

LEGAL UPDATES

AUGUST 2014



I- Guiding the foreign exchange management for FDI enterprises in Vietnam



On August 11, 2014, the Governor of the State Bank of Vietnam promulgated the Circular No. 19/2014 /TT-NHNN guiding on foreign exchange management for foreign direct investment (FDI) activities in Vietnam.

The Circular guided the foreign exchange management for investment capital contribution, opening and using bank accounts for direct investment in foreign currencies and Vietnamese dong; transfer of capital, income and other legal income to overseas; transfer of investment capital in pre-investment process. This new point is very good for FDI Enterprises in the process when pre-investing .

Accordingly, before being granted the Investment Certificate, foreign investors are entitled to transfer their investment capital to Vietnam to satisfy the legal expenses related to pre-investment process. And after being granted the Investment Certificate, foreign and Vietnamese investors of FDI Enterprises and foreign investors involved in business cooperation agreements must finally settle the investment capital transferred to Vietnam. Formerly, expenses used in the pre-investment process before receiving the Investment Certificate of FDI Enterprise i.e. consultancy fees on Investment Certificate application, expenses for inviting foreign specialists travel to Vietnam who study the investment environment and location survey, etc. those expenses were not recognized in expenses of FDI Enterprises by some local tax authorities because there was no any specific regulation. This new Circular of the State Bank, these expenses shall be included in operating expenses once the Enterprise is licensed.

The subjects are applicable of the Circular including: residents are Enterprises who have the direct foreign investment; non-residents involved in the business cooperation agreements in Vietnam; non-residents who are foreign investors of FDI Enterprises; organizations, individuals related to foreign direct investment in Vietnam.

Accordingly, in order to carry out the investment activities in Vietnam, FDI Enterprises and foreign investors involved in business cooperation agreements are entitled to open their FDI accounts in foreign currencies or Vietnamese dong at 01 (one) authorized bank for the purpose of payment and receipt transactions as prescribed.

As prescribed in the Circular, FDI enterprises and foreign investors must comply with regulations on law on investment, the prevailing regulations on foreign exchange management and this Circular. The investment capital contributed by foreign and Vietnamese investors into an FDI enterprise must be performed by the form of transfer into the FDI accounts.

Utilization of foreign investors' dividends in the Vietnam territory must comply with prevailing regulations on the foreign exchange management and other relevant regulations of Vietnamese laws. The transfer of investment capital in FDI enterprises and investment projects of foreign investors must comply with the Law on Investment, Law on Enterprise, Law on Personal Income Tax Law, Law on Corporate Income Tax, guidance documents of these laws, and the prevailing regulations on foreign exchange management and the regulations of relevant laws.



I- Guiding the foreign exchange management for FDI enterprises in Vietnam (continued)

Besides, foreign investors are entitled to use the legal revenues generated in Vietnamese dong or foreign currencies from their foreign direct investment activities in Vietnam for performing re-investment activities in Vietnam.

The Circular additionally prescribed, when performing the payment and receipt transactions related to foreign direct investment activities in Vietnam of FDI Enterprises and foreign investors, the authorized credit institutions are entitled to provide guidance to the FDI Enterprises and foreign investors on relevant procedures for the opening and closing of direct investment accounts; regulate, inspect and keep all documents which are conformable with the payment and receipt transactions on direct investment accounts of foreign investors to ensure these transactions comply with regulations in this Circular as well as those in conformity with relevant Vietnamese laws.

In addition, authorized credit institutions are responsible for selling foreign currencies to foreign investors for overseas transfer on the basis of self-balance of foreign currencies by the authorized credit institutions and in conformity with the laws.

This Circular shall take effect from September 25, 2014.

II- The new points of foreign contractor tax in accordance with the Circular No. 103/2014/TT-BTC

On August 06, 2014, the Ministry of Finance promulgated the Circular No. 103/2014/TT-BTC guiding tax obligations applied to foreign organizations and individuals operating business in Viet Nam or receiving incomes in Viet Nam. Accordingly, some new noteworthy points are as follows:



Expanding the taxable subjects

Subjects are applied the Foreign Contractor Tax, have been supplemented some new subjects as follows:

- Foreign organizations or individuals perform the partial or entire business operation of goods distribution and services supply in Vietnam, in which foreign organizations or individuals still are the owners of the goods delivered to Vietnamese organizations; or responsibility for costs of distribution, advertising, promotion, and quality of the goods or services delivered to Vietnamese organizations; or definition the price of goods sold or services supplied; including cases of authorizing or hiring the Vietnamese organizations to perform a part of service distribution, or other services related to the sale of goods in Vietnam;
- Foreign organizations or individuals use Vietnamese organizations or individuals to negotiate and sign the contracts by the name of the foreign organizations or individuals;
- Foreign organizations or individuals perform the export, import and distribution rights in Vietnam; purchase goods for export purpose, sell goods to Vietnamese businesses under commercial law.

The Circular also clearly guided that **subjects are non-application the foreign contractor tax** are foreign organizations or individuals who supply goods for Vietnamese organizations or individuals without accompanying services performed in Vietnam under the forms as follows: Goods delivery at foreign border gate; goods delivery at Vietnamese border gate (including the case of goods delivery at foreign or Vietnamese border gate with warranty belonging to the seller's responsibility and obligation).

Value added tax (VAT) calculation method:

VAT amount payable = Assessable turnover of VAT x the rate (%) of VAT to the turnover

The rate % for VAT calculation to turnover:

- + For business activities in services, machinery and equipment leasing, insurance; construction, installation which exclude the contract of raw materials, machinery and equipment, the applicable rate is 5%.
- + For production, transport, services associated with goods; construction, installation with the contract of raw materials, machinery and equipment, the applicable rate is 3%.
- + For other business activities, the applicable rate is 2%.

This Circular takes effect from October 01, 2014 and replaces the Circular No. 60/2012/TT-BTC.

III- Summary of the amendments and supplements on tax and invoice in accordance with the Circular No. 119/2014/TT-BTC

On August 25, 2014, the Ministry of Finance promulgated the Circular No. 119/2014/TT-BTC amending and supplementing a number articles of the Circulars No. 156/2013/TT-BTC, No. 219/2013/TT-BTC, No. 08/2013/TT-BTC, No. 85/2011/TT-BTC, and No. 39/2014/ TT-BTC to simplify the tax administrative procedures. Accordingly, on August 26, 2014, the General Department of Taxation promulgated the Official Letter No. 3609/TCT-CS introducing and guiding more details on the new contents of Circular No. 119/2014/TT-BTC on reform and simplification of tax administrative procedures. Some noteworthy points are as follows:

1. To abrogate Value added tax declaration and calculation of exported goods are returned and must be re-imported .
2. To abrogate the level of 01 (one) billion dong on conditions of assets, machinery and equipment are invested and purchased for newly-established Enterprises to voluntarily register for applying the tax deduction method.
3. To abrogate the conditions of sale invoices or service supply invoices in the value-added tax refund procedure of exported goods and services.
4. To abrogate regulation invoice preparation, tax calculation, declaration, and payment for exporting machinery, equipment, materials and goods for loan, borrowing or repayment in case there is any conformable contract and voucher related to the transaction.
5. To abrogate 12 items in the Invoice List of goods and services purchased or sold.

The new guidance contents mentioned above takes effect from September 01, 2014.

For cases perform procedures and forms related to forms in accordance with the Circulars have been amended and supplemented in the Circular No. 119/2014/TT-BTC that the Enterprises need the time to prepare, they are entitled to select procedures and forms under prevailing regulations and the amended and supplemented regulations to perform continuously until October 31, 2014 without any notification or registration to the tax authorities.



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