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NEW REGULATIONS

Decree No. 146/2017/ND-CP amending the regulations on Value Added Tax (“VAT”) refund and insurance expenses

On 15 December 2017, the Government issued Decree No. 146/2017/ND-CP (“Decree 146”) which amended and supplemented a number of articles in Decree No. 100/2016/ND-CP dated 1 July 2016 and Decree No. 12/2015/ND-CP dated 12 February 2015. Decree 146 takes effect from 1 February 2018, and the main amendments to the regulations are as follows:

Regarding VAT:

- A change in the VAT treatment, from a VAT-exempt supply to a taxable supply at 0%, where (in precisely defined cases) natural resources, and minerals have been used in the production of finished goods for export.

As a result of this change in VAT treatment, enterprises are now able to claim VAT refund - provided the products meet the conditions of the Decree, and are exported in accordance with the provisions of the Law on Customs.

Regarding Corporate Income Tax (“CIT”):

- There has been an increase in the threshold for voluntary pension fund, voluntary pension insurance and life insurance for employees when determining deductible expenses for CIT purposes. Those expenses will now be capped at VND 3 million/person/month.

Decision No. 4195/QD-TCHQ regarding Customs Appeal Procedures

On 18 December 2017, the General Department of Customs issued Decision No. 4195/QD-TCHQ (“Decision 4195”) regarding the receipt and processing of Customs appeals.

Decision 4195 stipulates the relevant authorities and procedures when handling appeals regarding administrative decisions and actions made by the Customs authorities (from the Customs Divisions and Departments to the General Department of Customs).

- With respect to appeals submitted to the General Department of Customs, particular attention should be paid to Articles 5 – 12 of the Decision.
- With respect to appeals submitted to Customs Divisions and Departments, attention should be paid to Articles 13 – 18 of the Decision.

The Decision also clearly defines the responsibilities of relevant authorities when handling and processing appeals. In which, the confirmation of processing the appeal letter must be sent to the petitioners within 10 days from the date of receiving the appeal letter.

The Decision takes effect from 1 January 2018, replacing other Regulations governing the receipt and processing of Customs appeals.

New guidelines on license for manufacture, trading, and declaration of chemicals

On 28 December 2017, the Ministry of Industry and Trade issued Circular No. 32/2017/TT-BCT (“Circular 32”) providing guidance on the implementation of a number of articles of the Law on Chemicals

and Decree No. 113/2017/ND-CP guiding the Law on Chemicals. Circular 32 introduces some additional requirements:

- Chemical producers/importers are obliged to classify and label chemicals. Before distributing or selling chemicals, producers and importers are required to make a Chemical Safety Note including information provided in Appendix IX of this Circular.
- Entities having industrial chemical-related activities must report annually their previous year’s chemical-related activities. An extraordinary report must also be prepared in cases of chemical-related incidents, or when terminating chemical-related activities, and be submitted to the Provincial Department of Industry and Trade where chemical-related activities are carried out.

The Circular takes effect from 28 December 2017 and supersedes a number of previous Circulars and Decisions.

New Decree on export, import, and distribution activities of foreign invested enterprises

On 15 January 2018, the Government issued Decree No. 09/2018/ND-CP (“Decree 09”) providing guidelines on the Law on Commerce and the Law on Foreign Trade Management regarding trading activities and other activities directly related to the trading activities of foreign investors and foreign invested enterprises in Vietnam.

One of the noteworthy points in Decree 09 is that a Business License is no longer required for foreign invested enterprises to conduct export and import activities. Pursuant to the Decree, foreign invested enterprises only need the Business License to conduct certain business activities including but not limited to: Retail/ wholesale distribution rights, logistics services, intermediary/ trade promotion, e-commerce.

Decree 09 takes effect from 15 January 2018 and replaces Decree No. 23/2007/ND-CP issued on 12 February 2007.

For detailed information of Decree 09, please refer to Deloitte’s Tax alerts issued on 24 January 2018.



Amendment of the list of Harmonized System (HS) codes for exports and imports under the management of the Ministry of Industry and Trade, and the Ministry of Agriculture and Rural Development

The Ministry of Industry and Trade, and the Ministry of Agriculture and Rural Development have issued a series of regulations to amend the list of commodities whose HS codes are revised and that are subject to quality control in the following documents:

- Circular No. 24/2017/TT-BNNPTNT renewed the list of 24 HS codes for imported and exported goods under the management of the Ministry of Agriculture and Rural Development, effective from 1 January 2018.
- Circular No. 28/2017/TT-BCT replacing the List of goods which are subject to quality control in the agricultural production sector, effective from 7 February 2018.
- Circular No. 33/2017/TT-BTC amending and supplementing HS codes in the list of potentially

unsafe products and goods under the management of the Ministry of Industry and Trade, effective from 1 January 2018.

- Decision No. 4755/QD-BCT lists imported products that must be subject to quality control, technical standards and food safety before customs clearance under the management of the Ministry of Industry and Trade, effective from 1 January 2018.

Exemption from registration of machinery imported by foreign contractors

On 29 December 2017, the Ministry of Industry and Trade issued Circular No. 35/2017/TT-BCT to abolish Circular No. 53/2015/TT-BCT dated 30 December 2015 - which required the registration of imported goods, or temporarily imported for re-export by foreign contractors in the construction sector in Vietnam.

From 12 February 2018, foreign contractors will no longer be required to register a list of imported goods, or temporarily imported for re-export, which are used in construction works in Vietnam.

GUIDING DOCUMENTATIONS

Corporate Income Tax ("CIT")

Employment costs of expatriates assigned by parent company

On 2 January 2018, Ha Noi Tax Department issued Official Letter No. 17/CT-TTHT regarding deductible expenses in relation to salaries, wages paid to expatriates assigned to work in Vietnam by parent company.

This Official Letter states that salaries and other employment expenses shall be tax deductible expenses for the subsidiary in Vietnam for CIT purpose if all the following conditions are met:

- The subsidiary operating in Vietnam is responsible for the salaries and other employment expenses incurred for expatriates during their assignment in Vietnam;
- The above condition is mentioned clearly in the written agreement between the parent company and its subsidiary in Vietnam;
- The labor contract is signed by both the subsidiary in Vietnam and those expatriates.

Only refund the overpaid CIT liabilities of finalized tax years

On 21 December 2017, the General Department of Taxation issued Official Letter No. 5841/TCT-KK providing guidance on CIT refund in case of changing business location.

Businesses can apply for refund for CIT overpaid due to the change in the tax management agency as the result of relocating their head office. However, with respect to taxes that are required for tax finalization, the amount of tax overpayment shall be determined based on tax finalization completed by the company. The old tax management agency shall conduct the tax audit/inspection to determine the overpaid amount.

For the amount of provisional quarterly CIT returns of the current year (not yet finalized), the old tax management agency shall certify the taxpayer's obligations, then transfer the data to the new tax management agency for further follow-up.

Accrued interest expenses are deductible for CIT purpose if the interest expenses are duly paid

On 8 December 2017, Ha Noi Tax Department issued Official Letter No. 79335/CT-TTHT providing guidance on the deductibility of interest expenses related to the loan from the parent company. Specifically:

- The amount of interest expenses which are accrued at the end of the fiscal year and which will be paid duly in the following year, such amount then would be treated as deductible expenses when determining CIT taxable income of the year in which the accrued expenses are recognized, if the conditions specified in Article 4, Circular No. 96/2015/TT-BTC and Clause 3, Article 8, Decree No. 20/2017/ND-CP are met;
- In case the Company removes such amount from deductible expenses of the fiscal year at the time of submitting CIT finalization (the interest expenses have not yet come to due date at the time of finalization), the Company shall adjust the tax returns in accordance with the guidance under Clause 5, Article 10, Circular No. 156/2013/TT-BTC.

Allowances for the owner of one-member limited liability company are non-deductible expenses

On 27 November 2017, Tax Department of Ho Chi Minh City issued Official Letter No. 11575/CT-THTT on CIT regulations.

The telephone allowance, business trip allowance (fixed monthly allowance), lunch and uniform allowances paid under the Company's financial policies for Executive Director who simultaneously is the owner of one-member limited liability company (owned by one individual) are treated as the employment costs for the Company's owner. Accordingly, such amount will not be deductible for CIT purpose.



Personal Income Tax ("PIT")

Transfer of contributed capital and share purchase rights before changing into a joint-stock company shall be subject to PIT as for capital transfer activities

On 18 December 2017, Ha Noi Tax Department issued Official Letter No. 80829/CT-TTHT providing guidance on PIT declaration towards the transfer of contributed capital and shares purchase right.

In case an individual transfers his contributed capital in a limited liability company and simultaneously transfers his shares purchase right before the transformation into a joint-stock company, total proceeds shall be treated as income from capital transfer (not securities transfer) and subject to PIT at the rate of 20%.

An expatriate who receives salaries paid indirectly through an overseas entity on behalf of the Vietnamese entity is not required to declare tax directly

On 27 November 2017, Ho Chi Minh City Tax Department issued Official Letter No. 11543/CT-TTHT providing guidance on tax declaration for salaries paid indirectly through an overseas entity on behalf of the Vietnamese entity.

In case an expatriate being a Vietnamese tax resident in the tax year receives salary (net of tax basis) paid by the Company (including salary paid directly by the Company and indirectly through an overseas entity), the expatriate is not required to declare PIT directly by using form 02/KK-TNCN in the case of that the PIT amount is borne by the Company. The Vietnamese company is responsible for withholding, remitting PIT liabilities for the salary paid on behalf by the overseas entity and using form 05/KK-TNCN as promulgated under Circular No. 92/2015/TT-BTC.

Value Added Tax (“VAT”)

It is required to have a non-cash payment voucher to be entitled to receive VAT refund for exported goods

On 20 December 2017, the General Department of Taxation issued Official Letter No. 5810/TCT-CS providing guidance on the conditions for VAT refund related to cross-border exported goods.

Specifically, exported goods are required to be supported by non-cash payment vouchers, including cross-border exports. Where exported goods are sold to foreign purchasers who are private enterprises; payment is made via bank account of the owner at credit institutions in Vietnam; and such payment is specified in export contracts (contract annexes or amendments of the contract - if any), then such payment would be considered as non-cash payment.

Where the enterprise has cross-border exports, but the foreign purchaser settles in cash and the amount is then transferred to the enterprise’s bank account, then such transaction is not eligible for VAT refund.

Not being eligible for VAT refund in case of late capital contribution

On 8 December 2017, the General Department of Taxation issued Official Letter No. 5642/TCT-CS

providing guidance on the regulations relating to VAT refund.

Specifically, pursuant to Point 2, Clause 3, Article 1 of Circular No. 130/2016/TT-BTC, a business which fails to contribute charter capital as registered shall not be eligible for VAT refund on the investment project.

Where under the Enterprise Registration Certificate, Investment Certificate, the Governmental authorities have permitted an enterprise to contribute their charter capital over a specified time schedule, then the Company will still be eligible for VAT refund provided that the Company has contributed sufficient charter capital in line with the specified timeline.

International transportation service through the third party is subject to 0% VAT

On 21 November 2017, Ha Noi Tax Department issued Official Letter No. 76063/CT-TTHT providing guidance on the VAT rate applicable to transport services.

Specifically, where a Company is hired to provide freight services, and the Company then hires a third party to ship goods from Vietnam to overseas (international transport),

then the transport services provided to customer by the Company will be subject to 0% VAT – provided all the conditions stipulated in Point c, Clause 2, Article 9 of Circular No. 219/2013/TT-BTC are satisfied.

Invoice

Invoice issuance for sales returns of defective goods

On 12 January 2018, Ha Noi Tax Department issued Official Letter No. 1759/CT-TTHT guiding export processing enterprises (“EPEs”) to issue invoices for sales returns of inferior quality goods, where the two parties have already conducted VAT declaration.

The Official Letter advises, when EPEs return the goods (in part or in whole) to the seller, they shall issue invoices for sales return, which should clearly state the goods are being returned due to improper specifications, quality or VAT amount (if any). EPEs use sales invoices when returning goods, on which clearly stating "From organizations and individuals in non-tariff areas".

Based on the sales return invoices, the EPEs and domestic enterprises shall declare their adjusted sales, output and input VAT as prescribed.

Domestic enterprises are not subject to VAT at the import stage when EPE returns goods.

It is not compulsory to sign directly on each invoice's copy

On 18 December 2017, Ha Noi Tax Department issued Official Letter No. 80824/CT-TTHT providing guidance on the signature on the second copy of an invoice.

Pursuant to Clause 3, Article 19 of the Accounting Law No. 88/2015/QH13, accounting vouchers used for payment must be signed on each invoice's copy (directly signing each one).

However, VAT invoice is not the accounting documentation for payment, it is not required to be signed directly on each invoice's copy. The Company may sign the first invoice copy and print to other copies by using carbon paper.

The sale of goods between dependent branches must be invoiced

On 27 November 2017, Tax Department of Ho Chi Minh city issued Official Letter No. 11617/CT-TTHT providing guidance

in cases where dependent branches have trading activities with each other. Accordingly, dependent accounting branches which supply goods and services for each other, shall issue invoices, declare and remit tax as prescribed, except for the internal transfer of goods, internal consumption for production.

Foreign Contractor Withholding Tax ("FCWT")

Foreign Contractors are not exempt from paying VAT under the Double Taxation Avoidance Agreement

On 19 December 2017, Ha Noi Tax Department issued Official Letter No. 81108/CT-TTHT on the VAT of FCWT not exempt under the Agreement.

Accordingly, in cases where a foreign organization generates incomes from consultancy service contracts in Vietnam, it shall be subject to FCWT (including VAT and CIT) as prescribed in Article 1 of Circular No. 103/2014/TT-BTC.

In cases where foreign organizations are eligible for tax exemption under the Double Taxation Avoidance Agreements, they shall only be

exempt from paying the CIT and the VAT amounts still have to be paid.

Dossiers of notification for tax exemption under the Agreement shall be implemented under the guidance in Item b.2, Clause 3, Article 22 of Circular No. 156/2013/TT-BTC.

Income of a foreign company earned under an agreement to provide secondment staff in Vietnam to Vietnamese enterprises, is subject to FCWT

On 19 December 2017, Ha Noi Tax Department issued Official Letter No. 81106/CT-TTHT relating to the FCWT regulations governing foreign-invested companies earning income in Vietnam under the agreement to providing secondment staff for Vietnamese enterprises.

According to the Official Letter, foreign companies are subject to FCWT with the CIT rate of 5% and the VAT rate of 5%.

The responsibility for FCWT declaration, and withholding in the case of loan transfer and transfer of all shares in

the Company including loan agreements and loan interests

On 14 December 2017, Ha Noi Tax Department issued Official Letter No. 80373/CT-TTHT guiding the determination of the FCWT obligations for loan interests.

Specifically, where the transfer of loan and loan interests between 2 foreign contractors with a transfer price that is equal to the principal plus interest up to the time of transfer, then the borrower is responsible to declare and pay FCWT on behalf of the lender for the interest on the principal of loans. The deadline for declaring and paying FCWT is regulated in Clause 3, Article 10, Article 26 of Circular No. 156/2013/TT-BTC.

In cases where the lender concurrently transfers all the shares in the Company including the loan agreements and loan interests incurred to the third party, the Company has responsibility to declare and pay FCWT for loan interests on the principle of loans on behalf on the lender as well as CIT for income from capital transfer.

Related-party transactions

Threshold of 20% for loan interest applies to the total interest expenses of both related and independent parties

On 3 January 2018, Ha Noi Tax Department issued Official Letter No. 208/CT-TTHT regarding the principle for estimating the deductible amount of interest expenses for CIT calculation purpose as prescribed under Clause 3, Article 8 of Decree No. 20/2017/ND-CP. Specifically:

- The amount of interest expense as mentioned above is the total amount of interest expense incurred during the financial year (regardless of interest expenses incurred by the related or independent parties);
- The total amount of interest expense which was incurred during the whole tax year 2017 is applicable.



Exemption of TP documentation report

On 28 December 2017, Ha Noi Tax Department issued Official Letter No. 83301/CT-TTHT guiding the conditions for exemption of TP documentation report.

Accordingly, in cases the Company only incurs transactions with affiliates who are liable to pay CIT in Vietnam with the same CIT rate and neither party is entitled to CIT incentives in the tax period, it shall be exempt from declaring and determining affiliate transaction prices in Section III, Section IV of Form No. 01 in the Appendix issued together with Decree No. 20/2017/ND-CP, concurrently be exempt from the dossier for determination of affiliate transaction prices. However, the company must declare the grounds for exemptions in Section I, Section II, Form No. 01 in the Appendix to the above-mentioned Decree No. 20/2017/ND-CP.



Export-Import Tax - Customs

Issuing 10 Special preferential tax rates of Vietnam for the period from 2018 to 2022

On 2 January 2018, the Import - Export Duty Department issued Official Letter No. 05/TXNK-PL regarding the implementation of 10 Decrees for special preferential tax rates of Vietnam in accordance with the Free Trade Agreements for the period from 2018 to 2022. Accordingly, on 1 January 2018 onwards, imported goods satisfying requirements of origin is entitled to applying special preferential tax rates prescribed under those Decrees.

Inspection enhancement of the origin of imported goods

The General Department of Customs issued Official Letter No. 8382/TCHQ-GSQL dated 25 December 2017 regarding the inspection enhancement of the origin of imported goods.

Specifically, in considering their acceptance of a C/O in relation to the application of preferential tariff rates, the General Department of Customs shall be taken into account:

- Have a clear statement of submission of C/O on the customs declarations. Specifically, in cases C/O is submitted immediately then the reference number and date of issuance must be declared, otherwise a comprehensive declaration of additional submission must be taken into account.
- Issued C/O must comply with C/O form stipulated in the Circulars of the Ministry of Industry and Trade. Note: C/O form AK not showing "See Notes Overleaf" in the reference number box (does not comply with form stipulated in the Circular No. 20/2014/TT-BTC). However, if the C/O was issued prior to 11 October 2017, Customs authorities will consider if it can be accepted.
- Information declared on C/O should comply with the following provisions:
 - In cases the C/O has a third country's/ third party's invoice, the name and country of the issuing company must be noted in Box No.7;
 - The C/O must contain the exporter's signature;

- C/O with third party's invoice, back-to-back C/O and retroactively issued C/O shall be declared by ticking on the corresponding box (or declared by the quote "issued retroactively" for retroactively issued C/O in certain forms of C/O);
- Particularly for C/O Form E, Box No.1 must contain the declaration of exporter's information, not information of the authorized person;
- If the C/O was issued for several commodities with different HS codes, then details of origin, quantity, and value of each item shall be provided;
- For commodities that have transited through an intermediate country, there must be documents proving that the goods were preserved in their original condition, and that they are accompanied by a transport bill of lading or transport documents issued in the exporting country.

The guidelines in this Circular takes effect from 25 December 2017. However, commodities imported previously may be subject to be re-checked.

VAT refund for raw materials imported to produce export goods

On 13 December 2017, the Ministry of Finance issued Official Letter No. 16836/BTC-TCHQ regarding the VAT treatment of raw materials imported to produce export goods.

Specifically, VAT refund for raw materials imported for export production with export declaration submitted before 1 July 2016 will be treated as follows:

- If VAT refund has not been done or has been re-collected by the Tax authorities, the tax refund amount would be considered to refund by the Customs authorities.
- If VAT refund has been done and has not been re-collected by the Tax authorities, the VAT amount is not needed to be adjusted.

- If the import VAT was declared as creditable VAT to the Tax authorities but has not been refunded, this VAT amount shall be declared as decrease adjustment without any late payment penalty. Afterward, the enterprises shall submit tax refund dossier to the Customs authorities.

For export declaration submitted on 1 July 2016 onwards, VAT treatment on raw materials imported for export production shall comply with the provisions of the Law on Tax Management No. 106/2016/QH13, the Decree No. 100/2016/ND-CP of the Government, Circular No. 130/2016/TT-BTC of the Ministry of Finance and other amended and supplemented guiding documents.

From 1 February 2018, the VAT refund on raw materials imported for export production shall comply with new provisions of the Decree No. 146/2017/ND-CP.

Guiding on information collecting process of the Customs Authority

On 9 January 2018, the General Department of Customs issued Circular No. 107/TCHQ-KTSTQ regarding re-organizing the process of collecting information from the

Enterprises for post-customs clearance inspection.

Accordingly, when collecting information, the provincial/ municipal Customs Departments shall prioritize using information source from the database system and professional activities of the Customs Department. Information should only be gathered from the customs declarants in cases the information collected by the Customs authorities is incomplete or unclear.

Other guiding documentations

Supplementing business lines, but neither increasing capital nor carrying out expansion investment to increase fixed assets, will not be considered as expansion investment

On 20 November 2017, Hanoi Tax Department issued Official Letter No. 75557/CT-TTHT regarding the identification of CIT incentives after Investment Certificate is adjusted.

In cases during operation process, the Company has supplemented business lines through adjusting Investment Certificate but neither increasing capital nor carrying out expansion investment to increase fixed assets), then the income generated from

the supplemented business lines is not entitled to CIT incentives.

With respect to the expansion project which information has not been updated in the investment license, the enterprises now can still submit application for adjustment

On 29 December 2017, Hanoi Tax Department issued Official Letter No. 83647/CT-TTHT regarding expansion project without adjusted Investment Certificate.

In case the enterprises actually carrying out investment activities to expand production scale (e.g. factory renovation, production lines expansion, additional purchase of fixed assets), yet, not adjusting Investment Certificate, they now can still submit application for adjustment. However, when the adjusted Investment Certificate is granted, enterprises will be fined for administrative violation according to Clause 4, Article 3 of Decree No. 50/2016/ND-CP, with the fine of VND 20-30 million.

Employees can be authorized to pay for commodities

On 20 November 2017, Hanoi Tax Department issued Official Letter No. 75546/CT-TTHT regarding deductible

expenses for payments from a personal account.

According to guidance provided by the Official Letter No. 5174/TCT-DNL dated 9 November 2017, it is possible that the Company authorizes its employee to transfer payments in advance for commodities valued at VND 20 million or above including VAT, then reimburse the employee through bank transfer from the Company account to personal account. If there are sufficient documents for this payment method, the Company could declare and deduct input VAT amount and could be included in deductible expenses when determining CIT amount:

- Financial policy or management policy stipulating this payment method;
- Supporting documents for proving the commodities are used for the Company's business purpose;
- The purchase invoice contains name and tax code of the Company;
- Supporting documents proving authorization of the employee to make a payment;
- Supporting documents of money transfer from the employee account to the supplier;
- Supporting documents of reimbursement of the Company to the employee.

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