



# LEGAL UPDATES

## MAY, 2012



### I – Announcements of updating the Tax declaration support software Htkk 3.1.3

On May 28, 2012, the General Department of Taxation announced upgrading the tax declaration support software Htkk 3.1.3. These functions are upgraded:

- + Upgrading function of declaring a declaration 01/GTGT in accordance with the Resolution No. 13/NQ-CP.
- + Updating excel file form of invoice report serving for receiving declaration with large data into online tax declaration system (iHTKK) for report on usage performance of invoices - Form BC26/AC and report on printing receipt performance of invoices - Form BC01/AC
- + Updating a declaration 01/NTNN, 03/NTNN: supporting and allowing declaration for taxpayers having negative taxable turnover .
- + Download at: <http://www.gdt.gov.vn/wps/portal/home/hotrokekhai>

### II – Tax law

#### Giving guidelines on implementing tax obligation

On April 12, 2012, the Ministry of Finance issued Circular No. 60/2012/TT-BTC giving guidelines on implementing tax obligation applicable to foreign organizations, individuals doing business in Vietnam or having income in Vietnam. This circular takes effect after 45 days from the signature date, changes Circular No. 134/2008/TT-BTC of Ministry of Finance dated December 31, 2008 giving guidelines on implementing tax obligation applicable to foreign organizations, individuals doing business in Vietnam or having income in Vietnam, Circular No. 197/2009/TT-BTC of Ministry of Finance dated October 09, 2009 supplementing Circular No. 134/2008/TT-BTC, Circular No. 64/2010/TT-BTC of Ministry of Finance dated April 22, 2010 amending and supplementing Circular No. 134/2008/TT-BTC.

The new points of this Circular in comparison with Circular No. 134/2008/TT-BTC:

+ The circular expands applicable objects to foreign organizations, individuals supplying goods in Vietnam under **the on - spot import - export form and there are income arising** in Vietnam based on the signed-contract between foreign organizations, individuals and Vietnamese enterprises (excluding processing and exporting goods return to foreign organizations and individuals) **or supplying goods under DDP, DAT, DAP terms (International Commerce Terms - Incoterms)**.

+ The objects *not subject to* regulations of this Circular are detailed and “narrower” in comparison with Circular No. 134/2008/TT-BTC in cases: Foreign organizations, and individuals supplying the below services for Vietnamese organizations and individuals and the services are performed overseas:

- \* Advertising and marketing (*excluding internet advertising and marketing*);
- \* Training (*excluding online training*).

+ In cases goods supplied and accompanied by services conducting in Vietnam such as: installation, running trial, guarantee, maintenance, replacement, other services and *these accompany services despite of being free*, CIT taxable income of foreign contractors, sub-contractors is *the total value of goods and services*.

+ VAT ratio chart (%) calculated in taxable revenue for business sectors subjects to supplementary VAT:

- \* Oil and gas drilling services: VAT rate calculated in taxable revenue: 70%.

## II – Tax law (continued)

### Giving guidelines on implementing tax obligation (continued)

+ The ratio chart (%) of Corporate Income Tax calculated in taxable revenue for business sectors is more detailed and specific :

No.	Business sectors	VAT rate (%) calculated in taxable income
1	Commerce: distributing and supplying goods, materials, supplies, machinery and tools accompanied with services in Vietnam <b>{including of supplying goods under the on – spot import – export form (excluding processing goods for foreign organizations and individuals); supplying goods under DDP, DAT, DAP terms (International Commerce Terms - Incoterms)}</b>	 1
2	Leasing services of machinery and equipment, insurance, and drilling	5
3	Management services of restaurant, hotel and casino	10
4	Leasing of aircraft, aircraft engines, aircraft accessories and vessels	2
5	Constructing and installing including or excluding the supplement of raw materials or machinery and equipment accompanied with construction works	2
6	Other production and business activities, transportation (including sea and airline transportation)	2
7	Transfer of securities, foreign reinsurance, reinsurance transfer commission	0,1
8	Derivative financial services	2
9	Loan interest	5
10	Copyright income	10

+ The period to apply the Circular for some **“special”** cases:

\* For Contractor contracts and sub-contractor contracts supplying services belonging to objects of free VAT, CIT or loan contract belonging to objects of free CIT for **loan interest** as regulated in Circular No. 169/1998/TT-BTC of the Ministry of Finance dated December 22, 1998, now belonging to objects who subject to VAT, CIT as regulated at this Circular shall abide by regulations of this Circular as from **March 01, 2012**.

\* For Contractor contracts and sub-contractor contracts applicable to CIT rate % calculated in the taxable revenue according to regulations in the previous Circulars **higher** than the rate mentioned in this Circular shall abide by the ratio mentioned in this Circular **from March 01, 2012**.

\* CIT rate% calculated in the taxable revenue for contracts supplying services of **management of restaurant, hotel and casino** will abide by regulations in this Circular from March 01, 2012.

### Exemption, reduction and extension of some amounts of state budget revenue

On May 23, 2012, the Ministry of Finance issued Circular 83/2012/TT-BTC giving guidelines on the exemption, reduction and extension of some amounts of State Budget revenue under the Resolution No. 13/NQ-CP of the Government dated May 10, 2012 regarding some solutions to reduce difficulties for production and business and support the market. They are:

#### Regarding value added tax



+ To defer for 6 months payment of value added tax (VAT) of April, May and June 2012 (excluding VAT of import stage) for the enterprises which currently pay VAT by the tax credit method belonging to following objects:

## II – Tax law (continued)

### Giving guidelines on implementing tax obligation (continued)

\* Small and medium-sized enterprises including co-operatives, excluding those doing business in: the lotteries, securities, finance, banking and insurance sectors and producing goods and services subject to special consumption tax and also excluding enterprises classified as Grade I or Special Grade belonging to Economic Groups and Corporations.

\* Labor intensive enterprises in the sectors of producing and processing agricultural, forestry and aquatic products, textiles, leather footwear, electronic components and construction of socio-economic infrastructure.



Small and medium-sized enterprises as regulated in this Circular are those that meet the criteria of capital or laborers as stipulated in Item 1 Article 3 of Decree No. 56/2009/ND-CP of the Government dated June 30, 2009 regarding supporting the development for small and medium-size enterprises.



Labor intensive enterprises are defined according to criteria: The enterprises' regularly average number of employees (including employees of branches and subsidiaries) in 2011 is over 300 people excluding employees with less-than-3-month labor contract term for the enterprises established before January 01, 2012. For enterprises just established from January 01, 2012, total amount of employees according to the criteria is over 300 people (excluding employees with less-than-3-month labor contract term) working from the establishment date to April 30, 2012 (for enterprises established before May 2012) or to May 31, 2012 (for enterprises established before June 2012), or to June 30, 2012 (for enterprises established before July 2012).

### Regarding corporate income tax

+ To defer for 9 months payment of corporate income tax for the amount of corporate income tax payable for years 2010 and earlier until May 10, 2012 which have not been paid to the State Budget of enterprises:

\* Small and medium-sized enterprises (including co-operatives), excluding small and medium-sized enterprises doing business in fields: lotteries, securities, finance, banking and insurance sectors and producing goods and services subject to special consumption tax and enterprises classified as grade I or special grade belonging to Economic Groups and Corporations.

\* Labor intensive enterprises in the sectors of producing and processing agricultural, forestry and aquatic products, textiles, leather footwear, electronic components, and construction of socio-economic infrastructure.

\* Enterprises manufacturing mechanical engineering products which are the materials for production or manufacture, and sea transportation (including transportation by both inland waterways and by sea), and manufacturing steel or cement; Small and medium-sized enterprises doing business in real estate field.

+ To defer for 9 months payment of corporate income tax for corporate income tax payable for year 2011 which have not paid to the State budget of enterprises manufacturing mechanical engineering products which are the materials for production or manufacture, and sea transportation (including transportation by both inland waterways and by sea) and manufacturing steel or cement; Small and medium-sized enterprises doing business in real estate field.

+ Corporate income tax payable in 2011 of small and medium-sized enterprises (excluding small and medium-sized enterprises doing business in real estate field); labor intensive enterprises doing business in the sectors of producing and processing agricultural, forestry and aquatic products, textiles, leather footwear, electronic components, and construction of socio-economic infrastructure are eligible for tax payment extension in accordance with Decision No. 21/2011/QD-TTg, Decision No. 54/2011/QD-TTg, Decision No. 04/2012/QD-TTg of Prime Minister.

### Regarding business registration tax



To exempt business registration tax for year 2012 for family households engaging in fishing. In case taxpayers belonging to entities eligible for tax exemption have paid business registration fees in 2012, they shall be refunded of tax amount paid by State Budget.

Households engaging in salt mining continue to exempt business registration tax as regulated in point 3 of Circular No. 42/2003/TT-BTC guiding the amendments and supplements to Circular No. 96/2002/TT-BTC dated October 24, 2002 of the Ministry of Finance.

## II – Tax law (continued)

### Giving guidelines on implementing tax obligation (continued)

#### *Regarding The amount of land rental and land use*

+ To reduce by 50% land rent payable in year 2012 for some economic organizations, enterprises operating in the commercial and services sectors which currently lease land from the State and the land rent unit price conform to regulations in Decree No. 121-2010-ND-CP of the Government dated December 03, 2010. Reducing mechanism is implemented under Decision No. 2093/QĐ-TTg of the Government dated November 23, 2011.

+ To defer for a maximum 12 months payment of land use fees in accordance with decision of Provincial People's Committees and being calculated from May 10, 2012 for economic organizations which are projects investors having the obligation to pay land use fees according to Announcement of tax offices or written-off relevant agencies but until May 10, 2012 the amounts have not been paid nor insufficiently paid.

+ To defer for a maximum 12 months payment of land use fees in accordance with the Provincial People's Committee for economic organizations which are the project investors having the obligation to pay arising land use fees after May 10, 2012 to December 31, 2012 according to Announcement of tax offices or written-off of relevant agencies.

However, Circular No. 83/2012/TT-BTC does not mention to the tax exemption and reduction cases referred in point 6 of the Resolution No. 13/NQ-CP of the Government dated May 10, 2012. To reduce by 30% corporate income tax payable in 2012 for small and medium enterprises; free presumptive tax amounts of value-added tax, personal income tax and corporate income tax in 2012 for individuals and business households...

#### *Tax policy for VAT invoice in foreign currency*

Although we mentioned **tax policy for VAT invoice in foreign currency** in Legal updates of April 2012 in accordance with the guidance in the Official Letter No. 4355/BTC-TCT dated April 03, 2012. However, due to the fact that this policy is especially relevant to many enterprises in recording and issuing VAT invoices conformable to the regulations to be eligible for VAT deduction as well as eligible for being recognized as Corporate Income Tax expenses. We continue to mention this regulation with more detailed analysis and guidance to draw your attention:

Accordingly, for the Enterprise purchased goods and services in VND but received invoices from suppliers stated in foreign currency and specified exchange rate into Vietnamese according to average transaction rate in inter-bank foreign currency market announced by the State Bank of Vietnam at the date when invoices are prepared, its actual preparation of invoices will be examined by Taxation Department, if the enterprise has declared and paid VAT as regulated and met conditions of VAT refund and calculated into deductible expenses upon determination of corporate income tax (CIT).

**In case an enterprise which is not allowed to sell goods and get foreign currency** but it prepared VAT invoices stated in foreign currency and specified exchange rate into Vietnamese according to average transaction rate in inter-bank foreign currency market announced by the State Bank of Vietnam at the date when invoices prepared and gave them to customers, the enterprise preparing invoices will be fined under the regulations of the prevailing law on foreign exchange management.

Thus, **from the day after April 03, 2012**, the purchase invoices paid in VND but stated in foreign currency and exchange rate will be illegal and **shall be neither eligible for VAT deduction nor eligible for calculation as deductible expenses upon determination of CIT.**

#### **Notes**

*"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 comprehensive and recipients should not act upon it without seeking professional advice".*