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Additional guidelines on 2009 CIT Finalization

The Ministry of Finance (“the MOF”) has recently issued Official Letter No. 7250/BTC-TCT dated 07 June 2010 (“OL 7250”) providing additional guidance on 2009 Corporate Income Tax (“CIT”) finalization.

OL 7250 introduces a number of important guidelines helping tax payers to clarify some particularly unclear matters arising in 2009 CIT finalization process which were not covered in prior regulatory and guiding documents.

The following noteworthy points are summarized and discussed for your information and to take any necessary actions with respect to 2009 CIT finalization.

Interpretations regarding deductible expenses and other income

In general, OL 7250 provides much more detailed and transparent guidance on assessment of deductible expenses and other income in comparison with those mentioned in Circular 130/2008/TT-BTC issued by the Ministry of Finance (“Circular 130”) and Official Letter No. 353/TCT-CS dated 29 January 2010 of the General Department of Taxation (“OL 353”). Below are some critical points that may require focused attention to:

- Income from deposit and lending interest is now allowed to be **offset** against loan interest incurred in the period. The net amount being income shall be regarded as other income and subject to the CIT rate of 25%. A loss shall be included in operating costs and applied the incentive tax rate (if any).
- Realized foreign exchange gains and unrealized foreign exchange gains resulted from revaluation of accounts payable and loans in foreign currencies at the year-end are allowed to **offset** against losses of the same items. The residual shall be treated under the same principle as aforesaid interest income and expenses.
- Provision making and recovery are required to follow Circular 228/2009/TT-BTC dated 07 December 2009 effective from 01 January 2009, according to which the recovery of provisions should be credited to the costs of goods sold or operating expenses, depending on each specific type of provision made.
- Income derived from other activities such as disposal of fixed assets and scrap sales is determined at the proceeds less related costs (net book value of fixed assets, scrap retrieval costs and selling expenses etc.).

Such income may be entitled to the incentive CIT rate if the scrap comes from incentivized activities, otherwise it shall be included in other income and the standard tax rate is applied.

- Losses incurred from 2009 onwards are required to be carried forward consecutively **in full** to taxable income of 5 subsequent years.
- Losses incurred in 2008 and prior years should be carried forward in accordance with the applicable regulations at that time. These losses would be offset against taxable income of 2009 under the following rules: (i) loss of a business activity can be carried forward to taxable income of the corresponding activity if separation of losses is feasible; or (ii) if it is not the case, the total losses should be pro-rated for each activity based on the ratio of revenue/income generated from such activities.

We make some further comments on the implication of the new loss carrying forward guidance later in this update

Apart from the points summarised above, a separated summary of key changes among OL 7250, Circular 130 and OL 353 is presented in the attached table for your ease of reference.

CIT reduction and deferral

OL 7250 provides further guidance on CIT finalization for enterprises qualifying for CIT reduction and deferral provided under Circular 03/2009/TT-BTC dated 13 January 2009. Some notable points are:

- In case the CIT upon finalization exceeds the quarterly CIT as provisionally declared, the payment of additional CIT liability would be deferred until **29 October 2010**.
- Conversely, the difference between the quarterly and finalized CIT shall be split equally for last two quarters after subtracting the declared and paid CIT amount of Quarter I and II. Payment of the outstanding CIT liabilities of Quarter III and IV, respectively, shall be deferred until 30 July 2010 and 29 October 2010.

Determination of newly established enterprises from investment projects entitled to tax incentives

OL 7250, again, confirms the MOF's view that newly established enterprises from investment projects entitled to tax incentives must be those carrying out business registration for the first time and meeting the conditions for the entitled incentives as stipulated by laws.

Regarding newly established enterprises from domestic investment projects with investment capital of under VND15billion, investment project documents shall be the business registration certificate of the enterprises.

In respect of newly established enterprises from domestic investment projects with investment capital from VND15billion up to VND300billion

which meet the conditions for investment incentives, but have not yet completed the investment registration procedures as required, the MOF shall consider and make decision on a case by case basis based on reports from local tax authorities.

Other important notes

Losses carried forward incurred in 2008 and prior years

It is confirmed under OL 7250 that losses incurred in 2008 and prior years shall be carried forward in accordance with the applicable regulations at the loss making time, i.e. the principle of “**in full and consecutive**” carry forward as mentioned above shall **not** apply, but the rule of “self-determination but not exceeding 05 years from the loss making year” will instead.

Must losses be carried forward into tax holiday period?

According to OL 7250, losses must be offset **in full and consecutively** against the taxable income within the following 5 years. However, it is still unclear about the treatment in case the taxpayers are enjoying **CIT exemption**. If losses must be carried forward consecutively into years entitled to tax exemption, such losses shall be forfeited while they should be the benefits that the enterprises are granted. This issue is a critical change compared to the previous regulations on loss carry forward under which the timing of loss carry forward could be planned.

2009 CIT finalization

OL 7250 was issued after the deadline for 2009 CIT finalization (i.e. 31 March 2010). With new guidance from the OL, 2009 CIT liabilities already declared may subject to changes (possibly increase the tax payable or arise tax refund) which may result in tax administrative penalties in connection with supplemental CIT return. However, such circumstances have not been addressed in OL 7250.

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