

## PROPOSED AMENDMENTS TO TAX POLICY

*Presented by  
Vu Thu Huong  
Tax Sub-group*

In recent years, thanks to efforts of Ministry of Finance and General Department of Taxation, tax policy witness various reforms to adapt to the practice and solve many disputes and controversial issues encountered by enterprises. Treatments of various issues were provided in a clearer and more reasonable manner, such as bonuses to employees are now deductible if these are provided in the Labor Contract or company's policy etc.

However, in the practical operations of taxpayers, there exist various issues where tax treatments are unclear or unreasonable. We would like to set out below some typical issues commonly encountered by enterprises, especially manufacturing enterprises, and propose our solutions so that you can consider for amendments to tax policy in the time to come.

### **I. ISSUE 1 – REMOVAL OF ADVERTISING & PROMOTION (A&P) CAP**

#### **Issue**

A&P expenses are commonly recognized as normal expenses incurred during normal operations of an enterprise. These are incurred to generate accounting and taxable revenue, and in substance these are of the same nature to other selling expenses such as remuneration for sales force, display costs etc. Enterprises, especially those which have not been able to established a well-known brand name in the market, will have no choice but paying expenses for advertising and promoting their goods and services to be able to distribute them in the market.

Currently, most advertising, promotion, marketing, intermediary commission, reception, seminars; marketing and expenses supports, payment discounts etc. are capped at 10% of total deductible expenses (15% for newly established enterprises for the first 3 years). As mentioned, the A&P expenses are critical investment for the course of business operations. The cap is very unreasonable because it curtails business development, and refrain rightful and compulsory investments by enterprises.

In addition, according to current Circulars, some expenses which are of the nature of advertising and introduction of products such as: display costs, introduction costs, organization of festivals, exhibitions, opening of display centers etc. are not subject to the cap. This may be viewed as an evidence that Ministry of Finance also recognize that these expenses are reasonable, and in substance they have not very different from A&P expenses mentioned above. Such discrimination in tax treatments should be avoided as much as possible, especially in the integration of Vietnam to the global economy.

According to our mini survey, Vietnam is one of rare countries in the world use the A&P cap. This raises the effective tax rate of enterprises by an average of 42% - 80% than nominal tax rates (the higher A&P expenses, the higher effective tax rates). This is a serious drawback for the decision-making process by both local and foreign investors.

#### **Proposal**

We would recommend that Vietnamese Government consider to fully abandon the A&P cap in amending the Law on Corporate Income Tax in 2013. The cap is now resulting in double taxation, at the taxpayers incurring A&P expenses and A&P service providers.

Before the Law can be changed, we also proposed the Ministry of Finance to reclassify and exclude some expenses from list of capped items. In particulars:

- Expenses for organizing client meetings/ seminars to launch or introduce products and guide the use of products;
- Expenses to print leaflet, brochures, manuals, demos, models to introduce products or guide the use of products.
- Costs of the products used for display / samples

These expenses are more like of the nature of product introduction and display, therefore should be considered fully deductible. Currently, in practice, companies will likely be challenged by the tax authority if they treat such types of expenses under non-capped A&P expenses.

## **II. ISSUE 2 – TRADE DISCOUNT**

### **Issue**

From accounting perspective, trade discount is recognized as a revenue deduction rather than A&P expenses. However, current regulations on invoices require that trade discount must be shown on the subsequent invoices, and the discounted invoice and amount must be clearly quoted. This requirement represents a big burden to many companies, especially companies which uses global accounting system that automatically generate invoices when sale occur and does not allow direct reduction on invoice.

### **Proposal**

Recently, the MOF has approved a few particular cases, allowing separate invoice issuance for trade discount without the need to refer to previous invoices, instead company only need to show supporting evidence of sale promotion policies and calculation table. Approval of each particular case demonstrates an important step towards more reasonable tax administrative requirements. However, we respectfully request the MOF to extend this supports further to all taxpayers, particularly to consider using payment/receipt vouchers for trade discount, on the condition that companies can present relevant sale promotion plan and actual quantity of goods bought by buyers.

As far as we are concerned, using payment/receipt vouchers does not, in any way, affects the nature of trade discount, while still serves as revenue deduction for accounting purposes, and hence should be similarly adopted for tax purposes.

## **III.ISSUE No. 3 – CONVERSION OF TAXABLE INCOMES IN FOREIGN CURRENCY INTO VND**

### **Issue**

According to provisions in point 5 article 3, Circular 130/2008/TT-BTC (unchanged in Circular 18/2011/TT-BTC) on CIT:

*“Enterprises which have foreign-currency turnover, expenditures, taxable incomes and taxed incomes shall convert these foreign-currency amounts into Vietnam dong at the average exchange rate on the inter-bank foreign currency market, announced by the State Bank of Vietnam at the time such foreign-currency turnover, expenditures, taxable incomes and taxed incomes arise, unless otherwise provided for by law. A foreign currency having no exchange rate with Vietnam dong must be converted via another foreign currency having an exchange rate with Vietnam dong”*

However, there are no specific guidelines on conversion for enterprises which are permitted to account in foreign currency (approved by the Ministry of Finance or satisfied all conditions in Circular 244/2009/BTC). In practice, for enterprises which are permitted to account in foreign currency, it is not feasible to convert foreign currency into Vietnam dong for each transaction at the time such turnovers/expenses incur, because they cannot set up two parallel accounting book systems (one foreign currency book for accounting purpose and one VND book for tax purpose). In fact, enterprises, which are approved to account in foreign currency, only carry out the conversion of gain/loss at the end of financial year. However, in some recent tax audits, we noticed that some local tax authorities required enterprises to convert each transaction into VND using exchange rates at the time transaction arises, and when the enterprises responded that they could not implement the conversion, the tax authorities can conclude that the enterprises' accounting systems do not meet the Vietnamese accounting requirements.

### **Proposal**

In order to ensure that permissions for enterprises to account in foreign currency have come into real force, and do not cause tax difficulties to taxpayers when working with tax authorities, we propose that the Ministry of Finance supplement regulations that allow enterprises which are approved to account in foreign currency to determine the accounting gain/loss by one conversion at the year-end using the closing exchange rate.

## **IV. ISSUE No. 4 – NORM FOR GOODS DAMAGED DUE TO OBJECTIVE REASONS**

### **Issue**

According to provisions in Circular 130/2008/TT-BTC and Circular 18/2011/TT-BTC on non-deductible expenses when determining taxable incomes:

*“In the case of goods which are damaged in the sense that their use period has expired or goods destroyed by natural biochemical processes, when such goods are on the list of norms formulated by the enterprise and when compensation for the loss has not been paid, then this loss may be included in deductible expenses when calculating CIT. If the damaged/destroyed goods exceed the norms specified by the enterprise, then that part of their value in excess may not be included in deductible expenses”.*

Normally goods are damaged due to objective causes (for example unexpected market change, economical changes, change in supply, demand...), leading to interrupted sales which are out of expectation and business management. It would therefore be impractical and complicated requiring enterprises to construct the norms for damaged goods in such objective circumstances.

### **Proposal**

We recommend that the Ministry of Finance consider to abolish the requirement on construction of norms for damaged goods and to allow deduction in full expenses regarding damaged goods as their use period has expired or goods destroyed by natural biochemical processes.