

## Client Alert

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### Loss Carry Forward and Potential Impact on Full Entitlement

One form of preferential treatment that exists within the enterprise income tax system is the ability to carry forward a loss for a maximum period of five years after the year in which the loss arose. Before 2009 and the new "consecutive" requirement, taxpayers could plan to carry forward their losses according to the tax holiday or reduction period, thereby skipping the loss carry forward during a tax holiday or reduction period (e.g., loss in 2003 could be carried forward from 2004 to 2008 and if the tax holiday was in 2004 and 2005, the taxpayer could choose to carry forward the loss in the remaining years 2006, 2007 and 2008).

The five-year period remains unchanged under the new Enterprise Income Tax Law effective from 1 January 2009. However, Decree No. 124/2008/ND-CP and Circular No. 130/2008/TT-BTC, providing guidelines to the implementation of this law, further stipulate that the loss carry forward period is counted consecutively. More recently the Ministry of Finance issued Official Letter No. 7250/BTC-TCT on 7 June 2010, which further stipulates that loss incurred from 2009 onwards must be carried forward entirely and consecutively in the subsequent five years. The examples given in this Official Letter also indicate that loss incurred in a year is carried forward to the immediate subsequent profit year. This new requirement would give rise to uncertainty as to whether loss must be carried forward "consecutively" to tax holiday or tax reduction years. The benefits of tax holiday, tax reduction and loss carry forward will be forfeited if loss must be carried forward to the tax holiday or tax reduction period. Further practical guidance from the Ministry of Finance is still needed. In anticipation of any consequences of the new rule, it is important for taxpayers to review the status of loss carry forward with regard to losses incurred before and from 2009, assess the potential exposure and optimize the benefits of tax incentives and loss carry forward.

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