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## Legal News

### 1. Preferential Import Tax Rates on a number of materials and equipment for manufacture of construction materials

The Ministry of Finance on December 13, 2010 promulgated Circular No. 201/2010/TT-BTC providing for preferential import tax rates on a number of materials and equipment imported for projects of manufacture of equipment used for manufacture of light non-tempered construction materials and manufacture of cement/aggregate blocks, at a capacity of 7 million standard pieces or more per year.



Specifically, the Circular will apply the preferential import tax rate of 0% to materials and equipment, which local manufacturers have been unable to manufacture currently, used for projects of manufacture of equipment used for manufacture of non-tempered construction materials, including autoclaved aerated concrete bricks, bubble concrete bricks and manufacture of cement aggregate blocks, at a capacity of 7 million standard pieces or more per year. Specifically, the list of materials and equipment used for projects of manufacture of equipment used for manufacture of light non-tempered construction materials at a capacity of 7 million standard pieces or more per year includes transport equipment (fork-lift trucks, wheel loaders); hydraulic presses; cutters; autoclave equipment; brick unloading machines; aluminum powder (content: Al > 85%).

Also, according to the Circular, enterprises which are importers or import authorizers shall undertake to use for proper purposes the materials and equipment used for projects of manufacture of equipment used for manufacture of light non-tempered construction materials and manufacture of cement aggregate blocks at a capacity of 7 million standard pieces or more per year. Such imported materials and equipment used for improper purposes will be applied the preferential import tax rate specified at the time of registration of the customs clearance declaration for imported goods with the Customs Authority and will be subject to retrospective collection of taxes in accordance with prevailing regulations.

The Circular is effective and enforceable from January 28, 2011.

## 2. New guidelines for deduction of PIT against dividend payment in cash

The General Department of Taxation on December 15 issued a document guiding the deduction of personal income tax (PIT) against dividend payments in cash. According to the General Department of Taxation, Circular No. 84/2008/TT-BTC of the Ministry of Finance has provided the guidelines: Tax deduction is the subtraction by the paying organization or individual of a payable tax amount from the income of the taxpayer before paying the income.



Before each instance of payment of incomes or dividends to individual investors, organizations are responsible for PIT deduction. The deducted tax amount is equal to the income or dividend paid each time multiplied (x) by the tax rate of 5%. Pursuant to the aforesaid provision, if companies pay dividends in cash to shareholders, they are responsible for deduction, declaration, and payment of PIT on incomes from capital investment in accordance with the guidelines in the Law on Personal Income Tax and Circular No. 84/2008/TT-BTC of the Ministry of Finance.

Where share certificates of a company have been deposited at the Securities Depository Center, before payment of dividends to shareholders, the company is responsible for PIT deduction against the incomes from capital investment in accordance with the aforesaid guidelines. Members of the Securities Depository Center are only responsible for paying the remaining dividend amount (after PIT deduction) and returning the documents on tax deduction of the company to the shareholders who are securities investors.

### **3. Simplification of administrative procedures within the scope of the Ministry of Construction**



**The Prime Minister on December 14 promulgated Resolution No. 55/NQ-CP regarding simplification of administrative procedures within the scope of management functions of the Ministry of Construction.**

Accordingly, the Prime Minister assigned the Ministry of Construction and relevant ministries and branches, within their respective authority, to take charge of implementation of the Plan for Simplification of Administrative Procedures passed by the Government in accordance with contents and time-limits stipulated therein.

For administrative procedures set forth in the laws and ordinances required to be amended, supplemented, superseded or rescinded in accordance with the simplification plan, the Minister of Justice, by order of the Prime Minister and for the Government, is assigned to make a report, before December 31, 2010, to the Standing Committee of the National Assembly. The report is about a request by the Government for addition of law and ordinance projects for implementing the plans for simplification of administrative procedures which have been passed by the Government to the program of formulating laws and ordinances in 2011 and 2012. Such simplification should be in the form of one document amending various other documents and reduced order and procedures should be applied, all in accordance with the 2008 Law on Promulgation of Legal Documents.

During implementation, the Ministry of Construction shall proactively detect and opportunely amend, supplement, supersede or rescind or cancel relevant regulations within its authority, or make written requests to the Ministry of Justice and the Office of the Government on the laws, ordinances and decrees of the Government and decisions of the Prime Minister providing for administrative procedures required to be amended, supplemented, superseded or rescinded in order to implement the plan for simplification of administrative procedures passed by the Government.

#### **4. Guidelines for determining expenses for preparation and evaluation of urban center classification schemes**

**The Ministry of Construction recently promulgated Circular 23/2010/TT-BXD dated December 23, 2010 regarding guidelines for determining expenses for preparation and evaluation of urban center classification schemes.**

Accordingly, organizations and individuals using State budget funds to prepare and evaluate urban center classification schemes shall apply the guidelines in this Circular to determine and manage expenses. Specifically, the principles of determining expenses for preparation and evaluation of urban center classification schemes include: Expenses for preparation and evaluation of urban center classification schemes determined by preparing estimates; Expenses for preparation and evaluation of urban center classification schemes are determined as appropriate to those who carry out such works; The management of expenses for preparation and evaluation of urban center classification schemes must be compliant with regulations related to management of State Budget funds.

The preparation of urban center classification schemes includes such works as surveying, collection and purchase of materials, data and maps of various types to be used for preparation of urban center classification schemes; Preparation of urban center classification schemes. Estimation of expenses for preparation and evaluation of urban center classification schemes consists of expenses for surveying, collection and purchase of materials, data and maps of various types to be used for preparation of urban center classification schemes; Expenses for preparation of urban center classification schemes; Expenses for organization of relevant workshops and conferences during preparation of urban center classification schemes; Expenses for materials, stationery, depreciation of machinery and equipment, other expense items (if any) used for preparation of urban center classification schemes; Management expenses, profits and payable taxes (where consulting organizations are hired to prepare urban center classification schemes).

Where consulting organizations are hired to prepare urban center classification schemes, the consulting organizations are responsible for preparing cost estimates, with a maximum amount of expenses not exceeding 20% of the expenses for preparation of the master plan for an urban center of the respective type. Details of the method of determining a cost estimate for preparation of an urban center classification scheme are included in the appendix to this Circular. If travel expenses for preparation of urban center classification schemes in urban centers are not sufficient (where consultants are hired), such expenses may be added in accordance with actual expenses.

Where State management bodies carry out the preparation of urban center classification schemes, expenses shall be determined by cost estimation, including expenses for data collection, expenses for payment of remuneration to experts of State management bodies who carry out the preparation of such schemes on a concurrent position basis; expenses for meetings.



The Circular also expressly stipulates that the People's Committees at all levels be responsible for making capital plans for the preparation of urban center classification schemes within the administrative boundaries under their management in accordance with prevailing regulations. Capital to be used for the aforesaid works shall be taken from the local budget funds.

Expenses for hiring consultants to prepare urban center classification schemes are managed through consultancy contracts for preparation of urban center classification schemes. Consultancy contracts for preparation of urban center classification schemes are determined on the basis of the result of selection of the consulting contractors, negotiation and execution of contracts between the bodies managing the preparation of the schemes and the consulting contractors for preparation of urban center classification schemes. The contents of the consultancy contracts for preparation of urban center classification schemes must be compliant with the provisions of the relevant laws on contracts, in which it is required to clarify the price of the contracts, the number of advance payments, payment of contracts and the products to be completed.

This Circular is effective from February 7, 2011.

## Legal Advice

### QUESTION:

We have been asked to provide our advice in regard to protection of minority shareholders under Vietnamese law.

### RESPONSE:

Protection of minority shareholders is covered under the Law on Enterprises (“**LOE**”) dated 29 November 2005 and Decree No. 102/2010/ND-CP dated 1 October 2010 (“**Decree 102**”).

Under the LOE, a shareholder or a group of shareholders holding more than 10% of the total ordinary shares for a consecutive period of 6 months or more, or holding a smaller percentage as stipulated in the charter of the company has the rights: (i) to nominate candidates to the Board of Directors and the Board of Controllers (if any), (ii) to review and make an extract of the book of minutes and resolutions of the Board of Directors, mid-year and annual financial statements, and reports of the Board of Controllers, (iii) to request the convening of a General Meeting of Shareholders (“**GMS**”), (iv) to request the Board of Controllers to inspect each specific issue relating to the management and administration of the operation of the company where it is considered necessary.

The shareholders, within 90 days of the date of receipt of the minutes of a meeting of the GMS or the minutes of the results of vote-counting by way of written opinions from the GMS have the right to request a court or an arbitrator to consider and cancel a resolution of the GMS if (i) the order and procedures for convening a meeting of the GMS did not comply with laws and the charter of the company, (ii) the order and procedures for issuing a resolution and the content of the resolution breach the law or the charter of the company.

An organization being a member of a limited liability company owning at least 35% of the charter capital shall have the right to appoint no more than 3 authorized representatives to participate in the members' council.

An organization being a shareholder of a shareholding company owning at least 10% of the total number of ordinary shares shall have the right to authorize a maximum of 3 people to attend the GMS.



In addition, before and during a meeting of the GMS, shareholders shall have the joint right to form a group in order to nominate a candidate(s) and to cast cumulative votes for their candidate(s). The number of candidates which each group shall have the right to nominate shall depend on the number of candidates decided by the GMS and the share ownership ratio of each group. Unless the company charter stipulates otherwise and unless the GMS decides otherwise, the number of candidates which a group shall have the right to nominate will be as follows:

<b>Share Ownership Ratio (%)</b>	<b>Number of Candidate to be Nominated (Maximum)</b>
From 10 – below 20	1
From 20- below 30	2
From 30 – below 40	3
From 40 – below 50	4
From 50 – below 60	5
From 60 – below 70	6
From 70 – below 80	7
From 80 – below 90	8

In practice, when foreign investors purchase a minority interest in a Vietnam company, its rights are seriously negotiated. What are contained in the Share Sale and Purchase Agreement are provisions that try to maximize protection for the investor. From this point, the Sellers can try to negotiate them down. However, ultimately, most of the protections contained in the Share Sale and Purchase Agreement are up to commercial negotiation and not required by law.



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