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# TAX NEWSLETTER

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## NEW DOCUMENTS

### Labor Code

#### Administrative procedures on employment of foreign labors

On 24 December 2014, the Ministry of Labor, War Invalids and Social Affairs ("MOLISA") issued Decision No. 1694/QĐ-LĐTBXH ("Decision 1694") promulgating the newly issued, amended, supplemented or replaced, abolished administrative procedures under MOLISA's mandated jurisdiction.

The Decision promulgates and provides guidance on administrative procedures in terms of foreign labors, including a number of new procedures under MOLISA's management such as: granting work permits during holidays for citizens of New Zealand, certification of foreign labors who are not required work permits; reporting the demand for foreign labors, reporting the changes in demand for foreign labors; application for recruitment of Vietnamese labors for positions expectedly reserved for foreign labors; application for the certification of non-registration of unemployment and application for not being entitled to unemployment allowances.

Decision 1694 was effective from 24 December 2014.

#### New decree on employment contract and salary

On 12 January 2015, the Government issued Decree No. 05/2015/ND-CP ("Decree 05") specifying the rights and responsibilities of employers, employees, representative organizations of labor collectives, agencies, organizations and individuals involved in the implementation of some provisions of the 2012 Labor Code on employment contracts, collective agreements, collective labor agreements, salary; insurance in case of multiple labor contracts are involved; labor discipline, material liabilities and labor dispute settlement.

Decree 05 was effective from 01 March 2015.



## Import and Export Duties ("IED")

### Providing details and implementation methodologies of Law on Customs regarding customs, custom inspection, monitor and supervision procedures

On 21 January 2015, the Government promulgated Decree No. 08/2015/ND-CP ("Decree 08") providing guidance on the implementation of Law on Customs No. 54/2014/QH13 regarding customs, inspection, monitor and supervision procedures. The Decree provides some key changes including the requirement of electronic declaration for imported and exported goods, loosening the conditions on quotas for assessment of "priority enterprises", altering the procedures on consumption level and liquidation notification in terms of processing goods for production of exports.

Details on key changes of Decree No. 08/2015/ND-CP have been updated in Deloitte Tax Alert dated 30 January 2015.

Decree 08 will come into effect from 15 March 2015, replacing Decree No. 154/2005/ND-CP dated 15 December 2005 and other relevant regulations.



## GUIDANCE DOCUMENTS

### Corporate Income Tax ("CIT")

#### CIT incentives of projects prior to 01 January 2014

On 17 December 2014, the General Department of Taxation ("GDT") issued Official Letter No. 5643/TCT-DNL providing guidance on CIT incentives of projects prior to 01 January 2014. Accordingly:

- If the Project was granted the Amended Investment Certificate after 01 January 2014 and put into operation, generated revenue after 01 January 2014, the Project is entitled to CIT incentives for new investment project in accordance with provision at Clause 5, Article 18, Circular 78/2014/TT-BTC.
- If the Project was granted the Investment Certificate prior to 01 January 2014 and put into operation, generated revenue after 01 January 2014, the Project is eligible for CIT incentives applicable to investment expansion projects provided that the project satisfies the conditions on incentivized-geographic

areas and sectors as stated in Clause 3, Article 23, Circular 78/2014/TT-BTC.

#### Only projects currently entitled to CIT incentives are allowed to carry incentives from 2014

According to Clause 2, Article 23, Circular 78/2014/TT-BTC, enterprises that remain eligible CIT incentives on newly established investment projects by the end of the tax year 2013, are allowed to elect to continue the current incentives or enjoy the incentives as regulated in Decree No. 218/2013/ND-CP. Accordingly, the provision on carrying the CIT incentives is only applicable to **newly established investment projects which were entitled to CIT incentives prior to 2014**. If the enterprise was established from investment projects in industrial zones in 2011, the enterprises are eligible for CIT incentives as regulated in Decree No. 218/2013/ND-CP. However, if there was no regulation on CIT incentives for new investment projects in industrial zones at the time of establishment, the enterprises are not allowed to carry the CIT incentives from 2014.

The above is the guidance under Official Letter No. 5692/TCT-DNL dated 18 December 2014 issued by GDT on carrying the CIT incentives from 2014.

## Loan interest in relation to capital contribution in “Project enterprises” is deductible expense

The GDT issued Official Letter No. 5896/TCT-CS dated 30 December 2014 providing guidance on CIT treatment of loan interest to contribute charter capital in “project enterprises” (enterprises under the form of BOT, BTO, BT). Under this letter:

In case the Company has made **full capital contribution** and the project enterprises are established for the purposes of performing contracts with definite payback period (BOT, BTO), the loan interest incurred in relation to capital contribution (beyond self-generated capital which the Company undertakes) is still deductible for CIT purposes.

In addition, the Ministry of Planning and Investment previously issued Official Letter No. 8926/BKHDT-GSTDDT dated 26 November 2014 allowing BOT, BTO projects to account for loan interest (apart from self-generated capital the investors undertake) as deductible expenses for the purposes of CIT calculation.



## Inheritance of CIT incentives of enterprises established from business merger

On 07 January 2015, the Ministry of Finance (“MOF”) issued Official Letter No. 49/TCT-CS dated 07 January 2015 providing guidance on determination of taxable income for the purposes of CIT calculation as follows:

Enterprises established from merger shall inherit the CIT incentives granted to the former enterprises provided that the new enterprises are still eligible for CIT incentives. The above provision is also applied to the enterprise which converts its subsidiaries into dependant branches. Accordingly, such branches shall inherit the subsidiaries' incentives.

## Foreign-invested enterprises re-registering the extension of operation duration are not entitled to CIT incentives

On 07 January 2015, the MOF issued Official Letter No. 206/BTC-TCT providing guidance on CIT incentives for the extended operation duration upon re-registration of foreign invested enterprises. Accordingly, the re-registering enterprises are entitled to CIT incentives for the remaining period stated in the previous Investment License and not for the extended duration.

## Valued Added Tax (“VAT”)

### Guidance on essential content of the via-bank payment documents

On 25 December 2014, the GDT issued Official Letter No. 5806/TCT-KK providing further guidance on different types of via-bank payment documents and conditions on eligible via-bank payment documents for the purposes of tax credit and refund as well as sanctions on violations in terms of via-bank payments. Under this Official Letter, regarding purchased goods and services, the eligible via-bank payment documents shall be the documents delivered by the bank (where the buyer's account is opened) to the buyer in order to debit the beneficiary's account the remitted amount. Regarding exported goods and services, the eligible via-bank documents shall be the documents delivered by the bank (where the beneficiary's account is opened) to the beneficiary in order to credit the payer's account the remitted amount.



Such documents should at least contain the following information:

- Document number and reference
- Date of issuance
- The payer's name, address, number of Identification Card/Passport and account's number; the payer's bank name, address
- The beneficiary's name, address, number of Identification Card/Passport and account's number as stated in documents; the beneficiary's bank name and address
- The transaction's quantity, unit price and value in numbers and the total amount of the accounting documents for the purposes of payment and receipt in numbers and in words
- Contents of the transactions incurred
- Names and signatures of the preparer, the approver and other involved parties
- Other information in accordance with credit institutions' regulations (if any).

## Accounting records not presented in Vietnamese are not accepted

On 31 December 2014, the GDT issued Official Letter No. 5948/TCT-KK responding the enterprise's request on application of the accounting system in line with the group practice. Under Clause 1, Article 12, Law on Accounting No. 03/2003/QH11, in case the foreign language is used in the accounting documents, accounting books, the corresponding Vietnamese should be indicated concurrently. Accordingly, application of the group accounting systems which do not have the Vietnamese content shall not be accepted.

## Transfer of land lease right of Export Processing Enterprises ("EPE") shall be applied the VAT rate of 10%

According to guidance in Official Letter No. 5892/TCT-CS dated 30 December 2014 of the GDT, land lease right transfer activities by EPEs to domestic enterprises is not for carrying out the EPEs' business and hence, subject to VAT rate of 10%.

## Guidance on VAT declaration for investment project with various items

The GDT issued Official Letter No. 5713/TCT-KK dated 19 December 2014 providing guidance on VAT refund for investment projects with various items. Under the provision at Clause 3.c, Article 11, Circular No. 156/2013/TT-BTC, in case the investment project includes various items (e.g. factories, plants, machinery lines, etc.), those completed items which are put into production shall be subject to separate VAT declaration under Form 01/GTGT. Input VAT of the ongoing items shall be declared under Form 02/GTGT and shall be offset against the VAT payables of business activities incurred in the aforementioned Form 01/GTGT.





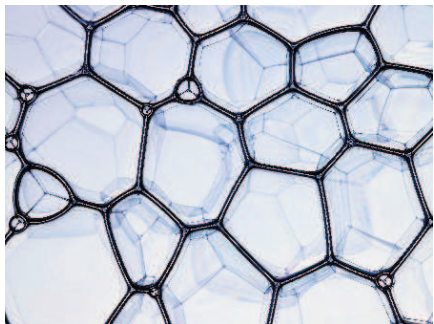
## Exported goods being returned shall not be entitled to VAT refund

According to guidance in Official Letter No. 5923/TCT-KK dated 30 December 2014 of the GDT on the VAT refund in terms of exported goods:

- In case the enterprises export goods, declare VAT and are granted VAT refund for the input VAT of the exported goods in accordance with the relevant regulations, and subsequently, the overseas customers return the exported goods due to quality unsatisfactory to the standards set out in the contracts, the input VAT of such exported goods shall not be refunded.
- In case the tax authorities refund to the enterprises the amount higher than the eligible amount, the non-refundable tax amount corresponding with the value of the exported goods being returned shall be clawed back. As the claw back only incurs upon the returns of the exported goods, late payment interest of the VAT refund regarding the exported goods being returned is calculated since the customs procedures for importing the returned goods are completed.

## Only goods despatch notes are required for delivery of entrusted exports

On 23 December 2014, the GDT issued Official Letter No. 5781/TCT-CS providing guidance on invoice usage in terms of entrusted exports. Specifically, according to Item 2.3, Appendix 4, Circular No. 39/2014/TT-BTC, upon delivery of exported goods to the entrusted parties, the entrusting parties shall issue goods despatch notes cum internal transport card along with internal transport order as documents for goods in transit. When the goods is actually exported, based on the reconciliation documents and confirmation on actual quantity and value of the exported goods provided by the entrusted parties, the entrusting parties shall issue invoices to the entrusted parties. The entrusted parties, in turn, shall issue commercial invoices to overseas customers.



## Personal Income Tax (“PIT”)

### Authorizing to pay PIT on behalf of expatriates performing contracts in Vietnam

In Official Letter No. 172/TCT-TNCN dated 16 January 2015, the GDT provides guidance on PIT treatment regarding expatriates performing contracts in Vietnam. Accordingly, income of an expatriate assigned to perform a contract in Vietnam shall be subject to PIT and such expatriate is obliged to conduct direct PIT declaration and payment to tax authorities in Vietnam. In case the expatriate's income is clearly provided in the contracts, he/she is allowed authorize the Vietnamese party to withhold and declare PIT on his/her behalf.



## Foreign Contractor Withholding Tax (“FCWT”)

### Imported goods in bonded warehouses delivered to non-tariff zones is still subject to FCWT

On 19 December 2014, the GDT issued Official Letter No. 5722/TCT-CS regarding the FCWT treatment of goods sales from bonded warehouses. Under Circular 103/2014/TT-BTC, foreign individuals and organizations exercising the rights to export, import, distribute goods in Vietnam shall be subject to FCWT.

Accordingly, in case the overseas enterprises imported goods to bonded warehouses and sell to Vietnamese enterprises in non-tariff zones, the overseas enterprises shall be subject to FCWT on such goods for exercising the rights to trade, distribute goods in Vietnam.

## Guidance on FCWT treatment for goods traded in bonded warehouse before 01 October 2014

On 15 January 2015, the GDT issued Official Letter No. 165/TCT-CS providing guidance on FCWT treatment in relation to goods sales with delivery point at bonded warehouse under contracts signed before 01 October 2014 – i.e. the date when Circular 60/2012/TT-BTC (“Circular 60”) expired. Under this Letter, in case the overseas enterprises provide goods to Vietnamese enterprises and the delivery point is located at bonded warehouses, then the overseas enterprises shall be subject to CIT payment in accordance with Circular 60.



## Import and Export Duties (“IED”)

### Exemption of submission of payment documents in the tax refund dossiers in relation to imported materials for production of exported goods

On 09 January 2015, the MOF issued Official Letter No. 275/BTC-TCHQ providing guidance on the preparation of the tax refund dossiers and non-tax collection on imported materials for production of exported goods.

Under this letter, in relation to imported materials for production of exported goods of which the products were actually exported and not domestically consumed, from 01 January 2015 onwards, the tax refund dossiers are not required to include the payment documents of the imported materials. In case there is any suspicion, after completion of tax refund and non-tax collection, the dossiers will be delivered to post-clearance inspection sub-department to conduct the inspection in accordance with relevant regulations.

## Delivery of imported goods as assigned to EPEs is not considered as temporary import for re-exports

According to Official Letter No. 1383/GSQL-GQ2 dated 17 October 2014 issued by the Department of Customs Monitoring and Management of the General Department of Customs, in case the enterprises import goods and sell to an overseas third party but made delivery as assigned to EPEs in Vietnam, the transactions are not re-exports across the international border or main border gates, thus are not qualified as temporary import for re-exports activities. However, the transactions shall satisfy the conditions for customs declaration procedures for on-the-spot import and export.

## Customs procedures in relation to importation of used materials, components and spare parts for repair and renovation purposes

Official Letter No. 14736/TCHQ-GSQL dated 10 December 2014 issued by the General Department of Customs providing specific guidance on customs procedures in relation to importation of used materials, components and spare parts of foreign traders for repair and renovation purposes.

Under this Letter, in case the enterprises register the imports as temporary imports for re-exports, the customs procedures shall be executed in accordance with Clause 4, Article 53, Circular 128/2013/TT-BTC at the bordergate customs authorities; in case the enterprises register the imports as imports for processing, the customs procedures shall be executed in accordance with Circular No. 13/2014/TT-BTC dated 24 January 2014 of the MOF.



## Enterprises not registering material consumption level before exports are not eligible for export duties exemption

According to Official Letter No. 14888/TCHQ-TXNK dated 15 December 2014 issued by the General Department of Customs, in case import duties are paid in relation to the goods imported for production of exports, the enterprises will be entitled to tax refund in proportion to the percentage of actual exported products and export duties exemption provided that the exported goods are evidenced to be processed from the whole imported

materials. The enterprises shall make notification on material consumption level on or before the export declaration of the first batch of the product which code is mentioned in the main material consumption level notification. If the enterprises fail to register the material consumption level before export, which is considered as not satisfying the documentation requirements for export duties exemption, the enterprises are not eligible for export duties exemption.





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