



Global Tax Update

Vietnam

Deloitte Tohmatsu Tax Co.

November 2015

VAT on Income of Foreign Contractors from Transfer of Trademark-use Rights

Recently, Hanoi Department of Taxation (“HDT”) and Ho Chi Minh Department of Taxation (“HCMDT”) have issued a number of Official Letters (“OL”) guiding VAT liability on income of foreign contractors from the transfer of trademark-use rights (OL No. 3159/CT-TTHT dated 15 April 2015 and OL No. 53638/CT-HTr dated 14 August 2015). According to the guidance in these OLs, the transfer of brand name/ trademark-use rights (not a permanent transfer, not a transfer of intellectual property rights in accordance with the Law on Intellectual Property) should be subject to Vietnamese Foreign Contractor Withholding Tax (“FCWT”) at the VAT rate of 5%.

(1) LEGAL BASE

Basis for Hanoi and Ho Chi Minh Tax Departments to make conclusion in the two above mentioned letters is OL No. 18115/BTC-TCT dated 27 December 2013 issued by the Ministry of Finance. In this OL, the Ministry of Finance guides that cases not subject to VAT under Circular No. 219/2013/TT-BTC only include “technology transfer under the provisions of the Law on Technology Transfer; transfer of intellectual property rights in accordance with the Law on Intellectual Property; computer software”. Therefore, the transfer of trademark-use rights,

which should be considered as transfer of the use of intellectual property rights rather than transfer of intellectual property rights, shall be subject to VAT at the rate of 10%.

(2) UNCLEAR POINTS

Up to now, the Ministry of Finance and the General Department of Taxation have not issued any formal guidelines on VAT on income of foreign contractors from transfer of brand name/ trademark-use rights. However, based on the two OLs mentioned above by HDT and HCMDT, tax authorities tend to uniformly apply FCWT at the VAT rate of 5% for this kind of transaction.

However, under the current FCWT regulation, 5% tax rate is applicable to income from services. There are still many different views on whether the income from the transfer of brand name/ trademark-use rights should be treated as income from services or not. Logically, if it falls in the category of services, the FCWT rate should be 5% VAT and 5% CIT rather than 10% CIT as currently applied to royalties.

(3) OUR RECOMMENDATIONS

Enterprises may consider reviewing all oversea payments for brand name/ trademark-use rights as well as other use rights not associated with

transfer of intellectual property rights in order to determine the potential tax exposure. Based on materiality of the estimated exposure, enterprises should consider:

- Declaring VAT on the payment for the trademark-use rights before tax authorities announce the decision on tax inspection; or
- Obtaining official guidances from local tax authorities for appropriate implementation

Newsletter Archives

To see past newsletters, please visit our website:
www.deloitte.com/jp/tax/nl/ao

Contacts

Deloitte Vietnam Co., Ltd.
Thomas McClelland, Tax Leader
tmcclelland@deloitte.com
Bui Ngoc Tuan, Tax Partner
tbui@deloitte.com
Bui Tuan Minh, Tax Partner
mbui@deloitte.com
Phan Vu Hoang, Tax Partner
hoangphan@deloitte.com
Dion Thai Phuong, Tax Partner
dthai@deloitte.com

Issued by

**Deloitte Tohmatsu Tax Co.
Tokyo Office**
Shin-Tokyo Building 5F, 3-3-1 Marunouchi,
Chiyoda-ku, Tokyo 100-8305, Japan
T e l: +81 3 6213 3800
email: tax.cs@tohmatu.co.jp
Corporate Info.: www.deloitte.com/jp/en/tax
Tax Services: www.deloitte.com/jp/tax/s/en

Deloitte Tohmatsu Group (Deloitte Japan) is the name of the Japan member firm group of Deloitte Touche Tohmatsu Limited (DTTL), a UK private company limited by guarantee, which includes Deloitte Touche Tohmatsu LLC, Deloitte Tohmatsu Consulting LLC, Deloitte Tohmatsu Financial Advisory LLC, Deloitte Tohmatsu Tax Co., DT Legal Japan, and all of their respective subsidiaries and affiliates. Deloitte Tohmatsu Group (Deloitte Japan) is among the nation's leading professional services firms and each entity in Deloitte Tohmatsu Group (Deloitte Japan) provides services in accordance with applicable laws and regulations. The services include audit, tax, legal, consulting, and financial advisory services which are delivered to many clients including multinational enterprises and major Japanese business entities through over 8,500 professionals in nearly 40 cities throughout Japan. For more information, please visit the Deloitte Tohmatsu Group (Deloitte Japan)'s website at www.deloitte.com/jp/en.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 220,000 professionals are committed to make an impact that matters.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

All of the contents of these materials are copyrighted by Deloitte Touche Tohmatsu Limited, its member firms, or their related entities including, but not limited to, Deloitte Tohmatsu Tax Co. (collectively, the "Deloitte Network") and may not be reprinted, duplicated, etc., without the prior written permission of the Deloitte Network under relevant copyright laws.

These materials describe only our general and current observations about a sample case in accordance with relevant tax laws and other effective authorities, and none of Deloitte Network is, by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. The opinions expressed in the materials represent the personal views of individual writers and do not represent the official views of Deloitte Network. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.