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Tax Management of Pre-Establishment Costs in Vietnam



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During the formation of a new business there are some inevitable expenses incurred prior to the company's formally coming into existence. Accordingly, one of the major concerns of foreign invested entities or local entities during this period is how to maximize the deductibility of pre-establishment expenses for corporate income tax (CIT) calculations after the establishment, particularly for investment projects requiring substantial costs, such as for setting up factories, purchasing machinery, etc.

Pre-establishment expenses commonly include such matters as business name registration, professional consultancy services, government fees, and certain expenses such as costs for wages and salary, research, purchase of equipment, advertising before establishment, office rental/land fees. These expenses are normally advanced by the investors, the corporate/individual founders, or other related entities or individuals, and subsequently charged back to the company after establishment.

Deductible Expenses for Corporate Income Tax

For tax purposes in Vietnam, if pre-establishment costs are to be deductible, such expenses must satisfy all of the following conditions as stipulated by law:

- the actual expenses incurred are related to the enterprise's business operation;

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- there are sufficient and valid invoices/supporting documents as per the regulations (i.e. contracts, legitimate invoices, bank payment vouchers, etc.);

- settlement must be made via forms of non-cash payment for invoices for which the value is 20 million Vietnamese dong (\$870) or more (including the value-added tax amount).

Regarding the first condition, the company is required to have supporting documents to substantiate the fact that these expenses are necessary and legitimately incurred for its formation and operation.

With regard to the second condition, however, before a company is granted an Enterprise Registration Certificate (ERC), its tax registration information, such as name, tax code and address are not available to appear on the invoices and the relevant supporting documents. Thus, the question arises as to how the tax invoices and the supporting documents can satisfy the second requirement (the current CIT regulations have not specified rules for this situation).

In response to this question, the company may apply other regulations relating to pre-establishment expenses as follows:

- Pre-registration contracts

Clause 1, Article 18 of the 2020 Law on Enterprises stipulates that a company's founders/investors may sign contracts serving the establishment and operation of the enterprise before and during the process of enterprise registration. When the ERC is granted, the company shall continue exercising and performing the rights and obligations under the concluded contracts, unless prescribed by other contracts.

- Creditable input value-added tax

The value-added tax (VAT) regulations also stipulate that prior to the company's establishment, its founders/investors are able to authorize other entities/individuals to pay, on its behalf, expenses related to its establishment. Subsequently, the company may credit the input

VAT of the VAT invoices bearing the name of the authorized entities/individuals upon tax registration. It should be noted that invoices for which the value is 20 million Vietnamese dong or higher must be paid via a non-cash payment method.

Based on the above regulations, where the contracts serving the company's establishment signed by the founders are in line with the Law on Enterprises, as well as the tax invoices and the relevant contracts bearing the tax registration information of the authorized entities/individuals being accepted to be creditable input VAT, the pre-establishment expenses satisfy the regulations and are accepted for CIT deductibility.

Local tax authorities also provide guidance on this, such as official letter 5973/CT-TTHT dated June 20, 2018 issued by the Tax Department of Ho Chi Minh City and official letter 17151/CTHN-TTHT dated May 20, 2021 issued by the Tax Department of Hanoi.

Apart from the above, the expenses for establishment and certain expenses for staff training, advertising, and the research stage incurred prior to the establishment are not considered as intangible fixed assets, but can be amortized as business costs over a period of up to three years from the commencement of operation.

With regard to the third condition listed above, for transactions of 20 million Vietnamese dong or more, the relevant non-cash payment voucher must be retained in order for the requirement to also be satisfied. If the company offsets such expenses against the founders' charter capital, such non-cash payment method must be recorded in documents and have the minutes available for reconciliation and confirmation by both parties.

Planning Points

In order to maximize the tax deductibility of pre-establishment expenses, the company's founders/investors should prepare the authorization agreement for the authorized entities/individuals indicating the payments on behalf of the company serving the establishment before and during the enterprise registration process. Obviously, the legitimate invoices, relevant supporting documents, and documents proving the non-cash payment method bearing the information of the authorized entities/individuals should be available.

After obtaining the ERC, the company is recommended to sign the contracts directly with the suppliers serving the operation expenses so that legitimate invoices bearing the company's information can be available for CIT deductible expenses after its establishment.

Companies needing support to ensure the tax deductibility of pre-establishment expenses may wish to consider professional advice: Proper planning and supporting documents are the main points that a company needs to focus on.

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