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Clarifications of General Department of Taxation on some uncertain areas of Personal Income Tax

On 08 September 2010, General Department of Taxation ("GDT") issued **Official Letter No. 3473/TCT-TNCN ("OL 3473")** providing some clarifications on Personal Income Tax ("PIT") issues. OL 3473 covers the issues on residency status definition, tax declaration of income arising from house leasing overseas, tax credit of overseas tax paid and tax declaration regarding tax consultant services.

We find the guidance is extremely helpful for the taxpayers and would like to summarize the following points for your awareness and action.

Residency status definition of foreign taxpayer

In the case that the individual who has a total number days pursuant to a lease contract of ninety (90) days or more but stays in Vietnam less than 183 days in a calendar year or twelve (12) consecutive months from the first date of arrival, the residency status shall be decided as follow:

- If the individual can prove to be a resident of the other country, he/ she shall be treated as a **non-resident** in Vietnam;
- If the individual cannot confirm to be a resident of any countries, he/ she shall be considered as a **tax resident** in Vietnam.

However, OL3473 does not mention what supporting documents should be available for the residency status proving. It appears that such non-residency is independent of tax treaties i.e. an individual who is resident of a country with which Vietnam does not currently have a tax treaty can also benefit.

Tax declaration of income arising from house leasing overseas

Since tax residents are obliged to declare PIT on income arising both inside and outside Vietnam, foreign taxpayers shall therefore be required to declare Vietnamese PIT on the income arising from house leasing activities overseas. Such income shall be treated as a **business income** of taxpayers.

The taxable income from house leasing activities for PIT calculation purpose shall be based on the deemed rate of 25% on turnover as regulated in Official Letter No. 15908/BTC-TCT dated 26 December 2008 of the Ministry of Finance.

Credit the amount of tax paid overseas

Taxpayer is allowed to deduct the amount of tax paid overseas from the total tax liabilities in Vietnam if the following conditions are met:

- The taxpayer is Vietnamese tax resident;
- The tax paid overseas is calculated for the overseas sourced income; and
- All supporting documents for verification are available.

According to OL 3473, the supporting documents issued by foreign authorities

will be translated into Vietnamese; however, notarization and legalization are **not** required.

Treatment on tax consultant fees

In accordance with the guidance of GDT, the tax consultant fees shall be treated in the following ways:

- If the consultant services are provided to the employer, such benefit shall **not** be considered as personal benefits. Accordingly, the consultant fees will not be included in the employees' taxable income for tax declaration purpose;
- If the tax consultant services are arranged by the employer for **an employee** or a **group of employees**, such benefit shall be considered as the personal benefits of the employees. The tax consultant fees, are treated as a **taxable** income for PIT declaration purpose.

Conclusion

This official letter confirms both tax benefits as well as tax costs for individual taxpayers. In both cases there are additional documentation and compliance obligations for individuals to obtain relief or declare tax.

We would be pleased to assist you as an employer or individual income earner with these. Please contact any of the Deloitte Vietnam tax specialists listed.

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

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