

## Happy New Year 2012

### CIT AND VAT CHANGES

## New Decrees on CIT and VAT (most will agree that this is a great start to the 2012 year)

On 27 December 2011, the Government issued Decree No. 121/2011/ND-CP providing amendment of and supplement to Decree No. 123/ND-CP dated 8 December 2008 on VAT, and Decree No. 122/2011/ND-CP providing a number of amendments to the prevailing Decree No. 124/2008/ND-CP dated 11 December 2008 on CIT.

Some noteworthy changes which in general will benefit most (if not all) taxpayers in Vietnam:

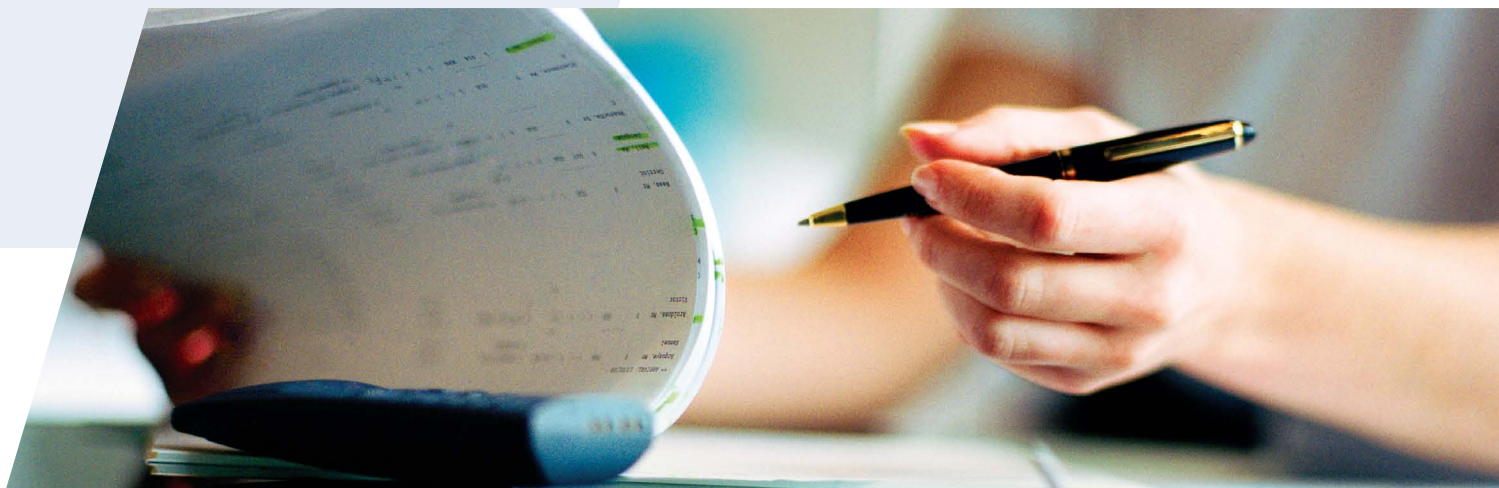
- There is a reduction of withholding tax to 5% from a previous 10% on interest payments from Vietnam to offshore lenders.
- CIT deductibility for life insurance premium payments for employees – we expect the Life Insurance sector to be celebrating, as well as employees, where their employers can see the tax planning opportunities.
- Property developers should be aware of the changes to the requirement to declare taxable income on revalued land contributed into a Joint Venture – now able to be declared over 10 years.
- Changes in the definitions of other income allows tax incentives to apply to more revenue items including the reversal of provisions for bad debts and inventory losses.
- For manufacturers which have significant by-product or scrap sales as part of their processes, you will appreciate that this will be considered a normal part of business and subject to tax incentives.
- Full credit of input VAT for damaged goods.

As usual, we await for the corresponding Circulars to provide more guidance, however the Decrees generally provide for positive outcomes for taxpayers in 2012.

Noteworthy points under Decree 122:

#### 1. Taxable income

- Income from disposal of assets and selling scraps which are not directly related to incentive business will be treated as “other income” and subject to CIT at the standard rate of 25%.
- Decree 122 confirms that reversal of provisions for inventory devaluation, financial investment loss, bad debts, warranty and salary shall not be included in “other income”.
- Income from transferring Certified Emission Reductions (CERs) within one year from the date of issuance will not be taxable.
- Income from revaluation of land use right for capital contribution purposes is allocated into other income and not exceeding 10 years from year of capital contribution.
- Income from leasing assets can be either allocated over the leasing period or recognised in full in one tax year. However, the CIT entitled to tax incentives is determined based on the total CIT liabilities of the years in which rental is paid in advance dividing by the number of such years.



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**2. Deductibility of expenses**

- Commission paid agents of multi-level marketing companies is confirmed not to be subject to cap of 10% or 15% applicable to advertising and promotion expenses.
- Expenses for bonuses, life insurance premium for employees are tax deductible if such benefits are documented in either labour contracts or policy of the Company.
- Provision for severance allowance made by companies who are required to pay Unemployment Insurance shall not be deductible.

**3. Foreign Contractor Withholding Tax ("FCT")**

- The CIT rates are adjusted:

Subject	Decree 124	Decree 122
Services	5%	5%. For restaurant, hotel and casino services: 10%
Interest	10%	5%
Re-insurance	2%	0.1%

- In addition to items already included under Decree 124, the new Decree 122 now provides that FCT will not apply to income earned by foreign companies by providing brokerage for sale of services overseas.

**4. Tax incentives**

- Tax incentives previously granted due to export ratio will be repealed from 1 January 2012.
- Taxpayers can adopt either tax incentives based on the prevailing regulations effective at the time they were licensed or those effective from 31 December 2011.
- Taxpayers are required to notify the tax authorities on the tax incentive option selected.

**Noteworthy points under Decree 121:**

- Supplies subject to zero rating (in effect) of VAT:
  - Exported goods and services with special conditions for international transportation, certain financial transactions including the transfer of Certificates of Emission Rights ("CER"), services provided by foreign contractors having no PE in Vietnam performed outside of Vietnam and sale of assets upon liquidation of an enterprise.
- Amending the amount subject to VAT:
  - Goods/services with special sales tax and environmental tax
  - Free invitation tickets/papers to art performances/contests



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- Specific calculation methodology regarding certain land transaction including auction of Land Use Rights, land leased from the State to perform investment project in infrastructure and houses for sale, transfer of land, and Build-Transfer contracts in exchange for land
- Provision of services which are performed both inside and outside Vietnam
- Supplementing some contents on "VAT direct method" :
  - The balance of negative added value can be offset against positive balance of gold, silver, precious stones. The remaining balance after offset shall be carried forward to following periods in the year, but not allowed to be carried forward to the following year. Please note that this does not apply to foreign currency trading and therefore the inability to carry forward losses regarding foreign currency trades, remains.
- Changes to creditable input VAT:
  - Full credit of input VAT of damaged VATable goods/services that are not indemnified
  - The 06-month time limit for correction of VAT declaration returns is not applicable for the case of VAT paid at import stage and input VAT of initial establishment of operations of an enterprise

Decree 121 and 122 take effect from 1 March 2012 and applies from tax year 2012.

We will keep you updated as soon as the Ministry of Finance provides further guidance regarding the Decree.



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