



Accounting regime applicable to foreign contractors

Introduction

On 31 December 2009, the Ministry of Finance (“MoF”) issued **Circular 244/2009/TT-BTC** (“Circular 244”) providing revision regarding accounting treatment of certain economical transactions as well as supplementary records of transactions that have not been stipulated in the prevailing accounting regime.

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Among various issues covered by Circular 244, guidance on implementation of accounting system applicable to Foreign Contractors (“FCs”) appears to be the most controversial.

This Circular may be a significant change to the taxation of foreign contractors in that one possible interpretation of the application of Circular 244 in conjunction with the current foreign contractor regulations Circular 134/2008/TT-BTC is that many foreign contractors with resident establishments in Vietnam will no longer be able to use the “deemed” method of declaring tax.

This Circular shall take effect 45 days after the signing date and replace relevant contents in other legal documents.

Resident or Permanent Establishment?

According to Circular 244, a FC who has a “resident establishment” in Vietnam is required to implement accounting system in accordance with the Law on Accounting, System of Vietnam Accounting Standards (“SVAS”) and Vietnamese Accounting System (“VAS”) as applicable for Vietnamese enterprise (collectively referred to as Vietnamese accounting regime).

Currently, Law on Corporate Income Tax, Personal Income Tax and regulations on FC’s tax obligation in Vietnam only refer to the concept of “permanent establishment” or “resident object” (organization or individual). The term resident establishment has not been used previously.

While there is a slight difference in the wording we believe that the term resident establishment is likely to be interpreted as equivalent to a “permanent establishment” as defined in the CIT Law for both tax and accounting purpose.

At the moment, while no further instruction is officially promulgated by MoF, FCs having a permanent establishment (“PE”) in Vietnam should adopt Vietnamese accounting regime as regulated under this Circular. This may conflict with current regulations on foreign contractor withholding tax

(“FCWT”) applicable to FCs.

Accounting regime to be applied

According to Circular 244, FCs having PE have to apply accounting regime on a contractual/project basis, in which system of accounts, ledger and structure of ledger, must be appropriate to business features of the PE for accounting and tax management purpose as follows:

- In case a FC elects to pay foreign contractor withholding tax (“FCWT”) applying deemed rate tax filing method, it should select and apply appropriate accounts and ledger to fit their managing requirement. However, it is not required to prepare and submit financial statements to relevant authorities. With regard to this, prior to the effective date of Circular 244, FCs adopting deemed rate tax filing method were not required to implement Vietnam Accounting regime.
- If the FC elects to adopt FCWT direct filing method (Full VAS application) as regular business (i.e. declares VAT on credit method and CIT on revenue less expenses), it has to maintain complete set of Vietnamese Accounting System (VAS), including accounts on balance sheet and income statement and the required ledgers and financial statements.
- FC adopting hybrid method (i.e. declare VAT on credit method and CIT on deemed rate method) also have to apply VAS but limited to certain accounts and ledgers for tax declaration and management purpose.

Per Circular 244, FCs having PE in Vietnam are responsible to notify the accounting regime applied to local tax authorities, however, FCs shall have to register for MoF’s written approval only if there may be changes or supplements comprising:

- Revision of content and structure of compulsory accounting documents;
- Supplement or modification of primary account or secondary account regarding name, code, nature and specific economic transaction records;
- Modification of article in financial statements or change in structure, method of FS preparation.

As such, FCs who apply Hybrid method shall not be required to register a simplified VAS to MoF as previously regulated.

Required documents

Circular 244 also provides requirements for preparation, presentation and audit of FC’s financial statements that FCs have to apply, of which:

- Trial Balance (attached to Circular 244) and Note to Financial Statements for each contract must be submitted to local tax authorities, licensing authorities and local statistics office. In case of Full VAS method adoption, Income statement is also required.
- Financial Statements of FCs are not obliged but encouraged to be audited for the tax purpose.

Circular 244 may have a significant impact on FCs providing services in Vietnam with a contract term longer than 183 days and having a permanent establishment in Vietnam which is very broadly defined at least under the CIT regulations.

It was previously understood that such foreign contractors were not required to adopt VAS and therefore in not meeting that condition for payment of VAT were able to use the deemed method of declaring FCWT.

This Circular now gives rise to uncertainty. If all foreign contractors are required to adopt VAS does this mean that foreign contractors with a permanent establishment and contracts longer than 183 days are now unable to use the deemed method and must either adopt the hybrid method or pay tax as a full branch in Vietnam?

While the full implications of the Circular are yet to be confirmed foreign contractors who consider they may have a resident establishment in Vietnam or are uncertain should seek specific advice from their Deloitte tax advisor.

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