



# LEGAL UPDATES

## DECEMBER 2013



### I - Some new points of the Law on Corporate income tax (CIT)

On December 26, 2013, the Government promulgated the Decree No. 218/2013/ND-CP guiding the implementation of Law on CIT. In which, there are some new noteworthy points as follows:

#### Regulating the deductible expenses as determining the taxable income must ensure the conditions as follows:

- The actual expenditures related to the business and production of enterprises, including expenditures for performing tasks of education, national defense and security; expenditures serving and supporting the activities of party organizations, political and social organizations in enterprises; expenditures of protection and prevention from HIV/AIDS in enterprises;
- The actual payments are full of invoices and vouchers under the provisions;
- For invoices of purchasing goods and services each time which their value of twenty million dong or more than must have payment vouchers not for cash payment, except for cases paying as provision.

#### Expenditures shall not be deducted as determining the taxable income of CIT:

Additionally supplement the differed payment of tax under the provisions of Law on tax administration.

#### CIT rate:

- CIT rate is 22 %, except for enterprises are the subjects to apply the tax rate of 20 % and the tax rate from 32 % to 50 %;
- As from January 01, 2016, cases are the subjects to apply the tax rate of 22% shall be applied the tax rate of 20%;
- Enterprises have been established and operated in accordance with the laws of Vietnam, including cooperatives and non-business units engage in business and production of goods and services with total revenue not exceeding 20 billion dong shall be applied the tax rate of 20 %.

#### Loss utilization:

Regulating income from transfer of real properties, transfer of investment project, and transfer the rights to participate in the investment project, transfer the rights of minerals exploring, exploiting and processing must separately determine to declare for tax submission. In case transfer the right of participating in investment project, transfer of investment project, transfer of real properties if there is any loss, this loss is offset against gains from business and production activities in the tax calculation period. In case enterprises prepare the dissolution procedures and sell their real properties as fixed assets, income from transfer of real properties are offset against income from business and production activities of enterprises.

## I - Some new points of the Law on Corporate income tax (CIT) (continued)

### The CIT incentives



- Incentives for new investment: Two years of tax exemption and the reduction of 50 % number of tax payable in the consecutive 04 years for income from performing the new investment projects in industrial parks (except for industrial parks located in the advantage economic - social conditions);

*Areas having the advantage economic - social conditions are urban districts of special cities, grade I cities directly under the central government and grade I cities under provincial municipalities.*

- Incentives for investment expansion: Enterprises having the investment and development projects for investment projects are operating in the field and locality of CIT intensives that expand their scale, improve capacity and innovate the production technology if satisfying one of three criteria under provisions shall be selected tax incentives for projects operating for the rest period or tax exemption and reduction for additional income increase due to the investment expansion brings toward. The tax exemption and reduction time from additional income increase due to the investment expansion is the same time with the tax exemption and reduction applied to the new investment projects in the same area and field of CIT incentives.

In case enterprises are operating with their investment to upgrade, replace and innovate the technology of projects operation in incentive field and area under provision but not satisfy one of three criteria under the provision, the tax incentive is performed for the project operating in the rest period.

The Decree takes into effect from February 15, 2014 and applies for the tax period 2014 onwards.

## II - Increasing the level of social insurance payment additionally of 2% from the year 2014

According to the schedule of adjusting the level of social insurance payment are clearly specified in the Decree No. 152/2006/ND-CP dated December 22, 2006 guiding a number of articles of the Law on social insurance and compulsory social insurance; the Decree No. 190/2007/ND- CP dated December 28, 2007 guiding a number of articles of the Law on Social insurance on voluntary social insurance of the Government. Accordingly, from January 01, 2014:

- The level of social insurance payment is increased additionally of 2% up to 26%, in which the labor users pay 18%, the labors pay 8%.
- The level of unemployment insurance and health insurance shall remain unchanged as before:

Unemployment insurance: 2% (the labor users pay 1% and the labors pay 1%);

Health insurance: 4.5% (the labor users pay 3%, the labors pay 1.5%).

Thus as from January 01, 2014, total level of social insurance, unemployment insurance and health insurance, the labor users pay 22% and the labors pay 10.5%.

### III - Expanding subjects of non-declaration and submission of value added tax (VAT)

There are more cases must not declare and submit the Value added tax (VAT), a number of goods and services are entitled the tax rate of 0% is the prominent in the Government's Decree No. 209/2013/ND-CP detailing and guiding the implementation of a number of articles of Law on VAT.

#### A number of cases must not declare and submit VAT

According to the Decree, VAT payers are:

- Organizations and individuals produce and do business of goods and services are the subject of VAT, organizations and individuals import goods are the subjects of VAT;
- Organizations and individuals produce and do business in Vietnam who purchase services (including cases of purchasing services associated with goods) of foreign organizations without having a permanent establishment in Vietnam, foreign individuals are the subjects of non-residents in Vietnam, organizations and individuals purchase services are the taxpayers.

Cases shall not declare, calculate and pay VAT:

- Organizations and individuals receive revenues on compensation, bonuses, allowances, transfer amounts, emission rights and other financial revenues;
- Organizations and individuals produce and do business in Vietnam who purchase services from foreign organizations without having a permanent establishment in Vietnam, foreign individuals are the subjects to non-resident in Vietnam, including cases: Repairing means of transportation, machinery, equipment (including materials, spare parts), advertising, marketing; promoting investment and trade; brokers of selling goods and providing services; training ...;
- Organizations and individuals do not do business shall not be taxpayers for VAT of assets sold;
- Organizations and individuals transfer the investment project for the production and business of goods and services are the subjects to Value added tax for enterprises and cooperatives.

#### A number of goods and services are entitled to the tax rate of 0%

Also according to the Decree, the tax rate of 0% applied to imported and exported goods including:

- Goods are exported overseas, and purchased in non-tariff barriers;
- Construction and installation projects in overseas, in the tariff barriers;
- Selling goods where the goods delivery and receipt places outside of Vietnam;
- On spot export and other cases are considered as export under the legal provisions.

For import services including the direct providing services to organizations and individuals in overseas or in the tariff barriers and consume outside of Vietnam, and consume in the tariff barriers.

In case service providing which activities take place both in Vietnam and outside of Vietnam but the service contract signed between the two taxpayers in Vietnam or have a permanent establishment in Vietnam, the tax rate of 0% only applied to the value of services performed outside of Vietnam. In case the contract does not separately specify the service value performed in Vietnam, the taxable price is determined by the ratio (%) of expenses incurred in Vietnam over total expenses.

This Decree takes effect as from January 01, 2014 and replaces the Government's Decree No. 123/2008/ND-CP dated December 08, 2008 and the Decree No. 121/2011/ND-CP dated December 27, 2011 detailing and guiding the implementation of a number of articles of the Law on Value added tax.

Abrogating Clause 1, Article 4 of the Decree No. 92/2013/ND-CP dated August 13, 2013 detailing the implementation of a number of articles took effect from July 01, 2013 of Law amending and supplementing a number of articles of Law on Corporate income tax and Law amending and supplementing a number of articles of the Law on Value added tax as from the date of this Decree takes effect.



#### IV - The new point on penalties for administrative violations in the customs domain

From January 26, 2014 the penalties for administrative violations in the customs domain shall have some new regulations on issuing and implementing the decision of administrative penalties, specifically as follows:

- Being entitled to apply the form of issuing decision on spot penalty for fines up to 250,000 dongs for individuals and 500,000 dongs for organizations;
- The time limit for issuing the penalty decision is 07 days as from the date of administrative minutes (before was 10 days);
- In case the differed payment of fine, other than paying full of fine, each date of deferred payment for fine, individuals and organizations shall pay additionally 0.05% per day over total fine has not been paid.



The new point as above stipulated in the Circular No. 190/2013/TT-BTC (Circular 190) guiding the Decree No. 127/2013/ND-CP stipulating the handling of administrative violations and enforcement of administrative decisions in the customs domain.

The Circular 190 replaces the Circular No. 193/2009/TT-BTC.

#### V - A number of words are able to be abbreviated as issuing invoice

On December 10, 2013, the General Department of Taxation promulgated the Official Letter No. 4291/TCT-CS guiding a number of words able to be abbreviated as issuing invoice including:

- “Phường” into “P”;
- “Quận” into “Q”;
- “Thành phố” into “TP”;
- “Việt Nam” into “VN”;
- “Cổ phần” into “CP”;
- “Trách Nhiệm Hữu Hạn” into “TNHH”;
- “Khu Công nghiệp” into “KCN”;
- “sản xuất” into “SX”;
- “Chi nhánh” into “CN”.

According to the General Department of Taxation these are the popular words, in case there are the abbreviation words and group of words in the invoice but these words ensure that the fully number of home, street, ward, commune, district, city and still define the correct name, address of the enterprise and in conformability with the business registration shall be also legal.



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