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Guidance on 2010 Tax finalization

In February 2011 the Ministry of Finance and the General Department of Taxation ("GDT") issued guidance on 2010 tax finalization as follows:

- **Official Letter No. 486/TCT-TNCN ("OL 486")** dated 11 February 2011 providing guidance on **2010 Personal Income Tax ("PIT") finalization**;
- **Official Letter No. 1933/BTC-TCT ("OL 1933")** and **Official Letter No. 518/TCT-CS ("OL 518")**, both on 14 February 2011, providing guidance on the **Corporate Income Tax ("CIT") finalization for 2010** as well as highlighting some significant issues with regard to Value Added Tax ("VAT"), Special Sales Tax ("SST") and Foreign Contractor Withholding Tax ("FCWT").

Below are some key points for your reference and proper implementation.

I. 2010 PIT finalization

Tax finalization for foreigners being Vietnamese tax residents

A foreigner who is a Vietnamese tax resident must conduct annual PIT finalization as usual. Those tax residents who left Vietnam during the year must conduct PIT finalization upon the termination of their assignment in Vietnam before leaving the country. The PIT finalization period applicable for such a foreign individual whose residency status is determined on the calendar year basis is from the **beginning of the calendar year** to the departure month from Vietnam.

The PIT liabilities shall be calculated based on total income received from the beginning of the calendar year up to the month of departure from Vietnam. In other words, total taxable income shall include **overseas-sourced income received before arriving Vietnam** for those individuals that arrive in Vietnam partly through 2010. Foreigners are allowed to have their PIT paid overseas credited with Vietnamese PIT calculated during the period from 1 January 2010 till they arrived Vietnam (Period Before Arriving in Vietnam-**"PBAV"**).

As worded this guidance would **significantly** impact foreigners who worked in Vietnam partially through 2010 due to the following reasons:

- Vietnam PIT payable may be **higher** as tax residents of Vietnam must declare income and pay tax from 1 January 2010 according to OL 486 and not from the first day of arrival based on the PIT law, even with a foreign tax credit. In addition, failing to have the tax payment receipt or confirmation on overseas tax paid in time might result in no foreign tax credit;
- PIT liabilities are calculated from the beginning of the calendar year. However, it is unreasonable that the number of months entitled to dependant deductions are only **count from the first month** foreigners arrived in Vietnam, not including PBAV;
- As arrived in Vietnam partly through the year, foreigners who are tax

residents of Vietnam might be considered as having more than one source of income and thus might be subject to **direct filing** with the local tax authorities;

- Remuneration confirmation on income during the PBAV may not be obtained;
- In case foreigner's income in Vietnam is paid on a net basis (i.e. individuals are tax protected in Vietnam), it is **unclear** who will bear the additional PIT payable related to the PBAV; and
- Whether the taxable months are based on a proportioned month or a full month basis is still a grey area.

We are of the view that this guidance as it applies to residents who arrive during the tax year is not consistent with the current PIT regulations and we anticipate there will be some clarification.

Vietnam - sourced employment income ("VSEI") determination

OL 486 provides detailed guidance on how to calculate VSEI of an individual who works both in Vietnam and overseas and has worldwide employment income that cannot be separated from that derived from Vietnam. The total VSEI then is determined as following:

- In case individual is not present in Vietnam during the year:
$$\text{VSEI} = (\text{Total days spent for assignment related to Vietnam work} / \text{total working days of the year}) * \text{Total worldwide employment income (gross)} + \text{Other taxable income derived in Vietnam}$$
- In other cases:
$$\text{VSEI} = \text{Total days staying in Vietnam} / 365 \text{ days} * \text{Total worldwide employment income (gross)} + \text{Other taxable income derived in Vietnam}$$

VSEI has not, in the past, clearly defined under the Vietnam tax law and regulations. In practice, VSEI was based on the proration of employment income over the physically number of days spent in Vietnam for non-tax residents. It is still unclear **how to determine** the "*Total days spent for assignment related to Vietnam work*" in case the individual does is not present in Vietnam. This new definition will significantly impact individuals who hold regional position in charge of multiple countries including Vietnam, Chief Representative for Representative Office who are no physically present in Vietnam, Project Director for Foreign Contractors or individuals who provide offshore services to Vietnam customers.

Family circumstance deductions

Pursuant to OL 486, the number of months entitled to family circumstance deductions is calculated from the first month the taxpayers have dependant(s). However, the application dossiers evidencing the dependants must be submitted prior to the PIT finalization stage. As a result, those submitted at the same time with the PIT finalization returns shall not be taken into account for 2010 PIT purpose. As a reminder, the submission on the evidences for the qualification of dependant(s) must be within 3 months from the month of claiming the deduction.

Based on the calculation provided in the OL 486, the deductions, if qualified, are granted in full amount, regardless if individual entered or departed Vietnam partially through the month.

Tax refund

The tax refund regime is unchanged as compared with 2009 where individuals who are eligible for tax refund cannot choose to offset the overpaid PIT with PIT liabilities in the future, provided that tax code is obtained.

Requesting for tax refund directly from the tax authorities can be cumbersome and time consuming.

OL 486 stipulates that foreigner, who has offshore employment income and subject direct tax filing under the PIT law, can authorize entities or individuals in Vietnam to combine and declare tax on the individual behalf. The authorized entities or individuals must remit the tax to the State Budget and refund any overpaid tax to the individual. This may be a way to avoid any unnecessary administrative procedures in requesting refund directly from the tax authorities.

Applicable PIT finalization forms and procedures for employment income and business income

OL 486 confirms forms and returns for 2010 PIT finalization remain unchanged from 2009.

Income from transfers of securities

OL 486 provides the determination on assessable income from a transfer of securities as following:

Total assessable income = Total selling price of the securities – [Total average purchase price of the securities + expenses related to the transfer]

Tax liabilities = Total assessable income * 20%

In which:

- Total selling price of the securities = selling price per unit * number of unit of securities sold;
- Total average purchase price of the securities = [(Actual value of the securities at the beginning of the year + purchase value of the securities during the year) / (number of the securities at the beginning of the year + number of the purchased securities during the year)] * number of the securities sold during the year.

To apply this method of 20% of the assessable income from securities, individual must register with the tax authorities at the beginning of the calendar year.

OL 486 provides further instruction on administrative procedures with respect to PIT finalization with regard to the transfers of securities.

However, OL 486 is silent if this provision can be applied for the transfers of securities in overseas markets or not.

II. 2010 CIT finalization

The tax treatments for 2010 CIT finalization remain relatively unchanged against the guidance for 2009 under OL 7250/BTB-TCT dated 7 June 2010 issued by the Ministry of Finance.

As noted, the guidance of this year primarily focuses on reinforcing and clarifying the existing CIT treatments with very limited new ones introduced, in particular:

- Depreciation charges of idle fixed assets during the **repair period** (less than 12 months) are accepted for CIT deductible expenses;
- Treatment on foreign exchange (“FX”) gains/losses:

Items	FX related to main business	FX related to other activities
Realised FX	Taxable income of main business and/or deductible expenses of main business	Other income and/or deductible expenses of main business
Unrealised FX regarding payables	Other income or deductible expenses of main business, if can be distinguish	
Unrealised FX of current assets and those incurred during construction period to form fixed assets	Non-taxable income and/or non-deductible expenses	

- Income from compensation for breach of contract should be offset against similar compensation expenses. The net balance, being gain or loss, shall be treated as other activity. In case there is no other income derived during the year, net loss from breach of contract can be recorded as a reduction of main business profit, if any; and
- If a company, during the CIT incentive period, did not meet all the conditions for incentive entitlement in a certain year, the CIT incentives shall not apply for such year. Additionally, such year will still be **counted** as one year in the incentive period.

III. Guidance on VAT

OL 518 has summarized and restated the importance on VAT treatments specified in some recent Official Letters, such as:

- All income generated from lending and guaranteeing processes of credit organizations is, generally, **not** subject to VAT;
- Disposal of loan-secured assets, asset custody services and other services provided by credit organizations are **subject** to VAT;
- While some securities related services (provision of information, share auctions, technical assistance regarding online securities trading) are VAT exempt, VAT 10% applies to the financial advisory services and service fee on cash advancement
- The fees for infrastructure construction paid by the land renters in industrial zones are not subject to VAT provided that the prices regulated by the local People’s Committees are applied;
- VAT 0% is **not** allowed for mobile phone cards (with face value and code) sold overseas or to non-tariff zones; and
- VAT on housing rentals paid for foreign employees working in Vietnam under labor contracts signed with local companies are non-creditable whereas VAT on housing for expatriates who remain employees of the overseas companies and continue receiving their income from such employers during their assignment in Vietnam are creditable.

IV. Guidance on SST

According to OL 518, buggy and caddy services during playing golf are subject to SST. This is also applicable to cars specifically designed for the use within the entertainment zones and where there is a change in the origin intended use and to cars which have less than 24 seats imported by entertainment and sports companies that are not designed for entertainment zones.

The OL also provides guidance on required documents for some imported goods subject to SST exemption and determination the tax rates for some special-use cars.

V. Guidance on FCWT

Services rendered by intermediary agencies for Vietnamese parties with respect to international sea transport contracts or software export, which are rendered outside Vietnam, are **not** subject to Vietnamese FCWT.

For further detailed guidance, please refer to OL 486, OL 1933 and OL 518.

We would be pleased to discuss with you to share your concerns in the implementations of the provisions mentioned above. Please contact any of the Deloitte Vietnam tax specialists listed.

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