

An aerial photograph of a tropical coastline. The image shows a dense green forest bordering a turquoise sea. A prominent white sandy beach curves along the shore, with a small bay or lagoon in the center. The water transitions from a deep blue to a lighter turquoise near the shore. The overall scene is bright and scenic, typical of a tropical island.

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In this issue:

NEW DOCUMENTS	3
New regulations on customs procedures for export and import goods sent via postal services	3
New regulations on priority regime in the implementation of customs procedures, customs inspection and supervision	3
GUIDING DOCUMENTS	5
Corporate Income Tax ("CIT")	5
Guidance on the recognition of salary expenses paid after tax finalization	5
Guidance on the recognition of insurance expenses	5
Guidance on deductible expenses and the constitution of permanent establishment under processing contracts	5
Value Added Tax ("VAT")	6
VAT reports for merely producing and trading goods not subject to VAT	6
Guidance on VAT applied for tobacco and alcohol in case of temporary import and re-export	6
VAT for "cooperative support" and "market development support"	6
Issuance of invoices, and tax creditability for lost goods being indemnified	6
Guidance on VAT in case of unregistered bank account	7
Foreign Contractor Withholding Tax ("FCWT")	8
FCWT with regards to money remittance services to overseas	8
Purchase of foreign documents online subject to FCWT	9
Import – Export Tax ("IET")	9
Tax exemption for imports of preferential investment projects after the beginning of production	9
VAT on imported software	10
Guidance on customs procedures of EPE's branch outside Export Processing Zone	10
Pilot process to issue certificate of origin (C/O) via the Internet	10
EPE which rents production premise must adjust the investment certificate before installing machinery	11
Imports from bonded warehouses must have C/O Form D back-to-back to be entitled to preferential treatment under ATIGA:	11
Officially expanding the national one-door regime at international seaports	11
Royalties tax ("RT")	12
Determination of taxable value for natural resources sold after processed	12
Environmental Protection Tax ("EPT")	12
Adjustment of EPT rates for some gasoline, oil and lubricant products	12
Tax management	13
Policies to strengthen the reform of tax and social insurance procedures of the Prime Minister	13
Officially stop receiving tax dossiers in PDF format from 10 May 2015	13

NEW DOCUMENTS

New regulations on customs procedures for export and import goods sent via postal services

On 14 April 2015, the Ministry of Finance issued Circular No. 49/2015/TT-BTC providing regulations on customs procedures for mails, packages and parcels of goods imported and exported via postal services of designated enterprises. Circular No. 49/2015/TT-BTC takes effect from 29 May 2015, replacing Circular No. 99/2010/TT-BTC dated 09 July 2010.

Accordingly, Circular No. 49/2015/TT-BTC has some notable contents as follows:

- Goods exported and imported via postal services must have their customs declarations submitted using electronic declaration, except for some cases which are allowed to continue with the paper-based customs declarations prescribed in Clause 2, Article 25 of Decree No. 08/2015/ND-CP;
- Declaration for goods subject to tax rate of 0% can be combined on a customs declaration for multiple shippers, similar to the case of goods subject to tax exemption/ not subject to tax.

New regulations on priority regime in the implementation of customs procedures, customs inspection and supervision

On 12 May 2015, the Ministry of Finance issued Circular No. 72/2015/TT-BTC providing regulations on the application of priority regime in the implementation of customs procedures, customs inspection and supervision with regards to imported and exported goods, and related administrative procedures. The Circular takes effect on 26 June 2015, replacing Circular No. 86/2013/TT-BTC dated 27 June 2013 and Circular No. 133/2013/TT-BTC dated 24 September 2013.

Circular No. 72/2015/TT-BTC has some notable contents as follows:

- Supplementing on additional subjects eligible to priority regime which are customs agents and major investment projects under the construction phase. Requirement for customs agents is to reach at least 20,000 declarations/year;
- With regards to enterprises applying priority mode:

- + Reducing the conditions to apply priority regime, reducing minimum import and export turnover; however, supplementing on additional conditions of not having overdue tax debts and satisfying the requirements for internal control systems.
- + Supplementing on additional priority policy compared to the previous regulations, such as:
 - o Allowing for customs clearance to incomplete declarations
 - o Prioritizing on customs formalities, freight handling, freight forwarding to private warehouses while awaiting for specialized inspection results,
 - o Prioritizing for goods imported and exported on the spot, raw materials, components and spare parts purchased from bonded warehouses for production purposes to be imported before customs declarations.
- + Prioritized enterprises which are not processing enterprises are randomly inspected to assess legal compliance status with the inspection rate not exceeding 0.5% of the enterprises' total number of import and export declarations.

Enterprises already recognized as prioritized enterprises under Circular No. 86/2013/TT-BTC and Circular No. 133/2013/TT-BTC continue to be entitled to priority regime under Circular No. 72/2015/TT-BTC.



GUIDING DOCUMENTS

Corporate Income Tax (“CIT”)

Guidance on the recognition of salary expenses paid after tax finalization

According to Official Letter No. 1699/TCT-CS issued by the General Department of Taxation dated 06 May 2015, in case the Company has accrued 13th month salary for its employees but not actually paid at the time of tax finalization for the accruing year, these expenses will not be considered as deductible expenses for that year. These expenses can be included as deductible expenses in the year of actual payment if there are sufficient invoices and source vouchers as prescribed by law.

Guidance on the recognition of insurance expenses

On 17 April 2015, the General Department of Taxation issued Official Letter No. 1501/TCT-CS providing guidance on the recognition of insurance expenses. Accordingly:

- If the insurance expenses are incurred during the construction phase to form the base of the project's fixed assets, they shall be included into the value of the

project.

- If the insurance expenses are incurred in the business and production phase, they shall be included as deductible expenses when determining taxable income for CIT purpose.

The above recognition can only be conducted in case the insurance expenses are appropriate in accordance with relevant regulations, have sufficient invoices and source vouchers, have been declared and paid in terms of foreign contractor withholding tax (for oversea insurance enterprises) as prescribed by law.

Guidance on deductible expenses and the constitution of permanent establishment under processing contracts

In case Vietnamese enterprises sign processing contracts with foreign enterprises including the purchase of raw materials, machinery and equipment on behalf of the foreign companies without adjusting the processing price to include the value of the materials, machinery and equipment which have been purchased on behalf; the purchase value is not the input of Vietnamese enterprises. Meanwhile, via the implementation of processing contracts, Vietnamese enterprises have, on behalf of the

foreign companies, conducted part of the foreign enterprises' business and, therefore, are deemed to constitute a permanent establishment of the foreign enterprises.

The above is the guidance under Official Letter No. 1840/TCT-CS issued by the General Department of Taxation dated 15 May 2015.

Value Added Tax (“VAT”)

VAT reports for merely producing and trading goods not subject to VAT

On 15 May 2015, the General Department of Taxation issued Official Letter No. 1850/TCT-CS responding to Dak Nong Taxation Department on the declaration and credit of input VAT. According to this Official Letter, the current regulations do not provide exemption from VAT declaration for organizations only producing and trading goods not subject to VAT. Therefore, in case the Company only produces and sells goods not subject to VAT, the Company still has to conduct monthly or quarterly VAT declaration as regulated.

Guidance on VAT applied for tobacco and alcohol in case of temporary import and re-export

Under Clause 5, Article 1 of Circular No. 26/2015/TT-BTC effective from

01 January 2015, tobacco and alcohol products imported then exported are not subject to the tax rate of 0%. Enterprises importing these products and then re-exporting shall not be subject to output VAT but input VAT is not creditable and refundable. This is the guidance under Official Letter No. 1589/TCT-KK dated 24 April 2015 issued by the General Department of Taxation responding on VAT policy.

VAT for “cooperative support” and “market development support”

Recently, the General Department of Taxation issued Official Letter No. 1417/TCT-CS dated 15 April 2015 and Official Letter No. 1874/TCT-CS dated 18 May 2015 providing guidance on VAT for some supportive grants.

Accordingly, in case agents receive the “market development support” to cater for the conduct of activities to expand and develop the product market for the paying party or the “cooperative support” on the basis of their assigned sales targets, these supports are subject to VAT declaration and payment. Therefore, the receiver must declare and make payment of VAT for these supports.

Issuance of invoices, and tax creditability for lost goods being indemnified

As guided in Official Letter No. 4403/BTC-CST dated 06 April 2015

issued by the Ministry of Finance on VAT treatment for lost goods and assets:

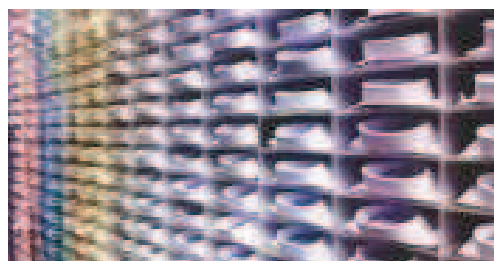
- Where the insurance contract specifies that the indemnity does not include VAT on lost goods and assets subject to VAT; the business establishment, when receiving the insurance indemnity, must issue receipt as regulated and may include the input VAT on lost goods and assets for crediting purpose. The insurance enterprise issues paying vouchers for the insurance indemnity;
- Where the insurance contract specifies that the indemnity includes VAT on lost goods and assets subject to VAT; the business establishment, when receiving the insurance indemnity, must issue VAT invoice (which states clearly the lost value being indemnified without VAT and the indemnified VAT amount); then declare, calculate the output VAT payment corresponding to the amount of VAT being indemnified, and may include the input VAT on lost goods and assets for crediting purpose;
- Where the insurance enterprise authorizes the insured enterprise to repair assets; Asset repair together with equipment and spare parts replacing costs are included in VAT invoice under the name of the insured enterprise;

insurance enterprise makes payments to the insured enterprise in accordance with the insurance contracts; the insurance company may credit the VAT corresponding with the insurance indemnity according to the VAT invoice under the name of the insured enterprise. The insurance indemnity paid by the insurance enterprises to the insured enterprises with value of VND 20 million or more must be paid via bank as regulated.

Guidance on VAT in case of unregistered bank account

On 07 May 2015, the General Department of Taxation issued Official Letter No. 1728/TCT-KK providing guidance on VAT in case of unregistered bank account. Accordingly:

- Where the account to receive payments for exported goods of the Company have not been registered with the tax authorities, but the export products still meet the conditions for tax credit and refund, the Company shall be sanctioned for violations of tax registration, but the goods is still entitled to the VAT rate of 0%.



- If the Company uses the above-mentioned unregistered bank account to pay for domestic goods, the Company shall be sanctioned for violations of tax registration regarding the bank account information, and at the same time:
 - If the supplier has not informed the tax authorities on the bank account information, the Company shall not be eligible for the credit or refund of relevant input VAT.
 - If the supplier has informed the tax authorities on the bank account information or the Company has supplemented the information about bank account before the tax authorities announce the decision on inspection or audit, the tax authorities shall base on the actual transaction to consider for tax credit and refund as regulated.



Foreign Contractor Withholding Tax (“FCWT”)

FCWT with regards to money remittance services to overseas

According to Official Letter No. 1924/TCT-DNL dated 20 May 2015, the General Department of Taxation provides guidance on FCWT declaration and payment in case Vietnamese bank signed agreement with foreign banks (foreign contractors) to perform money remittance services for customers from Vietnam to foreign countries and pay service fees to remit money under the agreement to foreign parties.

Accordingly, the FCWT applicable to each form of remittance is as follows:

- Where the Vietnamese customer remitting money to overseas has to pay for all expenses incurred both in Vietnam and overseas (OUR fee): Vietnamese bank must declare, withhold and remit

FCWT on behalf of the foreign contractors for the fee entitled by the foreign contractors.

- For the following 02 cases:
 - (i) Vietnamese customer remitting money to overseas only pays fee incurred in Vietnam, the fee incurred overseas is paid by the receiving customers overseas (SHARE fee); and
 - (ii) Vietnamese customer remitting money to overseas without having to pay any fee, all fee is paid by the receiving customers overseas (BEN fee);

Due to direct income from overseas receiving customers by the foreign banks is considered as income generated in Vietnam, Vietnamese bank is obliged to declare, withhold and remit FCWT for foreign contractors as regulated for the income received by the foreign contractors.

Purchase of foreign documents online subject to FCWT

On 16 March 2015, Ho Chi Minh City Tax Department issued Official Letter No. 2244/CT-TTHT regarding FCWT policy. According to this Official Letter, in case the Company purchases specialized materials and magazines from overseas via online suppliers, international advertisers in foreign countries, when making

payment by credit card for overseas suppliers, the Company is obliged to withhold and make payment of FCWT. The expenses of this FCWT, if supported by sufficient payment vouchers, withholding vouchers shall be considered as deductible expenses for CIT purposes.

Import – Export Tax (“IET”)

Tax exemption for imports of preferential investment projects after the beginning of production

Where investment projects have been put into business and production, but not all the goods in the List of tax exemption registered with Customs have been imported, the goods not yet imported continues to be exempt from tax if meeting the following conditions:



- + Amendment of Investment Certificate or written permission for extension of the project's implementation schedule is available;
- + Enterprises committed to import the remaining tax-exempt goods according to the List of tax exemption, strictly following the extended schedule and report on the utilizing status as regulated.

The above is the guidance under Official Letter No. 4000/TCHQ-TXNK dated 05 May 2015 issued by the General Department of Vietnam Customs.

VAT on imported software

On 23 April 2015, the Ministry of Finance issued Official Letter No. 5382/BTC-CST providing guidance on VAT on software.

Accordingly, software which is packaged, or manufactured under an independent module from the device and can be installed on devices by a third party (not the manufacturer), the software is considered an independent software which value can be separated from the value of the device; the value of the software is not subject to VAT. Where the software is embedded, integrated within the device, it shall be considered as part of that device; whereby VAT on software is calculated according to the VAT rate applicable to the device containing the software.

Guidance on customs procedures of EPE's branch outside Export Processing Zone

EPE's branch outside the EPZ shall apply tax policy, commodity management policy as applicable for commercial import and export according to the licensed import and export rights, shall not be entitled to investment incentives, tax incentives and other financial incentives for the production of exported goods entitled by the EPE.

The branch must conduct customs procedures for transactions between the branch and the EPE and does not have to conduct customs procedures when trading with local companies.

The Official Letter states that the Ministry of Finance is preparing a Decree amending Clause 9, Article 1 of Decree No. 164/2013/ND-CP towards eliminating the requirement for EPE to establish a separate branch to exercise the right of import and export.

The above content is under Official Letter No. 446/GSQL-GQ2 dated 13 May 2015 issued by the General Department of Vietnam Customs.

Pilot process to issue certificate of origin (C/O) via the Internet

On 24 April 2015, the Ministry of Industry and Trade issued Decision No. 4082/QD-BCT providing

regulations on the pilot process to issue C/O form D via the Internet, with the pilot period of up to 03 months.

Accordingly, traders only have to apply for the C/O form D via the Internet in electronic files without submitting paper copies. However, after receiving the approval notification for C/O application dossier via the Internet, the trader must submit to the C/O issuing authority the paper copy of Form C/O which has been fully declared together with the printed approval notification for C/O application dossier from the C/O issuing authority to obtain the result within 02 working hours.

List of selected traders participating in the pilot process shall be issued by the Ministry of Industry and Trade depending on each period.

EPE which rents production premise must adjust the investment certificate before installing machinery

In case EPE rents production premise to serve business and production activities, the installation of machinery and equipment for the premise and put them into operation are only allowed after adjusting the name and location of this premise on the EPE's Investment Certificate. In addition, this premise must also satisfy conditions of customs inspection and supervision prescribed for EPEs.

The above content is under Official Letter No. 3663/TCHQ-GSQL dated 23 April 2015 issued by the General Department of Vietnam Customs responding to Dong Nai Customs Department.

Imports from bonded warehouses must have C/O Form D back-to-back to be entitled to preferential treatment under ATIGA:

According to Official Letter No. 435/GSQL-TH dated 12 May 2015 issued by the General Department of Vietnam Customs, for goods in bonded warehouses imported into the domestic market wishing to enjoy the preferential tax rate under the ATIGA, enterprises need to provide the customs authorities with the C/O Form D issued by the Ministry of Industry and Trade back to back with the original C/O issued by the exporting country's authorities competent to issue C/O for goods stored in bonded warehouses.

Officially expanding the national one-door regime at international seaports

Official Letter No. 3487/TCHQ-CNTT dated 20 April 2015 issued by General Department of Vietnam Customs officially announces on the extended deployment of the national one-door regime at some international seaports, including the ports of Quang Ninh Province, Hai Phong City, Da Nang City,

Ho Chi Minh City and Ba Ria - Vung Tau Province. Accordingly, from the above-mentioned time forward, all of the enterprises operating in the field of transportation and freight forwarding will implement procedures to declare sea vessels, including the electronic cargo manifest (e-manifest), on the national one-door portal at <https://www.vnsw.gov.vn>.

Royalties tax (“RT”)

Determination of taxable value for natural resources sold after processed

On 11 May 2015, the General Department of Taxation issued Official Letter No. 1772/ TCT-CS providing guidance on the determination of taxable value for royalties purpose in case of natural resources sold after processed. Accordingly, the determination is in accordance with Decree No. 12/2015/ND-CP amending some articles of Decree 50/2010/ND-CP. Specifically, for natural resources which are not immediately sold but put into production or processing for



domestic or export consumption, the taxable value is determined on the basis of the customs value of the products after production, processing or the selling price of the products after production, processing exclusive of export taxes (if any) and other related costs from production, processing until export or from production, processing until sold in the domestic market.

The above content has also been included by the General Department of Taxation in the draft Circular replacing for Circular No. 105/2010/TT-BTC dated 23 July 2010 issued by the Ministry of Finance providing guidance on Royalties tax. The draft Circular is in the process of improvement to be put into consultation with the ministries and departments concerned.

Environmental Protection Tax (“EPT”)

Adjustment of EPT rates for some gasoline, oil and lubricant products

From 01 May 2015, the EPT rates for some petrol, oil and lubricant products shall be adjusted in accordance with Resolution No. 888a/2015/UBTVQH13 as follows:

- + Petrol (except for ethanol): increased from VND 1,000/liter to VND 3,000/liter.
- + Aviation gasoline: increased from VND 1,000/liter to VND 3,000/liter.

- + Diesel oil: increased from VND 500/liter to VND 1,500/liter.
- + Fuel oil, grease: increased from VND 300/liter to VND 900/liter.
- + Lubricants: increase from VND 300/kg to 900 VND/kg.

The above is guidance under Circular 4237/BTC-CST dated 02 April 2015 issued by the Ministry of Finance.

Tax management

Policies to strengthen the reform of tax and social insurance procedures of the Prime Minister

On 20 April 2015, the Government Office issued Notification No. 140/TB-VPCP of the Prime Minister on the reform of administrative procedures in the domain of tax and social insurance. Accordingly:

- Policy to shorten the registration time of land use rights and assets attached to the land shall be studied and supplemented
- Tax authorities are assigned to perform the task of collecting social insurance
- From 01 July 2015 onwards, one enterprise code shall be used consistently in all relations and transactions between the state authorities.

- New regulations on social insurance dossiers and procedures under the Vietnam Social Insurance Law shall be applied early (from 01 April 2015 instead of 01 January 2016) to facilitate business' operation.

Officially stop receiving tax dossiers in PDF format from 10 May 2015

According to Official Letter No. 1731/TCT-CNTT dated 07 May 2015 issued by the General Department of Taxation, from 10 May 2015, the tax authorities officially stop receiving tax dossiers (including invoices reports) in PDF format and shall only accept tax dossiers in XML format. However, Notes to the financial statements and balance sheet attached to tax declaration can still be in the Excel, Word format.





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