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# **Tax Newsletter**

April 2018

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## NEW DOCUMENTS

### Circular amending supplementing regulations related to VAT, CIT and PIT

On 16 March 2018, the Ministry of Finance issued Circular No. 25/2018/TT-BTC ("Circular 25") providing guidance on Decree No. 146/2017/ND-CP dated 15 December 2017 ("Decree 146"), amending and supplementing regulations related to Value Added Tax ("VAT"), Corporate Income Tax ("CIT") and Personal Income Tax ("PIT"). Key points addressed in the Circular are:

- **Regarding VAT:** Supplementing on goods and services that are not subjected to VAT: Extracted natural resources and minerals exported without further processing into other products; exports that are products mainly derived from natural resources and/or minerals whose total value plus energy cost makes up at least 51% of the prime cost, except for some cases specified in Clause 1, Article 1 of the Decree No. 146/2017/ND-CP.
- **Regarding CIT:** Supplementing on the deductibility conditions of depreciation expenses in case the enterprise transfers part of or entire capital to another enterprise.

- **Regarding the PIT:** Clarifying regulations on the income derived from "transfer securities" which is subjected to PIT. In which, the income from "transfer securities" being subjected to PIT excludes income from stock transferring, but includes the income from stock transferring in joint-stock company.

Circular 25 also regulates additional taxable income from securities under Clause 1, Article 6 of Securities Law, including rights, warrants, call option, put option, future contracts, securities classes and indexes.

Circular 25 became effective on 1 May 2018. The transactions arising from 1 February 2018 subject to the amendment of Decree 146/2017/ND-CP, shall be implemented as regulated in Decree 146/2017/ND-CP and Article 1, Article 2, Clause 2, 3, 4 of Article 3 of Circular 25.



## The issuance of Decree amending and supplementing the customs procedures, audit, inspection and control

On 20 April 2018, the Government issued Decree No. 59/2018/ND-CP amending and supplementing Articles of Decree No. 08/2015/ND-CP dated 21 January 2015 providing detailed regulations and enforcement of customs procedures, audit, inspection and control.

Highlighted points in the Decree are as follows:

- Additional cases subject to compulsory inspection of Export Processing Enterprise's facilities, including (1) first time importing for processing, manufacturing; (2) have potential signs of changing address, business line, scale, production capacity without notification; (3) outsource all processing goods for export;
- Additional procedures related to the cases where Customs authorities have sufficient base to reject the declared value of imported goods. Specifically, Customs authorities shall notify and request the customs declarants to provide

additional documentation to support the declared values within 5 working days from the announcement date and releasing goods as in accordance with the regulations. If the additional information is submitted within the above time limit, and accepted by Customs authorities, then Customs authorities shall permit customs clearance;

If the declarants do not provide supporting information within the regulated time limit, or the additional information provided is not acceptable, then Customs authorities shall carry out the customs valuation and impose the tax as regulated by prevailing regulations.

This Decree became effective on 5 June 2018.



## Renewing and supplementing the list of domestically produced machinery, equipment and spare parts

On 30 March 2018, the Ministry of Planning and Investment issued Circular No. 01/2018/TT-BKHDT ("Circular 01") renewing and supplementing the List of Machinery, equipment, spare parts, special transportation, raw materials, components, semi-finished products that were produced domestically. Details are listed on Lists attached with Circular 01, including:

- Appendix I: List of special-use transportation means;
- Appendix II: List of machinery, equipment;
- Appendix III: List of building materials;
- Appendix IV: List of raw materials, materials, components and replacement spare parts;
- Appendix V: List of accessories, car parts;
- Appendix VI: List of material necessary for Oil and Gas Production activities;

- Appendix VII: List of ship building constituents, materials and semi-finished products;
- Appendix VIII: List of machinery, equipment, raw materials, materials, accessories related to telecommunication - information technology, digital contents, software;
- Appendix IX: List of plant varieties, livestock breeds, fertilizers and pesticides.

Accordingly, in addition to the supplement of the former List in Circular No. 14/2015/TT-BKHDT ("Circular 14"), Circular 01 supplement the additional Lists (including appendix V, VIII and IX).



Except for the specialized goods which must meet the technical standard, other goods manufactured domestically included in the Lists attached to the Circular are universally applied regardless of usage purposes.

This Circular took effect as of 15 May 2018 and replaced Circular 14 dated 17 November 2015.

Additionally, on 15 March 2018, the Ministry of Industry and Trade (MOIT) simultaneously issued Decision No. 811/QD-BCT supplement two telecommunication equipments and Decision No. 812/QD-BCT supplement 29 equipments and software to the List of goods domestically manufactured. Two documents are effective from the signing dates.

## Procedures on issuance of C/O Form B for Vietnamese export goods

On 3 April 2018, the MOIT issued Circular No. 05/2018/TT-BCT regulated on the origin of goods.

Specifically, the Circular provides the List of Product Specific Rules (in Appendix I) and guidance on the determination of origin of goods as a basis for considering the issuance of Certificate of Origin Form B for Vietnamese exported goods.

The Circular includes sample Form B, guidance on the origin criteria to be satisfied, and guidance on the completion of Form B.

This Circular came into effect from 3 April 2018.





## GUIDANCE DOCUMENTS

### Corporate Income Tax (“CIT”)

#### Tax incentives for the project of manufacturing goods of supporting industries in concentrated information technology zones

On 9 March 2018, Hanoi Tax Department issued Official Letter No. 9134/CT-TTHT guiding on the CIT and VAT incentives to investment projects.

This Official Letter mentioned regulations in Article 4 of Circular No. 21/2016/TT-BTC and Article 11 of Circular No. 96/2015/TT-BTC on the policy of development of supporting industry. Accordingly, tax incentives only apply to Project of manufacturing supporting industry products which are “prioritized for development” and Investment Project at concentrated information technology zones that “were established under the Decision of the Prime Minister”. Specifically:

- If the project is for manufacturing industrial goods on the List of supported industries, for which a competent agency has granted an incentive

certificate for manufacture of supporting industry products as in accordance with Article 4 of Circular No. 21/2016/TT-BTC and/or manufacturing at Concentrated Information Technology Zones established under the Decision of the Prime Minister, then such project would be entitled to CIT and VAT incentives.

- If the project is the one of manufacturing normal industrial goods (not for prioritized for development) and manufacturing at Concentrated Information Technology Zones which are not established under the Decision of the Prime Minister, such project is not entitled to CIT and VAT incentives.



## Conditions for depreciation expenses of fixed assets to be deductible expenses

On 7 February 2018, Hanoi Tax Department issued Official Letter No. 12424/CT-TTHT guiding on the condition for depreciation of fixed assets in corporation which has manufacturing construction stone.

Whereby, regarding the depreciation expenses, as regulated in Clause 2.2, Article 4 of CircularNo. 96/2015/TT-BTC, except for fixed assets under financial lease contracts, depreciation expenses of other fixed assets without proof of ownership of enterprise (i.e contract, invoice, payment vouchers, etc.) even being used for business operation would not be deductible expenses.

## Deductibility for accruals of the land clearance expenses

On 26 March 2018, the General Department of Taxation (GDT) issued Official Letter No. 11504/CT-TTHT on the deductible expenses regarding to the compensation expenses, land clearance expenses.

In cases where a company gradually transfers real estate according to the completion progress and compensation expenses for land clearance are not approved by competent authority, the company can accrue the expenses based on the frame price provided by Provincial People's Committee in accordance with each type of land at the time of making accrual expenses.

At the time of payment, all supporting documents for the compensation with all signature of receivers shall be considered as conditions for the corresponding compensation expense to be considered as deductible expenses for the transfer of real estate for CIT purposes.

In cases where the compensation cost for land clearance of the company is higher than the level approved by competent authority, the differences shall not be considered as deductible expenses.





## Foreign Contractor Withholding Tax (“FCWT”)

### FCWT on the capital arrangement fees arising from the bank’s capital loan agreements

On 26 March 2018, Hanoi Tax Department issued the Official Letter No. 11500/CT-TTHT on FCWT of the expenses associated with loan interest.

Accordingly, if a Vietnamese company signed the capital loan agreement with overseas bank and this bank is not subjected to FCWT on the interest expenses incurred under the Decision of Prime Minister, the Vietnamese company is required to lodge an Official Letter to seek confirmation and guidance from the managing tax authority.

Capital arrangement fees and commitment fees specified in the capital loan agreement, which are separated from interest expense, would be still subject to FCWT.

The Vietnamese company is responsible for withholding and paying on behalf of the foreign contractors for VAT and CIT before making payment. In that case, the input VAT portion paid on behalf shall be deductible in accordance with the

expenses from loan contract is exclusive of CIT, the Vietnamese company shall be allowed to record it as deductible expenses for CIT purposes.

Previously, the GDT issued Official Letter No. 724/TCT-CS dated 2 March 2018 which shared the same opinion with Hanoi Tax Department in this regard.

### Compensation for breach of contract paid to overseas companies shall be withheld and remitted FCWT

On 26 March 2018, Hanoi Tax Department issued Official Letter No. 11503/CT-TTHT providing guidance on FCWT for the compensation for breach of contract.

Accordingly, if a company signs a contract for the transfer of share to overseas companies, but then had to cancel the contract and pay the compensation, the company has to declared and remit FCWT on behalf of the overseas company before making payment of the compensation.

The applicable FCWT rates shall be 2% of CIT and exempted from VAT. Previously, on 12 October 2016, Ho Chi Minh Tax Department also

issued the Official Letter No. 9849/CT-TTHT expressing the same view of the mentioned above Official Letter.

## Value Added Tax (“VAT”)

### The transfer of land with infrastructure must be issued invoice with 10% of VAT

On 13 March 2018, Hanoi Tax Department issued Official Letter No. 9543/CT-TTHT providing guidance on VAT regulations on transfer of land with infrastructure.

Accordingly, in case a company incurs transaction of transfer of land use right and infrastructure, the company shall issue invoice to its customers in accordance with Clause 1, Article 16 of Circular No. 39/2014/TT-BTC.

The applicable VAT for the transfer of real estate is 10%. When issuing the VAT invoice, the Company would take into account the deductible land cost for determination of taxable price as regulated at Clause 10, Article 7 of Circular No. 219/2013/TT-BTC.

The company shall calculate and remit the CIT from the transfer of real estate in accordance with Article 17 of Circular No. 78/2014/TT-BTC.

### The parent company shall carry out the procedures for VAT refund for affiliated entities which had closed their tax codes

On 23 March 2018, the GDT issued Official Letter No. 975/TCT-KK on handling the VAT Refund for affiliated entities which had already closed their tax codes.

Accordingly, regarding the affiliated entities which had closed their tax codes, in case of transferring the investment project which is not subjected to the declaration and remit of VAT, the VAT portion which were remitted to the State budget shall be considered as overpaid tax. The parent company who is the management entity shall carry out the procedures for VAT refund on behalf of affiliated entities which had closed their tax code.

## Tax Administration

### The time for revenue from the transfer of real estate to be recognized for CIT purposes is when the ownership is transferred

On 28 March 2018, Hanoi Tax Department issued Official Letter No. 12185/CT-TTHT providing guidance on the time for determining revenue for calculating taxable income of the transfer of real estate activities.

Accordingly, the time for CIT declaration and remit regarding the transfer of real estate is the time when ownership is transferred to the buyers. This regulation did not distinguish whether buyers' side had registered the ownership of real estate to competent authority. Therefore, at the time when ownership is transferred, the Company must declare and remit the CIT eventhough the buyers have not registered for the ownership yet.

Real estate business shall not be entitled to the refund for housing project if the fixed assets are not formed

On 3 April 2018, the GDT issued the Official Letter No. 1136/TCT-CS on the VAT refund regarding the investment project.

Accordingly, in case when a company operates in construction industry, real estate business, conducts an investment project to build house for sale or lease without forming fixed assets and this is considered as a main business activity of the company, this case shall not be entitled to receive VAT refund for investment project.



## Import - Export Duties and Customs

### Conditions to register for the entitlement of 0% import tax on automobile components and cars' spare parts

On 27 March 2018, the General Department of Customs (GDC) issued Official Letter No. 1636/TCHQ-TXNK guiding on the implement of import tax incentive program related to automobile components and cars' spare parts. Accordingly, highlighted point are as follow:

- *Entitles of and conditions for excuting the Program:* If companies meet the requirements regulated in Clause 2, Article 7a of Decree No. 125/2017/ND-CP shall be entitled to register for the import tax of 0% related to automobile components and cars' spare parts. Conditions for "components and cars' spare part that cannot be manufactured in Vietnam" are determined as in accordance with Circular No. 14/2015/TT-BKHTD.
- *Documentations, procedures for program registration:* Documentations for registration of 0% import tax rate entitlement is carried out as per regulations at Point a Clause 3 Article 7a Decree No. 125/2017/ND-CP and submit at the managing Customs authority where the enterprise's headquarters or its production factory is located. The submission deadline is before the first shipment.
- *Import customs documentations and procedures:* The documents and procedures for parts importation under the Tax Incentive Program would be carried out as per current regulations. In which, the customs declaration code is A43 for car parts used for production and installation for cars group registered under the Program as code regulated under Group 98.49 and is not able to be produced domestically.



- *Group 98.49's 0% tax code applications documentations and procedures:* At the declaration stage of car parts, enterprises are still required to declare and remit import duty at standard tax rate. Annually (60 days from 30 June or 31 December at the latest), enterprises submit application dossiers for 0% tax rate entitlement for the imported car parts.

Particularly, under guidance at Clause 3 Article 4 Decree No. 156/2017/ND-CP, one of the conditions for special preferential duty rate application is “goods must be transported directly from the exporting country to Vietnam”. However, on-spot imported goods are goods that are delivered/received within Vietnam, not transported directly from exporting country to Vietnam, hence, not satisfying the conditions under ATIGA.

## On-spot imported goods are not entitled to preferential duty treatment under ASEAN Trade In Goods Agreement (ATIGA)

On 12 April 2018, the GDC issued Official Letter No. 1973/TCHQ-TXNK guiding the application of special preferential duty rate under ATIGA for on-spot imported goods.



## Choosing assessment organization in case of categorization disagreement with Customs authorities

On 23 March 2018, the GDC issued Official Letter No. 1542/TCHQ-TXNK regarding determining the HS code. Specifically, if an enterprise disagrees with the analysis and categorization result of the Customs authorities, the enterprise would need to contact the Department of Customs Assessment to request a sample to be assessed by an accredited organization chosen by the enterprises. The Customs authorities would in making their final determination take into consideration the assessment by the accredited organization.

## Pre-determined HS code cases

Pursuant to Official Letter No. 1614/TCHQ-TXNK dated 26 March 2018, the GDC only pre-determines HS code for goods planned for importation, and does not determine HS code in case the enterprises disagree with the categorization result of the Customs authorities.

## Review of shipment with wrong declaration of standard import duty rate

On 30 March 2018, the GDC issued Official Letter No. 1693/TCHQ-TXNK guiding the review of application of standard import duty rate.

During the audit and review on MHS and Ecustoms System, the GDC has discovered that some enterprises were currently declaring and applying the import duty rates that were not in line with the import duty rate as regulated under Decision No. 36/2016/QD-TTg dated 9 September 2016 and Decision No. 45/2017/QD-TTg dated 16 November 2017 of the Government.

As a consequence, the GDC requested the provincial Customs authorities to conduct inspection and review the status of declaration and application of standard import

duty rate under the current regulations; and where incorrect duty rates had been applied, recover any underpaid import duty, and apply administrative penalties as appropriate.

## Opinion from the MOIT regarding inspection of imported vehicles and machines' efficiency

On 12 February 2018, the MOIT issued Official Letter No. 1316/BCT-TKNL in response to Official Letter No. 1111/BTC-TCHQ of the Ministry of Finance regarding inspection of imported goods' energy efficiency. Some of the main points include:

- Law on Economical and Efficient Use of Energy prohibits the production, import and usage of vehicles and machines with efficiency below the minimum energy efficiency. Accordingly, vehicles and machines belong to the list regulated at Decision No. 78/2013/QD-TTg ("Decree 78") which do not meet the minimum energy efficiency would not be allowed to import into Vietnam market.



- Regarding inspection of energy efficiency, for the enterprises' convenience, the MOIT has agreed to move the inspection from "before" to "after" customs clearance.
- Regarding specialized industrial machines, the MOIT may extend the deadline of submission of energy efficiency documentations from 15 days (under current regulations) to 60 days to allow for sufficient time for inspection.
- Regarding the List of goods subject to compulsory energy efficiency inspection issued under Decision No. 78 and Decision No. 04/2017/QD-TTg, the MOIT also proposed to the Ministry of Finance that it requires modification and supplementation of name and HS code to be compatible with the List of import/export goods 2018.



## Late submission of Certificate of Origin (C/O) could lead to rejection of claims to special preferential duty rate and, for next importation the C/O must be provided at time of importation

On 13 February 2018, the GDC issued Official Letter No. 978/TCHQ-GSQL providing guidance on the submission of supplementary C/O.

Specifically, where enterprises do not submit the C/O within 30 days (from the customs declaration), the GDC advises that:

- The enterprises should follow the guidance under Official Letter No. 451/TCHQ-GSQL dated 25 January 2018, and
- For the following importation, enterprises must provide the original C/O at the time of customs declaration. If the enterprises could not present the original C/O at the customs declaration stage, then Customs may not allow for customs clearance, or release for storage at the enterprises' premises.

## Customs declaration return lookup

On 23 April 2018, the GDC issued Official Letter No. 2181/TCHQ-CNTT guiding the registration of account for accessing the Electronic Customs Declaration Returns Portal.

Particularly, the subject allowed for access to the Electronic Customs Declaration Returns Portal under the Rules settled at Decision No. 33/2016/QĐ-TTg excludes enterprises, and only includes the states' competent authorities, financial institutions and C/O issuance authorities. Accordingly, enterprises cannot register account to access the Electronic Customs Declaration Returns Portal to look up the returns' information.

In case of demand for looking up information of electronic customs declaration return, enterprises may opt for the following ways:

- Using the utility "Customs Declaration Return Lookup" provided on the Customs Electronic Portal (<https://www.customs.gov.vn>);

- Using the SMS service to number 0869600633 provided by the GDC. To register for this service, please visit [tkhqdt.customs.gov.vn/doanhnghiep.aspx](https://tkhqdt.customs.gov.vn/doanhnghiep.aspx) and follow the instructions.

Furthermore, for further assistances from the GDC, please contact via:

- The Helpdesk's hotline of the GDC;
- Electronic email to address [bophanhotrotchq@customs.gov.vn](mailto:bophanhotrotchq@customs.gov.vn).



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