

Vietnam News Brief*

A special update on Foreign Contractor Withholding Tax (FCWT) in Vietnam

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HYBRID METHOD REINTRODUCED

On 9 October 2009, the Ministry of Finance issued Circular 197 reintroducing the hybrid method of application of FCWT. Circular 197 is effective 45 days after publication in the Official Gazette.

Many readers will remember the hybrid method from the previous FCWT regulations (effective up till the end of 2008). When the current regulations were introduced in 2009, they were absent the hybrid method, presenting enormous difficulties for projects where the foreign contractor incurred significant VAT in Vietnam (e.g. infrastructure, construction, EPC projects). The reintroduction of the hybrid method will be welcome news for these foreign contractors.

The hybrid method allows foreign contractors to register for value added tax ("VAT") and accordingly pay VAT based on the conventional method (i.e. output VAT less input VAT), but with corporate income tax ("CIT") continuing to be subject to deemed rates.

Under Circular 197, foreign contractors wishing to adopt the hybrid method must meet the following conditions:

- Having a permanent establishment in Vietnam, or be a tax resident of Vietnam; and
- Operating in Vietnam under a contract with a term of 183 days or more; and
- Maintaining accounting records in accordance with the accounting regulations and guidance of the Ministry of Finance. In this regard, Circular 197 is less clear than previous regulations. In the past a simplified accounting system could be adopted and it is hoped that similar requirements will apply going forward, but this needs to be confirmed.

Circular 197 requires notification of adoption of the hybrid method within 20 days of the contract signing date. It is not clear whether foreign contractors signing a contract between the effective date of Circular 134 (1 January 2009) and Circular 197 are now allowed to register.

As a separate issue, Circular 197 provides a grandfathering provision allowing Circular 05 dated 11 January 2005 to continue to govern contracts signed before the effective date of Circular 134. This is except for goods or services that were exempt from VAT prior to 2009 but VAT taxable under Circular 129 on VAT applicable from 2009. The VAT taxable revenue for such goods and services, if supplied after 1 January 2009, must be determined in accordance with Circular 197.

We would be pleased to discuss the implications of the above changes in respect of your business and assist with registration of the hybrid method.

This publication is intended for general guidance only and should not form the basis of specific decisions. Please contact us for further information and details of our services. In Ho Chi Minh City: contact David Fitzgerald or Richard Irwin (Tax), Phan Thi Thuy Duong (Legal), Kenji Murayama (Japanese Business), Ian Lydall (Audit), Steve Gaskill (Advisory) at phone (84-8) 38230796, fax (84-8) 38251947. In Ha Noi: contact Dinh Thi Quynh Van (Tax), Le Anh Tuan (Legal), Eisuke Kofugata (Japanese Business), Nguyen Phi Lan (Audit) at phone (84-4) 39462246, fax (84-4) 39460705.