

Vietnam News Brief*

An update on Foreign Contractors

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NEW REQUIREMENT FROM BA RIA-VUNG TAU TAX DEPARTMENT

The Ba Ria-Vung Tau Tax Department (“VTTD”) has recently issued Official Letter 5773/CT-TNCN (“OL 5773”) to all enterprises located in the province requesting enterprises provide information about their foreign contractors.

The request is being made in accordance with Point 3, Article 34 of Decree 85/2007/ND-CP dated 25 May 2007 (“Decree 85”) which states that:

“Organizations or individuals being business partners or customers of taxpayers shall have responsibility for providing information related to the taxpayers at the request of the tax administration bodies.”

OL 5773 provides a list of information that must be submitted, including a list of the foreign contractor’s expatriate employees working in Vietnam. Where an enterprise does not provide the requested information and this results in a shortfall of tax collection, the enterprise will take full responsibility.

We see this as an interesting development from a number of perspectives:

- We believe that the general intention of the provision of Decree 85 being relied on by VTTD is to allow tax authorities to request information on specific matters. It is not intended to allow them a blanket power to request information from all taxpayers in such a general manner.
- The extent of information requested is broad. In particular, the request for details of expatriate employees of foreign contractors is information that the Vietnam enterprise is unlikely to have. It is also a clear indication that the target here is Personal income tax.
- We question the ability of the tax authority to make the Vietnam enterprise responsible for any shortfall of tax by virtue of not providing this information.

For taxpayers based in Ba Ria-Vung Tau Province, notice should be taken of the requirements of OL 5773 and consideration given as to how to respond.

For taxpayers located in other provinces, OL 5773 provides an interesting insight into the broad interpretation that can be taken by tax authorities as to the powers afforded them by the regulations.

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.