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Tax Newsletter

December 2017

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NEW REGULATIONS

GUIDING DOCUMENTATION

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NEW REGULATIONS

Amendments of the regulations relating to pilot project on self-certification of goods origin

The Ministry of Industry and Trade has issued Circular No. 27/2017/TT-BCT amending and supplementing certain articles of Circular No. 28/2015/TT-BCT dated August 20th, 2015 regarding implementation of pilot project on self-certification of goods origin under ASEAN Trade in Goods Agreement (ATIGA). The Circular took effect from December 6th, 2017. The main amendments/ supplements are as follows:

- Amending criteria for joining pilot project on self-certification of goods origin: Elimination of criterion *"Export turnover to ASEAN to be granted C/O Form D in the preceding year reaches at least USD 10 million"*. Instead, enterprises should qualify as *"small and medium or above-sized enterprises"*.

- Supplementing restrictions of self-certification of origin on certain kinds of goods: limiting the self-certification right of *"shipments classified by the Customs authorities into yellow or red channel"*.

For detailed information of Circular No. 27, please refer to Deloitte's Tax alerts sent to our clients in December 2017.

New procedure of Customs Inspection on import/export commodities

On December 11th, 2017, the General Department of Customs issued Decision No. 4129/QD-TCHQ on the organization, operation, working relationship of the Inspection Team and order, procedure of a customs inspection. Some highlights are as follows:

(1) The Customs authorities will annually select the enterprises and topics to be inspected based on the following criteria:

- List of key enterprises (enterprises with different risk levels and business lines) as determined by the General Department of Customs and the local Custom Departments;

- Specific industry sectors or topics where there is known risk (e.g. based upon historic inspections);

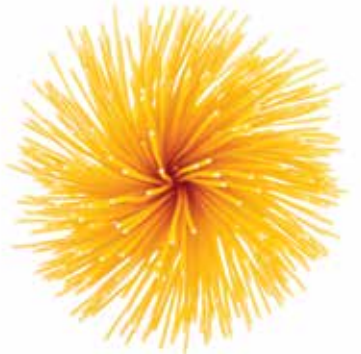
- The results of analyzing and evaluating collected information on the inspected topics.

List of annual inspected topics is set based on high to low risk order.

(2) The Customs authorities will additionally conduct inspection in cases where:

- They have identified any organization or individual with signs of violation of customs law, tax law and other charges applicable to imported or exported commodities;
- They are handling complaints from enterprises, or investigating corruption;
- They have been specifically requested by the Minister, the Chief Inspector of the Ministry of Finance or the General Director of the General Department of Customs (for the provincial Customs Departments level).

Inspection decisions will be announced by the Customs authorities to the enterprises to be inspected within 15 days from the date of signing.



Regulation of coordination on enterprise management between the Customs and Tax authorities

On November 23rd, 2017, the Ministry of Finance issued Decision No. 2413/QD-BTC regarding the exchange of information and coordination between the Customs & Tax authorities. The Decision advises that the Customs authorities and the Tax authorities will:

- Exchange and provide information about importing/ exporting enterprises;
- Coordinate with evaluation and application of compliance evaluation results, enterprises risk rating;
- Coordinate with evaluation, recognition and application of preferential regimes for accredited enterprises according to the provisions of law;
- Coordinate with the implementation of measures for collecting tax debt, late payment and fine amounts, conducting enforcement to measure tax-related or customs-related administrative decisions;
- Coordinate with settling problems in the working process and implementation of professional measures in customs and tax management administration.

There is a noteworthy point that during the process of VAT refund to enterprises, the Tax authorities have to offset the refundable amount against any tax debts, late payments and fine amounts for import/export commodities managed by the Customs authorities.

Detailed contents of information exchanged and provided by each authority are provided in Appendix 01 and 02 issued together with Decision No. 2413.

GUIDING DOCUMENTATION

Corporate Income Tax (CIT)

Expenses for using trademark

On November 7th, 2017, the General Department of Taxation issued Offical Letter No. 5132/TCT-CS providing guidance on the conditions for trademark expenses to be treated as deductible expense, and that the relevant license contract should be registered and approved by the Ministry of Industry and Trade in order to secure legal validity.

In accordance with the Commercial Law, in order to legally use trademark in Vietnam under franchising method, the Franchisor (The Foreign party) must register them with the Ministry of Industry and Trade while getting approval to conduct franchise activities from overseas into Vietnam.

When a License contract has not yet been registered by the Franchisor, and has not been approved by the Ministry of Industry and Trade for the purpose of securing legal validity in Vietnam, the relevant trademark expenses paid by Franchisee (the Vietnamese party) to the Franchisor shall not be treated as deductible expenses for CIT calculation purpose.

Marketing and promotional bonuses expenses for agents' employees

On November 23rd, 2017, the Hanoi Tax Department issued Official Letter No. 76515/CT-TTHT providing guidance on the conditions for direct expenses paid to employees in relation to:

- Marketing for product sales;
- Customer services;
- Promotional bonuses and support of agents' employees to perform the sales incentive programs for the purpose of promoting business; and
- Market development for the company and the corporation;

to be treated as deductible expenses, for CIT calculation purposes, the following conditions must be satisfied:

- Actual expenses can be evidenced as being incurred in relation to production and business activities of the company;
- Support conditions and levels are specified in the company's emulation incentive plans and the contracts signed between the company and the corporation;
- There should be complete list of employees who are eligible for receiving allowances complying with the conditions and levels as specified; and
- The company shall deduct, declare and pay personal income tax (PIT) on these expenses in accordance with current PIT regulations.

Tax declaration in the form of transfer of capital associated with real estate

On December 19th, 2017, the Hanoi Tax Department issued Official Letter No. 81215/CT-TTHT providing guidance on the transfer of capital associated with real estate. Specifically, the Official Letter states that when the company invested 100% of fixed assets (including factories, machineries, equipment, means of transport, etc.) to establish subsidiaries, and now wants to sell all subsidiaries in the form of transferring capital associated with real estate, then taxes shall be declared as follows:

- Value Added Tax (VAT): As the transfer of capital is not subject to VAT, when the disposing entity issues their invoice, the transfer value should be shown in the line containing "selling price", and the lines containing "VAT rate" and "VAT amount" should be crossed out.
- Corporate Income Tax (CIT): Declaration of tax payment on real estate transfer. The purchase price of the transferred capital is the value of accumulated capital up to the time of transfer stated in accounting books and accounting vouchers which should be certified by an independent audit company.

Personal Income Tax (PIT)

Reimbursement of tuition fees are exempt from employees' PIT declaration

The Hanoi Tax Department issued Official Letter No. 5249/TCT-TNCN on November 15th, 2017 providing guidance on determining PIT taxable income on tuition fee reimbursed to employees by the company.

The Official Letter advises that such reimbursement amounts should not be treated as taxable income for employees' PIT calculation purpose, providing that:

- The company has designated employees to attend courses (that are appropriate for their profession);
- Those designated employees made advance payment of the tuition fees from their personal account;
- The company reimburses the tuition fees by transferring such amounts to the employees' personal accounts; and
- The company holds valid invoices issued by the training organizations to the company.

Determining PIT for expatriates being tax resident having both Gross and Net income

On December 20th, 2017, the Hanoi Tax Department issued Official Letter No. 81381/CT-TTHT providing guidance on determining PIT for case of payment of both Gross and Net income. Details are as follows:

- When paying Net income (excluding PIT) to employees, such income is required to be converted into Gross income (including PIT) for PIT calculation purpose.
- When paying Gross salary (including PIT) and Net benefits in kind (excluding PIT) such as house rental, medical examination and insurance, etc. the Gross salary must be converted back to Net salary to aggregate with the remaining net benefits in kind, which then, to be converted into Gross income for PIT calculation purpose.

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Foreign Contractor Withholding Tax (FCWT)

FCWT on foreign individuals concluding business contracts in Vietnam

On November 23rd, 2017, the General Department of Taxation issued Official Letter No. 5392/TCT-TNCN providing guidance on FCWT applicable for foreign individuals concluding services contracts with domestic companies. Specifically:

- If a foreign individual is a trader, the income from services provision shall be subject to VAT and PIT as prescribed for foreign contractors and the Vietnamese companies are required to declared and make payment on their behalf.
- Foreign individuals who are traders must also have business registration certificates in accordance with the law of the foreign countries, or equivalent documents proving that such individuals are traders recognized by the law of foreign countries; those documents are required to be consularly legalized for using in Vietnam.
- If the individual is not a foreign trader, income from the provision of services shall be subject to PIT as employment income in accordance with current PIT regulations.

Value Added Tax (VAT)

Tax policies on housing rental of expatriates

On December 1st, 2017, the Hanoi Tax Department issued Official Letter No. 78210/CT-TTHT providing guidance on issuing invoices relating to housing rental for expatriates. Specifically:

- When a company arranges an apartment in its building for expatriates' accommodation, the company is required to issue invoices (VAT invoices or Sale invoices) with sufficient information and calculate VAT as if they provide goods/services to customers. In addition, the company is not allowed to declare relevant input VAT for expatriates' accommodation as creditable input VAT.
- The company can record expense for using such apartment as deductible expenses for CIT calculation purpose as per CIT regulations.

- Expenses of using such apartment should be included in the taxable income for the expatriates' PIT calculation purpose but shall not exceed 15% of the total taxable income (excluding house rental fee) of the expatriates.

VAT declaration on lending extraprovincial warehouses

On November 27th, 2017, the General Department of Taxation issued Official Letter No. 5444/TCT-KK providing guidance on VAT related to renting warehouses, storing and preserving goods in other provinces, namely:

- When a company in one city/ province signs a contract with companies to hire warehouses located in other cities/provinces (i.e. for purpose of lending warehouses, storing and preserving goods, unloading goods) the hiring company is not required to declare VAT in each location where the hired warehouses are located.
- If the hiring company has subsidiary units conducting business outside the province or city where its head offices are located (subsidiary units located in different provinces), those subsidiary units shall directly submit the VAT declaration to its managing tax authority.
- If the hiring company has subsidiary units locating in a different province doing businesses, those subsidiary units must declare VAT with the Tax Department that directly manages them. However, if those subsidiary units do not directly sell goods and have no sales turnover, they shall all make tax declarations at the company's head offices.

Only not fully net off VAT of investment projects is allowed to be refunded

On November 23rd, 2017, the General Department of Taxation issued Official Letter No. 5403/TCT-CS regarding VAT refund of investment projects.

The Official Letter states that in cases where a branch has outstanding creditable input VAT from its investment project, they are only allowed to conduct the VAT refund procedure if, after offsetting the creditable input VAT of the head office, the outstanding amount is VND 300 million or more.

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Copyright leasing subjected to VAT rate of 10%

On December 19th, 2017, the Hanoi Tax Department issued Official Letter No. 81104/CT-TTHT providing guidance on VAT applicable for software services.

The Official Letter advises that when the provision of software services is in accordance with Article 9 of the Decree No. 71/2007/ND-CP and Circular No. 09/2013/TT-BTTTT, then those software services are not subject to VAT. However, in cases of leasing copyright, 10% VAT would be applied.

Invoices

Invoices issued after tax code closure are invalid

On November 8th, 2017, the General Department of Taxation issued Official Letter No. 5161/TCT-KK specifying that the issuance of invoices after the closure of valid tax code is illegal. Furthermore, the company is not allowed to restore the tax code solely in order to finalize invoices use and would be imposed administrative penalty on such violation.

In addition, such invoices need to be recalled in accordance with the applicable regulations and the buyers are not allowed to declare input VAT and expenses arisen from the issuance of such invoices.

Issue invoices for the advertising subsidies

On November 27th, 2017, the Hanoi Tax Department issued Official Letter No. 771020/CT-TTHT guiding that the beneficiary is required to issue invoices, calculate VAT for subsidies received from the sponsors for advertising purpose.

The relevant input VAT can be credited providing that sufficient supporting invoices are available and conditions for input VAT to be credited are met.

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Tax Administration

The tax liabilities of dependent branches must be offset by the refundable tax amounts

On November 15th, 2017, the General Department of Taxation issued Official Letter No. 5263/TCT-KK advising that any requested refund amount of the company must first be offset against any outstanding VAT liabilities of its dependent accounting branches before tax refund processing.

Specifically, the process to be followed is:

- The company's managing tax authority is responsible for reconciliating and determining the company's tax liabilities and 90-day-overdue debt owed by the dependent accounting branches based on figures of the Tax administration application system to be responsible by the branches' managing tax authorities;
- The company is responsible for the amount of tax paid by its branches and explaining to the company's managing tax authority;
- Simultaneously, the company's managing tax authority conducts a search combining the data on the Tax administration system and the filing system of branches to determine the offset amount and amount to be refunded to the company.

Late payment interest in case of making supplement tax declaration dossiers

On November 21st, 2017, the General Department of Taxation issued Official Letter No. 5352/TCT-KK providing guidance on the handling of late payment interest when the taxpayer makes supplement declaration.

When a company submits a supplementary tax declaration, which decreases the payable tax amount of the previous period, the late payment interest amount (payable from the due date of payment to the actual date of payment) will be calculated as follows:

- From the due date of payment to the date of filing of the supplementary declaration - based upon the tax liability originally declared; plus
- From the date of filing the supplementary declaration to the actual date of payment- based upon the revised tax liability declared.

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Increased tax amount equal to or less than overpaid tax will be exempted from late payment interest

On November 23rd, 2017, the General Department of Taxation issued Official Letter No. 5407/TCT-KK guiding the tax policy for late payment interest.

In cases where in the same tax payment period, taxpayers have paid tax amounts equal to, or higher than any liability arising from supplementary declaration of the same tax, then taxpayers are not required to pay late payment interest calculated on the increase tax amount arisen from the supplementary declaration.

In contrast when, in the same tax payment period, a shortfall in the tax due is determined, then taxpayers are required to pay late payment interest.

Export and Import Tax - Customs

Enterprises are allowed to extend the time limit for payment of VAT at the import stage up to 60 days

On November 8th, 2017, the General Department of Customs issued Official Letter No. 7292/TCHQ-TXNK regarding the extension of VAT payment for certain imports.

Specifically, in cases where:

- Enterprises have financial difficulties (i.e. they have no financial sources to pay VAT at the import stage) and are borrowing commercial banks to import machineries and equipment for investment project; and
- Those enterprises also meet the conditions specified in Article 1 of the Circular No. 134/2014/TT-BTC,

then payment of import VAT can be extended by up to 60 days from the prescribed time limit for tax payment.

Note that, in the case of goods imported in multiple shipments, the list of imports requested for renewal must be prepared by the enterprises and attached to the first consignment (irrespective of

the place of registration of the List of goods exempted from import tax).

Tax assessment at price consultation is not necessarily carried out through post-clearance inspection

According to the guidance of Official Letter No. 7562/TCHQ-TXNK issued on November 17th, 2017, when an enterprise cannot prove the customs valuation of their imported goods, the Customs authorities have right to immediately impose tax during the consultation process, without carrying out post-customs clearance inspection.

Re-export of the wrong form will not be exempted from export tax and refunded of import tax

On December 6th, 2017, the General Department of Customs issued Official Letter No. 4888/TXNK-CST on the refund of import tax.

Specifically when imported goods are re-exported but the enterprises do not open the declarations according to the re-export form (B13) but open the declarations under the business export form (B11), enterprises are not eligible to be refunded of Import duty paid and export tax exemption.

Requesting explanatory documents when making amendments or supplements to the Finalization Report (FR)

On December 4th, 2017, the General Department of Customs issued Official Letter No. 7889/TCHQ-GSQL providing guidance on the filing of amendments or supplements to FR.

In cases where the enterprise discovers errors in the preparation of the FR on the use of raw materials, supplies, machineries, equipment and export goods already submitted to Customs authorities, they may be amended and/or supplemented such FR.

However, it is necessary to explain the reasons in the "comment box" and submit explanatory documents related to the supplementary declaration through the customs system or by paper.

Notice of some goods declared wrong HS code

In Official Letter No. 5591/TCHQ-TXNK dated August 25th, 2017, the General Department of Customs requested the local Customs Department to reconsider the incorrect declaration of HS codes of some commodities. On October 27th, 2017, the General

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Department of Customs issued Official Letter No. 6984/ TCHQ-TXNK supplementing the list of some goods subject to reviewing the application of HS codes. In particular, some notable items include some fabrics, water-based paints, metal surface cleaning preparations, adhesive tapes, aluminum alloy bars, pre-printed information packaging or products containing more than 70% by weight of petroleum oils.

When enterprises fail to strictly comply with the regulations on the declaration of HS codes, the local Customs Departments are requested to collect the outstanding tax amounts, if any.

For detailed information of the Official Letter No. 6984, please refer to Deloitte's Tax alerts sent to clients in December 2017.

HS code of goods which are packaged with full products information

The General Department of Customs issued the Official Letter No. 7471/TCHQ-TXNK dated November 14th, 2017 providing guidance on the classification of printed packaging films with full products information.

Specifically when the item is packaging films, showing printed colors, images, full of images and information content of the product, in addition to the label, the product should be classified under HS code 4911.99.90.

Imported goods for manufacturing exported goods (MEG), which are destroyed, are not exempted from tax

On November 9th, 2017, the General Department of Customs issued Official Letter No. 7380/TCHQ-TXNK on the tax policy of imported goods. Specifically:

Goods which are imported by MEG, but are destroyed instead of being used in production process, will not be exempted from import tax as regulated.

In addition, the Official Letter also guides the determination of customs value when transferring domestic consumption of waste products, scrap materials, and excess supplies. Specifically:

- For excess raw materials and supplies: The taxable custom value is the price paid up to the first import stage, declared at the initial custom declaration;
- For excess scraps, waste products of production process: The taxable custom value is calculated as actual payment or actual value to be paid at the time of conversing aims.

Explanation on some regulations on chemicals

On December 8th, 2017, the Department of Chemicals - the Ministry of Industry and Trade issued Official Letter No. 1372/HC-VP clarifying some difficulties in implementing Decree No. 113/2017/ND-CP ("Decree 113") guiding the Law on Chemicals. Some key points include:

- Definitions: Unifying the understanding of some terms used in Decree 113 (including "Chemical", "Substance", "Mixture" and "Chemical Activity");
- Industrial pre-substances: Mixtures containing pre-substances must also be managed as for pre-substances as required by Decree 113. However, products/ goods containing industrial pre-substances are not subject to the regulation of Decree 113, including but not limited to: Sulfuric acid contained in lead batteries, phenylacetic acid used in some fragrances, acetic acid (foodstuff) used as organic solvent, pharmaceutical, rubber, paint, dye, food, fabric bleach, etc., acetone in detergents, cleaning tools, used for two-component epoxy resin, paint and varnish, tartaric acid contained in plants, paint products, ink containing pre-substances, etc.;
- Declaration of chemicals: When mixtures of substances containing chemicals on the List of chemicals which must be declared (Annex V), in case of being classified as dangerous chemicals, organizations and individuals are required to declare the chemicals for only components named in Annex V of Decree 113 when importing;

- Exemptions from declaration of chemicals: Chemicals imported under 10 kg weight are exempted from chemicals declaration. This exemption is applied on a per chemical per-import basis - not the total weight of various chemicals. Note: The exemption does not though apply to chemicals that are restricted for production or trading;

- Documents required when carrying out procedures for exporting/importing chemicals: Enterprises are not required to present documents such as:

  - Certificates of eligibility for production or trading of chemicals subject to conditional production or trading;

  - Licenses for production and trading of chemicals that are restricted for production and trading;

  - Approval of plans and measures to prevent and respond to chemical incidents;

  - Control of toxic chemicals trading when carrying out customs procedures.

- Management of on-spot export/import chemicals: (1) Certifying chemicals declarations is not applicable for organizations and individuals purchasing chemicals in Vietnamese territory. (2) Organizations and individuals operating in export processing zones is required to obtain permits of the Ministry of Industry and Trade when importing pre-substances from domestic enterprises. Organizations and individuals are not required to apply for the permits from the Ministry of Industry and Trade when exporting their pre-substances from domestics into export processing zones.

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