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TAX

CIT

Official Letter 2373/TCT-DTNN dated 20 July 2005 of the GDT provides guidance on CIT on software products purchased from foreign countries. According to this Letter, the GDT affirms that enterprises importing software under the pure commercial contracts for re-sale or upgrading and re-sale are not subject to CIT for royalty payments. If enterprises import software under technology transfer contracts, they are required to declare and pay CIT for royalty payments on behalf of suppliers from foreign countries.

Official Letter 2452/TCT-PCCS dated 26 July 2005 of the GDT provides guidance on CIT relief. Under this Letter, the GDT asserted that if there are different tax reliefs which are applicable to an income within the same period of time, an enterprise is entitled to opt for the most favourable relief and notify the same to the tax authorities.

Official Letter 2371/TCT-DTNN dated 20 July 2005 of the GDT provides guidance on CIT for capital transfer activities. The GDT confirmed in the Letter that where a foreign party transfers its capital to another party in the joint-venture, the income/gains derived from the transfer is subject to CIT in accordance with the current tax laws in Vietnam. The Vietnamese tax authorities will confirm the foreign party's tax paid in Vietnam in support of the calculation of the foreign party's tax payable overseas. In a recent Official Letter, when determining the income/gains derived from capital transfer activities, the GDT allowed the transferor (foreign party) to deduct the direct expenses relating to the transfer (supported by original invoices/vouchers accepted by the tax authorities).

FCT

The GDT recently confirms that per *Circular No. 05/2005/TT-BTC* dated 11 January 2005 of the MOF a foreign organisation, which provides services offshore and does not derive income in Vietnam, is not subject to FCT in Vietnam.

VAT

Official Letter No. 2345/TCT-PCCS dated 19 July 2005 of the GDT provides guidance on dealing with input VAT for liquidated enterprises. In this Letter, the GDT affirms that input VAT incurred and credited for fixed assets, materials and goods, which were bought and used for taxable businesses, if the enterprise is liquidated:

- For fixed assets: The liquidated enterprise must refund the input VAT, which was previously credited, on the residual value of the fixed assets at the stage of liquidation; and
- For inventories: The liquidated enterprise must refund the total input VAT which was credited for inventories.

In the recent rulings, the GDT reconfirms that where the enterprises are late to declare input VAT which was incurred for more than three (03) months, they are not allowed to claim the credit/refund of input VAT. In that case, input VAT, which is unable to be credited due to three-month limit, is allowed to be recognised as deductible expenses for CIT purposes. However, if the late declaration of input VAT is supported by the objective reason(s), the tax authorities may approve for enterprises' credit of input VAT.

SST

Official Letter 2993/TCHQ-KTTT dated 28 July 2005 of the GDC provides guidance on SST for imported goods from export processing zones. The Letter provides that:

- Where the domestic enterprises deliver materials to export processing zones for processing of alcohol products and the products are returned to the domestic market for consumption, the SST compliance is similar to that applied to imported goods; and
- Where the enterprises in export processing zones process products and return such products to domestic market for consumption, the products are subject to taxes that apply to imported goods if the materials used for such products contained the imported alcohol.

Import Duty

Decision 50/2005/QD-BTC dated 19 July 2005 of the MOF releases the Regulation on the pilot scheme for electric customs procedures for imports and exports, and the applicable registration forms.

This Decision will take effect after 15 days since it is gazetted.

Decision 2060/2005/QD-BTM dated 25 July 2005 of the MOT releases its authorisation for approvals of plans for import of finished products to be combined with exported products, and the liquidation of machinery, equipment, means of transport, materials by FIEs. Under this Decision, the Minister of Trade delegates the above approvals to the municipal and provincial High-Tech Zone Administrations (within their legal competency). The approvals of plans for import of finished products to be combined with exported products must comply with the following rules:

- Exported products of FIEs must be complied with the business lines as provided for in their Investment Licenses;
- The quantity of finished products (after the deduction of wastage ratios) to be imported must be consistent with the quantity of exported products for FIEs;
- The value of imported finished products (per CIF price) must be less than 40% of the value of exported products (per FOB price); and
- Delegated agencies only deal with the import of finished products to be combined with exported products for FIEs upon the submission of purchase orders or export sales contracts of the products.

This Decision will take effect after 15 days since it is gazetted.

Official Letter 2832 /TCHQ-KTTT dated 18 July 2005 of the GDC provides guidance on Import Duty and VAT on machinery and equipment being exported for repairing and re-imported into Vietnam. Under this Letter, dutiable price for machinery and equipment is the actual cost to be paid for repairing per the contract signed with the foreign party, in line with the relevant legitimate vouchers for repairing services. The machinery and equipment are not subject to VAT when re-imported into Vietnam.

Official Letter 2685 /TCHQ-KTTT dated 28 July 2005 of the GDC provides guidance on Import Duty on disposal of imported assets in Vietnam. According to this Letter, where an enterprise,

which is entitled to the exemption of Import Duty for imported goods, purchases the legally disposed goods (instead of importing them) from another FIE or party(ies) to the BCC in Vietnam, it is still eligible for the exemption of Import Duty and the enterprise disposing the assets is also not subject to the recollection of Import Duty. When disposing the fixed assets, the enterprise must issue VAT invoice(s). Input VAT incurred on the purchases of fixed assets is creditable.

Official Letter 2994 TCHQ/KTTT dated 28 July 2005 of the GDC deals with requests of Import Duty refund for the case where the customs declarations registered are correct with the required types. According to this Letter, if the customs departments have sufficient evidences to determine the exported products which are produced from the imported materials registered by the commercial import type, the refund of Import Duty may be considered with reference to the actual exported products as regulated in *Circular 172/1998/TT-BTC* or *Circular 87/2004/TT-BTC*. If the customs departments do not have sufficient evidences to determine the exported products which are produced from the imported materials, the local tax departments will review the records and vouchers for the Import Duty refund.

Official Letter 2961/TCHQ-GSQL dated 28 July 2005 of the GDC deals with queries on C/O. According to this Letter, the time for submission of C/O for preferential Import Duty purposes is the time in which the customs declaration is registered. At the stage of registration of the customs declaration, if

the importer does not have the original C/O to submit to the customs department, they must send a letter asking for the late submission and detailing their commitment on the origin of imported goods and proposed date for submission of C/O. The maximum time for submission of C/O for preferential Import Duty purposes is 60 days after the registration date of customs declarations. If the importers fail to submit the legal C/O within the required time, they will be subject to the recalculation of Import Duty and be penalised in accordance with the prevailing regulations.

INVESTMENT

Listing, and registration of share transactions for foreign joint stock companies

Official letter 238/UBCK-QLPH dated 29/07/2005 issued by the State Securities Commission provides guidance for foreign joint stock companies in listing/registering the share transactions in the securities market. According to this Letter, the State Securities Commission allows foreign joint stock companies to list and/or register the share transactions in the Securities Trading Centers.

Draft Decree on the Issuance of Corporate Bonds dated 06 July 2005 issued by the MOF was submitted to the Government. The Decree is drafted based on the following views:

- To create equality in capital mobilisation for enterprises of all types, including the confirmation of FIEs'

entitlement to issue corporate bonds;

- To embrace all bond issuance activities of enterprises, including both public offerings and private placements;
- To guarantee the open and transparent principles for information disclosures for foreign investors' decision. Accordingly, all enterprises issuing bonds must have their financial statements (for the previous year of the year of issuance and for all subsequent years in during the term of the bonds) audited.

Decree 95/2005/ND-CP dated 15 July 2005 issued by the Government provides the regulations on issuance of certificates of the ownership for resident houses, and certificates of ownership for construction projects. This Decree is applied to domestic organisations and individuals, Vietnamese residing abroad, and foreign organisations and individuals having resident houses and construction projects which are lawfully situated or established in Vietnam. According to this Decree, domestic and foreign organisations wishing to obtain certificates of ownership of resident houses or construction projects must satisfy the following conditions:

- Being duly legal entities which are established and operating under Vietnamese laws; and
- Having resident houses and construction projects which are lawfully situated or established in Vietnam by

ABBREVIATIONS

ASEAN
Association of South East Asian Nations
CIT
Corporate Income Tax
FDI
Foreign Direct Investment
FIEs
Foreign-Invested Enterprises
GDC
General Department of Customs
GDT
General Department of Taxation
LFI
Law on Foreign Investment in Vietnam
MOF
Ministry of Finance
MOI
Ministry of Industry
MOST
Ministry of Science and Technology
MOLISA
Ministry of Labour, Invalids and Social Affairs
MOT
Ministry of Trade
MPI
Ministry of Planning and Investment
PIT
Personal Income Tax
SST
Special Sales Tax
VAT
Value Added Tax

construction investment, sales and purchases, donation, inheritances, and other lawful forms.

This Decree shall be full of force and effect after 15 days since it is gazetted.

Circular 11/2005/TT-BXD dated 14 July 2005 issued by MOC provides guidelines for examination and certification of the conformity for quality of construction works. This Circular is applied to projects that must have certificates for the conformity of quality before putting into operation are projects may cause disaster to human kind, properties and environment (if the breakdown occurs), such as theatres, cinemas, circuses, halls, stadiums, gymnasia, supermarkets, apartments, hospitals, offices, hotels, etc.

This Circular shall be full of force and effect within 15 days since it is gazetted.

Labour

Decree 93/2005/ND-CP dated 13 July 2005 issued by the Government amending and supplementing certain Articles of Decree 105/2003/ND-CP dated 17 September 2003 of the Government providing detailed guidance for the implementation of the Labour Code on recruitment and management of foreign employees working in Vietnam. Some salient points of the Decree include:

- The cap of 3% for the number of foreign employees is still applied to enterprises operating under the Law on State Owned Enterprises, the Law on Enterprises and the Law on

Foreign Investment in Vietnam; and

- Removal of the cap of 3% for the number of foreign employees working for foreign main/sub contractors in Vietnam, representative offices, branches of foreign economic organisations, business establishments operating in medicare, culture, education and training sectors (including enterprises established under the Law on Enterprises and the Law on Foreign Investment in Vietnam), foreign project offices in Vietnam, management offices of foreign party(ies) to Business Co-operation Contracts, law firms in Vietnam, etc.

This Decree shall be full of force and effect after 15 days since it is gazetted.

Decree 94/2005/ND-CP dated 15 July 2005 issued by the Government provides the regulations on the settlement of employees' interest in bankrupt enterprises and co-operatives. According to this Decree, when an enterprise obtained a decision for the bankruptcy declaration, all liabilities relating to the employees' interest must be fulfilled, including: (i) amounts due to the employees: salaries and allowances (if any); severance allowances; medicare expenses; compensation or allowances for work accidents, occupational diseases and other interest in accordance with the collective labour agreement and labour contracts (if any); and (ii) amounts due to the social insurance agencies.

This Decree shall be full of force and effect after 15 days since it is gazetted, and replaces Decree 92/CP dated 19 December 1995 of the Government provides guidance on the settlement of

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employees' interest in bankrupt enterprises.

Inter-ministerial Circular 21/2005/TTLT-BYT-BTC dated 27 July 2005 issued by the Ministry of Health and the MOF provides guidelines for the implementation of compulsory health insurance as provided for in Decree 63/2005/ND-CP dated 16 May 2005 of the Government.

This Circular shall be full of force and effect after 15 days since it is gazetted.

Others

Decree 89/2005/ ND-CP dated 11 July /2005 issued by the Government makes detailed guidance for the implementation of a number of Articles of the Ordinance on anti-subsidy for goods imported into Vietnam.

This Decree shall be full of force and effect after 15 days since it is gazetted.

Decree 90/2005/ ND-CP dated 11 July 2005 issued by the Government makes detailed guidance for the implementation a number of Articles of the Ordinance on anti-dumping of goods imported into Vietnam.

This Decree shall be full of force and effect after 15 days since it is gazetted.