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TAX ALERT
February 2015

TAX AND CORPORATE SERVICES

Decree 12 supplementing and amending a number articles of tax Decrees

On 12 February 2015, the Government has issued Decree 12/2015/ND-CP ("Decree 12") guiding on the implementation of the Law No. 71/2014/QH13 ("Law 71") dated 26 November 2014, supplementing and amending a number of tax laws. Decree 12 takes effect from 1 January 2015.

This Tax Alert only summarises notable points for which Decree 12 provides further guidance compared with those of the Law 71. For those points clearly mentioned under the Law 71, please refer to our Tax Alert dated 27 November 2014.

1. Corporate Income Tax ("CIT")

(i). Taxable income of foreign entities

Decree 12 supplements certain taxable income items of foreign entities regulated under Point c, d, Clause 2, Article 2 of the Law on CIT, including income from transfer of capital, investment project, capital contribution rights, investment project participation rights, rights for exploration, mining and processing mineral resources in Vietnam. A notable point here lies in the new regulation on income from capital transfer of foreign entities, i.e. offshore capital transfer transactions may be subject to Vietnamese CIT, depending on the specific transaction.

(ii). Income subject to CIT exemption

Income from processing agricultural and aquaculture products shall be exempt from PIT if all the following conditions are satisfied:

- Cost of materials of agricultural and aquaculture source over total production cost accounts for at least 30%
- Goods made from processing agricultural and aquaculture products are not subject to Special Consumption Tax, except for cases approved by Prime Minister as proposed by the Ministry of Finance.

(iii). Supplementing some deductible expenses

- Expenses incurred for occupational education and training activities for employees will be deductible.
- In case a company which has fully contributed capital incurs interest expense from loans for investment into other companies, such interest expense will be deductible for CIT purposes.
- Removal of the cap of VND1 million/month on life insurance expenses for employees. Previously, this expense is deductible at the cap, now it is fully deductible.

(iv). CIT incentives

Besides other additional cases subject to CIT incentives as per the regulation of the Law 71, the Decree 12 provides further guidance on the following cases:

- Clarify the following conditions for CIT incentive entitlement at 10% for 15 years of new investment projects in the manufacturing sector:
  - Having investment capital of at least VND6,000 billion, disbursement within 3 years from the date when the investor is allowed to invest for the first time in accordance with the investment regulations.

(previously, the limitation of 3 years is counted from the time the investment certificate is granted).

- Employing more than 3,000 laborers on a regular basis, in accordance with the labor regulations, i.e. including laborers signing labor contract with the term of less than one year and part-time laborers (previously, only laborers having over one year contract term and full-time laborers are taken into account for this condition).

- Supplementing the application of tax rate of 10% for income from the processing of agricultural, forestry and aquaculture products in the areas with difficult socio-economic conditions and 15% for income from agricultural and aquaculture activities in the non-difficult areas.
- Decree 12 confirms that tax incentives will not apply to income from trading and service activities implemented outside the economic zones, industrial zones, Hi-tech zones and incentive locations.
- Enterprises having investment expansion projects which have been approved by the licensing authority or executed during the period from 2009 to 2013 and satisfying the conditions for CIT incentive entitlement in accordance to the Law 32/2013/QH13 ("Law 32"), such enterprises will be subject to tax incentives applicable to investment expansion projects for the remaining period in accordance with Decree 218, from the tax year 2015.
- Enterprises having investment projects in industrial zones during the period from 2009 to 2013 will be subject to tax incentives in accordance with the Law 32 for the remaining period, from the tax year 2015.
- Enterprises will be entitled to tax incentives for the remaining period from the tax year 2015 if the investment projects are located in the areas which did not fall under the list of tax incentive entitlement areas prior to 01 January 2015 but now qualify as tax incentive entitlement areas.
- Enterprises having investment projects in the areas which are converted into tax incentive entitlement areas after 1 January 2015, will be subject to tax incentives for the remaining period, as from the conversion date.

2. Value Added Tax ("VAT")

- Fertilizers; cattle food, poultry food and other livestock food; equipment exclusively used for agricultural production are not subject to VAT instead of VAT rate of 5% as before. The input VAT relating to these goods will not be creditable but deductible for CIT purposes, except for input VAT incurred before 1 January 2015 (if eligible for VAT credit/refund).
- Cigarettes, spirits and beer which are imported and then exported shall not be entitled to output VAT rate of 0%.
- In case enterprises undergo dissolution, bankruptcy or termination during the investment stage, no output VAT is generated from the main business activities, such enterprises are not required to adjust the credited/refunded input VAT. The Ministry of Finance ("MoF") will provide further guidance on tax declaration and payment in case of transferring the investment projects, selling assets of the investment projects or changing the business purpose of the investment projects.

3. Personal Income Tax ("PIT")

(i). PIT on income from business

- Individuals doing business are subject to PIT at the deemed rates (%) on the revenue from sale of goods and provision of services, in particular:
  - Supply and distribution of goods: 0.5%;
  - Service, construction service without material supply: 2%;
  - Assets leasing, insurance agent, lottery agents, multi-level marketing: 5%;
  - Manufacturing, transportation, service with goods provision, construction service with material provision: 1.5%; and
  - Other activities: 1%.
- No PIT payment for income from capital investment of individuals being the owners of the private entity or one member limited liability company, for which the CIT liability has been declared and paid.

(ii). PIT on income from salary, wage

- PIT exemption will apply to one-off relocation allowance for Vietnamese citizens who have resided for a long term in overseas then come back to work in Vietnam.
- PIT liability and the time for determination of assessable income for life insurance premiums (excluding voluntary pension insurance), other non-compulsory insurance of cumulative nature purchased by the employers for their employees:
  - For insurance companies which are incorporated and operating under the laws of Vietnam, the insurance companies are responsible to withhold PIT at the rate of 10% on the accumulated premiums at the maturity date of the insurance contract.
  - For insurance companies which are not incorporated and operating under the laws of Vietnam but permitted to provide insurance service in Vietnam, employers are required to withhold PIT at the rate of 10% on the insurance payment before making the income payment to their employees.
- Deductible items for PIT calculation:
  - The voluntary pension fund, the contribution of voluntary pension insurance which does not exceed VND1 milion/month, including both the employer and employee's contribution portions.
  - Tax residents of Vietnam working overseas are allowed to deduct compulsory insurance contributions made in the countries where the individuals participate such compulsory insurance.

(iii). PIT declaration and PIT withholding

- No requirement of year end PIT finalisation for the life insurance premiums, other non-compulsory insurance of cumulative nature, on which the 10% PIT has been withheld by the employers or insurance companies.
- Lottery companies, insurance companies, multi-level marketing companies paying income for individuals acting as the lottery agents, insurance agents, multi-level marketing agents with the annual commission from VND100 million and more are responsible to withhold PIT before making payment to such individuals.
- Companies, economic organisations leasing houses, assets of individuals with the annual revenue from VND100 million or more, whereby it is stipulated that the lessees fully bear the relevant tax, such companies, economic organisations are responsible to withhold and pay PIT at 5% on the total rental amount before making the payment to the individuals.

4. Tax administration

(i). Tax declaration dossiers

- Supporting documents which have been available to the tax authorities are not required to be submitted again in the tax dossiers.
- Tax payers are only required to submit a monthly or quarterly tax declaration form for VAT, SCT and natural resources tax without any detailed lists or supporting documents.

(ii). Applicable exchange rate in case of incurring revenue, expenses and taxable price in foreign currencies

For import, export goods, the exchange rate for import, export duty calculation shall follow the provision under Clause 3, Article 21 of the Decree 08/2015/ND-CP on 21 January 2015 providing guidance on the implementation of Law on Customs. For other cases, the MoF shall provide further guidance on the applicable exchange rate.

(iii). Intestest on late payment of tax liabilities

- A single interest rate at 0.05%/day will apply on late tax payment instead of two rates of 0.05%/day and 0.07%/day as previously.
- For oustanding tax liabilities detected by the tax authority or by the tax payers from 1 January 2015, the interest rate of 0.05%/day will apply.

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