



MONTHLY LEGAL UPDATES

January 2011

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VALUE ADDED TAX

VAT deductible of fixed assets

Upon assignment or transfer of fixed assets to the Parent company, the enterprise must issue value added invoices to the Parent company, and declare to pay VAT according to the regulations. The Parent company is not entitled to declare to get the input VAT deductible on the transferred premises as this is a fixed assets which is house used as a head office of credit institutions.

(Official letter No. 16/TCT-CS dated 04 November 2010 of General Department of Taxation)

VAT imposed on activity of transfer of factory to an export processing enterprise

When a local enterprise transfers its factory (infrastructure on the land, not including machineries and equipment) to an export processing enterprise, if this factory is within the area of land being in use as stipulated in the amended investment certificate granted by the Management Board of industrial parks of Dong Nai and the Customs Department of Dong Nai determines that this case is not subject to customs formalities, the enterprise then is entitled to apply the VAT rate of 0% as long as it meets the conditions of contracts, invoices and receipts of payment via a bank.

(Official letter No. 5045/TCT-CS dated 13 December 2010 of General Department of Taxation)

VALUE ADDED TAX (continued)

VAT deductible of exported goods

If the export enterprise did not prepare the value added invoice for the exported goods, but did record the sales and cost of those goods into its accounting books, the export enterprise is still entitled to declaration for VAT deductible or input VAT refund of the volume of goods actually exported; however, the export enterprise will be fined for administrative violation of invoices.

(Official letter No. 130/BTC-TCT dated 06 January 2011 of General Department of Taxation)

VAT imposed on the Industrial park's infrastructure for lease

For organizations and individuals who are entitled to lease the land of the State to develop the infrastructure for lease, the value on which the VAT is imposed is defined as the infrastructure rental fee exclusive of VAT the organizations/individuals charge the tenant minus the land fee the organizations/individuals must pay to the State Budget. In which:

- ◆ If the organizations/individuals leasing the infrastructure collect the rental fee every year, the land fee which will be deductible when determining the taxable value is the rental fee of the land the organizations/individuals must pay to the State Budget of that year. If the organizations/individuals have already paid the land fee fully for whole term or for many years, then the land fee deductible is the paid amount allocated for that year in proportion to the total number of years the rental was paid.
- ◆ If the organizations/individuals leasing the infrastructure collect the rental fee for some years earlier, the land fee which will be deductible when determining the taxable value is the land fee the organizations/individuals must pay to the State Budget of those years.

Accordingly, if the organizations/individuals are in the period of entitlement to exemption of land fee, the land fee deductible when determining the taxable value is 0.

(Official letter No. 5085/TCT-CS dated 14 December 2010 of General Department of Taxation)

Tax obligation imposed on the assets established by capital contribution, tax finalization and VAT refund

The assets an individual contributed as capital into an enterprise is not subject to VAT. In case the individual transfers the assets to the enterprise, the transferred assets must be declared to pay VAT and CIT.

(Official letter No. 5217/TCT-KK dated 23 December 2010 of General Department of Taxation)

VALUE ADDED TAX (continued)

Inquiries about the VAT imposed on THC (Terminal Handling Charge)

If the costs of loading and unloading goods from the transports to the first gate of import are separate from the international freight charge, those will not be included in the taxable value of the imported goods.

(Official letter No. 104/TCHQ-TXNK dated January 07, 2011 of General Department of Customs)

PERSONAL INCOME TAX

PIT applicable to under-3-month seasonal employees not signing employment contracts

In case an individual having income subject to withholding tax at the rate of 10% but total taxable income estimated after deduction of family circumstances is not to an extent to pay tax, then such individual must make a commitment by the Form No. 23/BCK-TNCN and send to the income-paying organization. Based on the commitment of the income-receiving individual, the income-paying organization temporarily doesn't withhold the tax, but at the end of the year the income-paying organization still must provide the list to the tax authority for notification.

(Official letter No. 5239/TCT-TNCN dated 24 December 2010 of General Department of Taxation)

Guidelines on PIT policy

Foreign individuals eligible for residence in Vietnam must do the PIT finalization when their employment contracts come due. After returning to their home country, if in the same tax year, an individual is offered some extra incomes by the income-paying organization in Vietnam, which are subject to PIT and related to the working time in Vietnam, the income-paying organization/individual in Vietnam then must be responsible for withholding and declaring to pay the PIT to the State budget.

(Official letter No. 4999/TCT-TNCN dated 09 December 2010 of General Department of Taxation)

PIT exemption, reduction

In case the households and individuals directly engaged in agricultural production (having right to use land including the land distributed by the State, by transfer, inheritance, donation) exchange their agricultural land to others for the rationalization of agricultural production, the income acquired by those due to the disparity in the land area, due to farming and soil conditions... are exempted from PIT.

(Official letter No. 4889/TCT-TNCN dated 01 December 2010 of General Department of Taxation)



PERSONAL INCOME TAX (continued)

Punishment for late payment of tax

If, after tax finalization, the income-paying organizations/individuals discovered that the monthly (or quarterly) tax declaration and the tax finalization contained errors and due to that, the organizations/individuals submitted a supplementary declaration which increases the tax amount payable before receiving the announcement of the tax authority about the tax inspection; then the income-paying organizations/individuals will be fined for late payment of tax and for false declaration as stipulated. Period for which the punishment is imposed for late payment of tax and false declaration is from the date after the deadline to submit the declaration up to the submission date of the supplementary declaration.

(Official letter No. 5221/TCT-TNCN dated 23 December 2010 of General Department of Taxation)

CORPORATE INCOME TAX

CIT policy

- ◆ For enterprises whose business licenses were granted before 01 January 2009: those having projects investing in exploiting precious and rare natural resources and being granted the investment licenses must pay the CIT at the applicable tax rate stipulated in their investment licenses.
- ◆ For enterprises whose business licenses have been granted since 01 January 2009: the Prime Minister imposes the tax rates applicable to each projects, each enterprises.

(Official letter No. 80/TCT-CS dated 07 January 2011 of General Department of Taxation)



OTHERS

Preferential tax on land

If the land is used to build houses for sale or lease to employees, the land must be delivered with collection of land use fee for a stable and long land use term.

(Official letter No. 5046/TCT-CS dated 13 December 2010 of General Department of Taxation)

Regulations on control of activities of e-commerce websites selling goods or providing services

The Circular makes provisions on the State's control of the activity of e-commerce websites established by the businesspeople and the organizations within the territory of Vietnam for selling goods or providing services.

1. Trading of restrictive or conditional goods and services on e-commerce websites is controlled by legal regulations relating to those goods and services.
2. This Circular is applicable to:
 - a. Businesspeople and organizations setting up the e-commerce websites to sell goods or provide services of those such businesspeople and organizations;
 - b. Businesspeople and organizations providing e-commerce exchange services;
 - c. Businesspeople, organizations, individuals participating in selling goods or providing services on e-commerce trading platform.

(Circular No. 46/2010/TT-BCT date 17 January 2010 of the Ministry of Finance)

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