

RECENT GUIDANCE ON TAX POLICIES FROM TAX AUTHORITIES

In this Spotlight, RSM Vietnam would like to update some guidance issued by the tax authorities, including: (1) The application of Value Added Tax rates for services supplied to enterprises in the non-tariff zones; (2) Determination on deductible interest expense when calculating taxable income for Corporate Income Tax; (3) Tax policies on compensation and commission from the receipt and payment on behalf; (4) Taxable income when calculating Personal Income Tax for foreign employees; and (5) Personal Income Tax finalization for employees.



Guidance on the application of Value-Added Tax (“VAT”) rates for services supplied to enterprises in the non-tariff zones

According to Circular 219/2013/TT-BTC providing guidance on implementation of the Law on VAT, services being consumed outside of Vietnam or in the non-tariff zone are subject to 0% VAT.

However, the concept of “being consumed outside Vietnam” is not defined clearly in the relevant Decrees and Circulars on VAT but only in Official Letters issued by the Tax Departments for each of specific situation.

In this Spotlight, Official Letter 1992/TCT-CS (“Official Letter 1992”) issued by GDT on 24 May 2018, regarding conditions to apply 0% VAT for services provided to enterprises in the non-tariff zone is discussed. The services to apply 0% VAT must meet for the bellow conditions:

- Services shall be consumed in the non-tariff zones;
- Enterprises shall provide sufficient dossiers/documentations which include:
 - Services contract signed with for organizations and individuals in the non-tariff zones;
 - Bank payment vouchers for exported services;
 - Other documents prescribed in the relevant provisions/laws.

On specific cases mentioned in the Official Letter 1992, an enterprise provided services including:

- Public Relations and Communications; and
- Public Relations Management.

In order to manage the publicity for enterprises operating in the non-tariff zones in Vietnam, those services shall be deemed as being provided and consumed in Vietnam (outside the non-tariff zone) and be subject to 10% VAT.

Guidance on the determination of interest expense when calculating taxable income for Corporation Income Tax

On 05 October 2018, GDT issued Official Letter 3790/TCT-DNL on providing guidance to enterprises to implement Decree No. 20/2017/ND-CP (“Decree 20”).

Accordingly, total deductible interest expenses when determining taxable income for CIT shall not exceed 20% of total net profit generated from business activities plus the total interest expenses and depreciation expenses in the tax period. The total interest expenses are calculated from total interest expenses incurred in the tax period, regardless of whether the interest is from loan with a related party or an independent party.



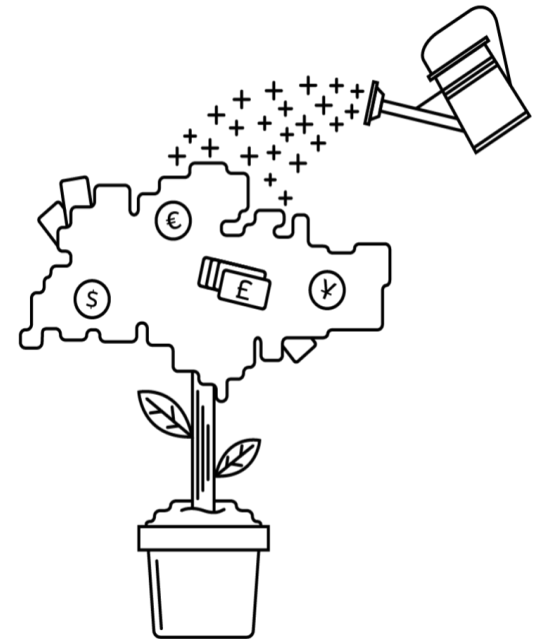
Guidance on tax policies on compensation and commission from the receipt and payment on behalf

On 06 July 2018, the Ho Chi Minh City Tax Department has issued Official Letter 6600/CT-TTHT guiding the tax policy for contract compensation amount and commission from the receipt and payment on behalf.

- According to the Official Letter, in case a foreign organization receives contract compensation amount ("the Compensation Recipient") from an organization in Vietnam ("the Compensation Payer") in accordance with the judgment of the Vietnam International Arbitration Centre. The Compensation Recipient shall be liable to Foreign Contractor Tax ("FCT") as follows:
 - VAT = Compensation is not required to declare and pay VAT; and
 - CIT = Taxable Amount * 2%.

In case (1) the Compensation Recipient who does not have a foreign currency account at the State Treasury, should authorize the Third Party in Vietnam to receive the compensation and (2) If the compensation amount has not been withheld for the FCT, the Third Party shall declare and pay the FCT amount on behalf of the Compensation Recipient.

- In addition, if the Third Party receives commission from the receipt and payment on behalf as agreed with the Compensation Recipient. Then the Third Party shall be responsible for:
 - Issue VAT invoices; and
 - Make declaration and payment for VAT and CIT.





Guidance on taxable income when calculating Personal Income Tax (“PIT”) for foreign employees

On 20 September 2018, the GDT issued Official Letter 3545/TCT-TNCN providing the guidance on taxable income for PIT for foreign employees as follows:

- Expenses for obtaining work permits are enterprises’ responsibilities according to the relevant laws/provisions, not the benefits of foreign employees as such they are NOT subject to PIT taxable income of foreign employees. Additionally, these expenses shall be treated as deductible expenses for CIT purposes; and
- Expenses paid by enterprises on behalf of foreign employees but are not the enterprises’ responsibilities as required under the relevant provisions shall be treated as taxable income from salaries and wages for PIT purposes.

Guidance on Personal Income Tax finalization for employees

On 28 September 2018, GDT issued Official Letter 3681/TCT-TNCN guiding the PIT finalization for employees.

Accordingly, enterprises shall conduct the PIT finalization for employees when these employees satisfy the following requirements:

- Having labor contracts signed with the enterprises for a period of 03 months or more;
- Being employed by the enterprises at the time of tax finalization; and
- Making the authorization to the enterprises for PIT finalization.

The enterprises have no obligation to conduct PIT finalization in the 02 below cases;

- Employees have labor contracts of less than one month; and
- Employees have long-term labor contracts but resign before the time of tax finalization.

For individuals having average monthly income of less than VND 9 million, if their PIT have been withheld in the year, the enterprises shall issue PIT withholding certificates according to the request of such individuals for PIT withheld amount. In case these individuals authorize the enterprises conduct the tax finalization, the enterprises shall not issue the PIT withholding certificates.



CONTACT US

Ho Chi Minh City

Lam Le

Partner

Tax and Consulting

T: +84 28 3827 5026 (ext: 227)

E: lam.le@rsm.com.vn

5th Floor, Sai Gon 3 Building

140 Nguyen Van Thu Street

Da Kao Ward, District 1

Ho Chi Minh City, Vietnam

T: +84 28 3827 5026

F: +84 28 3827 5027

E: contact_hcm@rsm.com.vn

Hanoi

Lam Nguyen

Partner

Tax and Consulting

T: +84 24 3795 5353

E: lam.nguyen@rsm.com.vn

7th Floor, Lotus Building

2 Duy Tan Street

Cau Giay District

Hanoi, Vietnam

T: +84 24 3795 5353

F: +84 24 3795 5252

E: contact_hn@rsm.com.vn

Da Nang

Nghia Tran

Partner

Tax and Consulting

T: +84 23 6363 3334

E: nghia.tran@rsm.com.vn

3th Floor

142 Xo Viet Nghe Tinh Street

Hoa Cuong Nam Ward, Hai Chau District

Da Nang, Vietnam

T: +84 23 6363 3334

F: +84 23 6363 3335

E: contact_dn@rsm.com.vn

www.rsm.global/vietnam



facebook.com/RSMVietnam

This newsletter is only intended for information about the new laws enacted, not for advice or applying to specific cases. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. RSM Vietnam as well as members in RSM network shall not be responsible for any loss whatsoever sustained by any person who relies on this communication. Please refer to your advisors for specific advice.

RSM Vietnam is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network. Each member of the RSM network is an independent accounting and consulting firm, each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction. The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London EC4N 6JJ. The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.

© RSM International Association, 2018. All rights reserved.

