



Vietnam Tax Updates

CIRCULAR ON FOREIGN CONTRACTOR TAX

In this newsletter, Grant Thornton summarizes selected tax and legal issuances that may be of interest to investors in Vietnam.

Circular No. 134-2008-TT-BTC
Hanoi, 31 December 2008

On 31 December 2008, the Ministry of Finance issued Circular 134-2008-TT-BTC. The Circular amends Circular 05-2005-TT-BTC on foreign contractors' tax and Circular 16-1999-TT-BTC on freight tax for foreign cargo transport firms in Vietnam.

The highlights of Circular 134 are discussed in the following pages.



Applicable entities

The Circular covers a broad range of foreign organizations doing business in Vietnam such as:

- *Foreign contractors* which refer to foreign business organizations with or without a permanent establishment in Vietnam, and foreign business individuals whether they are residents or non-residents of Vietnam doing business in Vietnam or having income arising in Vietnam on the basis of a contract, agreement or undertaking between such foreign contractor and a Vietnamese organization or individual.
- *Foreign sub-contractors* which refer to foreign business organizations with or without a permanent establishment in Vietnam, and foreign business individuals whether they are residents or non-residents of Vietnam doing business in Vietnam or having income arising in Vietnam on the basis of a contract, agreement or undertaking between such foreign sub-contractor and a foreign contractor to perform part of the work of the latter contractor's contract.

Non-Applicable Entities

The Circular specifically provide that the FCT shall not apply to:

- Supply goods by foreign organizations and individuals to overseas ports or Vietnam border gates not associated with services provided in Vietnam
- Supply of services performed and consumed outside Vietnam by foreign organizations and individuals.
- Supply of services performed overseas by foreign organizations or individuals such as:
 - Repair of transportation means (aircraft, aircraft engines, aircraft spare parts and sea-going vessels), and machinery and equipment (including sea cables and transmission equipment) with or without replacement spare parts and equipment;
 - Advertising and marketing services;
 - Investment and commercial promotion services;
 - Brokerage services for sale of goods;
 - Training services;
 - Sharing freight charges paid for international post or telecommunications services;

and services of leasing transmission lines and satellite bands from overseas parties.

Applicable taxes

Corporate foreign contractors and sub-contractors shall be subject to VAT and CIT.

Individual foreign contractors and sub-contractors shall be subject to VAT and PIT.

Bases and Method of Tax Calculation

Taxes may be calculated using two methods:

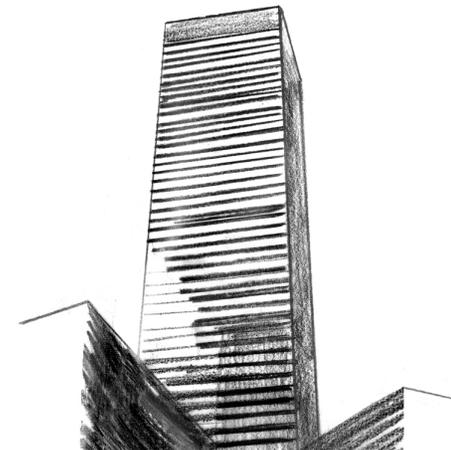
1. Payment of VAT in accordance with the tax credit method and payment of CIT on the basis of a declaration of revenue and expenses in order to calculate CIT-taxable Income
2. Payment of VAT directly on the basis of added Value and payment of CIT as a percentage (%) of turnover.

Declaration method

A foreign contractor may pay VAT on tax credit method and CIT based on net income if the following conditions are satisfied:

- It has a permanent establishment in Vietnam or is a resident of Vietnam;
- The period of conducting business in Vietnam is 183 days or more;
- It adopts the Vietnamese accounting system.

In this case, the Vietnamese party must provide written notice to the tax office within twenty (20) business days that such foreign contractor or sub-contractor will pay VAT based on tax credit method and CIT based on net taxable income.



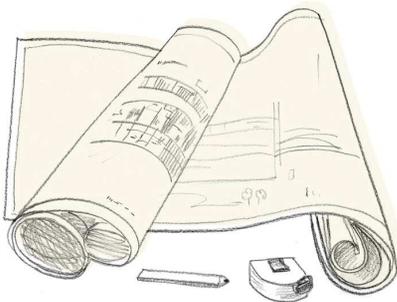
Withholding method

In this case, the Vietnamese party must, within twenty (20) business days from the date of signing the contract, register with the tax office that it shall pay tax on behalf of the foreign contractor or foreign sub-contractor.

VAT

The VAT shall be calculated based on the added value of the VAT-taxable services and the appropriate VAT rate.

The Circular removed trading as a taxable business line. It used to be subject to 10% rate of added value as a percentage of taxable turn over.



The value added rates as a percentage (%) of taxable turnover shall apply to the following business lines:

Business lines	Rate
Services, machinery and equipment leasing business, and insurance.	50
Construction and assembly and installation where the tender included supply of materials, machinery and equipment in the construction work.	30
Construction and assembly and installation where the tender did not include supply of materials, machinery and equipment in the construction work.	50
Transportation and other business and production.	30

The circular provides that when a foreign contractor performs various activities, including construction, installation services, and supply of machinery, equipment, and materials, the value of each activity must be segregated and VAT paid accordingly. If the contract fails to separate the value of each activity, the highest VAT applicable shall be used.



If a contract of supply of machinery and equipment cannot be separated, the deemed value added rate of 30% shall be applied.

Circular 134 reiterates the rule that the VAT portion as part of the FCT paid is treated as input VAT for the Vietnamese parties.

CIT

The amount of CIT payable shall be the CIT-taxable turnover x CIT rate as a percentage (%) of taxable turnover.

The CIT rates as a percentage of taxable turn over are:

Business lines	CIT rates
Trading: distribution and supply of goods, raw materials, supplies, machinery and equipment associated with services in Vietnam	1
Services, lease of machinery and equipment, insurance	5
Construction	2
Other production or business activities and transportation (including sea and air transportation)	2
Lease of aircraft, aircraft engines, aircraft spare parts and sea going vessels	2
Reinsurance	2
Assignments [transfer] of securities	0.1
Loan interest	10
Income from royalties	10

Circular 134 includes new types of taxable income and introduced the following changes:

- Royalty income now excludes income from transfer of use rights in the form of lease of machinery, equipment, and means of transportation. Those activities are now reclassified as services subject to a lower deemed CIT rate of 5%. However, the lease will now be subject to VAT whereas it was exempt in the past as royalties.
- Additional business activities such as reinsurance; securities investments; lease of aircrafts, aircraft engines, aircraft spare parts and sea-going vessels are now subject to FCT.

For supply of machinery and equipment which include services, the value of the machinery and equipment must be separated from the value of the services. If the contract does not separate the values, the CIT rate of 2% shall apply to the total value of the contract.

Tax administration

Circular 134 does not include guidelines on the tax compliance procedures and payment. The rules under the Law on Tax Administration and its implementing regulations apply.

Effective date

Circular 134 shall apply from 1 January 2009.



Abbreviations used:
 FCT- Foreign contractors' tax
 VAT- Value added tax
 CIT- Corporate income tax

For additional information, please contact



In Ho Chi Minh:

28th Floor Saigon Trade Center
 37 Ton Duc Thang Street
 District 1, Ho Chi Minh City
 T : +848 3910 9100
 F : +848 3914 3748

In Hanoi :

Vinaplast - Domus Building,
 8th Floor, 39A Ngo Quyen Street, Hanoi
 Tel: (+84 4) 2220 2600
 Fax: (+84 4) 2220 6449
 DID: (+84 4) 2220 2661

Or visit our website:

www.gt.com.vn

Or email:

Mr. Ken M. Atkinson

Country Managing Partner

E: Ken.Atkinson@gt.com.vn

Ms. Eleanor Roque

Director, Tax Services

E: Eleanor.Roque@gt.com.vn

© Grant Thornton International Ltd. All rights reserved.

Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered by the member firms independently. Any and all references to Grant Thornton International are to Grant Thornton International Ltd.

This publication has been prepared for information purposes only. No responsibility can be accepted by us for errors or omissions in this publication or for loss occasioned to any person acting or refraining from acting as result of any material in this publication. If you want to take action based on this newsletter, please contact our specialists.

© 2009 Grant Thornton (Vietnam) Ltd.