Vietnam NewsBrief

An update on Tax regulations

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NEW TAX DECREES

The Government released Decree 113/2011/ND-CP on 8 December 2011, and Decrees 121/2011/ND-CP and 122/2011/ND-CP on 27 December 2011 to amend and supplement a number of articles under the existing Decrees on Special Sales Tax ("SST"), Value Added Tax ("VAT"), and Corporate Income Tax ("CIT") respectively.

Each decree has an effective date as follows:

- Decree 113 on SST takes effect from 1 February 2012.
- Decree 121 on VAT takes effect from 1 March 2012.
- Decree 122 on CIT also takes effect from 1 March 2012 but will apply from the 2012 tax year.

The final Decrees contain some differences from the initial drafts, as originally covered in our NewsBrief of 1 September 2011. The more notable amendments are now summarised as follows:

Corporate Income Tax

Amounts treated as "other" taxable income

Other taxable income is treated separately and generally does not qualify for tax incentives.

To be treated as other income	To be treated as operating income
Income from the transfer of i) projects, ii) rights to exploit, explore and process minerals.	Reversal of provisions for inventory devaluation, financial investment loss, bad debts, warranties and salary. *
Income from selling scrap which is not directly related to tax incentivised activities. *	
Exchange gains on revaluation of payables dominated in foreign currencies at the end of the fiscal year. *	
Gains on revaluation of fixed assets on conversion of a State owned enterprise to a joint stock company	
*No change. Previous official letter position elevated to Decree status.	

Determination of taxable income

Income from leasing assets can now be either allocated over the lease term or recognized in full in one tax year. However, in order to determine taxable income during a period eligible for tax incentives, the rental should be allocated over the lease term.

Taxable income includes profits from share swaps upon restructuring or the transfer of securities for non-cash consideration.

Gains on revaluation of land use rights used for capital contribution are spread over a maximum of 10 years.

Profits from the transfer of projects or rights to exploit, explore and process minerals must be separately recorded and profits/losses of these activities are not allowed to be offset against the results of other business activities (but may be set off amongst themselves or against transfers of property)

Non-taxable income

- Income from transferring Certified Emission Reductions (CERs) within one year from the date of issuance.
- Share premiums on the issue of shares.

Deductible expenses

- Foreign exchange losses on revaluation of payables denominated in foreign currency.
- Bonuses and life insurance premiums for employees, subject to documentation requirements.
- Commissions for multi level marketing will not be subject to the Advertising & Promotion cap (which normally limits the deduction of A&P costs to 10% of total other deductible expenditure).

Non-deductible expenses

Provisions for severance allowance are not deductible, except for enterprises that are not subject to mandatory unemployment insurance contributions (e.g. those with less than 10 employees).

Tax incentives

Taxpayers with tax incentives based on export criteria that will be removed from the end of 2011 may select and notify the tax authorities of alternative CIT incentives and apply them for the remaining period in accordance with either:

(i) the regulations effective during the period from when the enterprise was incorporated until Decree 24/2007 came into effect (i.e. 21 March 2007); or
(ii) the regulations effective at the time the CIT incentives are revised due to the WTO commitments (i.e. 31 December 2011).

Generally the former will provide more generous incentives.

Foreign contractor withholding tax ("FCWT")

Certain FCWT CIT rates are amended as follows:

	Old tax rate	New tax rate
Casino/hotel/restaurant management services	5%	10%
Interest	10%	5%.
Re-insurance	2%	0.1%
Drilling rig rental	5%	5% *
Financial derivatives	2%	2% *

*No change. Previous official letter position elevated to Decree status.

FCWT will not apply to foreign companies brokering sales of services overseas (previously this only applied to brokering sales of goods overseas)

Value Added Tax

Output VAT

The following supplies are not subject to output VAT:

- Goods and services provided outside Vietnam (even between two Vietnamese tax payers).
- Compensation, bonus, subsidies and income from transfer of CERs and other financial income.
- The sales of assets by organisations or individuals not engaged in business and not VAT payers.

VAT-exempt supplies

The definition of VAT exempt supplies is expanded to include:

- Rediscount of negotiable instruments and other valuable papers.
- Credit card issuance.
- Debt factoring (including selling of debts).
- Management of securities investment companies, services related to securities registered or deposited with the Vietnam Securities Depository, loans granted for margin trading, and advances to sellers of securities.
- Foreign exchange trading.
- Certain public utility services.

VATable supplies

The definition of VATable supplies is expanded to include sales of assets held as collateral where the borrower is a VAT payer or the ownership of the assets has been transferred to the lender.

Application of VAT "direct" method

Where there is negative value added from the trading of gold, silver or precious stones in a period, it can be offset against the positive value added of those activities. Any remaining negative balance can be carried forward to a subsequent period in the same calendar year.

Tax payers having both gold/silver/precious stone trading and processing activities should declare VAT for both activities under the direct method.

The use of the direct method is no longer permitted for foreign entities or individuals providing goods or services for carrying out prospecting, exploration, development or exploitation of oil and gas fields. Instead the Vietnamese customer is required to withhold VAT on their behalf, at a rate to be determined by the Ministry of Finance. Such withheld VAT may be offset against the foreign party's VAT liability where they are VAT registered and file normal VAT returns.

Input VAT

Input VAT related to the purchase of goods that are subsequently damaged and not compensated will be creditable.

Input VAT related to fixed assets, machinery and equipment of credit institutions and re-insurance, life insurance and securities trading companies is not creditable but must be capitalised to the cost of the asset.

The six month deadline to claim input VAT does not apply to VAT incurred during the pre-operational start up period (but the claim must be made before any tax audit).

Special Sales Tax

Taxable price

Where a manufacturer produces goods subject to SST and sells such goods through an agent, the minimum price for calculation of SST shall be 90% of the average selling price of the agent. However for automobiles, the agent's average selling price used for this purpose shall exclude the cost of additional equipment and accessories installed at the customer's request.

Where a manufacturer produces goods under a licensing agreement and delivers goods to a branch or representative of an overseas company in Vietnam, the SST price shall be the selling price set by the branch or representative.

Tax credit

Taxpayers producing SST liable goods from SST liable raw materials shall be entitled to claim a credit for the SST amount already paid on raw materials imported or directly purchased from domestic manufacturers.

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Please contact us if you would like to discuss any aspect further.