

# Technical Update

VIETNAM

August 2010

## Corporate Income Tax (CIT)

### No profit repatriation allowed when in accumulated loss position

According to Official Letter No. 2785/TCT-CS dated 29 July 2010 of the GDT, despite the fact that an FIE is making profits in a given tax year, if its audited financial statements show that it is in an accumulated loss position, i.e. the accumulated losses are greater than that year's profits, the FIE shall not be allowed to declare dividend payout or repatriate any profits abroad.

It is still not clear in case the current year's profits are greater than the accumulated losses, an FIE could distribute the entire profit amount or just the balance after loss offsetting.

Further guidance from the GDT is expected in this regard. We will keep you posted of any development.

### Non-compliance with Vietnamese Accounting Standards can lead to deprivation of CIT incentives

Compliance with the Vietnamese Accounting Standards to the letter is now one condition for enjoying CIT incentives. Particularly, according to Official Letter 2669/TCT-KK of the GDT dated 21 July 2010, when an FIE is found to have failed to keep its accounting books up to the requirements of the Vietnamese Accounting Standards, it would be deprived of any CIT incentives that it should otherwise be entitled to.

Deviations from VAS requirements could be the absence of the Vietnamese language in accounting documents or certain items on an accounting document not completely filled out, etc. These deviations could be seen in many FIEs that employ the same accounting software as their headquarters for group reporting purposes.

The above shows that the tax authorities are looking at compliance issues more severely and the realisation of CIT incentives is now more conditional and uncertain than ever.

### Depreciation expenses of fixed assets under short-term repair allowed as deductible

According to Official Letter 10589/BTC-TCT of the MOF dated 12 August 2010, fixed assets under repair for a period of less than 12 months, and therefore could not be used for business production purposes during this period, could still be depreciated and the associated depreciation costs would be deductible for CIT purposes as usual.

# Value Added Tax (VAT)

## New Circular on simplified VAT refund procedures for export goods

Under current VAT regulations, one condition for recognising export sale is that payment must be made by way of bank transfer. As such, claims for VAT refund in connection with export sale must include evidence of bank transfer payment from customers.

However, in an effort to simplify VAT refund procedures on exports, recently the MOF issued Circular 94/2010/TT-BTC allowing that VAT refund claims for export sales could be settled upfront at 90% in value pending evidence of bank transfer payment. The remaining 10% shall be finalised when the enterprise submits evidence of bank transfer payment for the whole transaction at a later date.

Naturally, the above upfront VAT refund shall be revoked, and penalty shall apply, if the enterprise subsequently fails to submit sufficient bank transfer payment evidence as required by VAT regulations.

Circular 94 could provide some cash flow advantages especially for export-oriented businesses as it shortens tax refund approving time.

# Import & Export Duties

## New Decree on Import and Export Duty

On 13 August 2010, the Government issued Decree 87/2010/ND-CP, replacing Decree No. 149/2005/ND-CP, to provide detailed regulations for implementation of the Law on Import and Export Duties. Below are some notable highlights:

- The lists of incentive and especially incentive investment sectors for ID assessment purposes have been updated to align with those under the current CIT and Investment Laws.
- Import-export packages with value below regulated minimum dutiable thresholds and delivered via express post shall now be exempted from ID. The Prime Minister's decision regarding the threshold should be issued at some later date.
- Left-over materials of export processing contracts if actually destroyed in Vietnam in accordance with required procedures upon liquidation of such contracts, are now confirmed to be exempted from ID.
- The 5 year ID exemption on materials that is applicable to especially encouraged investment projects or projects implemented in locations with especially difficult social-economic conditions, shall now not apply to the following sectors: manufacture and assembly of automobiles, motorcycles, air-conditioners, electric heaters, refrigerators, washing machines, electric fans, dishwashers, disc

players, stereo recording systems, electric irons, kettles, hair dryers, hand dryers and other sectors as regulated by the Prime Minister from time to time. Again, the Prime Minister's decision regarding this matter could be issued at some later stage.

- Customs administration matters re now governed under the Tax Administration Law, rather than separate Law on Import/Export Duties, including statute of limitations, penalties, interest charge, etc. A separate decree is expected in this regard.

Decree 87 shall become effective from 1 October 2010.

## No ID exemption for importation of replacements of damaged goods

Under current regulations, items imported to form fixed assets of encouraged investment projects are exempted from ID. However, according to Official Letter 3740/TCHQ-TXNK of the GDC dated 8 July 2010, if for some reason, including force majeure, the fixed assets imported tax free are damaged and therefore have to be replaced, the importation of their replacement shall not enjoy ID exemption.

From the context of the Official Letter, it appeared that ID exemption was denied because the assets had already been put in use by the enterprise before the request for replacement, though it was not clear if they were still in warranty

period.

OL 3740 does not state whether ID shall be imposed in case of immediate re-export of defective items in exchange for good ones before an enterprise ever puts the asset in use. We believe that ID exemption should apply to the replacement in this case.

From the above, it is important that investors register their master list of all assets to be imported, including projected replacements where foreseeable, with the authorities at an early stage, in order to enjoy their legitimate ID exemption right.

## Possible recollection of ID on imported fixed assets in case of corporate reorganisation

According to Official Letter 3694/TCHQ-KTTT of the GDC dated 7 July 2010, when an enterprise undergoes a reorganisation, e.g. change in form of ownership, and the reorganised company itself is not a subject of ID exemption, all items previously imported tax free would now be liable to ID assessment.

This possible retroactive ID assessment could have significant financial impacts on enterprises undergoing corporate restructurings and therefore should be taken head of.

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