

Vietnam News Brief*

An update on VAT

8 October 2009

CONFIRMATION OF THE CONDITIONS REQUIRED IN ORDER TO CLAIM ZERO VAT RATING OF EXPORTED SERVICES

On 18 September, the General Department of Tax (“GDT”) issued Letter 3824/TCT-CS to the Hanoi and Ho Chi Minh City tax authorities confirming the conditions required for applying zero VAT rate for services rendered to foreign companies, including companies in non- tariff areas, as follows:

- The foreign company has no permanent establishment (PE) in Vietnam; and
- The foreign company is not a VAT registrant in Vietnam.

Although this is a reiteration of the rules in Circular 129/2008/TT-BTC dated 26 December 2008 on VAT (see PwC News Brief dated 16 January 2009), this letter is of interest as it does not refer to the place of consumption of the services. In the previous VAT regulations, zero rating could only apply if the services could be shown to have been consumed overseas. This requirement was removed under Circular 129 but certain tax authorities have indicated that this condition would still apply in practice. This guidance issued by the GDT appears to confirm that place of consumption is not relevant now, and only the condition set out in Circular 129 need be satisfied.

In a separate point, as guidance in applying the above conditions, the above Letter makes reference to the PE definitions under Circular 130/2008/TT-BTC dated 26 December 2008 guiding domestic Corporate Income Tax, and to Circular 133/2004/TT-BTC dated 31 December 2004 guiding the implementation of Double Tax Agreements (“DTAs”). It is not clear what the relevance of Circular 133 is in this regard since DTAs do not cover VAT, but it appears that the DTA definition of PE may also be referred to.

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.