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Tax Newsletter

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NEW REGULATIONS

New regulations on the application of trade remedies

On January 15, 2018, the Government issued Decree No. 10/2018/ND-CP ("Decree 10") providing further guidance on implementation of Law on Foreign Trade Management related to trade remedies. Specifically, Decree 10 provides guidelines on the following:

(i) Grounds of conduct, sequence, the procedures, timing, contents, grounds to terminate the investigation of trade remedies cases;

(ii) Method to determine losses of domestic industry;

(iii) Anti-circumvention of trade remedies;

(iv) Application and review of trade remedies;

(v) Responsibilities of the relevant authorities during the investigation;

(vi) Exemption from the application of trade remedies;

(vii) Handling of trade remedies for the exported goods of Vietnam.

Notably, in accordance with Article 8, Decree 10, from the date of issuance of the investigation decision to the conclusion of the investigation on trade remedies, the Ministry of Industry and Trade ("MOIT") may impose compulsory import declaration requirements on the goods subject to investigation.

MOIT may conclude that certain categories of goods can be exempt from the application of trade remedies, when it is determined that such exemption would not negatively affects the wider application of trade remedies.

However, where enterprises and individuals, who are granted, or entitled to, exemptions fail to comply with the Regulations; or the conditions of exemption; or not properly co-operate with the investigation, then the MOIT may:

- Withdraw their decision or not consider granting exemptions from the application of trade remedies, and
- Notify the Department of

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Customs to handle the application of the trade remedies in accordance with the Regulation.

In addition, under Article 73 of this Decree, the trade remedies may be extended (to counter evasion of trade remedies) to:

- Materials/components/parts imported from countries subject to trade remedies, to be used in production of goods subject to trade remedies;
- Goods similar to those under trade remedies, which are imported from a third country, are manufactured from materials/components/parts sourced from countries subject to trade remedies;
- Imports from countries subject remedies which do not significantly differ from subject to trade remedies;
- Goods that are subject to trade remedies that have been transshipped/ transited through a third country;
- Goods that are subject to trade remedies, that change their business/ distribution model to achieve lower levels of trade remedies.

This Decree takes effect from January 15, 2018 and replaces other previous legal documents.

Procedures for the registration of import tax incentive for an automotive manufacturer

On January 8, 2018, the Ministry of Finance ("MOF") issued Decision No. 26/QD-BTC ("Decision 26") announcing two new procedures relating to automotive manufacturing and assembling enterprises. These are:

- The procedure to register for import tax incentive program in automotive manufacturing and assembling;
- The procedure to register to apply for import tax rate at 0% for automotive components of group 98.49.

Enterprises need to register at the Customs authorities where their headquarters or factories are located. Dossiers and processes for each procedure are provided in Section II – the Appendix of Decision 26.

The effective date of Decision 26 is backdated to November 16, 2017.

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Revision to the scope of customs territories

On January 23, 2018, the Government issued Decree No. 12/2018/ND-CP ("Decree 12") to amend, and supplement, some articles of Decree No. 01/2015/ND-CP ("Decree 01") dated January 2, 2015, related to the geographical scope of customs operation, and responsibilities, when performing investigations to prevent smuggling and illegal transportation across borders.

Decree 12 replaces all the Annexes on the scope of customs operation at inland border point and inland watery and supplements terms of the determination of the scope of customs operation for the express delivery area.

Notably, the new decree replaces Clause 8, Article 8, Decree 01, to clarify that when Customs perform physical checks on import/export goods at the manufacturers/ re-processors premises, then these facilities are considered as being within the scope of Customs control.

Similarly, with regard to the inspection and supervision of imports and exports of goods by express delivery, the facilities where the goods are gathered for distribution, are considered to be within the scope of Customs control.

Decree 12 takes effect from March 10, 2018.

Removing the incentive program for the economic zone at the border gate as of Decision No. 72/2013/QD-TTg

On January 16, 2018, Prime Minister issued Decision No. 01/2018/QD-TTg ("Decision 01") relating Decision No. 72/2013/QD-TTg ("Decision 72") dated November 26, 2013, which concerns regulations of financial structure and policies for border gate economic zone.

Specifically, Decision 01 has removed the incentive granted for border gate economic zone provided in Decision 72.

Those investment projects, which are currently entitled to certain incentives, will be allowed to apply such incentive for the remaining period. In the event the Decision stipulates a higher incentive rate, the investor may opt to choose which incentive rate will be applied for the remaining period.

Decision 01 takes effect from March 1, 2018.

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GUIDING DOCUMENTATIONS

Corporate Income Tax ("CIT")

Expenses to purchase an apartment for foreign contractors' personnel without labor contract, or to accommodate the branch staff during Company's meetings/ events, are not deductible for CIT purpose

On January 18, 2018, Hanoi Tax Department released Official Letter No. 2736/CT-TTHT providing guidance on the recovery of input Value Added Tax ("VAT"), and fixed asset depreciation in relation to purchase of an apartment.

Where an enterprise purchases an apartment for accommodation purpose of foreign contractors' personnel (expatriates without labor contract), or for branch staff during conventions/events, such purchases do not qualify as housing and lodgings for Company's employees. Consequently, the input VAT of the apartment is not creditable and corresponding depreciation expense is not deductible for CIT purpose.

Royalty payments to overseas entities are only CIT deductible if legal conditions are met

On January 15, 2018, the General Department of Taxation issued Official Letter No. 231/TCT-CS providing guidance on CIT treatment on royalty payments to overseas entities.

Specifically, if the Vietnamese enterprise is unable to provide any documentation, issued by the overseas authorities, proving that there are industrial property rights, intellectual rights embedded within information received (e.g. specifications, manufacturing know-how) necessary for the production of goods in Vietnam, then this payment shall not be treated as a deductible expense for CIT purpose.

View on the processing of interest expense at some city/ provincial Departments of Taxation

Deloitte has recently become aware of conflicting of views on the handling of interest expense by

some city/provincial Departments of Taxation. Specifically:

On December 12, 2017, Binh Duong Tax Department issued Official Letter No. 21065/CT-TT&HT which provided guidance that interest expense could be treated as deductible expense for those enterprises having transaction with related-parties and independent parties as follows:

- Where an enterprise does not have any transactions with related-parties, then deductible expenses for CIT calculation purpose (even total interest expense incurred in a tax year) shall not be required to conduct in compliance with Decree No. 20/2017/ND-CP of the Government.

- Where an enterprise has related-parties transactions which do not include loan transaction with related parties, then the total interest expense in tax year shall be treated as deductible for CIT calculation purpose and not require to follow the regulations of Item 3, Article 8, Decree No. 20/2017/ND-CP that means the threshold 20% of EBITDA will not be applicable to this case.

- Where an enterprise has transactions with both related parties and independent parties, total CIT deductible interest expenses in tax year is subject to the provision under Item 3, Article 8, Decree No. 20/2017/ND-CP as above.

On January 15, 2018, Hanoi Tax Department released Official Letter No. 1990/CT-TTHT providing guidance on interest expense to be treated as deductible expense for enterprises having related-parties transaction. In which:

- In case the enterprise derives net profit before interest, taxes, depreciation and amortization ("EBITDA") in tax year that is greater than zero, total CIT deductible interest expenses (irrespective of associate or independent sourced-interest expense) would not exceed 20% of EBITDA.

- In case the enterprise derives EBITDA in tax year that is less than zero, interest expenses are not treated as deductible expenses for CIT calculation purpose.

Because of the conflict of views as mentioned above, Deloitte would

suggest the Client seek for written guidance from the city/provincial Departments of Taxation in relation to this subject in order to mitigate any risks during tax filing and tax payment.

Personal Income Tax ("PIT")

Guidance on 2017 PIT finalization issued by Hanoi Tax Department

On February 5, 2018, Hanoi Tax Department issued Official Letter No. 5749/CT-TNCN providing guidance on 2017 PIT finalization and the granting PIT code for Dependent.

The instructions in Official Letter 5749 remains unchanged as compared to the provision under current PIT regulations issued by MOF such as Circular No. 111/2013/TT-BTC, Circular No. 156/2013/TT-BTC, Circular No. 119/2014/TT-BTC, Circular No. 128/2014/TT-BTC and Circular No. 92/2015/TT-BTC. There are some notable points in 2017 PIT finalization as follow:

1. **Deadline for the submission of PIT finalization is March 31, 2018**

2. **In the event the employee is rotated among legal entities within the group**

Individuals, who have been rotated internally either within the organizations or the corporations or between parent company and subsidiaries or between headquarter and its branches in a tax year, are eligible to authorize the current employer to do PIT finalization.

Furthermore, according to the guidance from the General Department of Taxation in Official Letter No. 407/TCT-TNCN dated January 29, 2018, declaring the withholding tax amount on PIT finalization filing form of these individuals shall be done as follow:

- In item [35] of PIT finalization return Form 05/QTT-TNCN: Declare the total of tax withheld from the total income from salaries, wages paid at the current company, excluding the PIT withholding amount at other entities;

- In item [20] of the Appendix 05-1/BK-QTT-TNCN: Input the total of withholding tax amount within the year,

which is composed of the tax amount withheld at the current company and the tax-withholding amount in accordance with PIT withholding receipt of the other companies from which that employee was rotated.

3. **In the event when an individual changes their PIT finalization authorization**

   An individual has already authorized the current company and the company has finished the finalization process, however, the individual is subsequently determined to be a direct filing taxpayer, this company is not required to make any revisions in the PIT finalization return. The company shall be required to issue a PIT withholding receipt with a footnote at the left corner as: "[Company name] has already conducted the Personal Income Tax finalization for Mr./Ms. [employee name] as per his/her authorization at row [number] of the Appendix 05-1/BK-TNCN", then, by this tax certification, the individual shall further proceed PIT finalization with the Tax Department by himself/herself.

4. **In the event an individual registers their dependents after the time such maintenance support occurs**

   In the event the taxpayer registers dependent deduction after the effective time of such deduction using form 02/DK-NPT-TNCN attached with Circular No. 92/2015/TT-BTC dated June 15, 2015, and declares the effective date of such deduction later than the time such maintenance support occurs, then retrospective application of such dependent deduction is allowed if such taxpayer is subject to PIT finalization. Accordingly, such taxpayer shall file form 02/DK-NPT-TNCT to inform the actual effective date of the deduction and attach the form with PIT finalization dossier for submission.

5. **Hanoi Tax Department has deployed the electronic tax system (eTax)**

   With respect to 2017 PIT finalization, Hanoi Tax Department has recently deployed a new electronic tax system, which is applicable for

filing forms including 02/QTT-TNCN, 05/KK-TNCN, 05/QTT-TNCN, 05/DS-TNCN, 09/KK-TNCN, 13/KK-TNCN and the application for PIT code for dependents under form 02TH to the taxpayer using the electronic tax system (eTax) at the website thuedientu.gdt.gov.vn. Specifically:

- For the enterprises that are currently using digital signatures, continue to access the portal of nhantokhai.gdt.gov.vn to lodge the tax return with the support from iHTKK application. These enterprises are not required either to lodge the hard copies or upload data to the Tax authorities using the portal thuedientu.gdt.gov.vn;

- For the individuals and enterprises that have not yet used digital signatures, PIT finalization filing form should be submitted to Tax Department in hard copy with legal signature and stamp, data should be uploaded to thuedientu.gdt.gov.vn or copied to USB when submitting the hard copy to the Tax authorities.

Issuance of PIT withholding receipt is not required if the enterprise is authorized for PIT refund

On January 17, 2018, the General Department of Taxation issued Official Letter No. 276/TCT-TNCN providing guidance on the authorization of PIT finalization filing and PIT refund.

Pursuant to Point a, Item 2, Article 25, Circular No. 111/2013/TT-BTC, the Company must not issue PIT withholding receipt to the individual who authorized the Company for PIT finalization. Specifically:

- In the event the expatriate employees authorize the Company for PIT finalization and the Company has issued PIT withholding receipt for such employees, the Company is required to withdraw the issued PIT withholding receipt. Upon conducting the PIT refund procedure, the Company must present the original copy of PIT withholding receipt and the commitment letter on returning the refund of each resident individual.

- In the event the Company over-withheld PIT for non-tax

resident foreign employee and also issued PIT withholding receipt, if such foreign employee would like to authorize the Company to do PIT finalization, the Company must withdraw such PIT withholding receipts. Otherwise, that foreign employee must directly file PIT refund with the Tax authorities.

Applicable PIT for the allowance paid to an employee after the termination of employment contract

On February 2, 2018, Hanoi Tax Department issued Official Letter No. 5552/CT-TTHT regarding PIT on financial support paid after the termination of employment contract.

In case the Company negotiates with the employees to terminate labor contract, the applicable PIT withholding rate for specific payment would vary, specifically:

- Severance allowance, job-loss allowance, unemployment allowance and others similar allowance that paid in accordance with the provision under Labour Code and Law on Social Insurance are PIT exempt.

- For salaries, wages and allowances subject to PIT: progressive tax rate shall be applied.

- For additional financial supports paid to employees (except for the provisions of the Labor Code and the Law on Social Insurance) after the termination of the labor contract, of which the amount is VND 2 million or more, PIT withholding rate of 10% shall be applied.

Upon year-end PIT finalization, the Company shall use the following forms, including Form 05/QTT-TNCN, 05-1/BK-QTT-TNCN (for salary and wage payment that subject to progressive tax rate); Form 05-2/BK-QTT-TNCN (for payment that subject to 10% withholding rate).

If the employees terminate their employment with the Company before the timeline of PIT finalization, they shall not be allowed to authorize the Company to conduct PIT finalization on their behalf, instead, direct filing with the Tax authorities shall be required.

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Value Added Tax ("VAT")

Exported goods returned are not entitled to VAT refund

On January 25, 2018, General Department of Taxation issued Office Letter No. 380/TCT-KK providing guidance on VAT refund for exported goods returned.

Accordingly, creditable input VAT of exported goods in the amount of VND 300 million or more would be entitled to VAT refund. However, if the exported goods are returned, they shall not be regarded as exported goods, therefore would not be eligible for tax refund.

Acquiring real estate in projects for lease purpose is not entitled to VAT refund for investment projects

On January 18, 2018, Hanoi Department of Taxation issued Official Letter No. 2909/CT-TTHT on VAT refund for investment projects.

Where the Company acquires real estate in a number of projects and then signs a contract with the investor to sub-lease the acquired real estate for profit, the Company is not considered to be the owner or investor of those projects, instead, this would be regarded as the business operation of the Company.

In such circumstances, the Company is not entitled to VAT refund for investment projects.

The export of imported goods are not eligible to apply VAT rate 0%

On January 17, 2018, the General Department of Taxation issued Official Letter No. 282/TCT-CS to Hanoi Tax Department providing guidance on the VAT treatment of the export of imported goods.

Specifically, where a company in Vietnam signs a contract purchasing goods imported from overseas and subsequently signs a contract to resell the goods to another overseas customer, under which a third party located in the territory of Vietnam is assigned to receive the goods and conduct import procedures, the resell transaction does not qualify to apply the VAT rate of 0%.

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Invoice

Invoices and supporting document for promotion expenses

On January 15, 2018, Hanoi Tax Department issued Official Letter No. 1991/CT-TTHT on VAT declaration and supporting documents for cash support paid to distributors. Specifically:

- Where distribution companies pay sales promotion and cash support for sales staff on behalf of suppliers, then, when finalizing these payments to claim from the distributors, the distribution companies only need to issue collection receipt, VAT invoice and VAT declaration are not required.

- Where distribution companies receive money from distributors to carry out sales promotion programs in accordance with the regulations on trade promotion activities, then when making payments, distributors are required to issue VAT invoices at the rate of 10%.

Export - Import Tax and Customs

Prioritization of application of specialized regulations upon the import of used machinery and equipment

On January 9, 2018, the General Department of Customs issued Official Letter No. 84/ GSQL-GQ1 providing guidance on the import of used machinery and equipment. Specifically the Official Letter 84 states, with reference to Article 4 of the Circular No. 23/2015/TT-BKHCN ("Circular 23") of the Ministry of Science and Technology, that:

- For used equipment imported under approvals from Ministries or ministerial agencies, such imports must comply with the regulations issued by those Ministeries or ministerial agencies;

- If the used equipment is not covered by regulations, then the importers should comply with Circular 23. For example, where imports fall within the list of potentially unsafe goods, under the management of the Ministry of Communications and Transport provided in Circular

No. 39/2016/TT-BGTVT ("Circular 39"), enterprises must adhere to the specialized management contents mentioned in Circular 39, not to the regulations of Circular 23.

Conditions for the import of used machinery and equipment under internal relocation of production equipment

On January 15, 2018, the General Department of Customs issued Official Letter No. 140/ GSQL-GQ1 providing guidance on the import of certain used information technology equipment.

With reference to the Prime Minister's Decision No. 18/2016/QD-TTg dated May 6, 2016, the Official Letter states that enterprises are allowed to import goods (which are on the list of used information technology products prohibited from import (see Decree No. 187/2013/ND-CP dated November 20, 2013) where the import is a movement of a means of production within the same organization. The following conditions need to be met:

- The imported products would directly serve the production of the enterprise itself;
- The imported product must be the property of a foreign organization that has relationships with the enterprise through shareholding, capital contribution or other affiliates.

Imports of various types of goods may use the same certificate of origin ("C/O")

On January 15, 2018, the General Department of Customs issued Official Letter No. 230/TCHQ-GSQL in response to questions on the application of C/O.

According to the Official Letter, goods registered for import under various types, which are processed at the same place and at the same time, shall be entitled to use 01 common C/O in order to apply special preferential tax rates. However, it is necessary to ensure that the total quantity of declared goods by types does not exceed the quantity of goods on the C/O.

In addition, for duty-free imported goods subject to change of use purpose, if the original C/O is still valid at the time of registration of the change of use purpose, it shall be accepted. However, it is important to ensure that the goods registered to change use purpose must be the ones

declared on the C/O and are still in the same state/condition (i.e. have not participated in any production process) and still meet the initial origin criteria.

Exported goods for subsequent export are entitled to VAT refund

On January 22, 2018, the General Department of Customs issued Official Letter No. 370/TCHQ-TXNK providing guidance on the handling of VAT on import and export goods.

Specifically, in accordance with Clause 3, Article 1 of Circular No. 130/2016/TT-BTC, from July 1, 2016, imported goods used for subsequent export shall not be entitled to VAT refund. However, further to Decree No. 146/2017/ND-CP ("Decree 146") effective from February 1, 2018, VAT refund under such trading model became available.

Accordingly, if an enterprise has paid VAT on imported goods and subsequently re-export it back to the foreign owner before the effective date of Decree 146 (February 1, 2018), the corresponding imported VAT would not be entitled to VAT refund.

Other guiding documentations

Guidelines for 2017 PIT and CIT finalization - Bac Ninh Tax Department

On February 12, 2018, the Tax Department of Bac Ninh Province issued Official Letter No. 291/CT-TTHT summarizing a number of notable points in 2017 CIT and PIT finalization. In particular, the Official Letter highlights the following:

1. **In terms of CIT**

- ***Deemed other income for enterprise who signs interest-free loan contract with another enterprise:*** The above lending activity is considered as not align with the market price and thus subject to deemed tax at Point e., Clause 1, Article 37 of the Tax Administration Law. The above point is also presented in Official Letter No. 4975/TCT-TS dated October 26, 2016, by General Department of Taxation.

- ***Payment for PIT consulting for expatriate employees*** is not considered as business-related expense and is not a welfare expense,

therefore it is not deductible for CIT purposes.

- ***Expenses for health examination for foreign employees,*** which is a healthcare process from consultancy to medical examination and treatment, shall be regarded as welfare expenses that subject to threshold of one month's average salary actually paid in the tax year.

- ***Scrutinize the buyer and seller's accounts*** to promptly supplement Form 08/MST issued together with Circular No. 95/2016/TT-BTC if such accounts have not been notified to the Tax authorities before the Tax authorities announcing the tax examination decision at the enterprise.

- ***Implementing the provisions of the law on related-party transactions*** as prescribed in Article 5, Decree No. 20/2007/ND-CP. The taxpayer cannot deduct expenses arising from related-party transactions that do not follow the arm's length principle or do not contribute in generating revenue, income for operation activities.

2. In terms of PIT

- ***Personal deduction could be accounted for full 12 months*** for finalization purpose if personal deduction has not been accounted or accounted for less than 12 months during the calendar year.

- ***Registering tax code and deduction for dependents*** according to Article 7, Circular No. 95/2016/TT-BTC dated June 28, 2016, of MOF.

  Timing for determining taxable income related to salaries and wages is the date of salary payment.

3. Land rental finalization

- ***Subject:*** Enterprises having land lease agreement with the Government (Department of Natural Resources and Environment of Bac Ninh Province) with the term of annual payment.

- ***Finalization basis:*** Land lease documents, Notification of land lease unit price by the competent authorities, Notification of land lease payment by the Tax Authority.

- ***Finalization deadline:*** by the latest of March 31, 2018

Business households and individuals that have delayed declaration of amendment tax registration information are subject to administrative penalties

On January 23, 2018, Hanoi Tax Department issued Official Letter No. 3662/CT-TTHT regarding penalties for acts of delayed declaration of amendment of tax registration information in tax registration dossiers.

Specifically, where business households or individuals delay declaration of amendment information in the tax registration dossier until after the prescribed time limit, then regardless of whether it is intentional or unintentional, tax administrative penalties as stipulated in the Circular No. 166/2013/TT-BTC will be imposed.

Selling price that does not align with market price would be imposed Special Consumption Tax

On January 17, 2018, the General Department of Taxation issued the Official Letter No. 269/TCT-CS providing guidance on tax policy for special consumption tax.

As stipulated in Clause 1, Article 2, Decree No. 100/2016/ND-CP, in principle, the special consumption tax shall be based on the selling price of the domestic produced goods. However, where the Tax Authority has evidence that selling price of the domestic produced goods does not align with the normal transaction price on the market, then the Tax authorities has authority to impose tax in accordance with provisions of the Law on Tax Administration

Forced relocation of office is not entitled to extension of tax payment

On January 17, 2018, the General Department of Taxation issued the Official Letter No. 258/TCT-QLN regarding extension of tax payment.

In case enterprise is forced to relocate office without change of its production facility and business operating activities are not discontinued, then it is not entitled to tax payment extension.

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