



CORPORATE INCOME TAX TREATMENT ON INTEREST INCOME FROM BANK DEPOSIT AND LOAN DURING INCENTIVE PERIOD

Introduction

On 05 January 2010, the Ministry of Finance issued Official Letter 118/BTC-TCT (“**OL 118**”) to all provincial departments of taxation regarding the Corporate Income Tax (“CIT”) treatment of interest income from deposits and loans, which is retroactively applicable for tax years from 2004-2008.

We summarize below and discuss key points of OL 118 for your awareness and timely implementation.

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Grey area in the past

Under the Law on CIT (09/2003-QH11), and its guiding Decrees and Circulars applicable to tax years 2004-2008, CIT taxable income shall include (i) operating income (i.e. income from registered business activities as specified in the Investment License of a company) and (ii) other incomes from non-operating activities, which include interest from loans and bank deposits; whereas, whether the whole CIT taxable income is subject to CIT exemption and/or reduction or not was not specifically stipulated under the documents. Thus, there have been many cases where the tax authorities interpreted the CIT incentives treatment on interest income differently, which caused uncertainty in the application of such rules. As a result, certain tax authorities allow tax incentives to apply to non-operating income while some others may not.

CIT incentive rules to be affirmed

According to OL 118, it is affirmed for the tax years 2004-2008 that, for enterprises entitled to CIT incentives for their type of business, in case they are still in the investment stage and have **not** yet commenced their business operations, and **not** yet generated revenue from operating activities which are eligible for tax incentives, income from deposits and loan interest incurred during these periods shall not be entitled to CIT incentives, thus they are subject to the standard CIT rate. However, the recognition of these taxable incomes would not trigger the CIT incentives period (both for CIT preferential rates and CIT exemption/reduction). It is worth noting that the offsetting principles will allow the offsetting of interest income against the loss, if any, from main business activities for CIT calculation.

Further implications

In our view, this OL will give a good chance for enterprises, which are entitled

to and were assessed CIT incentives based on the first year generating interest income from deposits and loans, to extend their tax holiday period calculated from the first year generating operating income which are eligible for tax incentives.

Despite the fact that guidance has not yet been issued in relation to the subsequent information on the process of re-assessing CIT incentives in such situation, the guidance of OL 118 sheds more light on the determination of CIT incentives in the past as well as more closely follows the CIT incentive principles stipulated in the prevailing Law on CIT No. 14/2008/QH12 and subsidiary regulations applicable from the 2009 tax year onwards.

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