



LEGAL UPDATES

AUGUST, 2012



I - Corporate income tax (CIT)

- The Ministry of Finance promulgated the Circular No. 123/2012/TT-BTC dated July 27, 2012, guiding the implementation of a number of articles of the Law on Corporate Income Tax No. 14/2008/QH12, the Decree No. 124/2008/ND-CP dated December 11, 2008, and the Decree No. 122/2011/ND-CP of the Government dated December 27, 2012 detailing the implementation of a number of articles in the Law on corporate income tax. This Circular takes effect as from September 10, 2012, and **applies to the corporate income tax period from 2012 onwards; Replacing Circular No. 130/2008/TT-BTC dated December 26, 2008, Circular No. 177/2009/TT-BTC dated September 10, 2009, Circular No. 40/2010/TT-BTC dated March 23, 2010, and Circular No. 18/2011/TT-BTC dated February 10, 2011 of the Ministry of Finance.**

Also related to Circular No. 123/2012/TT-BTC, General Department of Taxation promulgated Official Letter No. 2967/TCT-CS dated August 17, 2012 introducing the new points of this Circular. The new and noteworthy points as follows:

The transfer of tax period of CIT

In case enterprises transfer the tax period of corporate income tax (including transferring tax period from solar calendar year into fiscal year, or vice versa) the tax period of corporate income tax in transfer year shall not exceed more than 12 months. Enterprises are in the period of corporate income tax incentives and conduct transfer of tax period, those are entitled to select: Eligible for incentives in the year transferring tax period or paying tax at the common tax rate in the year transferring tax period and eligible for incentives in the following year.

Determination of assessable income of CIT

Circular No. 123/2012/TT-BTC guiding and supplementing: Income from the transfer of real properties; projects (not associated with a transfer of land use and land lease right); transfer of project implementation rights and rights to explore, exploit and process minerals under law must be separately accounted to declare and pay corporate income tax at the rate of 25 percent, shall not be entitled to corporate income tax incentives nor offset with income or losses of other business production activities. In case enterprises have transfer activities of real properties; projects (not associated with the transfer of land use and land lease rights); transfer of project implementation rights and rights to explore, exploit and process minerals under law shall be entitled to offset profits, losses of these activities together.

Income to calculate taxable income of CIT

In case a lessee pays in advance for many years, income to calculate the taxable income shall be allocated in the number of years paid in advance or determined by income paid once. In case enterprises are in the period of corporate income tax incentives, the choice of method determining income to calculate the taxable income is total amount paid in advance for many years by lessee then *determination of the number of corporate income tax in each year of tax exemption, tax reduction will base on total number of corporate income tax of number of years paid in advance divides the number of years the lessee paid in advance.*

Deductible and non-deductible expenditures

+ For dossiers of assets and goods lost due to natural disasters, epidemics or fires are included in deductible expenditures for enterprise in *Industrial Parks, Export Processing Zones, Economic Zone* then Written confirmation of Management Board of Industrial Parks, Export Processing Zones, and Economic Zones where the natural disasters, epidemics, or fires occurs must confirm that in that time the natural disasters, epidemics and fires happened.

+ Goods damaged due to expiry, changes in natural biochemical process which are not compensated shall be included in deductible expenses upon determination of taxable income (abrogating the regulation of the fact that those must be in norm set up by enterprise).

+ Depreciation of fixed assets: Supplementing: equipment, interior qualified as fixed assets in the mid-shift rest house and canteen, dressing place, rest room, clinic or medical care unit and vocational and training facility shall be depreciated and included in deductible expenses upon determination of taxable income.

Assets which are tools, equipment, circulating packaging... do not satisfy the conditions to be determined as fixed assets under law then expenses used to purchase the assets mentioned above are allocated gradually to the cost of business production activities in the period *but not exceeding 2 years.*

In the case of project on land such as office building, factory, business store serving for business production activities constructed on the lease land and land borrowed from organizations, individuals, households (not directly rent land from the State or in industrial parks) shall be entitled to depreciation included in deductible expenses if: *"There are contracts of land lease and land borrowing between enterprises and land-owning unit and the enterprises' representative must take responsibility under law for the accuracy of the contract"*. In the past: *"Contracts of land lease and land borrowing must be notarized in the notary office under law; duration for lease and borrowing in contract shall not be less than the minimum depreciation period of fixed assets"*.

+ On constructing and managing the consumption norm of raw materials, supplies, fuel, energy, goods used in production and business: Supplementing: Registering the main norms of the major products of enterprises then the enterprises shall announce directly administrative tax office ***within the first three months of the year*** and there is a regulation: In case enterprises do not announce the norm to the tax office within time limit prescribed, the tax office, during the inspection and review, shall have the right to determine the cost of raw materials, supplies and goods. The determination of the cost of raw materials, supplies and goods are based on law on tax administration.

+ Payment of salary has been supplemented: the bonus, ***premium of life insurance*** for employees are not specified the conditions for entitlement and rate of entitlement in one of the following dossiers: Labor Contract; Collective labor agreement; Financial regulation of Company, Corporation, Group; Reward regulation prescribed by Chairman of the Board of Management, General director, Director in accordance with Financial regulation of Company, Corporation shall not be allowed to be included in deductible expense upon determination of taxable income. *In the past: There was no mention of premium of life insurance.*

I - Corporate income tax (continued)

Loss determination and transfer

Circular No. 123/2012/TT-BTC detailing the transfer of losses as follows: Enterprises suffering losses after tax finalization must continuously transfer all the losses to the taxable income of the following years. The continuous loss transfer period must not exceed 05 years, as from the year following the loss-making year.

The enterprise will temporally transfer losses to the taxable income of the quarters of the year after forming the quarterly temporary declarations and officially transfer the losses to the following year after forming the annual tax finalization declaration.

Enterprises having the number of losses between quarters in the same fiscal year are entitled to offset the number of losses of the prior quarters forward the following quarters of that fiscal year. Upon finalization of corporate income tax, enterprises determine the number of losses of the whole year and continuously transfer all the losses to the taxable income of the year following the loss-making year in accordance with the regulation mentioned above.

Abrogating the contents of regulation: Enterprise is the joint venture of other numbers of enterprises, as issuing liquidation decision and suffering losses then the number of losses shall be allocated for each enterprise participating in joint venture. Enterprise participating in joint venture is entitled to collect number of losses allocated from joint venture establishment to its income statement upon tax finalization but they must ensure continuously loss transfer principle not exceeding 05 years, as from the year following joint venture enterprise's loss-making year.



Please make reference to the attached Official letter No. 2967/TCT-CS for acknowledging other points other than noteworthy points shown above.

The Ministry of Finance promulgated Circular No. 140/2012/TT-BTC dated August 21, 2012, guiding the Decree No 60/2012/ND-CP dated July 30, 2012 of the Government detailing the implementation of Solution No. 29/2012/QH13 of National Assembly promulgating a number of tax policies in order to resolve difficulties for organizations and individuals. This issue was updated in prior legal updates, please make reference to the attached Circular for further details.

II - Use of foreign employees

Department of Labor, War Invalids and Social Affairs of Ho Chi Minh promulgated Official letter No. 7824/SLDTBXH-LD dated August 06, 2012 regarding report on performance of using foreign employees at enterprises. Accordingly,



Department of Labor, War Invalids and Social Affairs suggested that enterprises, organizations and individuals recruiting foreign employees and not reporting performance of using foreign employees in the first 06 months of the year must quickly report using form No. 19 accompanied with Circular No. 31/2011/TT-BLDTBXH dated November 03, 2011 and send that to Department of Labor, War Invalids and Social Affairs of Ho Chi Minh City on August 15, 2012. Expiration of the time limit mentioned above, enterprises, organizations and individuals recruiting foreign employees and not

reporting performance of using foreign employees shall be incurred sanction of administrative violation in labor field with **the sanction level from 20 million Vietnamese dong to 30 million Vietnamese dong** under clause 2, Article 14 of Decree No. 47/2010/ND-CP dated May 06, 2010 of the Government regarding sanction of behaviors violating Labor Law.

III - Relevant legal documents

- Circular No. 133/2012/TT-BTC dated August 13, 2012 of the Ministry of Finance , regulating the regime on collecting, paying and managing the charge of granting establishment license of the representative office of foreign businessmen in Vietnam.
- Circular No. 138/2012/TT-BTC dated August 20, 2012 of the Ministry of Finance giving guidance on allocating the business advantage value to joint stock company changed from the State - owned company.
- Official Letter No. 7483/BCT-XNK dated August 16, 2012 of the Ministry of Industry and Trade, regarding a number of issues related to import and export goods of foreign - owned processing enterprise.



Notes

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