

Tax Updates

December 2022

This is to provide updates on certain guidance issued by a number of local tax departments, addressing the following issues:

- ▶ The time to calculate corporate income tax (CIT) on unearned interest on bank deposits
- ▶ CIT deductibility of overtime payments
- ▶ Issuing e-invoices to amend incorrectly issued invoices
- ▶ Determination of related party transactions related to borrowings from banks

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Official Letter No. 57306/CTHN-TTHT dated 23 November 2022 (OL 57306) of the Hanoi Tax Department regarding the time of calculating CIT on unearned interest income from bank deposits

The Hanoi Tax Department states that the current CIT regulations do not stipulate when unearned income should be included in taxable revenue.

Accordingly, in OL 57306, the Hanoi Tax Department has issued guidance that interest on bank deposits should be added to taxable revenue of the tax period when the interest is actually paid.

We note that the aforesaid guidance does not apply to the recognition of taxable interest from deposits or loans or financial leasing earned by credit institutions.

Official Letter No. 3674/CTBNI-TTHT dated 8 November 2022 (OL 3674) of the Bac Ninh province Tax Department regarding the CIT deductibility of overtime payments

The CIT regulations do not have specific rules on the CIT deductibility of overtime payments.

Accordingly, in OL 3674, the Bac Ninh province Tax Department refers to Article 107 on overtime working of Labor Code No. 45/2019/QH14 dated 20 November 2019 and Articles 1 and 2 on the number of overtime hours in a year and in a month as stated in Resolution No. 17/2022/UBTVQH15 dated 23 March 2022, and have issued guidance that payments for overtime working hours which were incurred to meet production needs and business operations are deductible for CIT if:

- ▶ The payments are necessary given the nature of work, and the overtime work has been agreed by the employees
- ▶ The taxpayer has notified the need for such overtime in writing to its managing labor authority and received approval by the labor authority
- ▶ The payments are supported by sufficient documents as prescribed by laws

Taxpayers should attend to these conditions to ensure overtime expenses are deductible.

We note that even with the agreement of employees, the maximum overtime working hours must not exceed 300 hours in a year or 60 hours in a month. In addition, working overtime for more than 200 hours in a year is not permissible in certain circumstances as stipulated under the regulations.

Official Letter No. 3687/CTBNI-TTHT dated 9 November 2022 (OL 3687) of the Bac Ninh province Tax Department related to the correction of multiple erroneous e-invoices

Per OL 3687, the Bac Ninh province Tax Department has referred to the current regulations on handling of erroneous invoices and instructed enterprises to issue adjustment or replacement e-invoices to correct or replace ones which incorrectly state the billable amount such as unit prices, value of goods, value added tax amounts.

The adjustment or replacement should be made on the principle that one adjustment (or replacement) e-invoice corrects or replaces only one erroneous invoice. It is not permitted to issue one adjustment or replacement e-invoice to correct or replace multiple erroneous invoices. This is also a topic about which the General Department of Taxation is collecting opinions to propose amendments aimed at simplifying invoicing related procedures.

Official Letter 3668/CTLAN-TTHT dated 2 November 2022 (OL 3668) of the Long An province Tax Department in relation to the determination of related party transactions

The definition of “related parties” under Article 5 of Decree No. 132/2020/ND-CP includes the case where an enterprise that guarantees or provides a loan to another enterprise can become a related party of the borrowing enterprise if the loan simultaneously satisfies the following two conditions:

- (i) The loan amount equals at least 25% of the equity of the borrowing enterprise; and
- (ii) The loan amount makes up more than 50% of the total medium and long-term debts of the borrowing enterprise

On 2 November 2022, the Long An province Tax Department issued OL 3668 stating that an enterprise that obtains a loan meeting these two conditions from a commercial bank, will be considered to have an affiliate relationship, with such a commercial bank.

Note that when the parties have an affiliated relationship, transactions arising between the parties are treated as related-party transactions. The borrowing company is subject to a requirement for determining the deductible interest for CIT calculation purposes in accordance with Article 16 of Decree 132/2020/ND-CP.

Also in this OL, the Long An province Tax Department clarifies condition (i) that the determination of 25% equity of the borrowing enterprise should be calculated on the loan balance at the time of the transaction.

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APAC No. 16201201
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