Indochine Counsel
Business Law Practitioners

Special Alert

August 2020 www.indochinecounsel.com

New Tax Treatment of Loan Interest Expenses

On 24 June 2020, the Government promulgated Decree No. 68/2020/ND-CP ("**Decree 68**") amending Article 8.3 of Decree No. 20/2017/ND-CP dated 24 February 2017 regulating tax management of enterprises with related transactions [transfer pricing] ("**Decree 20**") in respect of the total of deductible loan interest when assessing taxable income for corporate income tax ("**CIT**") purposes. Decree 68 took effect on 24 June 2020, and will be applied to enterprises having related transactions from the fiscal year 2019 onwards.

Increase in maximum deductible rate of loan interest

The maximum deductible rate of loan interest expenses is raised from 20% to 30% of the total net profit from business operating activities in the period plus loan interest expenses (excluding the interest income from the deposits, current accounts and loans) and depreciation costs arising in a given fiscal year.

Carry forward of non-deductible loan interest expenses

The non-deductible loan interest expenses which exceed 30% will be carried forward when determining the total deductible loan interest expenses. The maximum duration to transfer the non-deductible loan interest expenses is five consecutive years, counting from the year in which the loan interest expenses are not deducted.

Non-applicable loan interest expenses

The deductible rate of loan interest expenses shall not be applicable for: (i) loans of taxpayers who are credit institutions under the Law on Credit Institutions and or insurance organizations under the Law on Insurance Business; (ii) loans under Official Development Assistance (ODA); (iii) government concessional loans implemented by the method of borrowing foreign loans for enterprises to reborrow; (iv) loans to implement specific national programs (including New Rural Areas Program and Sustainable Poverty Reduction Program); (v) loans to fund programs and projects related to national welfare policies (housing for resettlement, for workers, students, and other public welfare projects).

Retroactive application for fiscal years 2017 and 2018

Under Decree 68, the deductible rate of 30% of the loan interest expenses is applied to enterprises with related transactions arising in 2017 and 2018. Accordingly, before 1 January 2021, enterprises must submit supplement / revision of their CIT finalization declarations in 2017 and 2018 to the tax authority in order to re-determine the loan interest expenses and the corresponding CIT amounts payable (if any). In particular,

(a) if enterprises have not been inspected / checked yet by the tax authority, they shall offset the difference between the overpaid CIT and the late payment interest (if any) against the payable CIT in 2020. If the year 2020 is not fully offset, the difference will be offset against the payable CIT for the next five years from 2020; and

(b) if enterprises have already been inspected / checked by the tax authority and have been issued with an inspection conclusion or decision, they must request the tax authority to re-determine the payable CIT and the corresponding late payment to offset the difference (if any) to the payable CIT in 2020.

However, the amount of tax-related administrative penalties (if any) shall not be adjusted if enterprises have already been sanctioned or their claims are being settled under complaint settlement procedures.

New Form 01

Enterprises must amend the related transactions disclosure return according to the new Form 01 attached to Decree 68. This new Form 01 includes a new item 15 in Section IV, which details the loan interest expenses carried forward from previous periods used to determine the deductible interest expenses in the fiscal year.

If you have any questions about Decree 68's implementation or interpretation, or have tax questions in general, please feel free to contact our tax specialists (authors of this special alert) through their profiles on our website at: www.indochinecounsel.com.

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 45 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

- Inward Investment
- Corporate & Commercial
- Mergers & Acquisitions
- Securities & Capital Markets
- Banking & Finance
- Property & Construction
- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

A full list of partners, associates and other professionals is available on our website. |

Contact Us

For further information or assistance, please contact the following Indochine professionals:

Dang The Duc
Managing Partner
duc.dang@indochinecounsel.com

Dang The Duc
Managing Partner
duc.dang@indochinecounsel.com

Phan Anh Vu
Partner
vu.phan@indochinecounsel.com

Le Van Duong
Partner, Head of Hanoi Office
duong.le@indochinecounsel.com

Le Nguyen Huy Thuy
Partner
thuy.le@indochinecounsel.com

Nguyen Thi Hong Anh
Partner, Head of IP&T Practice Group
anh.nguyen@indochinecounsel.com

Pham Thi Thanh Lan
Partner
lan.pham@indochinecounsel.com

Ho Chi Minh City
Unit 305, 3rd Floor, Centec Tower
72 -74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +84 28 3823 9640
F +84 28 3823 9641
E info@indochinecounsel.com

Hanoi
Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +84 24 3795 5261
F +84 24 3795 5262
E hanoi@indochinecounsel.com

www.indochinecounsel.com