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1. Terminating gold trading on offshore accounts

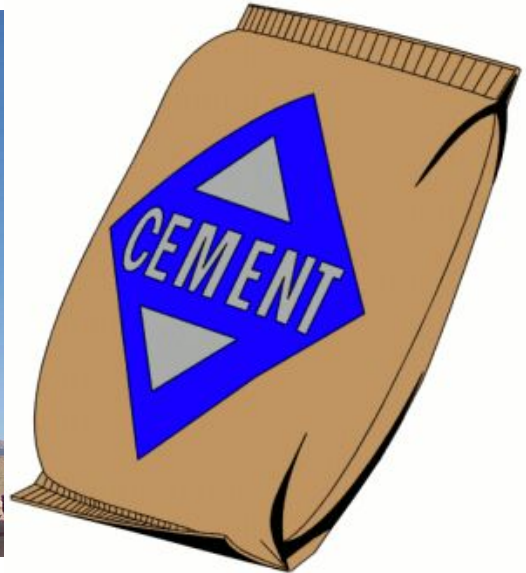
On January 6th, 2010, Governor of the State Bank, Nguyen Van Giau, issued Circular 01/2010/TT-NHNN to repeal Decision 03/2006/QD-NHNN dated on January 18th, 2006 and Decision 11/2007/QD-NHNN dated on March 15th, 2007 on gold trading on offshore accounts. In details, credit institution and enterprises currently involving in trading gold on offshore accounts must then terminate all such activities as from January 6th, 2010, except the transactions finalize payment and close accounts. In the cases where credit institutions and enterprises currently have the transactions which mean to finalize payment and close accounts, such institutions and enterprises must finalize transactions and close such accounts prior March 30th, 2010.



In addition, all licenses to trade gold on offshore accounts which were issued by the State Bank shall no longer be valid as from March 30th, 2010.

This Circular shall be full force and effect as from January 6th, 2010

2. Suspension of cement projects up until year 2020



On January 5th, 2010, Ministry of Construction issued Letter 06/BXD-VLXD to all Provincial Level People's Committees regarding the suspension of investment registration for cement projects in Vietnam. In implementation of the master plan for development of the cement industry in Vietnam until 2010 with orientation to 2020, as at the end of 2009, investment in 97 cement production lines have been completed with the total designed output of 57.4 million tones.

As estimated, in 2010, there will be about 2 million tones of cement being produced more than the market demands. In 2011, there will be approximately 8 million tones more than the market demands. In 2012, there will be about 15 million tons exceeding the domestic demand. In 2015, there will be somewhat 14 million tones more than the real demand. In 2020, there will be approximately 7 million tons exceeding the market demands.

In order to use up the designed capacity of cement projects and in order to ensure stable development of the cement industry, Ministry of Construction urges all Provincial Level People's Committees do not provide any further investment registration for cement projects from now up until 2020.

3. Adjusting compulsory reserve ratios of credit institutions

On January 18th, 2010, the State Bank of Vietnam issued Decision 74/QD-NHNN regarding the compulsory reserve ratio in respect of foreign currency deposits which will be applicable to credit institutions. In details, there are two types of applicable ratios as follow:



1. The compulsory reserve ratio in respect of foreign currency deposits on terms of less than twelve (12) months shall be:
 - i) Four per cent (4%) of the total of deposit balances for which compulsory reserves must be maintained, applicable to all banks and foreign bank branches in Vietnam (except Bank for Agricultural and Rural Development, the Central People's Credit Fund and co-operative banks).
 - ii) Three per cent (3%) of the total deposit balances for which compulsory reserves must be maintained, applicable to Bank for Agricultural and Rural Development, the Central People's Credit Fund and co-operative banks.
2. The compulsory reserve ratio in respect of foreign currency deposits on terms of twelve (12) months or more shall be:
 - i) Two per cent (2%) applicable to all banks and foreign bank branches in Vietnam (except Bank for Agricultural and Rural Development, the Central People's Credit Fund and co-operative banks).

- ii) One per cent (1%) applicable to Bank for Agricultural and Rural Development, the Central People's Credit Fund and co-operative banks.

This Decision shall replace Article 2 of Decision 379/QD-NHNN dated on February 24th, 2009, and be of full force and effect as from the period for maintenance of compulsory reserves in February 2010.

4. Casino Business in Vietnam



Per Notice96/TB-VPCP issued on May 4th, 2007, casino business investors must qualify the following requirements in order to be considered for a casino business license in Vietnam by the authorities:

- Investment Capital must be from four (4) billion US Dollars or more.
- Requirements on State administration and conditions for casino business on entertainment and tourism service locations shall be specified.
- Entities of investment must then be foreign investors with strong financial capability and extensive experience in entertainment and tourism services.
- Locations such as poor areas, areas with difficult socio-economic conditions, and islands must be selected.
- Players playing directly at the casino shall be only foreign individuals.

Legal Advice

QUESTIONS:

You have asked us to advise to what extent transfer pricing legislation is applicable in Vietnam to related party transactions ("**Related Party Transactions**").

The relevant legislation in answering these questions is as follows:

1. Applicable Law

Circular 117/2005/TT-BTC ("**Circular 117**" or "**the applicable law**") is the relevant legislation for Related Party Transactions in Vietnam. The aim of the applicable law is to ensure that market prices are applied to Related Party Transactions to enable the Vietnamese government to collect the appropriate level of corporate turnover tax and to prevent lost tax revenue through affiliate companies giving themselves favourable transfer pricing treatment in relation to their Related Party Transactions.

2. Analysis

2.1 Determination

To determine the appropriate level of corporate turnover tax, a company's Related Party Transactions are subject to a two part analysis:

- (a) the Comparative Analysis (as defined below) as discussed in paragraph 3.2; and
- (b) a comparison against the market price as discussed in paragraph 3.3.

2.2 Comparative Analysis

All Related Party Transactions are first subject to a particular analysis whereby each Related Party Transaction is compared with one or more third-party transactions (i.e. transactions between non-related parties on arm's length terms) to identify "**Significant Differences**". Significant Differences are defined under Circular 117 as variables which have an "important or material effect on the price of the products", which are the subject of the relevant transactions. Note that "products" has a wide meaning in this context and generally means all goods and services. The Significant Differences are then attributed a monetary value and a monetary adjustment (up or down) is made to the Related Party Transaction until all Significant Differences have been eliminated and the third-party transaction and the Related Party Transaction are similar in scope ("**Comparative Analysis**").

The Comparative Analysis uses a four part test to identify Significant Differences and each part needs to be followed by the relevant company.

The four part test is summarized below:

- (a) ***properties of the products test***: this involves a comparative analysis between the relevant Related Party Transaction(s) and the third-party transaction(s) of: (i) the type and physical characteristics of the products; (ii) the quality and trade name of the products; and (iii) the nature of the transfer (for example sale versus lease);
- (b) ***operational functions of a business establishment test***: this looks at the main functions of the business establishments as it relates to the profitability gained from using the property in question in respect of the transactions being compared;
- (c) ***contractual conditions when conducting transactions test***: this reviews and compares the corresponding rights and responsibilities of the parties in the transactions being compared; and
- (d) ***economic conditions when conducting transactions test***: this analyses the type of economic conditions (state policies, size and location of sale market, etc.) affecting the price of the products in respect of the transactions being compared.

Monetary adjustments to the Related Party Transaction made further to the tests set out in paragraphs (a), (c) and (d) above are straightforward. For example, under the properties of the products element of the test (see paragraph (a) above), a company determines whether the goods being sold are similar and then applies a monetary value to the extent a relevant Significant Difference exists.

A monetary adjustment made further to the test set out in paragraph (b) above, the operational functions test, is made by the company comparing the operational function costs of the Related Party Transaction and the third-party transaction(s), and then applying a monetary value to the extent a Significant Difference(s) exists. This test can be carried out by either separating or comparing individual functional operating costs or by comparing total operational function costs.

2.3 Analysis Against Market Value

After making the appropriate adjustments to the Related Party Transaction by eliminating the Significant Differences, the next step is to determine if the remaining value of the Related Party Transaction ("**Remainder**") is different from the "guide market value" ("**Guide Value**"). The relevant company itself needs to determine the Guide Value from relevant and available market price and price margin data. If the Remainder is equal to or greater than the Guide Value, no further adjustment is required and the Remainder shall be the appropriate value for the Related Party Transaction for corporate tax calculation purposes. If the Remainder is less than the Guide Value, the Related Party Transaction is then subjected to a second test so as to determine the "market price" and thus, the appropriate amount for corporate turnover tax calculation purposes.

If the Remainder is less than the Guide Value, the relevant company must choose one of the various methods listed below to calculate market price. The most appropriate method to be chosen needs to be by reference to the nature and context of the relevant Related Party Transaction and to the Significant Differences previously identified and eliminated as part of the Comparative Analysis. These methods include an analysis of: 1) a comparison of prices in independent transactions; 2) reselling prices; 3) prime cost plus profits; 4) profit comparison; and 5) profit division.

3. **Conclusion**

Every Related Party Transaction is subject to scrutiny in accordance with the procedure set out in this note and each company is responsible for complying with the applicable law.

The Vietnamese authorities automatically assume that all Related Party Transactions are favorable and will need to undergo this process under the applicable law. This is a complex area of the law in Vietnam and if a more detailed analysis in respect of the various tests is required, please contact us for any specific question may arise.

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