



Further guidelines on the implementation of Circular 130/2008/TT-BTC on CIT

Following the draft addressed in our Tax Watch No. 10 dated 7 October 2009, OL 1329/BTC-TCT was officially signed by the MoF on 29 January 2010 providing further guidance on the implementation of Circular 130/2008/TT-BTC. In comparison to the first draft, the major contents of OL 1329 have been reduced to the followings:

Deductibility of unemployment fund contribution

- ▶ CV 1329 confirms CIT deductibility of unemployment fund contributions made in accordance with Law on Social Insurance and Decree 127/2008/ND-CP.

Deductible PIT

- ▶ Where the labour contract is concluded on a net-of-PIT basis, the PIT amounts paid on behalf of the employees would be considered CIT-deductible.

Deemed tax payments by [income-generating] administration entities

- ▶ Where such entities can record the revenue but not the corresponding expenses and profit from the business activities, the entities will declare and pay the tax in accordance with the deemed method (i.e. as a percentage of sales) as follows:
 - ▶ Services: 5%
 - ▶ Goods trading: 1%
 - ▶ Other activities: 2%

However, in order to apply CIT incentives, those entitled to CIT preferential treatments must satisfy the following conditions:

- ▶ Conform with requirements on accounting records maintenance
- ▶ Register and pay for CIT based on declarations
- ▶ Do not calculate CIT based on the deemed method mentioned above

CIT treatment for real estate transfers

CIT treatment for transfers of houses attached to land use right prior to 2009 will be made in accordance with Law on CIT No. 09/2003/QH11 and implementing regulations. The CIT treatment for those sold from 1 January 2009 is made in accordance with Law No. 14/2008/QH12 and implementing regulations.

CIT determination for enterprises applying tax period different from Gregorian calendar year

Enterprises applying tax period different from Gregorian calendar year and is not subject to preferential CIT rate are allowed to pay CIT at 28% for months of year 2008 and at 25% for months of year 2009.

Determination of tax loss and loss carry forward

The OL also provides guidance on determination of loss and loss carried forward. Losses incurred before 2009 are carried forward in accordance with regulations applicable at that time. The remaining years of loss carried forward to year 2009 shall be calculated consecutively.

Other income

Other income, as stipulated at Point 19, Article V, Part C, Circular 130/2008/TT-BTC, is re-defined under OL 1329 as "income in cash or in kind received from donation."

CIT incentives

Enterprises established before 1 January 2009 which are not previously eligible for CIT incentives are not entitled to the CIT incentives for the remaining period, even they satisfy the requirements regulated in Decree 124/2008/ND-CP and Circular 130/2008/TT-BTC, except for those operating in socialization sectors regulated by Decision 1466/QD-TTg dated 10 October 2008 by the Prime Minister.



Abbreviations

| | | | | | |
|-----|----------------------|-----|---------------------|-----|---------------------|
| CIT | Corporate Income Tax | MoF | Ministry of Finance | PIT | Personal Income Tax |
| | | OL | Official Letter | | |

Contacts

For more information on this bulletin and Tax & Advisory Services of Ernst & Young Vietnam, please contact:

| | |
|---|----------------|
| Nam Nguyen Nam.Nguyen@vn.ey.com | Partner |
| Huong Vu Huong.Vu@vn.ey.com | Partner |
| Carlo Navarro Carlo.Navarro@vn.ey.com | Partner |
| Jeff Sea Jeff.Sea@vn.ey.com | Director |
| Sarah Jubb Sarah.Jubb@vn.ey.com | Director |
| Thanh Trung Nguyen Thanh.Trung.Nguyen@vn.ey.com | Senior Manager |
| Nhan Huynh Nhan.Huynh@vn.ey.com | Senior Manager |
| Ronelle Acheron Ronelle.Acheron@vn.ey.com | Senior Manager |
| Thy Anh Huynh Thy.Anh.Huynh@vn.ey.com | Senior Manager |
| Trang Pham Trang.Pham@vn.ey.com | Senior Manager |
| The Gia Tran The.Gia.Tran@vn.ey.com | Senior Manager |
| Hoang Vu Phan Hoang.Vu.Phan@vn.ey.com | Senior Manager |
| Tuan Dinh Pham Tuan.Dinh.Pham@vn.ey.com | Senior Manager |

Ernst & Young

Assurance | Tax | Transaction | Advisory

About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 144,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve their potential.

Ernst & Young Vietnam is dedicated to providing the highest quality professional services to all its clients through assisting them to achieve their objectives, whilst realising the growth aspirations of the firm and our people and making a positive difference to the community it serves.

For more information, please visit www.ey.com

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

The Ernst & Young organization is divided into five geographic areas and firms may be members of the following entities: Ernst & Young Americas LLC, Ernst & Young EMEIA Limited, Ernst & Young Far East Area Limited and Ernst & Young Oceania Limited. These entities do not provide services to clients.

©2010 Ernst & Young Vietnam Limited.
All Rights Reserved.
FEA no. 16000037

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither Ernst & Young Vietnam Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining in this publication. On any specific matter, reference should be made to the appropriate advisor.

www.ey.com/vn