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Tax and Registration Fee Reduced from 1 May 2009 to 31 December 2009

The Prime Minister issued *Decision 58/2009/QĐ-TTg* dated 16 April 2009 providing:

- 50% reduction of the Valued Added Tax ("VAT") rate from 1 May 2009 to 31 December 2009 is available for the following goods and services: (i) Fibre, cloth, garments and leather footwear of all types ; (ii) Paper and all types of paper products except for books as stipulated in point o, Article 8.2, the *Law on VAT* and except for newsprint ; (iii) Cement ; (iv) bricks and tiles of all types ; (v) Two and three wheel motor vehicles with cylinder capacity above 125 cm³.
- The payment of VAT is allowed to be deferred up to 180 days for the import consignments of enterprises' fixed assets being machinery, equipment, replacement accessories and specialized means of transportation within technological production lines which are not yet produced domestically. This deferment only applies to customs declarations to be submitted to the customs offices from 1 May 2009 to 31 December 2009.
- 30% reduction of Corporate Income Tax ("CIT") payable for Quarter IV of 2008 is allowed for the income generated from the manufacture of fibre, weaving, dyeing and sewing, and manufacture of leather footwear.
- 50% reduction of registration fees on cars of less than 10 seats (including the driver's seat) from 1 May 2009 to 31 December 2009.

Guidance on Personal Income Tax Exemption for Vietnamese Employees

The Ministry of Finance issued *Circular 57/2009TT-BTC* dated 24 March 2009 providing guidance on Personal Income Tax ("PIT") exemption for Vietnamese employees of representative offices in Vietnam of United Nations Organizations.

Circular 57/2009/TT-BTC provides that Vietnamese employees recruited under the contracts to work in representative offices in

Vietnam of United Nations Organizations are exempt from PIT. This PIT exemption is available to the salaries and remuneration paid by representative offices in Vietnam of United Nations Organizations from 1 January 2009 onwards.

However, other individuals, who are recruited and paid by the hourly rate by representative offices in Vietnam of United Nations Organizations, are covered under the PIT exemption provided in *Circular 57/2009/TT-BTC*.

To effect the PIT exemption, it is required under *Circular 57/2009/TT-BTC* that representative offices in Vietnam of United Nations Organizations must submit the list of Vietnamese employees, who are entitled to the PIT exemption, to the tax department of the cities and provinces no later than 30 May 2009. Where there is a change to the employees, it is required to submit the updated list of employees no later than the last day of the month of change.

Value Added Tax for Export Processing Enterprises Clarified

The General Department of Taxation issued *Official Letter 1276/TCT-CS* dated 8 April 2009 clarifying the VAT zero-rated treatment for services provided by domestic enterprises to export processing enterprises ("EPEs") in Vietnam.

Official Letter 1276/TCT-CS provides that:

- For the period from 4 June 2007 to 31 December 2008 (the effective date of *Circular 32/2007/TT-BTC* dated 9 April 2007 of the Ministry of Finance on VAT): Only services provided by domestic enterprises to EPEs and used inside the EPEs are entitled to apply 0% VAT. However, services used outside the EPEs (including the lease of houses, land, offices, hotels and warehouses; construction of dormitories for workers; transportation and commutation of employees) are not entitled to apply 0% VAT.

It is requested domestic enterprises to make the VAT adjustment for those services provided to EPEs for the use outside the EPEs.

Although this Letter confirms that no penalty for late payment is charged for the VAT adjustment, it is unclear in this Letter who will have to pay for the additional VAT cost of 10% for services used outside the EPEs.

- From 1 January 2009, the VAT zero-rated treatment is referred to *Circular 129/2008/TT-BTC* dated 26 December 2009 of the Ministry of Finance.

For further advice and assistance, please contact our professionals listed in the last page of this Spotlight.

Foreign Investors' Ownership in Listed Shares Increased

The Prime Minister issued *Decision 55/2009/QĐ-TTg* dated 15 April 2009 providing the percentage participation of foreign investors' investment in the securities market in Vietnam. This Decision replaces the Prime Minister *Decision 238/2009/QĐ-TTg* dated 29 September 2005.

With effective from 1 June 2009, *Decision 55/2009/QĐ-TTg* allows foreign investors (being foreign individual and institutions) to hold 49% of the public joint stock companies' stakes, unless otherwise stated in the specific laws in Vietnam.

The same rate of holding is allowed for foreign investors in investment fund certificates of a public securities investment fund and charter capital of a public securities investment company.

With respect to bonds, the issuers can decide on the maximum rate of investment for foreign investors.

Decision 55/2009/QĐ-TTg further provides that foreign companies are allowed to contribute the capital or buy shares in a securities company, subject to the cap of 49% of the charter capital of that securities company.

In addition, only foreign securities companies with securities fund management licences or foreign insurance companies are allowed to contribute the capital or buy shares to set up a fund management

company, subject to the cap 49% of the fund management company's charter capital.

Vietnam-Japan Economic Partnership Agreement Approved

The Prime Minister issued *Decision 57/2009/QĐ-TTg* dated 16 April 2009 to approve the Agreement between the Socialist Republic of Vietnam and Japan for an Economic Partnership and the Implementing Agreement signed by Vietnam and Japan on 25 December 2008.

The Prime Minister assigned the Ministry of Foreign Affairs to deal with the ratification procedures and to alert the effective date of the Agreement.

The Agreement is a comprehensive bilateral agreement covering goods and services, investment, the environment, the labour movement and co-operation on technical standards. Vietnam's agricultural, aquatic products and garments will not be taxed when exporting to Japanese market. Meanwhile, Japan's industrial products, including automobile spare parts and electronics will be granted duty-free status when exporting to Vietnamese market.

Work Permits Compliance for Foreign Employees to be Audited

The Government Office issued *Notice 129/TB-VPCP* dated 17 April 2009 to request the Ministry of Labour, War Invalids and Social Affairs to work with its delegated agencies to carry out the compliance audit at enterprises and foreign contractors in selected cities and provinces in Vietnam in relation to the work permits for their foreign employees.

The objectives of this audit are to ensure that foreigners (or their employers) must obtain work permits in Vietnam and that unskilled foreigners are not allowed to work in Vietnam.

For further advice and assistance, please contact our professionals listed in the last page of this Spotlight.

New Regulations on Seals

The Government issued *Decree 31/2009/ND-CP* dated 1 April 2009 amending and supplementing *Decree 58/2001/ND-CP* on 24 August 2001 in managing and using seals. *Decree 31/2009/ND-CP* shall be effective from 1 July 2009.

Under *Decree 31/2009/ND-CP*, organizations or entities established under the *Law on Enterprises* and the *Law on Investment* are not required to apply for permit to make the seals, but they must register their seals with the local public security department prior to the use of such seals.

Under *Decree 31/2009/ND-CP*, the time frame for the seal to be registered and processed by the local public security department is reduced from seven (07) working days to four (04) working days.

Amendment of Independent Audit Practice Regulations

The Government issued *Decree 30/2009/ND-CP* dated 30 March 2009 to amend and supplement *Decree 105/2004/ND-CP* dated 30 March 2004 in relation to independent audits. *Decree 30/2009/ND-CP* is effective from 22 April 2009 and replaced *Decree 133/2005/ND-CP* dated 31 October 2005 of the Government.

We outline below the salient points of *Decree 30/2009/ND-CP*:

- An audit firm can be established and operated in Vietnam under the corporate form of a limited liability company with two members or more, or a partnership company or a private company.
- An audit firm can only be established where it has at least three auditors having the audit practising certificates, one of which must be the Director or General Director. If the Director or General Director of an audit firm is member of the limited liability company

or partnership company, he/she must own at least 10% (ten percent) of such company's Charter Capital and processes at least three years of audit experience effectively from the date of his/her audit practising certificate. In addition, the Director or General Director of an audit firm is not allowed to concurrently manage and control another company in Vietnam.

- During the course of operation, an audit firm must ensure that it has at least three (03) certified auditors under permanent labour contracts. Any audit firm fails to satisfy this condition after six (06) consecutive months, it must stop providing audit services.
- Foreign limited liability audit companies with one member established and operating in Vietnam prior to the effective date of this Decree (22 April 2009) shall operate in accordance with the licensed corporate form (limited liability company with one member) until to end of the duration stipulated on the Investment Certificate (or the Investment License).