

**Special Edition:**

## **Updates on Corporate Income Tax (“CIT”) and Value Added Tax (“VAT”) Regulations for Banking and Financial Services Sector**

On 27 December 2011, the Ministry of Finance issued Decree 121/2011/ND-CP (“Decree 121”) and Decree 122/2011/ND-CP (“Decree 122”) providing a number of amendments and supplements to the prevailing Decree No. 123/2008/ND-CP and Decree 124/2008/ND-CP on VAT and CIT, respectively. Both Decree 121 and Decree 122 shall take effect from 1 March 2012. Below is the summary of notable points related to banking and financial sector.

### **Decree 122 on CIT - Clarity and reduction in withholding tax rates**

#### **Unrealised foreign exchange gain/loss of account payable**

Decree 122 confirms that unrealised foreign exchange gain of account payable shall be taxable and unrealised foreign loss of account payable shall be deductible for CIT purposes.

#### **Taxable income of capital/securities transfer activities**

Decree 122 specifically stipulates that deductible expenses for the determination of taxation income in case of capital/securities transfer activities must be expenses *directly* related to the transfer. However, Decree 122 does not define what are specifically the expenses *directly* related to the transfer. Hence, it is still leave room for interpretation.

In the case where the payment for the capital/securities transfer is not made in cash, but in kind such as assets or other material benefits (shares, fund certificates etc.) exchange, the income from such transfer shall be subject to CIT. However, it is unclear how the income shall be calculated in this case (e.g. how to determine the taxable income of the shares received be it at other market value or agreed valuation between both parties). As usual, we expect other regulations (such as circular) may be issued by the Ministry of Finance to provide more detailed guidance on this matter.

Decree 122 confirms that the difference between the selling price and the face value (i.e. share premium) in the case of issuance of new shares of a shareholding company shall not be subject to CIT. This removes the uncertainties relating to the tax treatment for share premium arising from newly listed companies.



**TAX AND CORPORATE SERVICES**

Applicable CIT rate (%) for income derived by foreign entities without permanent establishment in Vietnam

Applicable CIT rates for some financial services income, such as:

| Items                         | Decree 122 (New) | Decree 124 (Old) |
|-------------------------------|------------------|------------------|
| Interest income               | 5%               | 10%              |
| Re-insurance abroad           | 0.1%             | 2%               |
| Derivative financial services | 2%               | Silent (*)       |

(\*) Decree 124 is silent on the CIT rate for derivative financial services. However, under some rulings, income from interest rate swap (which is one of the derivative financial services) shall be subject to 2% CIT rate.

Decree 121 on VAT - More good news to financial services income

**Income not subject to VAT**

Decree 121 provides more clarity to some of the notable financial related services which are now not subject to VAT, these includes:

- Foreign currency trading;
- Issuance of credit cards;
- Domestic and international factoring services;
- Debts sales;
- "Margin" transaction in securities trading and cash advance for sale of securities.

**VAT Input Credit**

With effect from 1 March 2012, input VAT of fixed assets, machinery and equipment of credit institutions shall not be creditable for VAT purposes but will be treated as part of gross book value of such assets. This gross value will be eligible for depreciation claims where applicable.

Guidance on Purchase of Corporate Bonds by Credit Institutions and Foreign Bank Branches

State Bank of Vietnam (SBV) issued Circular 28/2011/TT-NHNN (Circular 28) for guidance on the purchase of corporate bonds by commercial banks, finance companies and branches of foreign banks. This circular covers corporate bonds offered for sale on the primary market in Vietnam and under an underwriting agreement with the issuer.

Circular 28 provides conditions of eligibility to purchase corporate bonds by credit institutions (CI). Funds invested in bonds will be treated as part of the CI credit limits which are subject to single client limit and single client plus related persons limit. The current limits are:

| Credit Institutions                    | Single client limit | Group Limit |
|--|---------------------|-------------|
| Commercial bank or foreign bank branch | 15%                 | 25%         |
| Finance Company                        | 25%                 | 50%         |

Circular 28 came into effect 20 October 2011 and it is noted that foreign banks branches are not entitled to purchase convertible bonds.



## Increase in Penalties for Offences in Monetary and Banking Sectors

It has been a common practice in Vietnam to quote prices for various transactions in foreign currencies. For most foreign companies and local enterprises which do not want to take the risk of accepting the devaluing VND, most prices for services and goods are quoted in USD or other foreign currencies. While most domestic land transactions are quoted in gold value rather than VND.

However, the above practices will come to a change as the new Decree 95/2011/ND-CP (Decree 95) provides more firepower for the enforcement authorities in penalising non-compliance of the Vietnam Foreign Exchange Control and Decree 160/2006 on advertising, listing and payment of transactions.

The Decree will result in penalties for violations of the above requirement. Fines can range from VND50 million to VND100 Million (approximately USD2,500 to USD5,000) and can apply to the following activities:

- lending, financing and repaying domestic debts in foreign currency;
- buying, selling or payments of goods or services domestically in foreign currency or gold.

In addition, a fine of VND300 Million to VND500 Million (approximately USD15,000 to USD25,000) will be imposed in the case of offences such as:

- engaging in foreign exchange activities without a valid license
- importing or exporting of foreign currency or gold without a State Bank of Vietnam (SBV) approval
- listing prices or advertising goods or services for domestic consumption in foreign currency or gold.

Decree 95 also provides for additional penalties in cases of severe violation. Such penalties include the confiscation of goods (i.e. gold and foreign currencies) and suspension of the business license. So far, several enterprises and banks have been penalised for non-compliance with the law. It appears that the SBV intends to exert stricter control over the widespread use of foreign currencies and gold pricing on the domestic market.

## Contact us

**Warrick Cleine**  
CEO - Vietnam and Cambodia  
Tax Managing Partner

### Hanoi

Le Thi Kieu Nga, Partner  
Hoang Thuy Duong, Partner  
Do Thi Thu Ha, Partner  
Nguyen Thu Huong, Director  
Er Say Hun, Director  
Ho Dang Thanh Huyen, Senior Manager  
Nguyen Thi Thuy Ha, Senior Manager  
Taninaka Yasuhisa, Japanese Desk

**16th Floor, Pacific Place**  
**83B Ly Thuong Kiet Street**  
**Hoan Kiem District**

**T:** +84 4 3946 1600  
**F:** +84 4 3946 1601  
**E:** kpmghanoi@kpmg.com.vn

### Ho Chi Minh City

Rolf Winand, Partner  
Ninh Van Hien, Partner  
Ta Hong Thai, Partner  
Nguyen Cong Ai, Partner  
Ho Thi Bich Hanh, Partner  
Nam Nguyen, Partner  
Jeff Sea, Partner  
Tran Thi Tuyet Nhung, Partner  
Hoang Anh Tuan, Director  
Nguyen Thanh Hoa, Director  
Do Trong Hoai, Director  
Nhan Huynh, Director  
Tran Dong Binh, Director  
Kimura Ayano, Japanese Desk

**10th Floor, Sun Wah Tower**  
**115 Nguyen Hue Street**  
**District 1**

**T:** +84 8 3821 9266  
**F:** +84 8 3821 9267  
**E:** kpmghcmc@kpmg.com.vn

[www.kpmg.com.vn](http://www.kpmg.com.vn)



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2012 KPMG Limited, a Vietnamese limited liability company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.