

New guidance on profit repatriation

On 18 November 2010, the Ministry of Finance issued Circular No. 186/2010/TT-BTC (Circular 186), providing guidance for profit repatriation by foreign investors.

The following are the most important changes:

- Circular 186 only applies to the remittance of profits earned from direct investment and does not cover indirect investment activities in Vietnam
- Circular 186 only allows the repatriation of profit on an annual basis, or upon termination of investment in Vietnam. To complete this, audited financial statements and Corporate Income Tax finalisation returns for the year of the Vietnamese entity where the investment is made, must be submitted to the local tax office
- The Circular is silent as to whether provisional profit remittance during the year (e.g. quarterly or semi-annual) is still possible
- No profit remittance abroad is permitted if the Vietnamese entity where the investment is made is in an accumulated loss position after loss offset. This requirement was previously provided for in various tax rulings and imposed by many local tax offices. With the issuance of Circular 186 this requirement becomes official.

In terms of documentation, at least 7 (seven) working days prior to the profit remittance, a "Notice" of profit remittance abroad must be sent to the tax office. It is not clear at this stage whether such a Notice must be approved by the tax authority before the remittance can take place.

Circular 186 comes into effect after 45 (forty five) days from the date of signing, i.e. from 2 January 2011.

With the issuance of Circular 186, the repatriation of profits now requires planning, both in terms of timing for profit remittance and profit & loss accumulation of the Vietnamese investment.



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