



# **TAX ALERT AND LAW**

**April - 2024**

## This update highlights the following matters:

1. Officer letter No. 1517/TCT-CS depreciation of fixed assets and income from real estate transfer.
2. Office letter No. 14116/CTHN-TTHT guiding on tax policy for dependent accounting branches.
3. Office letter No. 17339/CT-TTHT handling invoices with errors

# 1. Officer letter No. 1517/TCT-CS depreciation of fixed assets and income from real estate transfer

Based on Circular 200/2014/TT-BTC of Ministry of Finance dated 22<sup>nd</sup> December 2014:

## ***“Article 38. Account 214 - Depreciation of fixed assets***

- *For investment real estate for operating lease, depreciation must be deducted and recorded in production and business expenses during the period.*
- *Businesses can base on the same type of owner real estate (fixed assets) to estimate depreciation time and determine the depreciation method for investment real estate.*

# 1. Officer letter No. 1517/TCT-CS depreciation of fixed assets and income from real estate transfer

- *In case of investment real estate held for price increase, the enterprise does not depreciate but determines the loss due to decrease in value.”*

Based on the above regulations, in case an enterprise **buys an apartment for rental business, if there is no documents proving ownership of the enterprise** according to the provisions of law, it is not eligible to calculate **Depreciation of apartment assets is a deductible expense** when determining income subject to corporate income tax.

# 1. Officer letter No. 1517/TCT-CS depreciation of fixed assets and income from real estate transfer

In Article 2 of Circular No. 96/2015/TT-BTC dated 22<sup>nd</sup> June 2015:

*“2. **Income from real estate transfer activities**, investment project transfers, transfer of rights to participate in investment projects, transfer of rights to explore, exploit and process minerals according to the provisions of The law requires separate accounting to declare and pay corporate income tax at a **tax rate of 22% (from 01<sup>st</sup> January 2016 with tax rate is 20%)**.”*



## 1. Officer letter No. 1517/TCT-CS depreciation of fixed assets and income from real estate transfer

Clause 9, Article 18 of Circular No. 78/2014/TT-BTC dated June 18, 2014 of the Ministry of Finance stipulates:

*“9. In the same tax period, an enterprise incurs losses in business activities eligible for tax incentives, business activities not eligible for tax incentives, or other income from business activities (**excluding income from real estate transfer activities**, transfer of investment projects; income from transfer of rights to participate in investment projects,...). **The enterprise offsets the taxable income of income-generating activities chosen by the enterprise.**”*

# 1. Officer letter No. 1517/TCT-CS depreciation of fixed assets and income from real estate transfer

Based on the above regulations, if an enterprise has profit from real estate transfer activities, it must separately account to declare and pay corporate income tax at the tax rate of 22% (from January 1, 2016, applicable). applying a tax rate of 20%), cannot be offset against losses from other production and business activities (including apartment rental activities).

## 2. Office letter No. 14116/CTHN-TTHT guiding on tax policy for dependent accounting branches.

### License fees

Clause 1 and Clause 2, Article 12 regulate the allocation of **tax obligations of centrally accounting taxpayers with dependent units and business locations** in provinces other than where the head office is located:

*Taxpayers with operations and business in many other provincial areas where the taxpayer has its headquarters shall perform **centralized accounting at the headquarters** according to the provisions of Clauses 2 and 4, Article 11 of Decree No. 126/ 2020/ND-CP declares tax, calculates tax and submits tax declaration documents to the directly managing tax agency and **allocates the tax amount payable to each province** where business activities are located.*



## 2. Office letter No. 14116/CTHN-TTHT guiding on tax policy for dependent accounting branches.

### Value added tax

Clause 4, Article 13 regulates tax declaration, tax calculation, allocation and payment of value added tax:

*“4. For dependent units that directly sell and use invoices registered by the dependent unit or registered by the taxpayer with the tax authority managing the dependent unit, fully track and account for value-added tax. increase output and input, the dependent unit declares tax and pays value-added tax to the tax authority directly managing the dependent unit...”*

## 2. Office letter No. 14116/CTHN-TTHT guiding on tax policy for dependent accounting branches.

### Value added tax

In case a dependent unit (Branch) has business activities and **does not fully track and account for output and input VAT**, the **head office shall declare and submit the VAT declaration** of the Company and the Branch. other provinces for tax authorities to directly manage the headquarters.

In case a dependent unit (Branch) directly sells and uses invoices registered by the dependent unit or registered by the taxpayer with the tax authority managing the dependent unit, **full accounting tracking is required**. For output and input VAT, **the dependent unit declares and pays value-added tax** to the tax authority directly managing the branch.

### 3. Office letter No. 17339/CT-TTHT handling invoices with errors

Pursuant to Point b, Clause 1, Article 7 of Circular No. 78/2021/TT-BTC dated 17<sup>th</sup> September 2021 of the Ministry of Finance guiding the processing of electronic invoices, summary table of sent electronic invoice data Tax authorities make mistakes in some cases:

*“In case the seller issues an invoice when collecting money before or while providing the service as prescribed in Clause 2, Article 9 of Decree No. 123/2020/ND-CP, then there is a cancellation or termination of the service. If providing services, the seller must cancel the electronic invoice that has been created and notify the tax authority of the invoice cancellation according to Form No. 04/SS-HDĐT in Appendix IA issued with Decree No. 123/202Q /ND-CP;”*

### 3. Office letter No. 17339/CT-TTHT handling invoices with errors


Based on the above regulations, in case the seller issues an invoice when collecting money before providing warehouse rental services, then terminates the contract ahead of time, the seller will process the invoice according to the instructions at according to the instructions in Point b Clause 2 Article 19 of Decree No. 123/2020/ND-CP dated 19<sup>th</sup> October 2020 of the Government and Point b Clause 1 Article 7 Circular No. 78/2021/TT-BTC dated September 17 /2021 of the Ministry of Finance.

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