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Global Tax Update

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Deloitte Tohmatsu Tax Co.

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New Circular 'Revised deductible expenses' Decree 12/2015/ND-CP, Circular 78/2014/TT-BTC

Following Decree No. 12/2015/ND-CP dated 12 February 2015 from the Government, detailing the implementation of the Amendment and Supplement Law on tax laws and decrees; on June 22, 2015, the Ministry of Finance issued Circular No. 96/2015/TT-BTC ("Circular 96") providing guidance on Corporate Income Tax ("CIT") regulations per Decree No. 12/2015/ND-CP dated 12 February 2015 from the Government, and amending and supplementing a number of regulations from Circular No. 78/2014/TT-BTC ("Circular 78"). This Circular shall be in effect from 06 August 2015, and take effective from the CIT period of 2015 onwards.

In general, the amendments and supplements from the Circular tend to lean forwards the streamlining of administrative procedures, and supporting enterprises and tax payers. Below is a number of notable changes from Circular 96.

(1) Assessable Income

The time of revenue recognition for CIT purpose for service provision activities has been amended to be consistent and in line with accounting regulations and standards. Accordingly, service revenue is now recognized upon its full or progressive completion as agreed with the buyer, rather than on the time the seller receives payment from the buyer, as previously regulated in Circular 78.

(2) Deductible Expenses

Circular 96 presents a variety of amendments related to the determination of deductible and non-deductible expenses for enterprises, including the following primary ones:

- Removing the requirement for enterprises to prepare and manage material consumption rates, except for a number of raw materials, fuel, energy, and goods which were pre-determined by the Government;
- Depreciation expenses of library, kindergarten, sport complex, and similar structures for welfare purposes and the equipment installed therein are also be deductible;
- Supplementing guidance on the specific supporting documents required for deductible expense in the case of rental assets from individuals, which include asset rental contract, rent payment voucher, and PIT withholding voucher (depending on the terms of the rental contract);
- Removing the limit for uniform allowance <u>in kind</u> for employees; whilst the limit for uniform allowance in cash remains at VND 5million/person annually. Additionally, the Circular also removed the limit for per diem expense for domestic and

international trip, which was formerly stipulated at maximum two (02) times of the regulated amount for government workers per the Ministry of Finance's regulations. As a result, enterprises now can apply per-diem in accordance with their internal financial policies;

- Providing guidance on the calculation method for non-deductible interest expense corresponding with the un-contributed chartered capital based on the correlation between the un-contributed charter capital and the total loan in the tax period;
- Removing the monthly limit of VND 1 million/person for life insurance and other social security-type funds. Additionally, accident, health, and other similar voluntary insurances for employees are officially recognized as deductible expense at the Circular level, and are limited (collectively with other direct welfare expenses for the employees) by 01 month of actual averaged salary within a tax year;
- Removing the requirement on enterprises to submit explanatory dossier to the directly managing tax authority in the cases of damage expenses from natural disaster, epidemic, fire… Instead, the related documents shall be filed at the enterprise, and presented upon request from the tax authority.

(3) CIT Incentives

Circular 96 continues to amend, supplement, and clarify on the matters of CIT incentives in numerous points, the most notable of which are presented as follows:

- Supplementing guidance for the application of CIT incentive for preferential location, where in case an enterprise generates income from outside its original preferential location, and the income-incurring location also belongs to incentivized area, thus such income may still enjoy CIT incentives based on the specific time and CIT incentives applied for the outside area.

The above guidance had been issued by the Ministry of Finance in Official letter No. 12024/BTC-TCT, dated 27 August 2014, and is now regulated at Circular level for the first time.

- Summarizing and stipulating more detailed guidance on the application of CIT incentives for cases introduced in previous CIT documents, such as: stage investment, incentives applicable to investment expansion, and to regular machinery and equipment investment during the business operation, including the period of 2009-2013.

(4) Other Contents

Providing guidance on the case of surplus contribution of registered chartered capital from new capital-contributing member, specifically where:

- If the surplus belongs to the enterprise, and is added to the business capital, then the amount will not be recorded as taxable income of the capital-receiving enterprise;
- If the surplus is allocated to the existing contributing members, then the amount will be treated as their income and thus, subject to income tax.

Income of Vietnam located enterprises generated from overseas investment will be declared at time of being transferred to Vietnam rather than the time such income arising under the previous regulations in Circular 78. Also gains or losses from overseas investment project are not allowed to offset against losses or income, respectively, generated from activities in Vietnam. Besides, the Circular also amends the requirements on supporting documents for tax declaration and submission of Vietnamese enterprises investing overseas towards simplification, and applicability.

Supplementing clearer guidance on loss carried forward among different business lines, such as carrying forward loss from real estate transfer business to other business type of income.

Realized foreign exchange difference and unrealized foreign exchange difference from revaluation of account payables will be recorded as financial expense rather than operating expense from main activities as per previous regulations.

For capital transfer of founders, the purchase price of the transferred capital shall be determined as the value of the contributed capital accumulated up to capital transfer time.

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