

## Deloitte Vietnam

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## Tax Updates for Foreign Contractors

Recently, the Vietnamese General Department of Taxation (“GDT”) issued several Official Letters providing guidance on a number of specific issues for Foreign Contractors (“FCs”) doing business in Vietnam, including Tax Code Registration, Issuance of VAT invoices and Profit Remittance.

We find such guidance is particularly useful for FCs and would like to summarize the following key points for your awareness and proper implementation.

### Tax Code Registration

On 05 August 2010, the GDT issued **Official Letter No. 2907/TCT-KK (“OL 2907”)** guiding **all** provincial tax authorities on tax code registration of other projects in Vietnam of FCs who currently adopt declaration method (paying VAT under the credit method and CIT on net profits method) or hybrid method (paying VAT under the credit method and CIT on a deemed rate method).

According to OL 2907, if an FC was granted a 10-digit tax code, then a corresponding **13-digit tax code shall be granted to the FC** together with the Tax Registration Certificate **for each following contract it has in Vietnam**. The FC will then use the 13-digit tax code(s) for tax declaration, payment and refund (if any) of the related contract(s).

**If** FC was granted 10-digit tax codes for its following contracts, then these 10-digit tax codes **must be revoked** and **revised** into 13-digit tax codes.

Regarding FCs who have been using 10-digit tax codes for VAT declaration under credit method for its subsequent contracts, then the **input VAT incurred** during the period from the date of issuance of 10-digit tax code to the date of receiving OL 2907 shall **be refundable** to FCs, provided that all conditions for tax refund are met.

With this Official Letter, we foresee a significant impact on tax code registration, re-registration, and issuance of VAT invoices as well as tax refunds for FCs.

With this new policy, the tax authorities may have a better control of all the contracts that an FC has in the country and may also be stricter in implementing the requirement that once the FC adopts declaration method or hybrid method for one contract, such FC must also adopt the chosen method consistently for other contracts.

Thus, should your tax code is required to be revised in accordance with the OL 2907, we are pleased to discuss and address your concerns in the implementation of this regulation.

## Issuance of VAT invoice(s) for imported goods

On 21 June 2010, the GDT issued a private **Official Letter No. 2177/TCT-CS (“OL 2177”)** which provides guidance to a FC on the issuance of VAT invoice for imported goods.

According to OL 2177, in case the FC entered into a contract with a Vietnamese contracting party to supply goods with services attached of which value of goods and services are separately calculated, the FC applied declaration method or hybrid method for Vietnamese tax compliance purposes, then the **FC may not be required to issue VAT invoices for imported goods** to the Vietnamese contracting party if:

- Vietnamese contracting party is responsible for customs clearance procedures (i.e. the goods are imported under the name of Vietnamese contracting party) and pays import VAT, import duty for such goods at the import stage; and
- The FC has issued commercial invoices together with customs documentation of the imported goods to the Vietnamese contracting party at the import stage.

Even though this is a private ruling, it is a very good precedent for other FCs who are in a similar situation.

## Profit Remittance

On 16 August 2010, the GDT issued **Official Letter No. 3064 (“OL 3064”)** providing guidance on profit remittance of FCs to **all** provincial tax authorities. Accordingly to OL 3064, the requirements on FCs’ profit remittance differ depending on the method of their tax declarations.

### *Regarding FCs who adopt the declaration method*

FCs adopting the declaration method (paying VAT under the credit method and CIT on net profits), which is relatively uncommon, are required to comply with the regulations of profit remittance governed under Circular 124/2004/TT-BTC (“Circular 124”) dated 23 December 2004 of the Ministry of Finance, providing guidelines for implementation of regulations on Transfer Abroad of Profit of Foreign Economic Organization under the Law on Foreign Investment in Vietnam.

In accordance with Circular 124, FCs adopting declaration method shall **only** be permitted to remit its profit abroad in the following point of time:

- (i) Annual transfer and one-off transfer at the end of the fiscal year and after filing tax finalization with the tax authority;
- (ii) Provisional transfer during a fiscal year once every quarter or once every six (06) months after completing payment of CIT in accordance with the Law on CIT and/ or Law of Foreign Investment in Vietnam; and
- (iii) Once-off transfer on termination of business operation in Vietnam in accordance with the Law on Foreign Investment in Vietnam.

Further, FCs adopting the declaration methods are also required to prepare a *Declaration of Profit Remittance* and pay CIT at 25% on net profit to local tax authority before conducting procedures to transfer profit abroad.

*Regarding FCs who adopt hybrid declaration method or deemed method*

For FCs who do not declare and pay tax directly in Vietnam (deemed method) or FCs who declare CIT under deemed method and VAT under credit method (hybrid method), Circular 124 does **not** apply.

In this case, a tax declaration return should be submitted to the local tax authority **within 10 days** as from date of payment. Further, any tax payable should be settled to the State budget at the same time.

However, in practice, to our knowledge, local banks in Vietnam may still require Vietnamese contracting party (in case of deemed method) or the FC (in case of hybrid method) to provide tax payment vouchers as evidence proving FCWT liabilities imposed has been settled at the remittance time.

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