

INVESTMENT INCENTIVES FOR BORDER-GATE ECONOMIC ZONES

On 2 March 2009, the Prime Minister signed Decision No. 33/2009/QĐ-TTg to issue the financial regimes and policies applicable to border-gate economic zones.

Accordingly, newly established enterprises in border-gate economic zones shall enjoy corporate income tax ("CIT") incentives as follows:

- A tax rate of ten (10) per cent shall be applicable for a period of fifteen (15) years.

- A CIT exemption shall be applicable for a period of four (4) years and a CIT reduction of 50% shall be applicable for a period of nine (9) subsequent years.

- Vietnamese and foreigners working in a border-gate economic zone earning their income from such work and within the category of personal income taxpayers

shall enjoy a reduction of fifty (50) per cent of the amount of tax payable.

Goods and services manufactured and used in a non-tariff zone within a border-gate economic zone shall enjoy incentives of Value Added Tax (VAT); Special Sales Tax (SST), Import and Export Duties.

Investment projects in the especially investment incentive sectors shall enjoy the exemption of land and water surface rental. Investment projects in the investment incentive sectors shall enjoy the exemption of land rental for a period of fifteen (15) years as from the date on which the construction is complete and the project commissioned for use. Other projects shall be exempt from the land rental for a period of eleven (11) years.

This Decision shall be of full force and effective from 1 May 2009.

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GUIDELINES TO DEAL WITH BREACHES IN THE FIELDS OF SECURITIES AND SECURITIES MARKET

On 11 March 2009 the Ministry of Finance and the Ministry of Public Security jointly issued Inter-Ministerial Circular No. 46/2009/TTLT-BTC-BCA (“Circular 46”) to deal with breach of the law in the fields of securities and securities markets.

From 20 April 2009, the State Securities Commission (“SSC”) and the competent police investigation body shall be responsible to jointly co-ordinate in preventing, detecting,

investigating and sanctioning against breach in the fields of securities and securities market.

Circular 46 introduces 08 categories of securities breach which require joint co-ordination efforts between such agencies in making investigations and taking actions to deal with this breach.

According to Circular 46, during the handling of the breach, the competent agencies must determine

the nature of such breach, e.g. a breach of (i) civil or (ii) economic or (iii) administrative or (iv) criminal law in order to apply respective and suitable regulations. Before criminal offences/behaviors are found, if the offender voluntarily and promptly compensates for his/her damages or recovers the consequences caused by such breach, he or she might be exempt from criminal charges.

This Circular shall be of full force and effective from 25 April 2009.

CIRCULAR GUIDING ELECTRONIC TRADING ON SECURITIES MARKET

On 16 March 2009, the Ministry of Finance promulgated Circular No. 50/2009/TT-BTC (“Circular 50”) providing some guidelines on a number of articles of Decree 27/2007/ND-CP dated 23 February 2007 issued by the Government on electronic trading on the securities market (SM).

In accordance with this Circular, online securities trading services means services provided by a securities company to investors to open accounts, give orders, set out

requirements regarding securities trading or to receive transaction results via the internet or by telephone.

Securities traded on Stock Exchange shall be permitted to transact online. Any organization that or individual who participates in electronic trading in the securities sector commits a breach of law shall, depending on the nature and seriousness of the breach, be subject to an administrative penalty and must compensate for loss, or shall be

subject to criminal prosecution in accordance with the Law on Securities, Decree 27, and other relevant laws.

This Circular shall be of full force and effect from 30th April 2009.

SC already providing online securities trading services [before the effective date of this Circular] are required to complete registration procedures in order to obtain approval from SSC within six (6) months from the date on which this Circular takes effect.

TAXATION – FINANCE - BANKING**AMENDMENTS OF REGULATIONS ON PERSONAL INCOME TAX**

On 27 March 2009, the Ministry of Finance issued Circular 62/2009/TT-BTC ("Circular 62") guiding some amendments and supplementations of Circular No. 84/2008/TT-BTC dated 30 September 2008 promulgated by the Ministry of Finance providing some guidelines for implementing Decree No. 100/2008/ND-CP dated 8 September 2008 enacted by the Government guiding in details a number of articles of the Law on Personal Income Tax (PIT).

This Circular introduces the following main modifications:

Addition of certain incomes which are not taxable incomes from wages, salaries of resident individuals, including:

- (i) One off relocation allowances for expatriates coming to Vietnam for the residential purpose;
- (ii) Return airfare for expatriates paid by the employer to return home one time per year;
- (iii) Academic fees paid by the employer for the universal education in Vietnam of children of expatriates.

Addition of further guidelines on taxable income for other benefits enjoyed by employees:

Such incomes shall be calculated only on the basis of taxable incomes if it is possible to determine the beneficiaries; it shall not be calculated on the basis of taxable incomes if the beneficiary could not be determined; particularly in the following cases:

- (i) House rental of the employee paid by the employer: shall be calculated on the basis of taxable incomes in accordance with the real payment of employer but could not exceed 15% of total taxable income (not including the house rental).

(ii) Any transportation expense for picking up the employees from their accommodations to working place and vice versa. If such transport is given to each individual, the expenses shall be calculated on the basis of taxable incomes of such beneficiary;

(iii) Member fee such as member card of golf club, tennis club, or cultural and artistic club, sport club: shall be calculated on the basis of taxable incomes of each individual if the name of individual user or group of individual users are clearly indicated in the member card;

(iv) Other service fee for individuals in healthcare, entertainment, sport and aesthetics: shall be calculated into taxable income just in case the name of beneficiary is clearly indicated in the payment;

(v) Payment for training to improve the professional competence of employees to serve for employees' specification or in the plan of employer: shall be calculated into employees' taxable income if the training course is different from employee's specification or outside of the plan of employer.

(vi) The amount of payment for stationery, expenses for business trips; phone; clothing: shall not be calculated into taxable income provided that such payment is in compliance with the current regulations of the State of Vietnam.

Addition of further regulations on PIT reduction for employees working for economic zones:

Personal incomes enjoying the tax incentives according to tax laws and regulations issued before the enforcement and effectiveness of the Law on Personal Income Tax shall be entitled to enjoy such incentives.

Accordingly, Vietnamese individuals and expatriates - working for economic zones from the enforcement and effectiveness of Decree No. 29/2008/ND-CP dated

14th March 2008 enacted by the Government and after 1 January 2009 - shall be entitled to enjoy PIT reduction of 50% income tax.

Amendment of and addition to the regulations of PIT to be withheld:

Organizations which or individuals who pay commissions for sale agents; wages, salaries, compensation, other payment for individuals performing services with total amount of equal or above VND 500,000 for each time of payment or total value of commission, service fee, must withhold PIT before paying individual income as follows:

(i) A tax rate to be withheld is 10% of the total paid income, unless otherwise stated by the Ministry of Finance on withholding tax rate;

(ii) Individuals acting as sale agents (including insurance agent, lotteries agent) or providing services gaining only income subject to PIT to be withheld by the above-mentioned rate, however, after deductions for dependents, the estimated total taxable income shall be less than the tax income threshold, shall have the right to submit their commitments to the agencies paying their incomes on the base of the provisional non-deduction of 10% income for PIT;

(iii) Organizations, individuals hiring seasonal workers from 03 months to below 12 months under labour contracts shall provisionally withhold PIT in accordance with the threshold of tax tariff on each portion of monthly income.

Furthermore, this Circular also provides amendments and supplementations of tax declaration for residents with incomes earning from business activities or capital investment.

This Circular shall be of full force and effective after forty-five (45) days from the date of its signing, and shall apply to income arising from 1 January 2009

TAXATION – FINANCE - BANKING

PERSONAL INCOME TAX EXEMPTION FOR EMPLOYEES WORKING FOR REPRESENTATIVE OFFICES OF UNITED NATIONS IN VIETNAM

On 24 March 2009, the Ministry of Finance enacted Circular 57/2009/TT-BTC guiding the exemption of personal income tax (PIT) for Vietnamese individuals working for representative offices of the United Nations in Vietnam (RO).

Accordingly, individuals subjects to tax exemption include Vietnamese

individuals recruited agreeably to labour contracts, working for RO (hereinafter known as: "employee") shall be subjects to the exemption of PIT under the provisions of this Circular. This Circular shall not be applicable to other individuals recruited by RO and received compensation on an hourly rate basis;

This Circular shall be of full force and effective after forty-five (45) days from the date of its signing, all regulations against this Circular shall be abolished.

The exemption of PIT was applied from 1 January 2009 for employees recruited to work for representative offices agreeably to labour contracts.

GUIDING WITHHOLDING PERSONAL INCOME TAX OF LOTTERIES' AGENTS AND LOTTERY WINNERS

On 9 March 2009, the Ministry of Finance issued Circular 42/2009/TT-BTC providing guidelines on withholding personal income tax (PIT) of lotteries' agents, and withholding PIT on income payable to lottery winners.

Accordingly, lotteries companies shall be responsible to withhold PIT from income payable to agents with provisional percentage to be collected on monthly income payable to the agent is 0% if the monthly

income of the agent is up to VND4 million and 5% if the monthly income of the agent is above VND4 million. An agent's income in accordance with the above tariff means the agent's income without deductions for dependants, or for compulsory insurance premiums.

Any individual winning a lottery with a prize valued at above VND10 million on one lottery ticket shall be a personal income taxpayer and the taxable income from lottery winnings

shall be that part of the prize on each lottery ticket which exceeds VND10 million as receivable by the winner.

Lotteries companies shall be responsible to issue certificates of tax withheld on request from their agents and to withhold PIT on behalf of any individual with a winning ticket valued at above VND10 million.

This Circular shall be of full force and effective from 23 April 2009, and shall apply to income of lotteries' agents as from 1 January 2009.

GUIDING IMPLEMENTATION OF THE LAW ON SPECIAL SALES TAX

On 16th March 2009, the Government promulgated Decree No. 26/2009/ND-CP providing in detailed the provisions for implementation of the Law on Special Sales Tax (SST).

In accordance with this Decree, the Government provides specific regulations on the taxable objects and non-taxable objects to the special sales tax (SST), SST prices, tax rates and tax deduction.

In respect of goods produced in domestic, if a manufacturing establishment of goods ("ME") subject to SST sells them via its subsidiaries which are dependant cost accounting entities, the taxable price shall be the price at which such subsidiary sells the goods. Where the ME sells the goods via an agent on commission who sells at the

correct price stipulated by the ME, then the taxable price shall be the selling price stipulated by the ME without excluding commission.

If the ME subject to SST sells goods via a commercial business establishment (the "CBE"), then the taxable price shall be the selling price of the ME which must not be lower than the average selling price of the CBE by ten per cent (10%) or more.

If the selling price of the ME is 10% lower than the price at which the CBE sells, then the tax office shall fix the [special sales] taxable price.

The taxable price of goods manufactured according to a business co-operation contract between the manufacturer and the owner of the goods trade name

(or mark) or of the manufacturing technology, shall be the selling price by such owner of the trade name (or mark) or of the manufacturing technology.

SST rates shall be determined in accordance with the SST Tariff set out in article 7 of the Law on SST.

This Decree has been of full force and effective as from 1 April 2009. The provisions on SST in this Decree applicable to alcohol and beer shall be of full force and effective as from 1 January 2010.

This Decree shall replace Decree 149/2003/ND-CP of the Government dated 4 December 2003 and article 1 of Decree 156/2005/ND-CP of the Government dated 15 December 2005.

REGULATIONS ON LOANS SECURED BY PLEDGING VALUABLE CERTIFICATES

On 2 March 2009, the State Bank of Vietnam (SBV) issued Circular No. 03/2009/TT-NHNN providing regulations on loans secured by pledging valuable certificates ("PVC") of SBV for commercial banks.

Accordingly, giving loans secured by PVC is a form of lending by SBV for commercial banks based on PVC owned by banks to guarantee the obligation of reimbursement.

An interest of loans secured by pledge is a discounted interest rate applied by SBV at the time of disbursement of loans given to banks and maintained during the expiry of such loans. In case of overdue payment of the loans, banks shall bear an overdue interest rate of 150% of an interest rate agreed in credit contracts.

The loan limit does not exceed the value of the valuable certificates

used for collateral which is converted in accordance with regulations of SBV.

Commercial banks can transact directly with SBV or through computer network to offer secured loans.

Five conditions for secured loans offered by commercial banks are as follows:

- (i) Banks were established and operating in accordance with the Law on Credit Institutions or non-bank credit institutions licensed by the Prime Minister and are not under special control;
- (ii) Banks retain valuable certificates meeting standard for the lawful pledge;
- (iii) Banks have documents for collateral loans application sent to SBV in accordance with this Circular;
- (iv) Banks have no overdue debt at SBV at the moment of application;

(v) Banks were committed to using collateral for the accurate purpose and reimbursing the loans (including both principal and interest) for SBV by the agreed due date.

The maximum duration of the collateral loans granted by SBV for banks is up to one (01) year or 365 days, including bank holidays, public holidays and Tet holidays. SBV shall consider the extension of the collateral loans in some special cases, but the extended term shall not be longer than the first duration.

This Circular was of full force and effective from 14 April 2009 and replace Decision No. 1452/2003/QĐ-NHNN dated 3rd November 2003; Decision No. 94/2004/QĐ-NHNN dated 2nd January 2004; Clause 2 of Article 1 of Decision No. 1909/QĐ-NHNN dated 30 December 2005.

NEW REGULATIONS OF FINANCIAL COMPANIES ARE PERMITTED TO ENJOY INTEREST RATE SUPPORT FOR ITS LOAN

On 13 March 2009, the State Bank of Vietnam issued Circular No. 04/2009/TT-NHNN on amending and supplementing Circular 02/2009/TT-NHNN dated 3 February 2009 providing detailed guidelines for implementing interest rate support for institutions or individuals borrowing loans from banks for manufacturing and business.

Accordingly, financial companies (FC) - (except for the ones having business in consumption and cards sector under the laws) which comply with the regulations of SBV on safe rates in the operations of credit institutions and on extraction and use the reserve fund to resolve the credit risks in banking operations and have bad debt less 5% of their debt total - shall

be granted loans with interest rate support applicable as institutions or individuals in accordance with Circular No. 02.

Five (05) FCs are permitted to offer interest rate supporting loans in accordance with this Circular include: Rubber Financial Company, Vietnam Coal and Mineral Financial Company, Petroleum Vietnam Financial Company, Vinashin Financial Company, and Handico Financial Company.

This Circular also supplements the short-term loans which shall be subject to interest rate support, including:

(i) Loans listed by mining industrial sectors stipulated in Appendix 7 of Decision No. 477/QD-NHNN dated

28 April 2004 enacted by the Governor of State Bank of Vietnam and Decision No. 143/TCTK/PPCD dated 22 December 1993 enacted by General Director of General Statistics Office on issuing system of economic sectors by the Levels of II, III and IV.

(ii) Loans granted to economic institutions established and operating under Vietnamese laws for buying materials, goods; paying wages and salaries and other costs arising in domestic country to serve for manufacturing-business projects abroad;

(iii) Short-term loans in Vietnamese Dongs within mining sector shall be subject to interest rate support, be no longer not subject to interest rate support;

This Circular shall be of full force and effective from the date of its signing.

GUIDELINES ON TRANSITION OF INVESTMENT PROJECTS FOR CONSTRUCTION OF WORKS

On 25 March 2009, the Ministry of Construction issued Official Letter No. 59/BXD-HDXD providing guidelines on transition of investment projects for construction of works.

According to the guidelines in Section I of Part IV of Circular No. 02/2007/TT-BXD dated 14 February 2007 issued by the Ministry of Construction on formulation, evaluation and approval of investment projects for construction of works; on construction permits; and on management of investment projects for construction of works in accordance with decrees of the Government No. 16/2005/ND-CP

dated 7 February 2005 (“Decree 16”) and Decree No. 112/2005/ND-CP dated 29 September 2006 promulgated by the Prime Minister (“Decree 112”), the formulation, evaluation and approval of investment projects for construction of works and the subsequent tasks shall implement as follows:

The remaining procedures for investment projects for construction of works which were approved before the enforcement and effectiveness of Decree 16, but have not been implemented or just are under implementation shall be carried out in accordance with either (i) Decree 16 or (ii) the

(previous regulations prior to the enforcement and effectiveness of Decree 16 to be determined by the investment decision makers.

If the investment decision makers did choose the procedures for implementing the remaining steps in accordance with the regulations prior to the enforcement and effectiveness of Decree 16, such procedures shall be carried out accordingly; if they did choose the procedures for implementing the remaining steps in regard to Decree 16, the procedures for implementing Decree 112 shall be carried out in accordance with the guidelines on Clause 2 of this Section.

Q & A SECTION**Question 1:**

Before the opening of one General Meeting of Shareholders (GMS) of a listed Company (Company A), an institutional shareholder (Company B) convening this meeting on its own initial issuing a template of Power of Attorney printed with its seal hanging on a corner of this template. Company B requests that the authorization for a representative to attend this GMS must be performed in accordance with this template. Please advise whether this stipulation of Company B is lawful or not? (1)

Answer:

Assuming that the convocation of an extraordinary GMS in this case is lawful, Company B (as shareholder of Company A and shareholder convening the GMS) requires the Power of Attorney as mentioned above is not in compliance with the current laws and regulations.

Clause 2 of Article 101 of the Law on Enterprises 2005, regulates the right of attending GMS as below: *“The authorization for a representative to attend the GMS must be made in writing on the form stipulated by the company and must bear signatures in accordance with the following provision: (a) Authorization to represent a shareholder being an individual must bear the signatures of both that shareholder and the person authorized to attend the meeting; (b) Authorization on behalf of a shareholder being an organization which is the principal must bear the signatures of the authorized representative, of the legal representative of the shareholder and of the person authorized to attend the meeting; (c) In other cases the authorization must bear the signatures of the legal representative of the shareholder and of the person authorized to attend the meeting.”*

The standard charter of companies listed at the Stock Exchanges/Securities Trading Centers enclosed to Decision No. 15/2007/QĐ-BTC dated 19 March 2007 issued by the Ministry of Finance (“Decision 15”) regulates that: *“The authorization for a representative to attend the GMS must be made in writing on the form stipulated by the Company and must bear signatures in accordance with the following provision: (a) Authorization to represent a shareholder being an individual must bear the signatures of both that shareholder and the person authorized to attend the meeting; (b) Authorization on behalf of a shareholder being an organization which is the principal [of the power of attorney] must bear the signatures of the authorized representative, of the legal representative of the shareholder and of the person authorized to attend the meeting; (c) In other cases the authorization must bear the signatures of the legal representative of the shareholder and of the person authorized to attend the meeting.”*

According to the above-mentioned regulation, only Company A has the right to issue a sample of the Power of Attorney for the representatives attending its GMS.

Therefore, the issuance of the sample of the Power of Attorney by Company B to force other shareholders to authorize its representative to attend the GMS is not in compliance with Article 101 of the Law on Enterprises 2005 and Decision 15.

(1) Advice by LuatViet’s lawyers posted on the Investment Bridge – Vietnam Investment Review Issue 23 (651) dated 23 February /2009

Q & A SECTION**Question 2:**

In order to request to cancel the resolutions of General Meeting of Shareholders (GMS), in case the order and procedures for convening the GMS did not comply with Law on Enterprises and the charter of the company, how should shareholders or shareholder group do in this case? (2)

Answer:

In accordance with to Article 107 of the Law on Enterprises 2005, in order to request to cancel a resolution of GMS, shareholders or group of shareholders shall directly request, or request by written documents the member of Members' Council, Director or General Director, Inspection Committee to request a court or a arbitrator to consider and cancel such resolution. Then, the shareholders or group of shareholders should take into account some following legal issues:

Firstly: Determine the time-limit of the request

Article 107 of the Law on Enterprises 2005 provides that: within ninety (90) days from the date the minutes of the GMS is received or the minutes of the results of counting of votes being written opinions from the GMS is received, shareholders, members of the Board of Management, the Director (or General Director) and the Inspection Committee shall have the right to request a court or an arbitrator to consider and cancel a resolution of the GMS in case the order and procedures for convening the GMS not in compliance with the Law on Enterprises 2005 and the charter of the company.

Secondly: Determine competent jurisdiction for dispute settlement

Jurisdiction for dispute settlement might be an arbitral organization in one of the following cases: (i) The Charter of the Company stipulate clearly that the jurisdiction is an arbitral organization; or ii) Although the Charter of the Company has no stipulation on the competent arbitrator but after the dispute arises, relevant parties agree to choose an arbitral organization as jurisdiction for dispute settlement.

Competent jurisdiction for dispute settlement might be the court of law in the following cases: (i) There has no stipulations or no explicit stipulations on the jurisdiction for settling such disputes in this cases and after the dispute arises, there is no agreement to choose a specific arbitral organization for the dispute settlement; or (ii) the agreement on Arbitration between parties, although exists, is null and invalid in accordance with regulations and laws on Arbitration.

Q & A SECTION**Answer: (cont)****Thirdly: Submission of the Request for consideration/Petition and provision of evidences**

Shareholders or group of shareholders or member of Members' Council, Director or General Director, Inspection Committee have the right to submit Request for consideration (request for consideration of commercial and business case) for the cancellation of the resolutions of the GMS, or submit a petition (request for settlement of commercial and business dispute) to the competent arbitral organization or court of law for the cancellation of the resolutions of the GMS. Such request or petition shall meet some requirements in accordance with regulations and laws such as: valid copies of the minutes of the meetings (minutes of checking the votes of the GMS), and the resolutions of the GMS requested for the cancellation, evidences proving the incompliance of the order and procedures for convening the GMS with the Law on Enterprises 2005 and the charter of the company such as: valid copies of the charter of the company and other information and documents referring to the GMS issuing the resolutions requested for the cancellation such as: convocation for GMS, list of shareholders entitled to attend the GMS.

In each specific case, arbitrator or court will, based on evidences provided and produced by parties and on the governing regulations and laws, consider the cancellation of the resolutions of the GMS in accordance with the laws.

(2) Advice by LuatViet's lawyers posted on the Investment Bridge – Vietnam Investment Review Issue 32 (660) dated 16 March 2009.

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