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New regulations guiding outward profit remittance

By Tuan Nguyen

On 18 November 2010, the Vietnam Ministry of Finance promulgated *Circular 186/2010/TT-BTC* (Circular 186) guiding the outward remittance of profits of foreign investors from their direct investment in Vietnam under the *Investment Law*. Circular 186 became effective 45 days after its promulgating date, and replaced *Circular 124/2004/TT-BTC* dated 23 December 2004 of the Ministry of Finance. Outward remittance of profits of foreign investors from their indirect investment by way of purchasing shares, bonds, other valued notes and/or investment through securities investment funds and/or other intermediary financial institutions is not subject to the governing scope of Circular 186.

Outward remitted profits

Circular 186 stipulates that profits to be outwardly remitted by foreign investors must be legal profits, which are shared or generated from direct investment of foreign investors in Vietnam under the *Investment Law,* after fulfillment of tax and financial obligations to the State of Vietnam. Profits to be outwardly remitted can be cash or in kind. Outward remittance of cash profits shall comply with the Vietnam foreign exchange control regulations. In-kind profits must be converted into value in accordance with the laws of Vietnam on export, import of goods and other relevant regulations.

Profits to be outwardly remitted include profits of annual remittance and profits shared on termination of investment in Vietnam.

"Profits of annual remittance" means profits that foreign investors share from their direct investment each fiscal year, based on an audited financial report and declaration of corporate income tax balance. It must be an enterprise where foreign investors contributed capital plus other unshared profits passed over from previous years, less any profit which was reinvested or committed to be reinvested by foreign investors in such enterprise and any expenses of foreign investors for business activity and personal spends in Vietnam.

It should be noted that foreign investors are not permitted to outwardly remit profit shared to them from any profit-making year, if the enterprise is still suffering losses based on the financial report of such profit-making year.

"Profits shared on termination of investment" means the total profits generated by foreign investors from their direct investment in Vietnam less any reinvested profit, annually outwardly remitted profits and any expenses of foreign investors for business activity and personal spends in Vietnam.

Time of outward remittance of profits

As to annual outwardly remitted profits, foreign investors are only permitted to outwardly remit profits shared to them at the end of the fiscal year and after the enterprise has fulfilled its tax and financial obligations to the State of Vietnam and completely submitted its audited financial report and declaration of corporate income tax balance for such fiscal year to the relevant tax authority.

As to profits shared on termination of an investment, foreign investors are only permitted to outwardly remit profits shared to them after the enterprise has fulfilled its tax and financial obligations to the State of Vietnam and completely submitted an audited financial report and declaration of corporate income tax balance for such fiscal year to the relevant tax authority and fulfilled its obligations as stipulated in the *Law on Tax Management.*

Notice of Profit Outward Remittance

Foreign investors shall submit a Notice of Profit Outward Remittance to the relevant tax authority seven business days in advance of the profit remittance date.

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