

Client Alert

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Clarified Taxation on Transfer of Shares in Joint Stock Companies

The Ministry of Finance on 20 September 2010 issued Official Letter No. 12501/BTC-CST to all the local tax authorities. The Official Letter is helpful in ending long-standing ambiguous and inconsistent guidelines with regard to whether transfer of shares in joint stock companies is a “transfer of capital” or “transfer of securities” since Vietnam has different tax regimes for each as summarized below.

Transferor	Transfer of capital	Transfer of securities
Organizations	25% tax on the gain	For foreign organizations: 0.1% tax on the sale proceeds For locally established organizations: 25% on the gain
Resident individuals	20% tax on the gain	0.1% tax on the sale proceeds or 20% tax on the gain (subject to prior registration for applying this method)
Non-resident individuals	0.1% tax on the sale proceeds	0.1% tax on the sale proceeds

The Official Letter stipulates that a transfer of shares in public companies in accordance with articles 25 and 26 of the Securities Law is a transfer of securities and it is subject to the tax applicable to the transfer of securities.

According to articles 25 and 26 of the Securities Law, a public company is a joint stock company in one of the following three forms:

- A company that has made a public offer of shares; or
- A company which has shares listed on a Stock Exchange or Stock Trading Center; or
- A company which has shares owned by at least 100 investors excluding professional securities investors, and which has paid-up charter capital of 10 billion Vietnam Dong or more. The public company in this case must submit the public company file as referred to in article 26.1 of the Securities Law to the State Securities Commission within 90 days after it becomes a public company.

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The downside of the Official Letter is that transfers of securities of closely-held (non-public) joint stock companies will henceforth be treated as transfers of capital, resulting in the application of the more burdensome gain-based tax for foreign investors.

According to the Official Letter, the transfer of shares in joint stock companies for which the tax was assessed in accordance with the effective regulations at such time and tax was paid or withheld before the issuance date of this Official Letter will not be subject to retroactive tax adjustment.

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