

# Technical Update

## Tax and Legal Services

October 2016



### 1. Corporate Income Tax ("CIT")

- (i) *A branch established in the 2007-2008 period is treated as an expansion investment project and eligible to enjoy tax reduction and tax exemption, and does not qualify for the incentive tax rate*

According to Official Letter No. 11753/BTC-TCT dated 23 August 2016, the Ministry of Finance has clarified that a branch established in the year 2007 or 2008 is treated as an expansion investment project and hence is eligible to enjoy CIT reduction and exemption but does not qualify to enjoy the CIT incentive rate (which is applicable to a new investment project).

- (ii) *Interest income arising from a short-term savings account in which charter capital is deposited shall be taxable for CIT calculation purposes*

According to Official Letter No. 4507/TCT-CS dated 29 September 2016 issued by the General Tax Department, if a company deposits its foreign-currency denominated charter capital into a short-term savings accounts following the regulations on the use of direct capital account in foreign currencies, interest income arising from such savings accounts shall be taxable for CIT calculation purposes.

When the principle of the charter capital in foreign currency is transferred between a savings account and a checking account resulting in foreign exchange differences due to the revaluation of the account balance, the corresponding foreign exchange gain / loss shall not be taxable / deductible for the purposes of CIT calculation.

- (iii) *Circular 86/2016/TT-BTC provides guidance on the provision, utilisation and accounting record for the reserve fund to compensate for damage to the environment*

In 20 June 2016, the Ministry of Finance issued Circular 86/2016/TT-BTC to provide guidance on the provision, utilisation and accounting record for the reserve fund to compensate for damage to the environment, further to Decree No. 19/2015/ND-CP stipulating the implementation of the Law on Environmental Protection. Some notable points from Circular 86 are as below:

- Guidance in the circular is applicable to organisations and individuals engaging in the following business activities:
  - Oil and gas;
  - Manufacturing and trading of chemicals and petroleum;
  - Using specialised marine vessels to transport petroleum, petroleum products or other dangerous items when operating in the territorial waters and port areas of Vietnam; and
  - Storing, transporting and disposing of hazardous waste and goods.
- The provision is made at 0.5% of the annual net sales revenue, capped at 5% of its annual profit before tax. When the fund's balance equals 10% of the company's charter capital, no additional provision is allowed.

- (iv) *Joint Circular No. 12/2016/TTLT-BKHHCN-BTC provides guidance on the allocation and management of the Science and Technology Development Fund ("STDF") in enterprises*

On 28 June 2016, the Ministry of Science and Technology and the Ministry of Finance issued Joint Circular No. 12/2016/TTLT-BKHHCN-BTC providing guidance on the allocation and management of the STDF. Some notable points in the joint circular are as below:

- It supplements the provision on the fund's spending, including the expenses for managing the fund such as salaries and other compulsory insurances, allowances for personnel holding concurrent posts, and office leasing expenses (if any);
- It supplements the provision on interest on late payment arising from additional CIT payable in case a company reverses the unused fund. Accordingly, the relevant interest on late payment shall not be deductible for CIT calculation purposes;
- It supplements the requirement to prepare a report for fund making, fund transfer and fund utilisation. Accordingly, the report for fund making, fund transfer and fund utilisation must be submitted to the tax authority, the provincial Department of Science and

Technology and the provincial Department of Finance, following the same submission deadline for fiscal year-end CIT finalization.

Joint Circular 12 comes into force on 1 September 2016 and applies for the fiscal year 2016.

(v) *Circular 147/2016/TT-BTC supplementing and amending Circular 45/2013/TT-BTC on fixed asset depreciation*

On 13 October 2016, the Ministry of Finance issued Circular 147/2016/TT-BTC, amending and supplementing certain articles of Circular 45/2013/TT-BTC on management and depreciation of fixed assets. Some notable changes under Circular 147 are as below:

- It supplements the depreciation of fixed assets for a building complex: where a company owns a building complex which is utilised for both normal operation and for leasing/sales purposes, such a company is required to separate the areas that are for leasing/sales purposes, and is neither allowed to record the fixed assets nor claim depreciation for such areas;
- It supplements category No. 6 of the fixed assets and the related management requirements applicable for high-value infrastructure fixed assets funded from the State Budget and transferred for business organisations to manage, exploit and use;
- It amends the provision for fixed assets of Build – Operation – Transfer (“BOT”), Business Cooperation Contract (“BCC”) projects. Accordingly, the useful life of fixed assets of the related projects shall be equal to the payback period (“PBP”) of the investors. Previously, the useful life of those assets should be counted from the commencement date of the usage of the assets till the last day of the projects.

Circular 147 comes into force on 28 November 2016 and applies for the fiscal year 2016.

## 2. Personal Income Tax (“PIT”)

(i) *Increase the monthly mid-shift meal allowance to VND 730,000 per person*

On 1 September 2016, the Ministry of Labour, Invalids and

Social Affairs issued Circular No. 26/2016/TT-BLDTBXH (“Circular 26”) providing guidance on the implementation of labour management, salaries and bonuses for employees working in 100% state-owned limited liability companies. Notably, the mid-shift meal allowance is increased from VND 680,000/person/month to VND 730,000/person/month.

In accordance with Circular 111/2013/TT-BTC, in case the employer, being a non-state-owned enterprise and other business organisation, provides a mid-shift meal allowance in cash instead of in-kind to its employees, the allowance within the cap applicable to the state-owned enterprise shall be non-taxable for PIT calculation purposes.

Accordingly, the cap for the mid-shift meal allowance subject to PIT exemption shall be VND 730,000/person/month.

Circular 26 comes into force on 15 October 2016. All regimes specified in the Circular shall be applicable from 1 January 2016.

## 3. Permanent Establishment for tax purposes

(i) *A representative office of foreign organisations performing trade promotion activities is regarded as constituting a permanent establishment for a foreign organisation in Vietnam*

According to Official Letter No. 2826/TCT-DNL dated 23 June 2016 of the General Tax Department, in case a representative office, on behalf of a foreign organisation, performs trade promotion activities and participates in the implementation of signed contracts in Vietnam, such foreign organisation is considered as performing part of its business activities through the representative office, and hence giving rise to a permanent establishment in Vietnam.

## 4. Export Duty and Import Duty

(i) *The deadline to supplement the Certificate of Origin (“C/O”)*

According to Official Letter 12802/BTC-TCHN dated 14 September 2016 and Official Letter 13959/BTC-TCHQ dated 4 October 2016 of the Ministry of Finance, the deadline to submit the C/O shall be as below:



- The customs declarant must submit the original C/O to the customs authority upon submitting the customs declaration in order to enjoy the preferential tariffs under the corresponding free trade agreements.
- In case the original C/O is not available at the time the customs declaration is submitted, the customs declarant must declare to supplement the C/O on the customs declaration, and submit the C/O within 30 days from the registration date of the customs declaration. For the C/O under the Vietnam – South Korea Free Trade Agreement, the deadline to supplement the C/O shall be within 1 year from the registration date of the customs declaration. In the absence of the original C/O, the most-favoured nation (“MFN”) tax rates shall be used for customs duty calculation purposes.
- Other than the above deadline, customs authorities will only consider the C/O supplementary in the following cases:
  - As at the date of registration of the customs declaration, with the declared harmonised system (“HS”) code, the MFN tax rate is lower than or equal to the special preferential tax rate, and the company declares the MFN tax rate instead of applying the special preferential tax rate. After the customs clearance, the customs authority re-classifies the HS code or the company declares to update the applicable HS code, and the MFN tax rate applicable to the new HS code is higher than the preferential tax rate.
  - As at the date of registration of the customs declaration, the goods are determined to be entitled to import duty exemption as being the goods imported for the incentive investment sector. After the customs clearance, the customs authority carries out a post-customs clearance inspection and identifies, or the company self-identifies that the goods are not on the list of the incentive investment sector.

*(ii) Guidance on the implementation of the Law on Export Duty and Import Duty No. 107/2016/QH13 (“Law 107”) regarding cases of export and import duty exemption*

On 31 August 2016, the Ministry of Finance issued Official Letter No. 12166/BTC-TCHQ (“Official Letter No. 12166”) to provide further guidance on the implementation of Law 107. Official Letter No. 12166 sets out 10 cases eligible for export and import duty exemption, and the relevant supporting documents and procedures required for duty exemption.

In relation to the raw materials, supplies and components imported for producing export goods, and the trading goods temporarily imported for re-export purposes registered prior to 1 September 2016, the General Customs Department also issued Official Letter No. 8621/TCHQ-TXNK further to Official Letter No. 12166 as follows:

- Companies that have registered customs declarations prior to 1 September 2016 for which the deferred payment period or the guarantee period has expired but the goods have not been exported or re-exported, and import duty has not been paid, are exempt from import duty;
- Companies that have registered customs declarations prior to 1 September 2016, which is within the allowable deferred payment period or guarantee period, are required to declare on the new customs declaration where there is a change in purpose for the import to enjoy the import duty exemption;
- In case the goods have been exported or re-exported and/or the taxpayers have paid the import duty, the company is eligible to submit a tax refund /no tax payment application in accordance with the current regulations.

*(iii) Decrees guiding on export tariffs, preferential import tariffs and special preferential import tariffs*

On 1 September 2016, the Government issued 11 decrees guiding on export tariffs, preferential import and special preferential import tariffs applicable for signed free trade agreements. All decrees come into force on 1 September 2016.

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