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INDEX

Part 1. Legal News

1. [Guidelines for Personal Income Tax on transfer of real property](#) Page 2
2. [Detailed regulations on interest rate support](#) Page 3-4
3. [Guidelines on CIT for businesses in industrial park infrastructures](#) Page 5
4. [Foreign right-handed vehicles to be allowed on Vietnamese roads](#) Page 6
5. [Incentives for foreign experts engaging in ODA projects](#) Page 7

Part 2. Legal Advice

- [General conditions in development and operation of ports and related services](#) Page 8-9

1. Guidelines for Personal Income Tax on transfer of real property



On September 24, 2009, the General Department of Taxation of the Ministry of Finance issued Official Letter 3929/TCT/TNCN to provide the additional guidelines for Personal Income Tax (“PIT”) on transfer of real property.

In details, there are two types of applicable entities. First, they are individuals having capital contribution contracts with house-constructing organizations or individuals who transfer their capital contribution contracts to other entities. Second, they are individuals having contracts to purchase real property with house-constructing organizations or individuals who transfer their contracts to other entities.

The formula to calculate the Payable PIT is known as below:

PIT= (Transfer Price- Cost Price of transfer contract) * 25% Tax Rate on transfer

Cost Price of transfer contract= Total Capital to be contributed – Unpaid capital

Transfer Price is understood as the price stated in the transfer contract.

Last but not least, no PIT will be payable in respect of transfer contracts, if the procedures for changing name on which were performed with organizations and individuals doing real property business took place before September 26, 2009.

2. Detailed regulations on interest rate support



On April 7, 2009, the State Bank of Vietnam (“SBV”) issued Circular 5-2009/TT/NHNN (“Circular 5”) to provide the detailed regulations on interest rate support for organizations and individuals applying for medium and long-term loans to carry out new investment for production and business development. Then on October 9, 2009, SBV issued Circular 21-2009/TT/NHNN to amend Circular 5.

The eligible borrowers for the interest rate support shall be listed as follow;

- Organizations or individuals borrowing loans from commercial banks or finance companies to carry out new investment projects for production, business, and/or infrastructure development within Vietnam.
- Investors borrowing loans from Vietnam Development Bank (“VDB”) to carry out new investment projects for production, business, and/or infrastructure development within Vietnam.

However, the following medium and long-term loans will be ineligible for interest rate support:

- Foreign currency denominated loans;
- Vietnamese dong denominated loans for direct payment of taxes, fees or charges into the State Treasury;
- Vietnamese dong denominated loans to purchase foreign currency to pay overseas parties for the import of consumer goods or to pay domestic distributors for the purchase of imported consumer goods to implement investment projects for the development of production and business.
- Loans in the economic sectors on which are provided in accordance with the provisions in Decision 477 and Decision 143.

The maximum term of loans for interest rate support is 24 months from the date of loan disbursement. Also, interest rate support will be applied from April 1, 2009 to December 31, 2009. In the case that loans for such support become overdue, then such support must not be provided for the overdue period or for any extended term exceeding 24 months.

The level of interest rate support shall be 4% per year which is calculated on the actual loan amount and the actual loan term within the period from April 1, 2009 to December 31, 2011.

The method of applying the interest rate support will take place when commercial banks, VDB, and finance companies collect loan interest; those institutions will subtract interest rate support amounts from the amount of loan interest payable by borrowers. Then the State bank will transfer the amount on the basis of such support as reported by the above-mentioned institutions.

In order to obtain the interest rate support, organizations or individuals must comprise:

- A written request for interest rate support to the lending commercial bank, finance company or VDB;
- Use loans for interest rate support for proper purposes as stated in the loan contract;
- Comply with regulations of the lender;
- Account for paid loan interest;
- Request lender to provide interest rate support;
- Provide complete and truthful information and date proving the purpose of borrowing the loan.

This Circular shall be full force and effects as from the date of its signing.

3. Guidelines on CIT for businesses in industrial park infrastructures



On September 23, 2009, the General Department of Taxation of Vietnam ("GDT") issued Official Letter No. 13480 in response to Letters of several Department of Taxation of provinces and cities of Vietnam regarding determination of the remaining preferential time of Corporate Income Tax ("CIT") for businesses in industrial park infrastructure.

In this regard, the GDT guiding the application cited legal documents as follows:

1. Companies established before January 1, 2009, with investment projects in infrastructure development of Industrial Zones, Hi-Tech Zones, Export Processing Zones and these projects and allocating land, land lease before February 1, 2009 for investment in the construction of infrastructure and then these companies sub-lease land with developed infrastructure, the income from operations is income from infrastructure development business activities are entitled to preferential CIT as; and
2. The investment projects are being entitled to preferential CIT shall continue to enjoy preferential CIT for the time remaining preferential base on conditions that investment projects meet.

Official Letter 13480 took effect immediately from the date of signing.

4. Foreign right-handed vehicles to be allowed on Vietnamese roads



On October 1, 2009, the Government issued Decree 80 to allow the participation of transportation of foreign right-handed drive.

In detail, Decree 80 requires that the right-handed cars shall meet the following conditions

- (i) must be used to carry people;
- (ii) owned by foreign organizations and individuals, has been registered and added foreign number plates;
- (iii) with a valid certificates of technical safety and environmental protection issued abroad;
- (iv) the drivers must be nationals of countries with left-hand traffic regulations and hold specific driving licenses with appropriate license;
- (v) and finally written approval of the Ministry of Transport of Vietnam.

When the owner of the right-handed vehicle satisfies all the requirements, a 30-day limit will be placed on the use of the cars in Vietnam. In cases of unexpected circumstances, drivers can extend their permits for another 10 days.

Organizations and individuals who have right hand drive cars to join the traffic in Vietnam will be responsible for vehicle navigation layout and ensuring traffic safety when vehicles circulating in the territory of Vietnam.

Decree 80 sets a time limit of 5 working days to process applications with complete and valid dossiers.

In cases of disapproval, reasons must be given to applicants within 3 days.

Decree 80 shall be of full force and effect as from November 15, 2009.

5. Incentives for foreign experts engaging in ODA projects



On October 1, 2009, Prime Minister issued Decision 119-2009/QĐ/TTg (“Decision 119”) to provide more incentives for foreign experts engaging in ODA projects. According to Decision 119 which will replace Decision 211/1998/QĐ-TTg dated October 31, 1998 by the Prime Minister., foreign experts and their relatives will be allowed to bring foreign currency into Vietnam and exchange their income from working for ODA projects, as well as their other legitimate income, into foreign currency and then take it out of Vietnam.

Moreover, they will be also exempt from personal income tax while working on ODA projects.

Other incentives include easier applications for visas, residence and vehicle registration, application for driver’s license and changing driver’s license, among others.

All foreign ODA project consultants in Vietnam will be exempt from personal income tax from November 20, 2009.

Prior to Decision 119, ODA project international consultants, were generally PIT exempt only if ODA agreements had particular PIT exemption provisions for international consultants, or the international consultants being qualified as special experts and certified by the Ministry of Planning and Investment.

Decision 119 will widen the scope of those who are subject to ODA projects. However, this decision has not provided detailed procedures in applying for the exemption but it seems that as long as the international consultants' names are on the approved bidding documents, they are qualified for the exemption.

Decision 119 shall take effect from November 20, 2009.

Legal Advice

1. Question

You have asked us the general investment conditions for investment in the development and operation of ports and related services, specifically: (1) developing, operating, managing a port; (2) cargo handling of international cargo; (3) domestic trans-shipment of cargo; (4) container handling at port.

2. General Discussion

The investment laws do not prohibit investment in any of the business sectors you have listed.

However, an investment project for the “construction and commercial operation of national seaports” is in a “sensitive” sector that must ultimately be approved by the Prime Minister pursuant to Article 37.1.b of Decree 108. Also both the “construction and operation of seaports” and the “transportation of goods...by railway, airway, roadway and sea and inland waterways” is considered a “conditional” sector subject to specific investment conditions and the “evaluation” process during application for investment certificate.

3. Discussion Regarding Each Sector

(a) Developing, Operating, and Managing Port

Per the Maritime Code, the master plans for the development of seaports are under the charge of the Minister of Transportation and Communications while the master plan for the overall development of seaports is under jurisdiction of the Prime Minister.

Investment in the construction of seaports must comply with the master plan for the development of the system of seaports, with the law on investment, with the law on construction, and with other relevant laws. Foreign organisations are permitted to invest in the construction of seaports.

Decree 71/2006/ND-CP further states that an investor must liaise with and submit and construction proposal to the Ministry of Marine to verify whether the investor’s port construction plans conforms to the State’s master plan. An investment project for the “construction and commercial operation of national seaports” must ultimately be approved by Prime Minister pursuant to Article 37(1)(b) of Decree 108.

(b) Cargo Handling of International Cargo

United Nations Central Products Classification (“CPC”) 7411

This CPC is defined as cargo handling services provided for freight in special containers. Included are services of freight terminal facilities, on a fee or contract basis, for all modes of transport, including stevedoring services (i.e. the loading, unloading and discharging of vessels' containerized freight, at ports).

Currently, Joint Venture (“JV”) is required with foreign capital contribution up to 50% with no specific commitment for increase in the future.

(a) Domestic and Trans-shipment of Cargo

For this sector, we assume you meant freight transport on non-seagoing vessels.

For freight transport on non-seagoing vessels, currently, JV is required with foreign capital contribution up to 49% with no specific commitment for increase in the future.

For international freight transportation (defined as transport of freight on sea-going vessels), from January 1, 2009, joint ventures with up to 49% foreign capital will be allowed. Up until January 1, 2009, there is no WTO commitment to allow business presence in this area.

Furthermore, foreign seafarers may be permitted to work in ships under the national flag of Vietnam (or registered in Vietnam) owned by JVs in Vietnam but not exceed 1/3 of the total employees of the ships. The Master or first chief executive must be Vietnamese.

(b) Container Handling at Port

CPC 7411

This CPC is defined as cargo handling services provided for freight in special containers. Included are services of freight terminal facilities, on a fee or contract basis, for all modes of transport, including stevedoring services (i.e. the loading, unloading and discharging of vessels' containerized freight, at ports).

Currently, JV is required with foreign capital contribution up to 50%.

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