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Tax Update

May 2025

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Key content

This Tax Update highlights the following matters:

- Determination of corporate income tax (CIT) incentives in the event of changes to administrative boundaries.
- CIT incentives applicable to adjustments of investment projects that remain in the investment phase.
- Determining the CIT deductibility for rental expenses when the lessor has not fulfilled the required rental conditions.
- Expenses incurred related to businesses' investments in branches.
- Additional criteria for determining the deductibility of accrued expenses.

Details

Determination of CIT incentives amid changes to administrative boundaries

The restructuring and reorganization of administrative units at various levels, in accordance with the two-tier local government framework, may result in alterations to administrative boundaries. To safeguard the rights of investors, the Ministry of Finance (MoF) has issued Official Letter No. 4525/BTC-PC dated 9 April 2025, providing guidance to relevant authorities on identifying investment incentive areas in the event of administrative boundary changes (Official Letter 4525). Specifically:

- The adjustment of administrative boundaries does not affect the geographical location of the investment project. Therefore, investment projects that have received approval or have been granted investment registration certificates will continue to be eligible for incentives.
- If a business proposes to initiate a new investment project or relocate an existing project to an area not yet designated as an investment incentive zone, the competent authority will determine the incentives applicable to that area based on the type of incentives previously applied by the majority of commune-level administrative units before the administrative boundary change.

For instance, if the newly established administrative unit encompasses several commune-level administrative units, and the number of those designated as areas with challenging socio-economic conditions is equal or exceeds the number of units not eligible for investment incentives, then the new administrative unit should be identified as an area with challenging socio-economic conditions.

Furthermore, Official Letter 4525 provides guidance to competent authorities regarding the legal basis, procedures, and documentation required for amending investment projects at the request of investors.

The guidance outlined in Official Letter 4525 from the MoF is grounded in the provisions of the Investment Law No. 61/2020/QH14 dated 17 June 2020 along with its implementing regulations.

CIT incentives for amending investment projects still in the investment phase

Businesses that amend their investment registration certificate (IRC) to implement an expansion project for an ongoing investment project in incentivised sectors or locations will be eligible for CIT incentives only if they meet one of the three criteria regarding the increase in the historical value of fixed assets (FAs), or the proportion of the increase in the historical cost of value of FAs, or the increase in manufacturing design capacity, as prescribed in the Government's Decree No. 218/2013/ND-CP dated 26 December 2013 which provides detailed guidance on the implementation of the Law on CIT.

However, if the amendment of the IRC is intended to add production and business activities while the initial project remains in the investment phase, has not yet commenced operations, and has not generated revenue, the business will still qualify for the tax incentives applicable to the initial investment project for the remaining period, provided that this change does not affect the fulfilment of the tax incentive conditions of the initial investment project. The eligibility for incentives in this case is contingent upon meeting the incentive conditions and is not dependent on whether there is an increase in investment capital.

This guidance is detailed in Official Letter No. 686/CT-CS dated 18 April 2025, issued by the Department of Taxation (formerly known as the General Department of Taxation). On 12 September 2023, the Tax Department of Bac Ninh province has also provided similar guidance in Official Letter No. 3567/CTBNI-TTHT.

Factory rental costs may not be deductible if the lessor has not met lease conditions

According to Official Letter No. 634/CT-CS dated 16 April 2025 (Official Letter 634), the Department of Taxation has indicated that there is no basis for claiming CIT deductions for factory rental costs if the lessor has not fulfilled the necessary conditions for the lease.

Official Letter 634 does not provide guidance on how to determine whether a lessor has fulfilled the conditions for leasing a factory. Therefore, businesses are recommended to consult relevant legal regulations, including those pertaining to real estate trading, to make this determination.

Expenses related to investments in branches

- According to current regulations on CIT, businesses can claim CIT deductions for various provisions if they are made in accordance with the guidelines established by the MoF, specifically in Circular 48/2019/TT-BTC dated 8 August 2019 (Circular 48).

As stated in clause 2, Article 2 of Circular 48, provisions for losses related to investment activities are defined to include provisions for losses arising from the impairment of investments in business organizations. In this context, the Department of Taxation, in Official Letter No. 469/CT-CS dated 4 April 2025 (Official Letter 469), has clarified that a branch is a dependent unit of a legal entity and not an independent legal entity. Therefore, the Department of Taxation holds a view that the capital contributed by the business to the branch does not qualify for provisions for investment losses as outlined in Circular 48. Consequently, this provision is not deductible for CIT purposes.

- Official Letter 469 further indicates that the current tax legislation does not provide guidance on utilizing losses carried forward from independent branches to offset the taxable profits of the business upon the dissolution of the branch.

Based on this, businesses will not be permitted to use losses from the independent branch to offset against the taxable profits of the business.

Additional conditions for determining deductibility of accrued expenses

Current CIT regulations require that expenses be supported by valid invoices and documentation to be deductible for CIT purposes. Meeting this invoicing requirement can be challenging for accrued expenses. Therefore, current regulations permit the deduction of accrued expenses based on the revenue matching principle. However, practice reveals varying interpretations regarding the conditions for determining deductible accrued expenses and the timing for claiming such deductions.

Recently, the Tax Sub-Department of Region XVII (responsible for Long An province, Tien Giang province, Vinh Long province) issued Official Letter No. 684/CCTKV17-QLDN1 dated 29 April 2025. In this letter, the Tax Sub-Department clarified the conditions for claiming deductions for accrued expenses, stating that businesses can claim deductions for accrued expense in the year they are recognised, provided that the sufficient invoices and documents for the accrued expenses are obtained before the tax finalization filing deadline for that year. The difference between the actual amounts incurred, based on valid invoices and documentation, and the accrued amounts which have been claimed as deductions will be adjusted upward or downward in the tax period upon the finalization of respective contract.



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