# Tax Alert
## Keeping you informed

December 2011

# Supplementing Decrees on CIT and VAT

# New VAT guidance

On 27 December 2011 the Government issued Decree 121/2011/ND-CP to amend Decree 123/2008/ND-CP providing guidance on Value Added Tax ("Decree 121").

In addition to confirming some issues guided under Circulars and Official Letters over the last few years, Decree 121 also adds some notable new guidance as follows:

- Introducing a new concept of "goods and services for which VAT declaration and calculation are not required". Unlike "goods and services that are not subject to VAT", input VAT of "goods and services for which VAT declaration and calculation are not required" would be fully creditable;
- Supplementing and specifying more cases of goods and services those are not subject to VAT, such as financing services, some types of insurance, debt factoring, foreign currency trading, etc.;
- More detailed guidance on VAT taxable value in case of goods/services subject to Environment Tax; goods/services used as gifts; and deductible land price in real estate transfer transactions;
- Export services not subject to the 0% tax rate shall be detailed under Circular level rather than Decree level to increase the flexibility of Ministry of Finance in providing guidance;
- Specifying VAT withholding requirement under the deemed method in respect of foreign entities providing goods/services for oil & gas exploration and exploitation, and responsibilities of the Vietnamese parties on withholding and paying tax on their behalves;
- Input VAT of goods being damaged without compensation will be creditable;
- Input VAT of **machinery and equipment** *(instead of specialized equipment*) of credit institutions, enterprises carrying out reinsurance, life insurers, securities business establishments, hospitals and schools; and civilian aircraft and yachts not used for business of transportation of tourists, passengers and cargo, will **not** be creditable; and
- No 06-month time limit for the credit and declaration of input VAT at importation stage or input VAT during investment stage.

# Significant changes in CIT

On the same date, the Government issued Decree **122/2011/ND-CP** amending the prevailing Decree 124/2008/ND-CP on Corporate Income Tax ("CIT"). This new Decree mainly reinforces regulations in recent guiding Circulars and Official Letters as well as introduces new CIT treatments with some selected noteworthy points below:

- New method for incentive re-determination of enterprises currently enjoying preferential CIT treatment based on export ratio upon the forthcoming deadline 31 December 2011;
- No incentive for income from certain services that are subject to Special Consumption Tax;
- Prescribing at Decree level the tax treatments on income from project transfer, transfer of natural resources exploration rights, and foreign exchange gains from revaluation of payables in several cases;
- Supplementing non-taxable income from transfer of Certified Emission Reductions ("CERs");
- Clarifying deductibility conditions for certain labor expenses i.e. severance allowance, bonus and life insurance;
- Detailed determination of taxable non-cash income in term of capital assignment, security transfer (e.g. corporate stocks or fund stocks);
- Full deduction for commission paid to agents of multi-level marketing companies, with adequate supporting documents without being capped as A&P expenses; and
- Changes in CIT deemed rate on income of foreign entities from several services i.e. income from restaurant, casino, hotels management (increased from 5% to 10%), income from loan interest (decreased from 10% to 5%).

The two new Decrees shall take effect from **1 March 2012**. We will update you on any further guidance at Circular level once it is issued.

We are of the view that these new guidance might have significant impact on the business of many companies operating in Vietnam. Should you have any concerns in the implementation of the provisions mentioned above, please feel free to contact us for further clarification.

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