

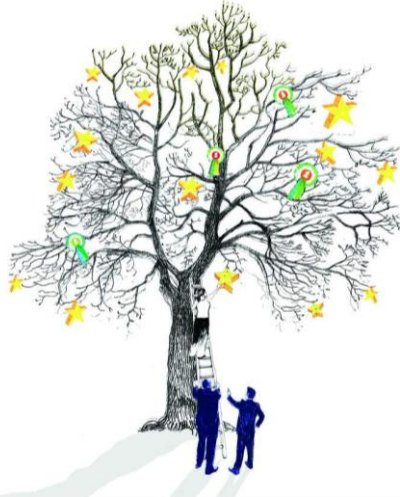


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# Tax Alert



In this tax alert, Grant Thornton (Vietnam) would like to update a number of policy changes, including:

- (1) Decision No. 2279/QD-BKHCH dated 29 August 2014 of the Ministry of Science and Technology on the abolishment of Circular No. 20/2014/TT-BKHCH dated 15 July 2014 of the Minister of Science and Technology, regulating the importation of used machineries, equipment, technological assembly lines.
- (2) Circular No. 119/2014/TT-BTC dated 25 August 2014 of the Ministry of Finance (“MoF”) for the reform of tax administration procedures.
- (3) Circular 103/2014/TT-BTC dated 6 August 2014 of the MoF, guiding the implementation of foreign contractor tax (withholding tax) in Vietnam.
- (4) Official Letter No. 3311/TCT-CS dated 15 August 2014 of the General Department of Taxation (“GDT”) providing guidance on the determination of income increased due to investment expansion during the period from 2009 to 2013, which is not subject to CIT incentives.

(5) Official letter No. 3144/TCT-CS dated 11 August 2014 of the GDT, providing guidance on the tax treatment for loss carry forward.

1. Decision No. 2279/QD-BKHCH dated 29 August 2014 of the Ministry of Science and Technology on the abolishment of Circular No. 20/2014/TT-BKHCH dated 15 July 2014 of the Minister of Science and Technology, regulating the importation of used machineries, equipment, technological assembly lines.

According to this Decision, the Minister of Science and Technology announced the abolishment of Circular No. 20/2014/TT-BKHCH dated 15 July 2014 of the Minister of Science and Technology, regulating the importation of used machineries and equipment, assembly lines, from 1 September 2014.

2. Circular No. 119/2014/TT-BTC dated 25 August 2014 for reforming tax administration procedures.

Pursuant to Directive No. 24/CT-TTg dated 5 August 2014 of the Prime Minister on improving the management and reform of tax and customs administrative procedures, the MoF has issued Circular No. 119/2014/TT-BTC amending and supplementing some articles of a number of tax circulars. According to the MoF, such reforms should result in 201.5 hours reduction in tax calculation and declaration for businesses.

On 26 August 2014, GDT issued Official Letter No. 3609/TCT-CS to introduce new content of the Circular No. 119/2014/TT-BTC for reforming tax administration procedures for the tax departments for informing to taxpayers for implementation. A number of notable tax administration reforms include:

- Removal of the provision on Value Added Tax (“VAT”) declaration and payment for goods, semi-finished products which still continue business process.

- Removal of the provision on VAT declaration and payment for export goods, which are returned and re-imported.
- Removal of the criteria on the VND1 billion threshold for investment, purchases of assets, machineries, equipment of newly established enterprises for the voluntary application of the deduction method.
- Removal of the requirement for sales invoices as part of the documentation requirements for VAT refund application for exported goods, services (the business entities would use commercial invoices, which are part of the customs documentation).
- Removal of the requirement for invoice issuance, declaration and payment of taxes for the lending or return of machineries and equipment, materials, goods, provided that there are appropriate contracts and relevant supporting documents.
- Removal of items previously prescribed in the lists of output and input invoices, etc.
- Where businesses require additional time for implementing procedures, forms stipulated at Circulars, they could opt to implement procedures, forms pursuant to current regulations or those following the amended, supplemented regulations up until the end of 31 October 2014 without the need for notification or registration with the tax authorities.

Circular 119/2014/TT-BTC takes effect from 1 September 2014.

**3. Circular 103/2014/TT-BTC dated 6 August 2014 of the MoF, providing guidance on the taxation of foreign contractor tax (withholding tax) in Vietnam.**

This Circular provides guidance on the tax treatment applicable to foreign organisations, individuals doing business in Vietnam or having income derived from Vietnam, which takes effect from 1 October 2014 and replaces Circular 60/2012/TT-BTC.

The VAT and CIT treatment for contracts, sub-contracts signed before the effect date of this Circular (i.e. 1 October 2014) will be made in compliance with regulations in force at the time of contract signing.

A number of amendments and supplementation of Circular 103/2014/TT-BTC include:

**Adding subjects of application**

- Adding foreign organizations, individuals supplying goods under all international commercial terms – Inco terms, where the seller bears risk associated with the goods entering Vietnamese territory (current regulations: only applicable to DDP, DAT, DAP terms).
- Adding 3 groups of application:
  - Foreign organisations, individuals supplying goods, providing services in Vietnam, including the authorisation or hiring of Vietnamese organizations.
  - Foreign organisations, individuals performing negotiation and signing of contracts under the name of such organisations, individuals, via Vietnamese organisations, individuals.
  - Foreign organisations, individuals exercising import, export, distributions rights in Vietnam market, procurement of goods for export, sales of goods to Vietnamese trading entities.

**Amending, supplementing subjects of non-application**

- Clarifying cases where foreign organizations, individuals supplying goods to Vietnamese organisations, individuals, which are not attached with services performed in Vietnam, including the delivery of goods with warranty provisions, being the responsibility and obligations of the sellers.
- Adding cases where foreign organizations, individuals use bonded warehouses, inland clearance depots (“ICDs”) as warehouses for supporting international transportation, transshipment activities, storage of goods or for processing activities of other businesses.

**4. Official Letter No. 3311/TCT-CS dated 15 August 2014 of the GDT, providing guidance on the determination of additional income derived from investment expansion during the period from 2009 to 2013, which is not entitled to CIT incentives.**

According to this Official Letter, the GDT confirms that for the period from 2009 to 2013, the Law on CIT 2008 and implementing regulations do not provide CIT incentives for the additional income derived from investment expansion within this period and there has been

no specific guidance on the determination of such additional income.

Where businesses performed investment expansion projects in the period from 2009 to 2013, but could not determine the revenue or expenses of the expansion activities for allocation, following provisions of Circular 130/2008/TT-BTC, Circular 123/2012/TT-BTC of the MoF, the additional income derived from investment expansion, which are not subject to CIT incentives, could be determined according to one of the following methods:

#### Method 1:

**The additional income derived from investment expansion** = Total taxable income for the year (excluding other income, which are not entitled to CIT incentives) x [Value of fixed assets additionally invested and put into business use / Total historical cost of fixed assets actually put into business use].

The total historical cost of fixed assets put into actual business use include: value of fixed assets additionally invested, which have been completed, handed over and put into use and historical costs of fixed assets currently put into use, according to the annual Balance sheet's closing figures.

#### Method 2:

**The additional income derived from investment expansion not subject to CIT incentives** = Total taxable income of the year (excluding other income, which are not entitled to CIT incentives) x [Additional investment capital put into business use / Total investment capital actually put into business use].

The total investment capital actually put into business use is the total self-funding and loan capital of the business, which are put into business use, according to the annual Balance Sheet closing figures.

Businesses are allowed to select only one allocation method for the determination of income attributable to an investment expansion.

From 2014, the MoF has supplemented guidance in Circular No. 78/2014/TT-BTC dated 18 June 2014 on the method of determining the additional income derived from investment expansion based on the ratio of fixed assets' value additionally invested, which are put into business use, on the total historical cost of fixed

assets put into use, or the ratio of increased capital investment put into business use, on the total investment capital actually put into business use.

#### 5. Official Letter No. 3144/TCT-CS dated 11 August 2014 of the GDT, providing guidance on the tax treatment of loss-carry-forward.

According to this Official Letter, where a Company is allowed by the MoF for the use of foreign currency (USD) as the accounting currency, and has converted into Vietnamese Dong ("VND") for tax declaration, **the losses to be carried forward are the VND amounts stated in the submitted CIT returns of the previous years.**

**Where you might wish to explore the above changes further, and assess their impact on your specific business circumstances, please contact the professional tax advisors of Grant Thornton (Vietnam) for detailed consultation.**

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