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Tax Update

December 2024

This Tax Update highlights the guidance from several local tax authorities in the recent times, including:

- Temporary suspension of exit for legal representatives when an enterprise changes its legal representative
- Capital contributions not made through a Direct Investment Capital Account (DICA) opened at a licensed credit institution will not be considered valid capital contributions
- Value-Added Tax (VAT) rates applied to promotional goods in foreign markets
- The transfer of an investment project, which produce goods and services which are not subject VAT to other enterprises to continue implementing the project will be subject to a 10% VAT rate.
- Tax policy on interest earned from bank deposits

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Temporary suspension of exit for the legal representative when an enterprise changes its legal representative

On 18 September 2024, the General Department of Taxation (GDT) issued Official Letter 4136/TCT-QLN (Official Letter 4136) in response to Lao Cai Provincial Tax Department regarding the possibility of a temporary exit suspension for the legal representative when an enterprise changes its legal representative.

According to Official Letter 4136, if there is sufficient evidence to determine that at the time the tax authority issues the notice of temporary exit suspension, the individual is no longer the legal representative of the enterprise with enforced tax debts, that individual is not subject to the temporary exit suspension. Therefore, there remains a risk that the former legal representative may be suspended from exiting the country if the suspension notice is issued before the enterprise is granted the updated enterprise registration certificate reflecting the information of the succeeding legal representative.

EY teams recommend that enterprises review and fulfill their tax obligations to avoid undesirable impacts related to the temporary suspension of exit of the legal representative.

Capital contributions not made through a DICA opened at a licensed credit institution will not be considered valid capital contributions

According to the Binh Duong Provincial Tax Department in Official Letter No. 27659/CTBDU-TTHT dated 22 October 2024, if, before being granted an enterprise registration certificate, a foreign investor opens a DICA in foreign currency at a licensed credit institution to conduct transactions related to direct investment activities in Vietnam in accordance with the foreign exchange management regulations for foreign direct investment activities in Vietnam, the deposit for land lease and advance payments that the foreign investor transfers from the aforementioned DICA to the account of the landlord will be considered valid capital contributions by the investor into the enterprise.

In cases where a foreign investor transfers funds directly from abroad into the account of a landlord to pay the deposit for a land lease without going through a DICA opened at a licensed credit institution, that fund transfer will not be considered a valid capital contribution by the investor into the enterprise as it does not comply with the regulations.

Therefore, when contributing capital, investors need to use a correct DICA at a licensed credit institution to ensure that the investor's capital contribution is valid.

VAT rate applied to promotional goods in foreign markets

According to Official Letter No. 4706/CTCTH-TTHT dated 18 October 2024, the Can Tho City Tax Department provided guidance cases where an enterprise undertakes promotions for customers who are foreign entities operating outside Vietnam. Under a promotion program where, for example, if a customer buys 10 products they are entitled to 1 free product of the same type, if the promotion is not conducted in accordance with the commercial law, the enterprise must declare and pay tax on the promotional products as if they were used for internal consumption, gifts, and donations, in accordance with Clause 5, Article 7 of Circular 219/2013/TT-BTC⁽¹⁾.

Goods used for promotions for customers who are foreign companies operating outside Vietnam, which are not sold for money and do not have payment documents for exported goods through banks, do not meet the conditions to be treated as exported goods or services as stipulated in Point a, Clause 2, Article 9 of Circular 219/2013/TT-BTC. Therefore, they are not eligible for the 0% VAT rate.

It should be noted that the current regulations on trade promotion activities do not mention the conditions and procedures that must be followed when traders conduct promotions for foreign customers.

The transfer of an investment project, which produce goods and services which are not subject VAT to another enterprise to continue implementing the project, will be subject to a 10% VAT rate

Article 5 of Circular 219/2013/TT-BTC stipulates cases where VAT declaration and payments are not required, including situations where organizations and individuals transfer investment projects for the production and business of goods and services subject to VAT to enterprises or cooperatives. This regulation may be interpreted to mean that the transfer of investment projects for the production and business of goods and services which are not subject to VAT will not fall within the scope of Article 5.

¹ Circular No. 219/2013/TT-BTC dated 31 December 2013 of the Ministry of Finance (Circular 219/2013/TT-BTC) guiding the implementation of the Law on VAT and Decree No. 209/2013/ND-CP dated 18 December 2013 of the Government detailing and guiding the implementation of a number of articles of the Law on VAT.

This interpretation was confirmed by the GDT in Official Letter No. 5102/TCT-CS dated 8 November 2024. According to this Official Letter, the GDT states that when an enterprise transfers an investment project to another enterprise to continue implementing the project for producing goods not subject to VAT according to the original objectives of the project, a 10% VAT rate must be applied. Official Letter No. 5102/TCT-CS does not mention whether the enterprises or cooperatives purchasing the project can claim credits for the input VAT associated with the transfer of the project. On the basis that the transferred project is to continue producing VAT-exempt goods, there is a possibility that the input VAT related to the transfer of the project by the purchaser should not be creditable but can be recorded as an expense. Thus, the creditability of the input VAT relating to this kind of project transfer transaction should be further assessed.

Documents used to record interest from bank deposits

According to Circular 219/2013/TT-BTC, individual lending activities that are not within the regular business operations of taxpayers who are not credit institutions are not subject to VAT as stipulated in Clause 8, Article 4.

Circular 219/2013/TT-BTC also lists certain cases where VAT declaration and payments are not required, including the receipt of financial income as specified in Clause 1, Article 5.

These regulations have led to different, and sometimes inconsistent guidance, from the tax authorities regarding the VAT impact on bank deposit interest. Specifically, according to the Hanoi Tax Department in Official Letter No. 28235/CT-HTr dated 9 May 2016, income from bank deposit interest is not subject to VAT as stipulated in Clause 8, Article 4. However, in Official Letter No. 2269/CTHN-TTHT dated 26 January 2021, the Hanoi Tax Department confirmed that a taxpayer is not required to declare or pay VAT on bank deposit interest as it is financial income as specified in Clause 1, Article 5 of Circular 219/2013/TT-BTC.

The different VAT treatment leads to different applications of documentation when receiving interest on bank deposits as well as the determination of creditable input VAT. It should be noted that enterprises are allowed to claim credits for input VAT for activities that are not required to declare and pay VAT, but they are not allowed to credit input VAT arising from activities that are not subject to VAT.

Recently, the Binh Dinh Provincial Tax Department issued Official Letter No. 3332/CTBDI-TTHT dated 13 September 2024, determining that interest on term bank deposits is considered revenue from services not subject to VAT as prescribed in Clause 8, Article 4 of Circular 219/2013/TT-BTC, and requires enterprises to issue invoices when receiving interest from banks.

However, subsequently, the Binh Dinh Provincial Tax Department in Official Letter No. 3642/CTBDI-TTHT dated 7 October 2024 (Official Letter 3642) determined that if available cash is deposited in banks, the interest income is considered financial income and not required to be declared and pay VAT as prescribed in Article 5 of Circular No. 219/2013/TT-BTC. When receiving interest from banks, enterprises are not required to issue invoices for this interest income but only to issue receipts as specified in Clause 1, Article 5 of Circular 219/2013/TT-BTC.

By referring to Official Letter 3642, enterprises are not required to declare and calculate VAT, and issue invoices for bank deposit interest. The input VAT on goods and services used for providing goods and services not required to declare and pay VAT as per Article 5 of Circular 219/2013/TT-BTC (except Clause 2, Clause 3 of Article 5) is fully creditable, and enterprises are not required to allocate creditable input VAT for the activity of depositing money in banks.

Several other tax departments have provided similar guidance to Official Letter 3642 of the Binh Dinh Provincial Tax Department⁽²⁾.

Please note that this regulation may not apply to interest from other lending activities of the enterprises.

⁽²⁾Reference

- *Official Letter No. 25992/CTBDU-TTHT dated 27 September 2024 issued by the Binh Duong Provincial Tax Department*
- *Official Letter No. 7097/CTBGI-TTHT dated 8 October 2024 issued by the Bac Giang Provincial Tax Department*

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