

Tax Alert

Keeping you informed

23 July 2011

Update on Foreign Contractor Withholding Tax ("FCWT")



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On 07 July 2011, the General Department of Taxation (“the GDT”) issued Official Letter **2321/TCT-CC** (“OL 2321”) providing guidance on Foreign Contractor Withholding Tax (“FCWT”) in Vietnam. According to the OL, where an offshore company signs a contract to purchase goods from a company in Vietnam, and then orders this company to deliver the goods to another company in Vietnam (**on-the-spot import/export transactions**) and then generate income from such sale transaction, this offshore company is treated as foreign contractor (“FC”) and has to pay FCWT (Corporate Income Tax element only) in accordance with Circular 134/2008/TT-BTC dated 31 December 2008 issued by the Ministry of Finance.

The Vietnamese company who receives the goods (in-land importer) is responsible to declare and pay FCWT on behalf of the offshore company.

It is noticeable that prior to the issuance of the OL 2321, there was not any official guidance with regard to FCWT implications on the on-the-spot import/export transactions.

Therefore, this guidance might be cumbersome for taxpayers to implement. In the worst case, should the back filing may kick-off from 1 January 2009, being the effective date of Circular 134/2008/TT-BTC, it will affect pricing structure of the offshore company for the on-going contracts. For contracts already done and payment already made to FC, the in-land importer may be caught to pay FCWT.

To avoid potential tax risks or penalty (if any) exposure to this kind of transaction, foreign companies under such situations may seek tax relief under treaties between Vietnam and their corresponding countries of which they are tax residents.

We trust the above is clear. Should you have any concern in the implementation of the provisions mentioned above, please feel free to contact us for further clarifications.

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Contacts

For more information, please contact:

Thomas McClelland

Tax Partner
+84 (8) 3911 0727
tmcclelland@deloitte.com

Lynn Tastan

Tax Partner
+84 (8) 3910 5330
ltastan@deloitte.com

Tuan Bui

Tax Partner
+84 (4) 6268 3568
tbui@deloitte.com

Minh Bui

Tax Partner
+84 (4) 6268 3568
mbui@deloitte.com

For further information, visit our website at www.deloitte.com/vn

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