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Tax Newsletter

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NEW DOCUMENTS

New regulations on customs procedure and tax regulations on import & export duties

On 25 March 2015, the Ministry of Finance has officially issued Circular 38/2015/TT-BTC guiding on customs procedure, customs audit and supervision; import export duties and tax management on imported and exported goods. Circular 38 came into effect from 01 April 2015 and repealed Circular 128/2013/TT-BTC regarding customs procedure, customs management and supervision, and import export duties; Circular 22/2014/TT-BTC on e-customs procedure; Circular 13/2014/TT-BTC on processing; and Circular 94/2014/TT-BTC on customs procedure, customs management and supervision on temporarily imported for re-exported goods and other related regulations.

Accordingly, customs procedure for processed and manufactured for export goods under Circular 38 has the following remarkable changes:

- Enterprises are not required to notify processing contracts, materials codes, product codes, and register the capped level for manufacturing and processing for export activities.
- Enterprises are required to submit finalization reports for materials in accordance with the approach of Inventory Input – Output – Balance once a year for imported materials which are used for processing contracts, being imported for manufacturing exports. The submission deadline is within 90 days since the end of the financial year.
- Enterprises are not required to file and pay Value Added Tax of the imported materials and supplies for manufacturing exports which are still in the stock, not yet put into production, or had been put into production but yet exported after 275 days from the date of import declarations.

In addition, Circular 38 also updates a number of changes on customs audit and supervision, analyze classification and value. Other important changes in Circular 38 have been updated in Tax Alert of Deloitte dated 03 April 2015.



New regulations on the analysis and classification of imports and exports

On 30 January 2015, the Ministry of Finance has issued Circular 15/2015/TT-BTC guiding on the analysis and classification of goods for the purpose of checking quality and safety on Imports and Exports. This Circular came into effect from 17 March 2015, replacing Circular 49/2010/TT-BTC dated 12 April 2010; Article 17, Article 97 of Circular 128/2013/TT-BTC dated 10 September 2013; and Official Letter No. 1280/BTC-TCHQ dated 24 January 2014 of the Ministry of Finance.

Remarkable changes in Circular 15 have been updated in the Tax Alert of Deloitte dated 03 April 2015.

On 25 March 2015, the Ministry of Finance issued Circular 39/2015/TT-BTC regulating customs value of the imports and exports. The Circular updates and provides detailed guidance on the contents as previously stated in Circular 205/2010/TT-BTC dated 15 December 2010 and Circular 29/2014/TT-BTC dated 26 February 2014; and simultaneously replaces Circular 205 and Circular 29 mentioned above. Circular 39 was effective from 01 April 2015.

Important changes in Circular 39 have been updated in the Tax Alert of Deloitte dated 03 April 2015.



GUIDING DOCUMENTS

Corporate Income Tax (“CIT”)

CIT Incentives for the period of 2009-2013

On 04 February 2014, the General Department of Taxation issued Official Letter No. 432/TCT-CS guiding on CIT incentives. Accordingly, in case the enterprise is currently entitled to CIT incentives and had supplemented the production lines during the period of 2009-2013, the tax authority would consider whether such supplementation of the production line is subject to the cases of new investment projects or business expansion projects. If not, the additional income arising from such frequent machinery and equipment supplementation would be eligible for tax incentives in consistency with the original project for the remaining period calculated from the tax year of 2014.

Expenses paid for health insurance for employees are deductible

From 01 January 2014, expenses incurred by enterprises for health insurance, including accident insurance, medical insurance and healthcare insurance under Law on

Insurance Business, provided to employees are in the nature of welfare expenses. Total welfare expenses which are not exceeding the one month of actual averaged salary would be treated as deductible expenses for CIT purposes.

Above is the guidance in Official Letter 1694/BTC-CST dated 03 February 2015 issued by the Ministry of Finance.

Foreign exchange losses from re-valuation of payables without the supporting documents are non-deductible expenses for CIT purpose

In accordance with the guidance in the Official Letter No.632/TCT-CS dated 13 February 2015 issued by the General Department of Taxation, in the event that account payables in foreign currencies are in the nature of expenses for enterprise establishment but not supported with valid supporting documents, these expenses would not be considered as deductible expenses for the purposes of determining taxable income. Therefore, the enterprise is not allowed to record the foreign exchange losses from re-valuation of such account payables into deductible expenses for CIT purpose.

Value Added Tax (“VAT”)

Input VAT of other income being gifts is not creditable

On 13 February 2015, the General Department of Taxation issued Official letter No. 633/TCT-CS providing guidance on VAT regulations related to invoicing for gifts. Accordingly, goods received by the enterprise in form of gifts would be viewed as “other income” and then input VAT of these goods would not be allowed to be creditable regardless of the availability of VAT invoices. In addition, pursuant to Point 2.4, Appendix 4 of Circular 39/2014/TT-BTC, the enterprise is still required to issue VAT invoice, declare and pay output VAT for goods which are used as gifts to the customers..

VAT rates for goods sold to branches in non-tariff zones

On 12 February 2015, the Ministry of Finance issued Official letter No. 2335/BTC-CST addressing some issues in the implementation of Circular 109/2014/TT-BTC on financial policies and regulations for border-gate economic zones.

Accordingly, the application of 0% VAT rate on goods traded between the enterprise or its branches located in non-tariff zones and within the Vietnam territory would

depend on whether such subsidiary records its accounting books dependently or separately and whether customs declarations are opened or not. If it is an independent subsidiary and customs declarations for goods exported from the Vietnam territory to non-tariff zone are available, 0% VAT rate would be applied. Otherwise, if it is either a dependent subsidiary or customs declaration are not made, 0% VAT rate would not be applicable.

Guidance on invoice issuance for trade discounts

On 14 February 2015, the General Department of Taxation issued Official letter No. 667/TCT_CS addressing the issues related to the description of invoice for trade discounts. Accordingly, in case the Company offers price reduction, trade discounts based on actual quantity and sales volume up to a certain level by the customers, the Company will, on a monthly basis, base on the sales volume of the previous month and the price reduction, trade discounts which the enterprise has regulated for each period to issue the amended invoice. The description of the amended invoice should clearly specify “trade discount.”.

If the invoice describes “sales support” instead of “trade discounts”, the Company and its customer should prepare a minute detailing

this error and are responsible for the accuracy of such minutes and amended invoices.

Required documentation for offset payment between export revenue and bank loan

According to Official letter No. 834/TCT-KK dated 10 March 2015 issued by the General Department of Taxation, in case the Company exports its goods to overseas customers and agrees that such payment will be made through the Company's bank account opened in a Vietnamese bank, then such offset payment between export revenue and bank loan will be qualified as making payment via bank for the purposes of VAT creditability and refund if the following conditions are met:

- The Company and the Bank have a discount contract without recouring bill of exchange which stipulates that the Company borrow and payback the loan from and to the Bank by the total value of relevant exports; and

- The bank has a written notice to the Company on the amounts received from the overseas customers for the relevant exports and other information of the above-mentioned Contract.

Acceptance of via-bank payment voucher without bank's address

As there are currently the two conflicting guidelines on via-bank payment voucher, the General Department of Taxation issued Official letter No. 874/TCT-KK dated 12 March 2015 providing guidance on non-cash payment voucher in order to ensure consistency with general rules of banks and provide necessary information for tax administration purposes. Accordingly, in case via-bank payment voucher issued by the bank to the payer or the beneficiary does not specify "bank's address" but "bank's name" already includes the information of the name of bank's branch, such voucher is still qualified for VAT creditability and refund. Also, the tax authority will research the address of banks's branches on its website for the verification purposes of transaction.

Guidance for determination of VAT taxable income in case the buyer is responsible for tax payment at import stage

On 10 March 2015, the General Department of Taxation issued Official letter No. 827/TCT-CS addressing some questions related to the VAT regulations. Accordingly, in the event that the Company enters into the sales contract of which goods have been imported from overseas under the CIF Incoterm, the contract value is the CIF price; the sales contract stipulates that the contracting party (the purchaser) will be responsible for customs procedures and making tax payment at import stage, it is stated that:

- If the customs procedure for importing is made in accordance with the customs regulations, the seller is allowed to issue VAT invoice to the purchaser, on which VAT taxable income will be the value of the sales contract signed with the purchaser.
- Assessable value of the imported goods on the customs declaration which the purchaser has declared and made customs procedures will be deducted against VAT taxable income.

Guidance for input VAT of the complete investment project which has not yet been fully credited

On 10 March 2015, the General Department of Taxation issued Official letter No. 833/TCT-KK addressing VAT refund for the complete investment project. Accordingly, in the event that the Company has a new investment project which is separately accounted and has finished but input VAT has not yet been fully credited, such input VAT will be offset against input VAT of business operation activities and the refund is made in accordance with Clause 1, Article 18 of Circular 219/2013/TT-BTC and Circular 26/2015//TT-BTC.



Personal Income Tax (“PIT”)

PIT exemption for business trip expenses paid by overseas entity according to the internally capped level

On 12 February 2015, the General Department of Taxation issued Official Letter No. 594/TCT-TNCN guiding the implementation of PIT regulations for travel and accommodation expenses. Accordingly, based on Clause 2, Article 2, Circular No. 111/2013/TT-BTC dated 15/08/2013 of the Ministry of Finance on PIT, for employees working in international organizations, the representative offices of foreign organizations, the capped level for business expenses shall comply with the provisions of international organizations, representative offices of foreign organizations. Therefore, if airfare, travel and accommodation expenses, which are paid by the overseas company for its foreign employees working in Vietnam, are qualified to be expenses for business trips as regulated in business trip policies of such overseas company, they are not included in PIT taxable income of the relevant employees. Business trip expenses exceeding the the capped level would be included in the employees' taxable income.

The tax authority will coordinate in inspection of social insurance contribution

According to Official Letter No. 768/TCT-TNCN date 05 March 2015 by the General Department of Taxation to tax departments of cities and provinces, the tax authorities and social insurance agencies have entered into an Agreement on coordination to manage the collection of mandatory social insurance, health insurance and unemployment insurance (collectively referred as “SI”). Thus, during the tax audit and inspection, the tax authorities will also review the contribution and payment of SI. Upon the release of tax inspection result, the tax authorities would provide the status of SI payment to the SI agencies. In addition, the local tax authorities will also provide the SI agencies with the approved list of enterprises subject to tax audit, inspection during the year.

Some notes for 2014 PIT Finalization

On 26 March 2015, the General Department of Taxation issued Official Letter No. 1043 / TCT-PIT specifying a number of measures to boost the supports for enterprises and workers in the 2014 PIT Finalization, notably as below:

- PIT overpayment, if not applied for tax refund, will be offset against PIT payable of the next tax payment period. In the case of PIT refund, administrative penalty for late submission of PIT finalization dossiers (i.e. after 13 March 2015) will not be applied
- Dependants qualified for 2014 family deduction are those who have been registered and have the proper supporting documents, including individuals whose tax code has not yet been granted.
- The tax authorities are responsible to instruct and receive the PIT finalization dossiers under the current regulations. In case the tax authorities have recorded individual's finalization obligations into its tax administration system, they are not allowed to return the finalization dossiers and are obliged to process the dossiers as prescribed,
- The individuals who lost the tax withholding certificate (Copy 2 for taxpayers) are allowed to use the copy of tax withholding certificate (Copy 1 filed at the enterprise) for finalization purpose.

Foreign contractor withholding tax (“FCWT”)

No FCWT liabilities for debt forgiveness from foreign contracting parties

On 03 February 2015, the General Department of Taxation issued the Official Letter No. 415/TCT-CS guiding on FCWT in case of receiving debt forgiveness from its foreign parties. Accordingly, in case the enterprise signed a service contract with the foreign entity, but not yet made payment and its foreign partner has forgiven the debt for the enterprise, and then no overseas payment has been made, no FCWT liabilities arise. However, with respect to this debt forgiveness, the enterprise is required to record as its other income and declare, pay CIT liabilities as prescribed.



Goods delivery at Vietnamese border gates is not subject to FCWT

On 13 February 2015, the General Department of Taxation issued the Official Letter No. 611/TCT-DNL on FCWT regulations for goods delivered under DES/DAP term.

According to the Official Letter, in case the Vietnamese party enters into the contract of importing goods with the foreign supplier under DES/DAP Incoterm without the associated service provision in Vietnam and agrees in the contract that (i) the seller bears all risks relating to the goods until the delivery point at the port of Vietnam; (ii) the buyer bears all risks relating to the receipt, unloading and transportation of goods from the port as well as is responsible for customs procedure, customs clearance prior to the consumption of goods, then no FCWT liabilities arise.

Activities of being represent, acting on behalf of the parent company is considered as forming a permanent establishment in Vietnam

According to the Official Letter No. 313/TCT-HTQT dated 27 January 2015 on determination of

permanent establishment, the General Department of Taxation provides guidance as follows:

- Where the subsidiary in Vietnam, on behalf of the parent company, conducts purchase order transfers, purchase order notifications, urging the debt collections which are not the business activities registered in its Investment License/Business Certificate, then such activities shall be considered as forming representative relations for the parent company to perform partially its operations in Vietnam and thus forms a permanent establishment of the parent company in Vietnam.
- The fact that the parent company reserves the right to examine the books and records at the office of the subsidiary in Vietnam makes such subsidiary subject to certain control of the parent company and lost its independence in the implementation of contract with the parent company and accordingly forming a permanent establishment of the parent company in Vietnam.



Import Export Duty (“IED”)

Finance leasing companies are required to obtain license for importation of machinery & equipment for finance leasing

On 14 February 2015, the General Department of Customs issued the Official Letter No. 1591/TCHQ-GSQL guiding on imported goods for finance lease. As the Decree 39/2014/ND-CP dated 07 May 2014 of the Government replacing the Decree 16/2001/ND-CP which took effect from 25 June 2014 does not clearly specify that finance leasing companies are allowed to import goods for which the the lessee is allowed to import, finance leasing companies are still required to obtain import licenses for finance leasing goods which are subject to import licensing.

Consideration of the fully tax refund in case of hiring Export Processing Enterprise (“EPE”) for processing exports

In case the Company imports materials and hires Export Processing Enterprise to process and then receives the products for further production and export; the Company has paid import tax for

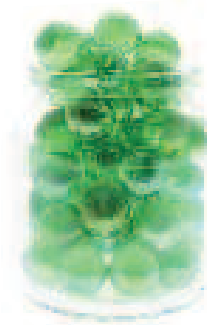
post-processed goods, when such goods are exported to the overseas entity in form of export manufacturing, the Company will be entitled to the refund of already paid import duties (including import duties for material and import duties calculated on the added value of post- processed goods) corresponding to the portion of actually exported goods.

The above guidance is stated in the Official letter No. 1444/TCHQ-GSQL dated 12 February 2015 of the General Department of Customs.

Tax Management

No longer receive online tax returns in PDF format since 15 April 2015

According to Official Letter No. 965/TCT-IT dated 20 March 2015 of the General Department of Taxation, in order to reduce the overload of the current system, since 15 April 2015, the tax authorities will no longer receive online tax returns in PDF format, but still allows XML format.



Simplification of administrative procedures on taxes and invoices

On 19 March 2015, the Ministry of Finance issued Decision No. 509/QD-BTC approving the plan to simplify some administrative procedures in the tax domain under the state management of the Ministry of Finance. Accordingly, the number of administrative procedures on taxes and invoices will be simplified as follows:

- Remove the procedure on notification of unused invoices;
- Remove the items [04]; [05] on CIT finalization returns Form 03/TNDN and item [11], [12], [13], [14] on Form 03-8/TNCN.
- Remove "Copy of certificate of capital contribution" in CIT declaration dossier for capital transfer.
- Remove provisional quarterly CIT returns Form 01A/TNDN and Form 01B/TNDN issued under Circular so156/2013/TT-BTC;
- Remove documents proving the ownership and usage of ships of the foreign transporters in the tax declaration dossier.

Before 30 June 2015, the Ministry of Finance will issue Circulars amending and supplementing a number of provisions relating to the

plan of simplifying the tax procedures as outlined above in Circular 39/2014/TT-BTC, Circular No. 80/2012/TT-BTC, Circular No. 156/2013/TT-BTC and Circular No. 151/2014/TT-BTC.

Guidance on electronic tax filings

On 20 March 2015, the General Department of Taxation issued Official Letter No. 964/TCT-CNTT on implementing and expanding electronic tax filing services (ETFS). Accordingly, the General Department of Taxation will provide the guidance on the procedures of electronic tax filings. Therefore, in order to conduct this procedure, the taxpayer must register to use electronic tax filing services at the Web portal of the tax authorities.

If successfully register, taxpayers can implement the electronic tax filing 24 hours a day and 7 days a week, including holidays (Saturday, Sunday, public holidays, New Year). The electronic tax filing date will be calculated from 0 hour to 24 hours of the same date.

In addition to the above main contents, the Official letter also provides guidance for: time of tax payment; research notifications, electronic tax payment voucher, confirmation of electronic tax payment; handling risks in the electronic tax filing process.



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