

Client Alert

December 2010

New Regulation on Overseas Profit Remittance

The Ministry of Finance issued Circular No. 186/2010/TT-BTC on 18 November 2010 regarding overseas profit remittance by foreign individuals or organizations that generate profit from direct investment in Vietnam. This new Circular will replace Circular No. 124/2004/TT-BTC and will take effect on 3 January 2011.

The major change is the timing of overseas profit remittance. In accordance with Circular No. 124/2004/TT-BTC, overseas profit remittance could be done at the end of each quarter, at the end of each financial year or upon termination of operation. Under the new Circular, however foreign investors may only repatriate their profit abroad either at the end of a financial year (after having filed audited financial statements and the annual finalization enterprise income tax return) or upon termination of their business activities in Vietnam.

Overseas profit remittance can only be effected if a company has retained net earnings. If accumulated loss is larger than profit generated in a year, overseas profit remittance will not be allowed.

In terms of procedure, under the previous regulation, investors were required to submit a declaration to the local tax authority which would certify that the profit is net of after tax and the company has fulfilled tax liability on that profit before the investor could remit the profit. Investors now will be required to notify the local tax authority of the profit remittance at least 7 days before profit remittance. The notification appears to imply that it is a self-notification which does not involve approval or certification by the tax authority.

The new rule is intended to help stabilize the Vietnamese Dong and slow the drain on Vietnam's foreign exchange reserves. It will not be welcome to regional treasury officers who refer more flexibility in moving liquid cash around their various operations to balance cash flows and reduce interest costs.

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