

Tax Updates January 2020

Vietnam Accounting & Taxation Changes

We have released our January 2020 publication of our Tax and Accounting Updates covering a Draft Decree to adjust the deductible interest cap for enterprises with related party transactions, and our regular review of recent Official Letters released by the Tax Authorities.

DRAFT DECREE TO AMEND TAX DEDUCTIBLE INTEREST EXPENSE CAP (AMENDING DECREE 20/2017/ND-CP)

Further to the meeting hosted by the Deputy Prime Minister on 29 November 2019, which discussed amending regulations for interest expense deductions for companies with related party transactions (currently covered by Decree 20/2017/ND-CP), the Ministry of Finance released a Draft Decree on 12 December 2019. Key points of the Draft Decree include:

1. Increasing deductible interest expense cap from 20% to 30% of EBITDA

The total net interest expense incurred in a period by a taxpayer (interest expenses, less interest income from deposits and loans) is deductible when determining the income subject to corporate income tax where the net interest expense does not exceed 30% of total net profit from business activities, plus the net interest expense, plus depreciation expenses in the period.

2. Deductions for interest expenses can be carried forward for the next five years

Where $EBITDA \leq 0$ for a taxpayer with related party transactions, the net interest expenses arising in a period can be carried forward against taxable income for the next five years.

Vietnam Tax Updates, January 2020

3. Widening of exemptions from related party transactions provisions

The provisions will not apply to taxpayers to which the Law on Credit Institutions or the Law on Insurance Business applies, nor will they apply to public and social projects under control of the Government

4. Effective date of the proposed changes

The changes are proposed to apply for the 2019 Corporate Income Tax ("CIT") year onwards.

Comments are being sought from enterprises on the Draft Decree before being considered for approval by the Prime Minister.

“ The Ministry of Finance has released a Draft Decree amending regulations of interest expenses including increasing deductible interest expense cap from 20% to 30% of EBITDA ”

OFFICIAL LETTERS RELEASED

USD Exchange Rate for Converting Foreign Currency (USD) Salaries and Insurance Calculations for the First Half of 2020

On 2 January 2020, the Ho Chi Minh City Insurance Office issued Official Letter 9/BHXH-QLT detailing the exchange rate to be applied for converting foreign currency (USD) salaries for the first six months of 2020.

According to the Official Letter, the exchange rate for converting salary received in USD during the first six months of 2020 is 23,150 VND/USD, an increase of 96 VND compared to the previous rate. This rate is also applicable for calculating insurance contributions where salaries in labour contracts are stated in USD. The exchange rate is applicable from 2 January 2020.

Input Invoices for Vat Refunds Not Issued at Correct Time

On 18 December 2019, the Hanoi Department of Taxation ("HDT") issued Official Letter 94420/CT-TTHT regarding input invoices for VAT refunds.

Where a company purchases goods from a domestic supplier for export, if the date of the invoice issued by the supplier to the Company is after the export date, it will be considered as a violation of Point a, Clause 2, Article 16 of Circular 39/2014/TT-BTC.

However, where the sale of goods between the Company and the supplier was valid and the company can provide other supporting documents as proof for the supplier's delivery date being before the export date, the tax authorities will undertake inspection and may accept the deductibility of those invoices.

Vietnam Tax Updates, January 2020

Gross up of Net Income for Personal Income Tax ("PIT") Calculations

On 30 December 2019, HDT issued Official Letter 97458/CT-TTHT providing guidelines for gross-up of net income for PIT calculations.

Under Clause 4, Article 7 of Circular 111/2013/TT-BTC, income exclusive of tax (after-tax income or net income) must be grossed up to assessable income following Appendix 02/PL-TNCN when calculating PIT.

Accordingly, where an individual derives income from two sources in a month, including a pre-tax income (including tax), and an after-tax income:

- The after-tax income must be grossed up to assessable income following Clause 4, Article 7 of Circular 111/2013/TT-BTC and Clause 1, Article 14 of Circular 92/2015/TT-BTC. The gross-up must be conducted each month. When finalising PIT, the assessable income of the year will be the total amount of the monthly grossed-up income.
- The pre-tax income is not required to be grossed-up.

Calculation of Purchase Price Withheld for Capital Gain Tax

On 31 December 2019, HDT issued Official Letter 98064/CT-TTHT providing guidelines for the calculation of transfer prices and capital gains tax.

According to Article 14 of Circular 78/2014/TT-BTC, where the transferor and the transferee are both foreign-based enterprises, the Vietnamese company where the transferor disposes its interest to the transferee is responsible for declaring and paying CIT on their behalf.

The gain on Capital Transfer is determined by the transfer price minus the purchase cost of the interest transferred minus the transfer cost.

The "purchase cost" is the cumulative book value of the capital to the date of transfer, and being certified by related investors or following the results audited by an independent audit firm if the enterprise is wholly owned by a foreign investor, and which is not based on the investment certificate (Article 8 of Circular 96/2015/TT-BTC).

The applicable exchange rate for foreign currency to Vietnamese Dong will follow the instructions in Clause 4, Article 2 of Circular 26/2015/TT-BTC.

Foreign Contractor Tax ("FCT") on Distributing Goods for Foreign Vendors

On 10 September 2019, the General Department of Taxation issued Official Letter 70832/CT-TTHT on Foreign Contractor Tax applicable to foreign vendors with goods distributed through local parties. According to Clause 3, Article 1 of Circular 103/2014/TT-BTC, where a foreign company derives income from selling goods in Vietnam through an authorized Vietnamese company that provides distribution services and other services related to the sale of goods, the foreign company will be subject to FCT.

If the foreign company fails to meet the conditions for direct tax declaration and payment in Vietnam, the Vietnam company will be subject to withholding FCT (VAT and CIT) before payments to the foreign party, and is responsible for declaring and paying the FCT on behalf of the foreign vendor in accordance with Article 12 and Article 13 of Circular 103/2014/TT-BTC.

Deductibility of Investment Provisions Where Invested Company Has a Different Financial Year

On 6 January 2020, HDT issued Official Letter 422/CT-TTHT providing guidelines for deductibility of investment provisions where the invested company has a different financial year.

Tax Updates, January 2020

According to Clause 2, Article 5 of Circular 48/2019/TT-BTC, to record provisions against an investment in another enterprise, the corporate investor and invested enterprises ("the two companies") must prepare financial statements covering the same period. If the annual financial statements of the two companies cover different periods, the investor is not permitted to record an investment provision unless the corporate investor is eligible to make a provision based on the latest quarterly financial statements of the invested enterprise, or where:

(i) Invested enterprises do not prepare annual financial statements at the same time with corporate investors as they have ceased operations and are waiting for dissolution, or

(ii) Invested enterprises are permitted to prepare financial statements covering a different period as itself is a corporate investor and have notified competent authorities under the Accounting Law.

Acclime Vietnam is a leading provider of professional accounting, tax, payroll, compliance, company establishment and advisory services in Vietnam, with a focus on providing quality outsourcing and consulting services to clients.

We assist foreign invested and locally owned companies maintain the highest level of professional standards in Vietnam through proactive compliance, reporting assistance and advice.

vietnam@acclime.com

vietnam.acclime.com

FOR FURTHER INFORMATION CONTACT:

Matthew Lourey
Managing Partner
m.lourey@acclime.com

Thao Do
Manager, Tax & Accounting Services
thao.do@acclime.com

Phung Nguyen
Manager, Tax & Accounting Services
phung.nguyen@acclime.com

Acclime Vietnam

Ho Chi Minh City:
Level 9, Abacus Tower
58 Nguyen Dinh Chieu, District 1
Phone: +84 (0)28 6291 5779

Hanoi:
Level 13, Hanoi Tower
49 Hai Ba Trung, Hoan Kiem District
Phone: + 84 (0)24 3226 3314

Danang:
Level 3, Indochina Riverside Tower
74 Bach Dang, Hai Chau District
Phone: +84 (0)236 366 4662

This publication is general in nature and should not be relied upon without first seeking specific advice. No liability is taken for the content of this publication, nor any responsibility for any actions taken based upon the content.

Copyright (c) 2020 Acclime Vietnam, All rights reserved.