



- ➔ **Foreign Contractor Tax's Hybrid Method Re-introduced**
- ➔ **Personal Income Tax on Bonus Stocks and Stock Options**
- ➔ **Personal Income Tax Exemption for Expatriates Working for ODA Projects in Vietnam**
- ➔ **Guidance on Withholding of VAT and Issuance of VAT invoices by Vietnamese Agents with respect to Fees Collected on behalf of Foreign Forwarding, Logistics and Express Transportation Companies**
- ➔ **New Regulation on Management, Use and Depreciation of Fixed Assets**
- ➔ **Treatments on Exchange Rate Differences**
- ➔ **Registration of Import Duty Exemption for Fixed Assets**
- ➔ **Tax Audits and Inspections Re-enforced**
- ➔ **Minimum Wages for Vietnamese Workers at Foreign Invested Enterprises**

FOREIGN CONTRACTOR TAX (“FCT”)

Hybrid Method Re-introduced

Prior to 1 January 2009, Hybrid Method was a favorable option in optimizing the Foreign Contractor Tax (some may call this tax as Withholding Tax) position for many foreign companies doing business in Vietnam without having a legal entity incorporated in Vietnam (herein after referred to as “foreign contractors”). On the one hand, Hybrid Method could help foreign contractors pass the Value Added Tax (“VAT”) charged by Vietnamese suppliers/sub-contractors on to the Vietnamese customers or Vietnamese project owners as an input VAT. On the other hand, it entitles foreign contractors to pay Corporate Income Tax (“CIT”) on a deemed withholding basis.

The old FCT allows foreign contractors to decide whether it should select the Hybrid Method. In order to do this, the foreign contractor must register the use of Vietnamese Accounting System, a tax identification number for the issuance of VAT invoices, payments of VAT by the credit basis, and payments of CIT by the deemed withholding basis.

However, Hybrid Method was canceled with unknown reasons from 1 January 2009 by *Circular 134/2008/TT-BTC* dated 31 December 2008 of the Ministry of Finance. Later in March 2009, the Ministry of Finance issued *Official Letter 2665/BTC-TCT* to confirm the exceptional use of Hybrid Method for all contracts signed with foreign contractors prior to 01 January 2009 until the expiry date of such contracts.

As a welcome move, the Ministry of Finance re-introduced the Hybrid Method in *Circular 197/2009/TT-BTC* on 9 October 2009 as an amendment of *Circular 134/2008/TT-BTC*. Same as before, *Circular 197/2009/TT-BTC* confirms that a foreign contractor can select the use of the Hybrid Method if it satisfied the following conditions:

- It has a permanent establishment in Vietnam or is a resident of Vietnam; and
- The duration of conducting business in Vietnam pursuant to the contract signed is 183 days or more from the effective date of such contract.

If the foreign contractor satisfies the above conditions and wishes to use the Hybrid Method for a particular project or contract, it must register with the tax office for the use of the Vietnamese Accounting System, a tax identification number for the issuance of VAT invoices, payments of VAT by the credit basis, and payments of CIT on a deemed withholding basis within 20 working days as from the effective date of the contract. In our view, the deadline for this registration is not practical to foreign contractors.

Since *Circular 197/2009/TT-BTC* is effective from 23 November 2009, it is not clear whether the Hybrid Method is also available to foreign contractors who signed the contracts from 1 January 2009 to 22 November 2009. Our view is that this provides an opportunity for the appeal of a specific tax ruling for the use of the Hybrid Method. Please contact us if you need to explore further details.

PERSONAL INCOME TAX (“PIT”)

PIT on Bonus Stock and Stock Options Granted to Employees

The Ministry of Finance issued *Official Letter 14169/BTC-TCT* dated 7 October 2009 providing guidance on PIT treatment with respect to bonus stocks and stock options granted to employees in Vietnam.

In this Letter, the Ministry of Finance confirmed that the bonus stocks and stock options are considered as employment incomes as per *Circular 84/2008/TT-BTC* dated 30 September 2008 of the Ministry of Finance.

- With respect to the bonus stocks: the taxable value will be determined based on the amount of bonus as stated in the enterprises’ accounting records. Particularly:
 - The beneficiary employees are not subject to PIT upon receipt of the bonus stocks. However, when they transferred the bonus stocks, the income (which is determined based on the amount of bonus stated in the enterprises’ accounting records) is subject to PIT at marginal rates as part of the employment income. In addition to this, the beneficiary

employees must pay PIT at either 0.1% of the transfer value or 20% of the profits (being the difference between the transfer value and face value or the amount of bonus as stated in the enterprises' accounting records).

- The beneficiary employees are not required to include the transfer value of the bonus stocks in their monthly PIT declarations and payments for employment income. It is allowed them to include the transfer value of the bonus stocks in their employment income for the assessment of year-end PIT finalization.
- With respect to the stock options:
 - The beneficiary employees are not subject to PIT upon receipt or exercise of the stock options. However, when they transferred the stocks, the income is subject to PIT at marginal rates as part of the employment income. In addition to this, the beneficiary employees must pay PIT at either 0.1% of the transfer value or 20% of the profits (being the difference between the transfer value and face value or the arms-length cost of the stocks).
 - The beneficiary employees are not required to include the transfer value of the bonus stock in their PIT declarations and payments for employment income. It is allowed them to include the transfer value of the bonus stock in their employment income for the assessment of year-end PIT finalization. The determination of the option value must be based on the amount of bonus as stated in the enterprises' accounting records.
 - If the beneficiary employees do not exercise the stock options, but transfer such options to the others in compliance with the regulations, it is required that they must follow the procedures to transfer such options to the others and at the same time, will be subject to PIT on the amount

of bonus as stated in the enterprises' accounting records.

PIT Exemption and Other Incentives for Expatriates Working for ODA Projects in Vietnam

Expatriates working for ODA projects and programs in Vietnam are confirmed to be exempt from PIT in Vietnam from 20 November 2009. This exemption is provided in *Decision 119/2009/QĐ-TTg* dated 1 October 2009 of the Prime Minister which provides numerous incentives to expatriates working for ODA funded projects and programs in Vietnam. *Decision 119/2009/QĐ-TTg* seems to widen the scope of those who are subjects to ODA projects. This Decision, however, does not stipulate detailed procedures in applying for the PIT exemption but it seems that provided the expatriates' full names are on the approved bidding/project documents, they should be qualified for the PIT exemption.

Decision 119/2009/QĐ-TTg also provides that expatriates who work for ODA projects and their family members will be equally treated and protected by Vietnam in their working period in Vietnam. The expatriates and their family members can enjoy a maximum visa term of 03 years for working and staying in Vietnam.

Decision 119/2009/QĐ-TTg replaces *Decision 211/1998/QĐ-TT* dated 31 October 1998 of the Prime Minister and will be effective on 20 November 2009.

VALUE ADDED TAX (“VAT”)

Guidance on Withholding of VAT and Issuance of VAT invoices by Vietnamese Agents with respect to Fees Collected on behalf of Foreign Forwarding, Logistics and Express Transportation Companies

The General Department issued *Official Letter 3947/TCT-CS* on 25 September 2009 providing guidance on withholding of VAT and issuance of VAT invoices by Vietnamese agents with respect to fees collected in Vietnam on behalf of foreign forwarding, logistics and express

transportation companies. *Official Letter 3947/TCT-CS* provides that when the Vietnamese agents collect fees in Vietnam on behalf of foreign forwarding, logistics and express transportation companies, the agents must comply with the following rules:

- For clients being enterprises in Vietnam, agents must state on their VAT invoices that the fees were collected on behalf of foreign forwarding, logistics and express transportation companies. The invoice description and the services fees will be disclosed as the amount (without VAT) paid to the foreign forwarding, logistics and express transportation companies. The VAT rate line is left blank and crossed and the amount of VAT payable will be amount of VAT to be withheld by the agents for the tax administration requirements in accordance with *Circular 134/2008/TT-BTC* on FCT.
- For clients being export processing enterprises in Vietnam, the above rule also applied, except the VAT rate and VAT payable are left blank and crossed.
- If the forwarding and logistics operations including international transportation charges, the agents must issue VAT invoices as per the above rules. However, the international transportation charges are subject to VAT at 0%.
- Clients are entitled to use VAT invoices issued by the above agents for the credit of input VAT. This entitlement is available to VAT invoices issued by agents from 01 January 2009.

CORPORATE INCOME TAX (“CIT”)

New Regulation on Management, Use and Depreciation of Fixed Assets

The Ministry of Finance issued *Circular 203/2009/TT-BTC* on 20 October 2009 providing the guidance on the management, use and depreciation of fixed assets.

Circular 203/2009/TT-BTC is of full force and effect on 1 January 2010, and will replace *Decision 206/2003/TT-BTC* dated 12

December 2003 of the Ministry of Finance on the same issue.

Among other things, *Circular 203/2009/TT-BTC* still requires enterprises to make a registration of the preferred depreciation method of fixed assets with the local tax offices prior to the start of depreciation of fixed assets. Within 30 days, the tax offices will review the registration dossiers and advise enterprises in writing on a suitable depreciation method if the enterprises are not satisfied the relevant conditions for the preferred depreciation method.

Treatments on Exchange Rate Differences

The Ministry of Finance issued *Circular 201/2009/TT-BTC* on 15 October 2009 guiding the treatments of exchange rate differences in enterprises. *Circular 201/2009/TT-BTC* applies to enterprises established and operating under the laws of Vietnam (except enterprises trading in foreign currencies). It provides that all exchange differences within the tax year resulting from production and business operations (including the investment and capital construction operations) are allowed to be recorded as financial expenses/incomes.

Circular 201/2009/TT-BTC is of full force and effect on 29 November 2009, and replaces *Circular 44-TC/TCDN* dated 08 July 1997 and *Circular 38/2001/TT-BTC* dated 5 June 2001 of the Ministry of Finance on the same issue.

Circular 201/2009/TT-BTC further provides that:

- For the period of investment and capital construction to form the fixed assets of newly established enterprises, the exchange rate differences resulting from payments and revaluation of monetary items in foreign currencies at the end of financial year are presented as accumulated amounts in the balance sheet. Upon completion and operation of the projects, the exchange rate differences will be recorded or amortized as financial incomes or expenses up to

05 years, starting from the operation date of the projects.

- During the course of operations of the enterprises (including period of investment and capital construction to form the enterprises' fixed assets), the exchange rate differences resulting from payments of monetary items in foreign currencies in the financial year will be immediately recorded as financial incomes or expenses of the that financial year.
- The exchange rate differences resulting from year-end revaluation of balances of foreign currencies (including cash, deposits, deposits in transit and short-term debts of one year or less) must not be recorded as financial incomes or expenses, but such balances must be presented in the financial statements and will be reversed in the start of subsequent financial year. As for the balances of long-term debts (being account payables or account receivables) of 01 year or more, the exchange rate differences resulting from year-end revaluation must be recorded as financial incomes or expenses. The exchange rate differences within the accounting period resulting from the purchase and/or sale of foreign currencies will be directly accounted into financial revenues or expenses of the period.
- Upon the winding-up and closure of enterprises, exchange rate differences resulting from account receivables and account payables will be immediately recorded as financial incomes or expenses.

IMPORT AND EXPORT

Registration of Import Duty Exemption for Fixed Assets

The General Department of Customs issued *Official Letter 6279/TCHQ-KTTT* on 20 October 2009 to confirm the requirement of registration of list of fixed assets for the import duty exemption, entitled by qualified investment projects as per *Decree*

149/2005/ND-CP dated 8 December 2005 of the Government on import and export duties.

In order to enjoy the import duty exemption for qualified investment projects, enterprises must make the first registration of the list of fixed assets for the entire investment projects or each of the phrases of the investment projects with the local customs offices.

It is required that the above registration must be made in accordance with the economic and technical explanatory statements and materials of technical specification of the investment projects, and that total value of the imported fixed assets must not exceed the capital used by enterprises for purchases of machinery and equipment forming enterprises' fixed assets.

It further confirmed that the registration of import duty exemption may be rejected by the local customs offices if enterprises failed to submit the economic and technical explanatory statements.

TAX AUDIT

Tax Audits and Inspections Re-enforced

The General Department of Taxation issued *Official Letter 3778/TCT-TTr* on 17 September 2009 instructing the tax departments of all cities and provinces to re-enforce the tax audits and inspections for enterprises such as those engaged in trading of cars and motorbikes, electronic products, restaurants. It is reported that these businesses are often not issue VAT invoices to customers for the objectives of tax evasion.

These enterprises are considered as targets for unexpected tax audits or inspections by the tax offices in co-operation with other agencies, such as public security departments, market administrators, customs offices, and press agencies.

The administration measures are tax administrative penalties and/or temporary suspension of the business registration certificates/investment certificates.

LABOUR UPDATE

Minimum Wages for Vietnamese Workers at Foreign Invested Enterprises

The Government issued *Decree 98/2009/ND-CP* dated 30 October 2009 on the minimum wages applicable to Vietnamese workers under simple or normal work conditions (those have not completed any training course or to be apprenticed) for foreign invested enterprises, foreign offices and organisations, international organisations and foreign individuals in Vietnam.

This Decree will be of full force from 1 January 2010, providing the following minimum wages:

- Area I: VND1,340,000 per month.
- Area II: VND1,190,000 per month.
- Area III: VND1,040,000 per month.
- Area IV: VND1,000,000 per month.

In addition, minimum wages for trained or apprenticed workers must be at least 7% higher than the above minimum wages.