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New guideline on classification of transfer of shares in joint-stock companies

On 20 September 2010, the Ministry of Finance ("the MOF") issued **Official Letter No. 12501/BTC-CST ("Official Letter 12501")** providing tax policy on transfer of shares in joint-stock companies ("JSC").

Through the issuance of the Official Letter 12501, the MOF provides clearer guidance on the classification between securities transfer and capital assignment with regards to the transfer of shares in JSC, for the purpose of determining applicable tax rate in accordance to current tax regulations.

We summarize this key points of Official Letter 12501 below for your awareness and timely implementation:

- The transfer of shares conducted by organizations and individuals in **public companies**, as defined by the Law on securities, shall be classified as **security transfer** and thus, subject to provisions of tax on securities transfer.
- The transfer of shares in **JSC other than the above classification** shall apply the provisions of tax on **capital assignment**.

The Official Letter 12501 has however raised a number of new issues for example a public JSC in general has 100 or more shareholders, but may not satisfy the additional conditions to be a public company (i.e. not yet registered with the SSC as required under Law on Securities).

Foreign institutional investors in such companies who thought that they would have the 0.1% deducted by their custodian will now have to declare tax at 25% on the gain on behalf of foreign vendors (if they know the status of the foreign vendor). To do this, they will need to know the cost base of the foreign vendor which is practically difficult.

As this Official letter comes into effect, there are significant impacts on the tax declaration, tax payment as well as tax deduction of enterprises and individuals in transferring shares in public companies. We are willing to discuss with you to share your concerns and advise you on the implementation of the provisions mentioned above.

This **Alert** is published for the clients and professionals of the Deloitte - Vietnam offices. The contents are of a general nature only. Readers are advised to consult their tax advisors before acting on any information contained in this newsletter. For more information or advice on the above subject or analysis of other tax issues, please contact us.

If you prefer to receive future issues by soft copy or update us with your new correspondence details, please notify Ms. Thanh Bui (Hanoi Office, e-mail thanhbui@deloitte.com) or Ms. Trang Dinh (Ho Chi Minh City Office, e-mail trangdinh@deloitte.com).

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