



# MONTHLY LEGAL UPDATES

April 2011

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## CORPORATE INCOME TAX

### **Corporate income tax (CIT) incentives for enterprises doing business in several areas**

If enterprises newly established from investment projects do business and production in areas having different socio-economic conditions, those must separately record the income acquired from production and business activities which are entitled to tax incentives by each area (including preferential tax rates or tax exemption or reduction) in order to enjoy preferential treatment by local conditions of each area. If, in a tax period, the enterprises did not separately record the income from production and business activities entitled to tax incentives by each area where the investment project was conducted, then the income from production and business activities entitled to tax incentives by each area is determined by (=) total taxable income of production and business activities of all areas multiplied (x) by the percentage (%) of the cost of production and business activities by each area where the tax incentives are offered over total costs for production and business activities of the enterprises.

*(Official letter No. 982/TCT-CS dated 25 March 2011 of General Department of Taxation)*

## CORPORATE INCOME TAX (continued)

### Extension for payment of CIT of the year 2011

Deadline for payment of income tax is extended one year longer as from the deadline stipulated under the Law on Tax administration, which is applicable to the CIT payable of the year 2011 of small and medium enterprises, even including cooperatives (hereinafter referred to as small and medium enterprises).

CIT payable of the year 2011 of small and medium enterprises which is entitled to extension of payment must be the CIT amount temporarily calculated for every quarter and the additional CIT which must be payable after tax finalization of the year 2011.

The CIT entitled to extension for payment in the year 2011 even includes the CIT entitled to payment extension in the year 2010 which becomes due in the year 2011 (in addition to the CIT amount temporarily calculated for every quarter and the additional CIT which must be payable after tax finalization of the year 2011).

*(Circular No. 52/2011/TT-BTC dated 22 April 2011 of the Ministry of Finance)*

### Tax policy applicable for the period of investment

Content of the official letter the General Department of Taxation responded to the Tax Department of Ha Nam Province is summarized: "... If during the process of investment and building But Son Cement Factory, the PMU (Project Management Unit) has had receipts from fines, compensations given for breach of contracts (compensations in foreign currencies for late delivery, costs for repair of design errors,

compensations by materials) and receipts from exchange differences due to higher exchange rate by the time the contractor paid the compensations for the cost of repair of design errors to the PMU compared with the exchange rate by the time the PMU paid up the repairer; the PMU then should record the figures by reducing the invested capital of the project mentioned above relevant to such receipts".

*(Official letter No. 1355/TCT-CS dated 21 April 2011 of General Department of Taxation)*

### Payment of dividend into account of the Representative office of a foreign-owned enterprise in Vietnam

According to the regulations, in case a Joint-stock enterprise paid dividend into bank account of the Representative office of a foreign-owned enterprise in Vietnam after having settled all tax payments complying with the Law on CIT, the income the foreign-owned enterprise acquired from the dividend in Vietnamese dong is exempted from CIT as stipulated by the Law on CIT No. 14/2008/QH12 mentioned above and other legal documents providing guidelines on implementation.

*(Official letter No. 1050/TCT-CS dated 30 March 2011 of General Department of Taxation)*



## PERSONAL INCOME TAX

### Explanation about personal income tax

GDT (General Department of Taxation) has given explanation to the Finance and Budget Committee of the National Assembly about the PIT, which is not consistent between the Decree and the Law: "The contents prescribed at Point b, c, Clause 1, Article 32 of Decree No. 100/2008/ND-CP dated 18 September 2008 are meant the details of Point b, Clause 2, Article 8 of the Law on Personal Income Tax. "

*(Official letter No. 954/TCT-TNCN dated 23 March 2011 of GDT)*

### Guidelines on personal income tax

Individuals who have yet to have house or land for live fall into the cases of transferring of contracts of selling and purchasing houses established in the future are not entitled to exemption of PIT.

When individuals transfer the contracts of selling and purchasing houses established in the future, if the transfer price stated in the agreement of transfer of contracts of selling and purchasing houses established in the future and that declared in the tax report are not reasonable to the market price, the tax authorities will fix the transfer price, on which the tax will be imposed, after getting reference of prices from real estate exchange platform.

*(Official letter No. 955/TCT-TNCN dated 23 March 2011 of GDT)*

### Policy of personal income tax

For individuals who are foreigners and resident in Vietnam, the tax year is the calendar year. All income even including income acquired overseas must be declared in their PIT finalizing period.

Number of months for which the PIT will be imposed is determined according to the number of months those individuals actually worked in Vietnam.

*(Official letter No. 991/TCT-TNCN dated 28 March 2011 of GDT)*

### Insurance premiums not subject to income tax on high-income earners

For social insurance and health insurance premiums of foreigners which have already paid by those in their countries as compulsory requirements similar to social insurance and health insurance premiums in Vietnam, if there are proving documents, those premiums will be deductible when determining the taxable income of high-income earners.

For PIT deductible for income acquired overseas: if foreign individuals who are resident in Vietnam incurred taxable income overseas during the tax year, the PIT deductible for this kind of income shall not exceed the payable PIT under the tariffs of Vietnam corresponding to the income acquired overseas. Those individuals must declare and pay tax on the income acquired overseas (without any assumption) and this kind of income is not deductible unless there is tax payment receipts attested by overseas tax authorities.

*(Official letter No. 1032/TCT-TNCN dated 29 March 2011 of GDT)*





## PERSONAL INCOME TAX (continued)

### Conditions of PIT incentives for foreign experts implementing programs and projects of Official Development Assistance (ODA) in Vietnam

According to prevailing regulations in respect of foreign experts who are implementing ODA programs and projects, those foreign experts must provide the tax authorities required documents so as to be entitled to exemption of PIT and then the tax authorities will issue a confirmation on PIT exemption to the foreign experts implementing programs and projects of ODA. (Official letter No. 956/TCT-TNCN dated 23 March 2011 of GDT)

## VALUE ADDED TAX

### Invoices with sales discounts

If the discounts are offered to the purchasers basing on a certain extent of volume and turnover of their actual purchases of goods or services, the discounted amount of goods purchased must be recorded by the sellers in the invoice of that sale of goods or services for the last purchase or for the following purchase. Therefore, when issuing invoices with sales discounts or rebates, those discounts or rebates should have been deducted from the price on which the output VAT is imposed; concurrently the purchasers should not deduct the VAT not incurred by those discounts.

(Official letter No. 1114/TCT-CS dated 04 April 2011 of GDT)

## OTHERS

### Adjustment to policy of allowances

For those who are receiving monthly benefit for loss of work capacity; those who are receiving both monthly benefit and pension benefit; the monthly benefits are adjusted as follows:

$$\begin{array}{l} \text{Monthly benefit} \\ \text{and pension} \\ \text{applicable from} \\ \text{01 May 2011} \end{array} = \begin{array}{l} \text{Benefit and} \\ \text{pension of} \\ \text{April 2011} \end{array} \times 1.137$$

For those who are receiving benefits for injury suffered as a result of a work-related accident or occupation disease:

$$\begin{array}{l} \text{Monthly benefit} \\ \text{for work-related} \\ \text{accidents,} \\ \text{occupation disease} \\ \text{from} \\ \text{01 May 2011} \end{array} = \begin{array}{l} \text{Benefit for} \\ \text{work-related} \\ \text{accidents,} \\ \text{occupation} \\ \text{disease of} \\ \text{April 2011} \end{array} \times 1.137$$

(Circular No. 13/2011/TT-BLĐTBXH dated 27 April 2011 of the Ministry of Labor)

### New laws

National Assembly of the Socialist Republic of Vietnam, Legislature XII, 9th session on 29 March 2011 has adopted the following laws: the Law of independent audit; the Law of prevention of traffic in persons; the Law of amendment to the Code of civil procedure (which takes effect from 01 January 2012).

### Disclaimer

"This newsletter is designed for the information of readers. Whilst every effort has been made to ensure the accuracy, information contained in this newsletter may not be comprehensive and recipients should not act upon it without seeking professional advice".