



LEGAL DOCUMENTS UPDATE NEWSLETTER IN NOVEMBER 2020

NOVEMBER 2020

PIT & CIT

- Official Letter No. 3394/CT-TTHT dated 3rd November 2020 issued by Bac Ninh Tax Department about PIT from contributed capital transfer activities of non-residents
- Official Letter No. 5032/TCS-CS dated 26th November 2020 issued by General Tax Department guiding to determine PIT, CIT on isolation expenses for expatriates working in Vietnam

FCT

- Official Letter No. 4827/TCT-CS dated 12th November 2020 issued by Tax Department about FCT policy in case of hiring Foreign Law Consulting Firm

INVOICE

- Circular 88/2020/TT-BTC dated 30th October 2020 issued by the Ministry of Finance amending regulations on effective implementation of Circular 68/2019/TT-BTC about e-invoices

Tax Administration

- Decree 132/2020/ND-CP dated 5th November 2020 issued by Government on Tax Administration for Enterprises with related party transaction.
- Official Letter No. 4818/TCT-PC dated 12th November 2020 issued by Tax Department about introducing new points in the regulations on administrative penalties for tax or invoice-related violations.

**Personal Income Tax****NOVEMBER 2020**

Official Letter No. 3394/CT-TTHT dated 3rd November 2020 issued by Bac Ninh Tax Department about PIT from contributed capital transfer activities of non-residents

Summary:

According to this Official Letter, in case Mr. A is non-resident individual transferring his contributed capital in the Company to other members, PIT from capital transferring income of Mr. A shall be determined as below:

$$\boxed{\text{PIT}} = \boxed{\text{Total income received}} \times \boxed{\text{Tax rate 0.1\%}}$$

Note:

- The total amount of money the non-resident receives from the transfer of capital invested in organizations and individuals in Vietnam is the capital transfer price without any deductions, including the cost price.
- If the contract does not specify transfer price or the price stated in the contract is not conformable with the market price, the tax authority may impose a transfer price in accordance with regulations of law on tax administration.

References :

- Clause 2. Article 20, Circular No. 111/2013/TT-BTC dated on 15th August 2013 issued by Ministry of Finance on the implementation of the law on PIT.

**Personal Income Tax & Corporation Income Tax****NOVEMBER 2020**

Official Letter No. 5032/TCS-CS dated 26th November 2020 issued by General Tax Department guiding to determine PIT, CIT on isolation expenses for expatriates who was dispatched to Vietnam

Summary:

According to this Official Letter, in case the Company paid isolation expenses for expatriates who was dispatched to Vietnam:

- **CIT:** The conditions to record as deductible expense as below:
 - *Isolation at hotel expense* :
 - Labor contract, in which mention clearly about the house rent, which is paid by the Company.
 - Legal invoices and documents, payment according regulations.
 - *Air ticket expenses:*
 - Comply with provisions at Point 2.9, Clause 2, Article 6, Circular 78/2014/TT-BTC (amended by Circular 96/2015/TT-BTC)
 - Legal invoices and documents, payment according regulations
 - *Test costs* are considered as welfare paid directly to employees
 - Comply with the provisions of Point 2.30, Clause 2, Article 6, Circular 78/2014/TT-BTC (amended by Circular 96/2015/TT-BTC)
 - Legal invoices and documents, payment according regulations
- **PIT:**

These expenses are considered as benefits of employees, so they have to be added into taxable income from salaries and wages..

References:

- Article 4, Circular No. 96/2015/TT-BTC dated on 22nd June 2015 of the Ministry of Finance amending and supplementing Article 6, Circular No. 78/2014/TT-BTC dated 18th June 2014 of the Ministry of Finance guidance on CIT
- Clause 2, Article 2, Circular No. 111/2013/TT-BTC dated on 15th August 2013 issued by Ministry of Finance on the implementation of the law on Personal Income Tax
- Point a, Article 1, Official Letter No. 7038/VPCP-KTTH dated on 24th August 2020 issued by the Government Office about isolation expense, Covid-19 treatment expense.

**Foreign Contractor Tax****NOVEMBER 2020**

Official Letter No. 4827/TCT-CS dated 12th November 2020 issued by Tax Department about FCT policy in case of hiring Foreign Law Consulting Firm

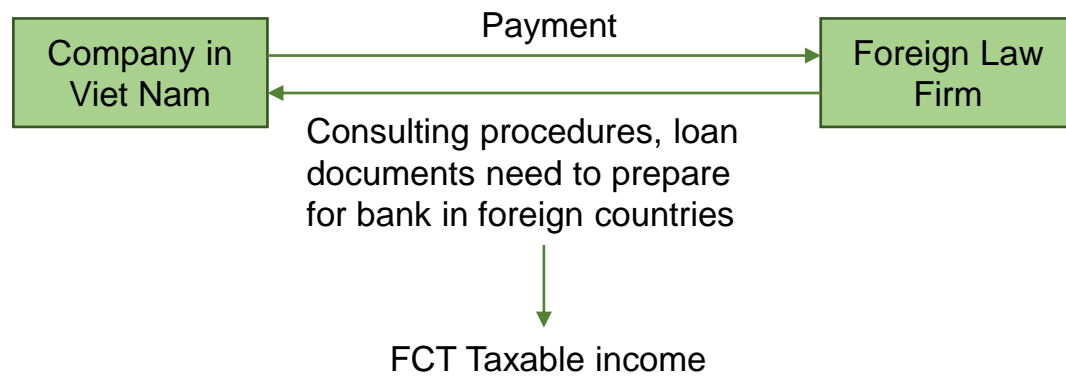
Summarize:

According to this official letter:

In case the Company signs a contract with a Law Firm located overseas which provided service about edition, document preparation, documents relating to loan transactions according to the request of bank in overseas and legal consulting, the income received by overseas law firm from providing the services which paid by the company in Viet Nam, is subjected to FCT as prescribed Circular 103/2014/TT-BTC dated 6th August 2014 issued by the Ministry of Finance.

References:

- The clauses, articles of Circular No. 103/2014/TT-BTC dated 06th August 2014 issued by Ministry of Finance guiding the implementation of tax obligations applicable to foreign organizations and individuals doing business in Vietnam or have income in Vietnam:
 - Clause 1, Article 1
 - Clause 3, Article 2
 - Clause 1, Article 6
 - Clause 1, Article 7



**INVOICE****NOVEMBER 2020**

Circular 88/2020/TT-BTC dated 30th October 2020 issued by the Ministry of Finance amending regulations on effective implementation of Circular 68/2019/TT-BTC about e-invoices

Summarize:

This Circular amends and supplements Article 26, Circular 68/2019/TT-BTC dated 30th September 2019 issued by the Ministry of Finance regarding e-invoices when selling goods and services.

Until 30th June 2022, the following regulations continue to take effect:

- Circular No. 32/2011/TT-BTC guiding the creation, issuance and use of e-invoices for selling goods and providing services.
- Circular No. 39/2014/TT-BTC guiding sales invoices and providing service
- Circular No. 191/2010/TT-BTC guiding the management, use of transportation invoices
- Circular No. 37/2017/TT-BTC amending and supplementing Circular 39/2014/TT-BTC

The mandatory use of e-invoices from 01st November 2020 in Circular 68/2019/TT-BTC is abolished.

Circular 88/2020/TT-BTC takes effect from 01st November 2020.

References:

- Law on Tax Administration No. 38/2019/QH14
- Decree No. 119/2018/ND-CP dated 12th September 2018 issued by The Government about e-invoices for selling goods and providing services.
- Decree No. 123/2020/ND-CP dated 19th October 2020 issued by the Government about invoices and documents.

**Tax Administration****NOVEMBER 2020****Decree 132/2020/ND-CP dated 5th November 2020 issued by Government on Tax Administration for Enterprises with related party transaction.****Summary of Content:**

Some new points in Decree 132/2020/ND-CP compared with the provisions of Decree 20/2017/ND-CP and Decree No. 68/2020/ND-CP as bellow:

1. The new rate of deductible loan interest expenses for Enterprises incurring related parties transactions:

Total loan interest cost (Loan Interest minus Deposits interest and lending Interest) within a specific taxable period is deducted not 30% more than the net profit generated from business activities plus loan interest cost plus Depreciation/Amortization Expenses (“EBITDA”).

The portion of loan interest cost exceeding 30% EBITDA, which is non-deductible is carried forward to the next taxable period for determination of the total loan interest cost deductible if total loan interest cost in the next tax period is lower than 30% EBITDA.

The loan interest costs may be carried forward for a maximum consecutive period of 05 years, counting from the year following the year in which non deductible loan interest costs arise.

2. Change in the standard arm's length range

"The standard arm's length range" is a set of values ranging from the 35th percentile to the 75th percentile; The median value is the 50th percentile determined according to the probability function.

Thus, the lower threshold value increases 10% comparing to the old regulations.

3. Safe harbor rules for taxpayers' exemption from transfer pricing declaration and documentation requirements.

- The taxpayers are engaged in transactions with related parties that:
 - + Entities pay corporate income tax within the territory of Vietnam;
 - + Are subjected to same corporate income tax rate as applied to these taxpayers;
 - + All of them are not offered CIT incentives within a specified tax period.
- The taxpayer also needs to satisfy both conditions:
 - + Total sales arising within a specified taxable period are less than VND 50 billion
 - + The total of values of the related party transactions arising within a specified taxable period do not exceed VND 30 billion.

Taxpayer already entering into Advance Pricing Agreement (APA) have submitted the annual report in accordance with legislation on Advance Pricing Agreement

Taxpayers perform business activities by exercising simple functions, neither generating any revenue nor incurring any cost from operation or use of intangible assets, generating the sales of less than VND 200 billion, as well as applying the ratio of net operating profit before deducting loan interest and corporate income tax (exclusive of the difference between sales and costs of financial activities) to net sale, engages in related-party transactions in the following sectors:

- Distribution: At least 5%;
- Manufacturing: At least 10%;
- Processing: At least 15%.



Decree 132/2020/ND-CP issued by Government dated 5th November 2020 on Tax Administration for Enterprises with related party transaction.

Summary of Content:

4. Change in regulations on Country-by-Country report (“CbCR”):

- Taxpayers have overseas ultimate parent company (“UPC”) shall not be required to submit CbCR if the Vietnamese Tax Authority is able to obtain the CbCR through Automatic Exchange of Information (“AEOI”).

- Taxpayers in Vietnam having overseas UPC responsible for submitting a CbCR of profits under the host country’s legislation must submit such reports to tax authorities in the following cases: :

+ Countries, territories where ultimate parent companies are residents enter into international taxation agreements with Vietnam, but do not have any agreement with Multilateral Competent Authority Agreement (MCAA) by the deadline for submission of reports.

+ Overseas countries, territories where ultimate parent companies are residents have agreements between MACC with Vietnam, but have terminated AEOI or fail to automatically provide Vietnam with CbCR of profits of groups.

+ In case where a multinational group having more than one taxpayer in Vietnam and an UPC in an overseas country issues a written notification to designate one of the taxpayers in Vietnam to submit a CbCR of profits. The designated taxpayer shall be obliged to submit CbCR of profits and written notification of designation issued by UPC.

5. Effect

Decree 132/2020/ND-CP comes into force from the date 20th Dec 2020 and applies from the corporate income tax period in 2020.

Decree 20/2017/ND-CP and Decree 68/2020/ND-CP are invalid from 20th December 2020.

In case the additional declaration of the CIT finalization for FY 2017 and 2018 according to the new rate of deductible loan interest rate in Circular 68/2020/ND-CP is required to be done by 1st January 2021.

In case the sum of CIT and late payment interest already paid to the state budget for FY 2017 and FY 2018 are higher than the re-determined amount of CIT and late payment interest, the difference shall be offset against the amount of CIT payable from 2020 to the end of 2024.



Tax Administration

November 2020

Official Letter No. 4818/TCT-PC dated 12th November 2020 issued by Tax Department about introducing new points in the regulations on administrative penalties for tax or invoice-related violations.

Summarize:

This Official Letter explains the contents of Decree 125/2020/ND-CP and reconciles, compares between old regulations and the new ones.

About transition terms:

From 01st July 2020 to 4th December 2020: Applying the following regulations for penalty:

- + Law on Tax Administration No. 38/2019/QH14
- + Decree No. 129/2013/ND-CP
- + Decree No. 109/2013/ND-CP
- + Decree No. 49/2016/ND-CP

In case the violation is committed before 5th December 2020 and ending from 5th December 2020, applying prescribes administrative penalties for tax or invoice-related violations law take effect at the time the violation is committed.

Application of Decree No. 125/2020/ND-CP to fine administrative violations arising from 5th December 2020

References:

- Decree No. 125/2020/ND-CP dated 19th October 2020 issued by the Government prescribing administrative penalties for tax or invoice-related violations.

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