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HYBRID METHOD FOR CONTRACTS SIGNED IN THE PERIOD BETWEEN CIRCULAR 134 AND CIRCULAR 197

As you may recall, the hybrid method for foreign contractors (“FCs”) (i.e. FCs pay VAT under the convention deduction method, but pay CIT on withholding basis on the gross value of the contract) was re-introduced in Circular 197/2009/TT-BTC dated 9 October 2009 (“Circular 197”) issued by the Ministry of Finance (“MoF”) amending Circular 134¹. However, Circular 197 was silent on whether the hybrid method would be retroactively adopted for contracts signed during the transitional period between Circular 134 and Circular 197 (i.e. from 1 January 2009 to 22 November 2009).

There have been a number of previous rulings (e.g. Official Letter 3412/TCT-CS dated 6 September 2010) from the General Department of Taxation (“GDT”) and certain provincial tax departments which did **not** allow adopting the hybrid method during this transitional period.

The MoF, however, has issued **Official Letter 6274/BTC-TCT** dated 16 May 2011 to allow the adoption of the hybrid method for a qualified foreign contractor’s contract signed during this transitional period. Official Letter 6274 also states that it replaces the aforesaid rulings from the GDT. This positive development, in our view, would pose an opportunity for FCs who wish to re-apply the hybrid method for their qualified contracts signed during the transitional period but already adopted other FCWT filing methods.

Please contact any of the Deloitte Vietnam Tax specialists listed should you have further concern on this matter.

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¹ Circular 134/2008/TT-BTC dated 31 December 2008 issued by the MoF, effective from 1 January 2009 on taxation applicable to foreign contractors and subcontractors doing business in Vietnam or having income derived from Vietnam.