

Global Tax Update

Vietnam

Deloitte Tohmatsu Tax Co.

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Foreign contractor withholding tax for transfer of rights to use trademark

Official Letter 15888/BTC-CST ISSUED BY the MINISTRY OF FINANCE DATED 07 November 2016 PROVIDING GUIDANCE ON FOREIGN CONTRACTOR WITHHOLDING TAX (FCWT) ON TRANSFER OF RIGHT TO USE TRADEMARK

In the Global Tax Update issued in [November 2015](#), Deloitte Vietnam has updated the guidance of several provincial Tax Offices on 5% withholding VAT applicable to income of foreign contractors from transfer of right to use trademarks. Thereby, Deloitte Vietnam recommends enterprises to consider tax impacts of this issue and make necessary tax adjustments.

On 07 November 2016, the Ministry of Finance issued Official Letter 15888/BTC-CST (Official Letter 15888) to all provincial Tax Departments to provide detailed guidance on FCWT applicable to income of foreign contractors from transfer of right to use trademark. The ruling advises that:

- Pursuant to the Law on Intellectual Property, when a Vietnamese party uses a trademark and making payments to the foreign party for the transfer of use right, it should be considered as **transfer of the right to use** trademarks in accordance with the Law on Intellectual Property, distinguishable from **transfer of intellectual property rights**.
- As a result, income of foreign contractors from transfer of the rights to use trademark should be subject to FCWT with applicable tax rates as follows:
 - CIT rate (%) on taxable revenue is 10%;
 - VAT rate (%) is 10% (if foreign contractors declare VAT under the credit method) or 5% (if foreign contractors declare VAT under the deemed method);

- Furthermore, the Ministry of Finance also stipulates effectiveness of the Official Letter 15888 as follows:
 - With regards to cases incurred before the date of this Official Letter, if taxpayers have declared and paid FCWT not in line with the guidance in this Official Letter, retrospective adjustment is **not** required.
 - Nonetheless, if taxpayers have not declared yet or have declared VAT and CIT not in line with this guidance but not yet made a payment, the company is required to declare and pay VAT and CIT in accordance with this Official Letter.

Given the above, it is recommended that the Company should review all contracts for transfer of rights to use trademarks in order to apply the appropriate tax rates as guided under OL 15888 to avoid potential tax exposure and penalties for such kind of transactions.

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