

### Deloitte Vietnam

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## Additional clarification on a number of uncertain PIT areas

There have recently been certain PIT developments in relation to the definition of tax residency status and PIT treatment of benefits in kind. In an attempt to secure the PIT filing position for taxpayers, Deloitte took the initiative to liaise with the General Department of Taxation (“GDT”) to seek clarification on a number of related uncertain PIT areas. The GDT accordingly issued Official Letter No. 4999/TCT-TNCN dated 09 December 2010 (“OL 4999”) with below noteworthy points.

### Evidence of tax residency

Under Official Letter No. 3473/TCT-TNCN dated 08 September 2010 of the GDT (“OL 3473”), an expatriate having a lease contract of 90 days or more but being present in Vietnam for less than 183 days in a calendar year or in 12 consecutive months from the first date of arrival, shall be classified as non-tax resident in Vietnam on condition that he/she can prove residency of another country.

OL 3473, however, is silent on the required documents to evidence tax residency in such cases. OL 4999 then confirms that the evidence of tax residency of another country is the **original** Tax Residency Certificate (“TRC”) issued by the tax authorities of that country. The TRC must be statutorily legalized and translated into Vietnamese.

Since TRCs are normally available after year-end, whilst individual taxpayers could already depart from Vietnam within the year, OL 4999 has not yet specified the time for lodging the TRC and whether there is any requirement for confirmation or guarantee from the taxpayers to present the TRC to the tax authorities prior to their permanent departure from Vietnam.

### No gross-up required for benefits in kind

That benefits in kind paid by the employer on the employee’s behalf are treated as gross income as stipulated in the GDT’s Official Letter 3565/TCT-TNCN dated 14 September 2010, **irrespective of** whether the employee’s remuneration is on a net-of-tax or gross-of-tax basis, appears to be particular to Vietnam and more favorable than the current practice of other countries. OL 4999 re-affirms this treatment, which provides a more beneficial tax treatment for the provision of benefits in kind as compared to cash remuneration.

### PIT on post-assignment income of resident expatriates

Expatriates being tax residents in Vietnam are generally required to conduct their PIT finalization prior to their permanent departure from Vietnam. However, PIT treatment on their Vietnamese-sourced income after the repatriation is still unclear.

As per OL 4999, for such income, which is paid by the Vietnamese income payers within that tax finalization year, it is the responsibility of the Vietnamese parties to withhold, declare and pay the corresponding PIT liabilities to the State Budget.

It could be interpreted that the expatriates are not required to adjust and re-submit their individual PIT finalization returns to cover such incomes. There remains the issue of Vietnam-sourced income received from non Vietnam income payers after the expatriate has left Vietnam.

Should you have further concerns on the aforementioned matters, we would be pleased to discuss with you in detail.

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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](mailto:thanhbui@deloitte.com)) or Ms. Trang Dinh (Ho Chi Minh City Office, e-mail [trangdinh@deloitte.com](mailto:trangdinh@deloitte.com)).

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