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Tax Newsletter

June 2019

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GUIDING DOCUMENTATIONS/ OFFICIAL LETTER

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GUIDING DOCUMENTATIONS/ OFFICIAL LETTER

Corporate Income Tax ("CIT")

Reception of Project transferred before 2014 would not be allowed to inherit tax incentives

On 04 May 2019, the General Department of Taxation issued Official Letter No. 1752/TCT-DNL guiding on CIT incentives for investment projects.

Accordingly, Law on CIT and guiding documentations for the period before 01 January 2014 only allowed tax incentives for legal entities, i.e. newly established enterprises from investment projects (no incentive granted to investment project). Simultaneously, no tax incentives is granted for business expansion in the period from 2009 to 2013.

Thus, in case the company received investment project transferred before 2014, the company would not be allowed to inherit CIT incentives for income from such projects.

Hospital fees paid by Health Insurance Fund must be declared and paid for CIT

On 03 January 2019, the Ho Chi Minh City Tax Department issued Official Letter No. 132/CT-TTHT guiding on CIT treatment on hospital fees paid by Health Insurance Fund ("HIF").

Specifically, according to Circular No. 78/2014/TT-BTC, revenue for calculating CIT taxable income is the total revenue from sales of goods and services, including price subsidies, surcharges, and extra/additional incomes that enterprises may earn regardless of the collection of such amounts.

Therefore, there is no provision to discount income from payments from the HIF when determining CIT taxable income for medical services. In other words, all hospital fees, including hospital fees paid by the HIF, must be declared for CIT purposes.

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Sponsorship for international schools can be deductible

On 06 May 2019, the Hanoi Tax Department issued Official Letter No. 29282/CT-TTHT guiding on the CIT deductibility of expenses for sponsorship for education.

Specifically, according to the provisions of Circular No. 96/2015/TT-BTC, enterprises are allowed to account expenses for education sponsorships including ones for public and private schools of the national education system. This clause does not distinguish whether the recipient is a local or international school.

Accordingly, in case the company sponsors for the international schools established in Vietnam, the expenses can be CIT deductible if sufficient supporting document as regulated can be maintained and provided.

Costs incurred from the production testing period can be deductible

On 18 April 2019, the Hanoi Tax Department issued Official Letter No. 21842/CT-TTHT guiding on deductible expenses when determining taxable income.

Expenses, considered as recurrent to maintaining business operation, incurred from the rent of factory at the starting up phase of the business cycle in which the business has not earned revenue (other than investment costs to form fixed assets) can be CIT deductible when determining taxable income if they meet the conditions specified in Article 4 of Circular No. 96/2015/TT-BTC.

Concerning fixed assets used prior to the official production phase, the Company is allowed to start the depreciation from date the assets are recognized following the Law of Accounting (according to the number of days of the month).

Costs of the purchase of assets that are tools and equipment, circulated packaging materials, etc. that are not qualified as fixed assets shall be amortized in the operating costs within no more than 03 years.

Costs incurred during the trial production period that meet the conditions in Circular No. 96/2015/TT-BTC can also be CIT deductible.

Expenses for raw materials, materials, fuel, energy, goods, etc. if meeting the conditions provided in Circular No. 96/2015/TT-BTC shall be deductible, except for the excesses of the consumption of raw materials, materials, fuel, energy, goods of which the consumption level is provided by the State.

Accelerated depreciation method is allowed if the assets are proved to have high economic efficiency

On 20 May 2019, the Hanoi Tax Department issued Official Letter No. 35839/CT-TTHT guiding on conditions for the application of accelerated depreciation method.

Accordingly, in case the Company purchases fixed assets for leasing activities and has registered the straight-line depreciation method for those fixed assets, such method must be applied consistently throughout the business course.

In case the fixed assets being leased are of high economic efficiency then the enterprise wish to switch to the accelerated depreciation method, the assets must be proved to have factors that form the "high economic efficiency". In such case, the enterprise must also ensure new depreciation time does not exceed 02 times shorter than the time calculated by the straight-line method.

Personal Income Tax ("PIT")

PIT must be withheld at rate 1% of payments as rewards or for business supporting purposes to individual distributors

On 21 January 2019, the Ho Chi Minh City Tax Department issued Official Letter No. 632/CT-TTHT guiding tax policy applied to payments as rewards, or for business supporting purposes to individual distributors as follows.

Enterprises have the obligation to withhold PIT at the tax rate 1% of the payments as rewards or for business supporting purposes to individual distributors. The withheld PIT has to be declared in the Form 01/CNKD and paid to the local tax authority where the enterprise is

located. If the enterprise identifies any incorrect PIT declaration, the revision can be conducted pursuant to the guidance of the Circular No. 156/2013/TT-BTC. In case there is any PIT overpaid after the revision, the treatments as specified in Article 33, Circular No. 156/2013/TT-BTC should be applied.

The employee, who is the owner of another company, is eligible to authorize his/her PIT Finalization if he/she entered into a labour contract with the term from 03 months or above and had no incomes from his/her owned Company

On 22 May 2019, the Hanoi Tax Department issued Official Letter No. 36782/CT-TTHT responding to the PIT Finalization authorization matter as follows:

Pursuant to Circular No. 92/2015/TT-BTC, the individual receives income from salary, wage is eligible to authorize PIT Finalization to the company once the following conditions are met: entering into a labour contract with the working term from 03 months (or above) at the company and still working at such company at the time of authorization.

According to the Official Letter, in case an employee signs the labour contract (with the term from 03 months or above) at company A, concurrently being the owner and participating the compulsory insurance at his/her owned company; but, receiving no income from such owned company, and only receiving incomes from company A, the employee is allowed to authorize company A to file the PIT Finalization on his/her behalf.

Progressive PIT rates are applied if the employee mobilized from the branch to work at the Head Office of a company from 03 months or above, while the PIT flat rate of 10% applies if the working time is less than 03 months

On 26 April 2019, the Hanoi Tax Department issued Official Letter No. 26991/CT-TTHT guiding on the PIT Finalization for employees who are mobilized from the branch to work at the head office of a company.

According to the Official Letter, in case a company mobilizes employees from the branch to work at the head office of the company from 03 months and above, the company has the obligation to withhold their PIT at the progressive tax rates, even if the employees are having multi-labour contracts. Such employees are allowed to authorize the company to file their PIT Finalization on their behalves if they do not receive incomes from other companies.

In case the company mobilizies employees from the branch to work at the head office for less than 03 months term, the company withholds flat PIT rate of 10% on the income from VND 2 million per time. Such employees are not allowed to authorize the company to file their PIT Finalization on their behalves.

Foreign Contractor Witholding Tax ("FCWT")

Purchasing outbound tours is not subject to FCWT while the round-trip airfare, for flights from Vietnam to destination countries, are subject to FCWT.

On 20 May 2019, the Ha Noi Tax Department issued Official Letter No. 35836/CT-TTHT guiding the tax implication regarding the tourism packages purchased from vendors located in foreign countries.

Pursuant to Circular No. 103/2014/TT-BTC, foreign organizations or individuals receive income from providing services that are provided and consumed outside the territory of Vietnam shall not be subjected to FCWT. Therefore, the tourism packages (including foods and drinks, hotels, transportation, etc.,) purchased from the foreign travel company and entirely consumed overseas would not be subjected to FCWT.

For the round-trip air tickets from Vietnam to foreign countries that are included in the package, the FCWT rate of 2% on the revenue shall be applied, while no Value

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Added Tax is required to be withheld for the international transportation.

Value Added Tax ("VAT")

Machinery value in the "technology transfer" package is not VAT exempted

On 13 June 2019, the General Department of Taxation issued Official Letter No. 2407/TCT-CS providing guidance on VAT. Details are as below:

According to Decree No. 209/2013/ND-CP and Circular No. 219/2013/TT-BTC, "technology transfer" and "intellectual property rights transfer" are VAT exempted.

However, if the technology and intellectual property rights transfer are accompanied by the transfer of machinery and equipment, only the part of technology and intellectual property rights shall be VAT exempted. In case the machinery and equipment value cannot be separated from the technology and intellectual property rights transfer value, VAT liability shall be imposed on total value of the transfer.

Accordingly, this Official Letter provides the principle guidelines that technology transfer activities are VAT exempted, but the transfer of the rights to use intellectual property is not VAT exempted.

Free samples are exempt from VAT but required to have a VAT invoice

On 20 May 2019, the Ha Noi Tax Department issued Official Letter No. 35857/CT-TTHT guiding VAT invoices in relation to free samples provided to customers.

When giving free samples to customers for the purpose of advertisement and product introduction, if it complies with the regulated promotion activities under commercial law, the VAT taxable price is 0 following the guidance of Circular No. 219/2013/TT-BTC.

It worths noted that for free samples given to customers, Circular No. 39/2014/TT-BTC requires the company issue invoices to each of customer, instead of combining all customers in only one invoice together with a detailed list. Such invoices must have the name and quantity of the products. A note of "sample goods" must be clearly stated.

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Invoices

Issuing adjusted invoice when refunding tuition fee

On 28 March 2019, the Ha Noi Tax Department issued Official Letter No. 12567/CT-TTHT guiding companies operating in the education and training sector on invoicing when refunding the tuition fees.

If students have paid tuition fees for the school year but wish to withdraw from the courses in the middle of the year, when tax for such payment had been declared, a working minute or written agreement between the school and students to specify the situation must be arranged upon refunding the tuition fees. The school is required to issue adjusted invoices following the guidance of Circular No. 39/2014/TT-BTC dated 31 March 2014 issued by the Ministry of Finance. Based on the adjusted invoice, the school adjusts the revenue and relevant output VAT in the VAT declarations.

With sufficient purchasing documentations, buyers are not required to sign off the e-invoices

On 22 April 2019, the Ha Noi Tax Department issued Official Letter No. 23469/CT-TTHT to provide guidance on the use of e-invoices.

Accordingly, if the seller could maintain sufficient documentations to substantiate the provision of goods and services to the buyers, such as contract, inventory issuing minutes, delivery note, payment voucher, receipt, etc., the relevant e-invoices is not required to have the buyers' e-signature (except for cases when the buyers are accounting entities and request to have their signature on the invoice).

The invoice issuance is required when delivering goods to the import trustee

On 22 April 2019, the Hanoi Tax Department issued Official Letter No. 2347/ CT-TTHT regarding the VAT invoice for returning goods of the entrusted importer.

According to Circular No. 39/2014/TT-BTC, when a entrusted importer returns goods to the trustee, of which import VAT has

been fulfilled during the customs clearance, the entrusted importer is required to issue invoice to the trustee for the trustee to form a basis for input VAT crediting.

Such invoice must clearly state the selling price that is exclusive of VAT, the VAT rate, the VAT amount, and the total payment.

The entrusted importer needs to issue a separate invoice for their entrusted import services.

Customs

Guidance on classification of goods imported under assembly mode

On 03 June 2019, the General Department of Customs ("GDC") issued Official Letter No. 3606/TCHQ-TXNK ("OL 3606") responding to the Ho Chi Minh City Department of Customs on the classification for the case following Rule 2a in the 6 General Rules of Interpretation for classification of goods under the Circular No. 65/2017/TT-BTC.

Particularly, the OL 3606 specifies a case in which imported spare parts can be assembled (to make a complete product), and can become a new product A or B if being assembled to with another or some other parts. The OL 3606 concludes that such imported components, which have had the essential character of complete or finished products, should be conformed to apply Rule 2a, and must be classified under the product A or product B. Therefore, the Ho Chi Minh City Department of Customs should base on the physical goods at the time of import to determine the main function and classification of goods. In case the main function of the goods at the time of import is relating to a particular product, then the Customs Department will classify the imported components into the HS code of such product.

Guidance on goods classification

On 03 June 2019, GDC issued Official Letter No. 3587/TCHQ-TXNK to instruct the provincial Departments of Customs on the classification and inspection of HS codes of import and export goods. Some notable contents are summarized as follows:

- Regarding the HS code classification: When carrying out customs procedures, customs officers must check the description of goods, HS codes and tax rates according to regulations in detail. It is noted that the import-export goods must be declared with clear descriptions of composition, content, nature, structure, characteristics, and function of the goods in alignment with the name and description of goods described in the List of Import – Export Tariff of Vietnam.

- Regarding the inspection of the HS codes and tax treatment: When applying the notification of classification, or official letter of providing guidance on HS code classification issued by the GDC for a specific product, the Customs officials must ensure the nature of products of these two shipments are identical (i.e. having the same description, composition, physical and chemical properties, features, usage, import from the same manufacturer). The classification of goods should not only base on the name or commercial information of the goods subject to classification.

Production of automotive spare parts in the incentivized areas entitled to import duty exemption

On 06 June 2019, the GDC issued Official Letter No. 3761/TCHQ-TXNK on tax policy for materials, supplies and components imported to produce automotive components and spare parts.

Particularly, the import duty exemption for the supplies and components within 5 years for special incentivized investment projects is not applied to projects manufacturing and trading goods subject to Special Consumption Tax ("SCT").

Accordingly, in case the investment project manufacturing automotive components and spare parts (other than goods subject to SCT) in special incentivized area is independent, and not under automobile manufacturing and assembly projects; the investment project is entitled to a 5-year import duty exemption for the supplies and components that cannot be produced domestically.

Inspection on the actual Bill of Material ("BOM") and determination of the cut-off time of inventory balance

On 03 June 2019, the GDC issued Official Letter No. 3600/TCHQ-KTSTQ ("OL 3600") to provide instructions to the provincial Departments of Customs on inspection of the actual BOM and the determination of the cut-off time of inventory balance. According to OL 3600, the use of "average BOM" is not appropriate and may be inaccurate against the enterprises' actual production. Therefore, to unify the inspection method, the GDC provides the following instructions:

- Regarding the inspection of BOM: The BOM must be inspected with supporting documents such as production orders, production plans, internal transport slips, etc. for each sales order. During the post-clearance audit/inspection at the company's site, the customs authority must require the enterprise provide such documents of weekly/monthly/yearly production plan depending on the management scale, and characteristics of the industry that the manufacturer is operating.

- Regarding the cut-off time of inventory balance: The cut-off time of inventory balance of each enterprise will be different dependent on the business activities and internal management practices. Therefore, the Customs authority must rely on the actual situation of the enterprise to determine the appropriate cut-off time and the data of inventory balance for reconciliation.

  - In case the enterprise conducts a periodic stock-take and submit the relevant documents, the Customs authority will select the stock-take time as the cut-off time of inventory balance for data reconciliation;

- If the enterprise does not perform a periodic stock-take (or does not summit the relevant documents), the Customs authority will carry out the inspection of the inventory balance within the post-clearance customs audit/ inspection period, and determine the appropriate cut-off time and data of inventory balance based on the results of analysis, risk assessment, and the actual situation of the enterprise.

In addition, the GDC requests the provincial Department of Customs review and promptly remedy the cases of audit/inspection that do not comply with the above guidance.

Tax treatment on imported materials for on the spot export manufacturing

On 25 June 2019, the GDC issued Official Letter No. 4138/TCHQ-TXNK replacing Point 2 of Official Letter No. 5826/TCHQ-TXNK (dated 05 October 2018) to provide guidance on the treatment of import duty for materials and supplies imported to manufacture for export under the on-the-spot export mode, and deliver goods to the destinations specified by the overseas entity.

Particularly, in case the company imports raw materials for processing, manufacturing of export goods, which will then be re-exported or sold to the oversea entities but instructed to deliver goods to enterprises in Vietnam under on-the-spot export mode, the Company will be entitled to import duty exemption on the volume of imported raw materials and supplies used for processing, manufacturing of export goods under on-the-spot export mode.

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Penalty for late submission of customs documents for various customs declaration returns

On 11 June 2019, the GDC issued Official Letter No. 3824/TCHQ-PC on the violation sanctions in customs domain. Accordingly, the sanction of repeated administrative violations shall follow the provisions of the Law on sanction of administrative violations as follows:

- Clause 6, Article 2 on Administrative Violations which are repeated many times;
- Point d, Clause 1, Article 3 on Principles of penalty for administrative violations;
- Article 9 on Extenuating circumstances;
- Article 10 on Aggravating circumstances: “Administrative violations repeated many times; relapse": and,
- Official Letter No. 15214/BTC-TCHQ dated 23 October 2014 issued by the Ministry of Finance.

In particular, where individuals, organizations commit the violation of "not submitting the customs dossiers on time, which are allowed for late submission", and "late submission of customs dossiers for liquidation, refund purpose..." for various customs declaration returns for many times, if such violations are detected at the same time, such individuals, organizations will be subjected to administrative penalty for 01 time violation, and simultaneously being subjected to aggravating circumstances for "multiple time administrative violation”.

Increase inspection of imported goods labeled as "Made in Vietnam"

On 20 May 2019, the GDC issued Official Letter No. 3083/TCHQ-GSQL on increasing inspection of the origin of goods imported from China but labeled as "Made in Vietnam".

Particularly, in order to prevent fraudulent origin and protect domestic consumers, the GDC requests the Directors of provincial Department of Customs to implement the following actions:

- Increasing inspection and identification of the origin and labels of imported goods in accordance with current regulations;

- For goods imported from China, when performing the customs documentation check or physical inspection of goods, customs officiers must check in detail the name, HS code, origin of goods and label to ensure the consistency with the name, HS code, origin of the goods presented in the customs declaration dossiers and C/O (if any).

When detecting the imported goods labeled "Made in Vietnam", customs officiers must conduct verification. Where there are grounds to identify that a product has been falsified origin, place of manufacturing, packaging or assembly, customs officiers, depending on the violations, nature and extent of violations, apply the criminal sanction or administrative sanction in accordance with Clause 2, Article 13 of Decree No. 185/2013/ND-CP.

Materials used to make uniforms for employees of EPEs are not entitled to import duty exemption

On 05 April 2019, the GDC issued Official Letter No. 2751/TXNK-CST responding to Tay Ninh Customs Department on tax policy for goods used in export processing enterprises ("EPEs").

According to the provisions of Point c, Clause 4, Article 2 of the Law on Import and Export Duties, goods imported from oversea into the non-tariff zones and only used in the non-tariff zones are exempt from import duty. However, in case EPEs use imported materials to make uniforms for employees for daily use, due to the insufficient basis to determine whether the uniforms are only used in the EPEs, the aforementioned materials are not entitled to import duty exemption.

In case EPEs use fabrics produced by themselves to make uniforms, if the fabrics are produced from imported materials, they are not exempted from the import duty as the aforementioned case. In case the fabrics are produced from raw materials bought domestically and

all applicable duties have been fulfilled, it is not required to declare and pay taxes for such fabrics.

Customs declaration and tax treatment for the re-imported goods manufactured for export

On 30 May 2019, the GDC issued Official Letter No. 3514/TCHQ-TXNK providing guidance on the customs declaration and treatment for the re-imported goods manufactured for export, particularly:

Regarding import and export duties

Accordingly, when re-importing products manufactured for export and awaiting for re-export, if the enterprise submits a complete set of applications for duty exemption at the time of the re-import, it will be exempted from import duties and at the same time entitled to refund of the having paid export duties (if any).

The enterprise reflects the volume of re-imported products in the Inventory Finalization Report (IFR) at the item 26.10 (The volume of products imported in the period), and the reference number of re-import customs declarations return at item 26.13 (Note) in the Form No. 26 of the Appendix I attached with Circular No. 39/2018/TT-BTC. For the manufactured goods for export that is re-imported, if the enterprise has been refunded with the export duties (if any), such goods will be subject to export duties (if any) when re-exporting as in the initial export. In case when the submission of customs dossier was in hard copies, the enterprise needs to present the volume of re-imported products in column 6 of the IFR, stating the number of re-imported declarations in Column 11, Form No. 15a/BCQTSP-GSQL of Appendix II attached with Circular No. 39/2018/TT-BTC.

Simultanouesly, the enterprise has to declare the volume of exported products in item 26.11.2 (export manufacturing) and the reference number of re-export customs declarations return at item 26.13 (Note) in the Form No. 26 of Appendix I; or presents at column 8 and the reference number of re-export customs declarations return in Column 11, Form No. 15a/BCQTSP-GSQL of Appendix II attached with Circular No. 39/2018/TT-BTC (in case of submission of paper customs dossier).

Regarding SCT

When re-importing exported

manufactured products awaiting for re-export, the enterprise must declare SCT on re-import declarations, the customs authorities shall not collect tax if the declarant submits a complete set of non-collection of SCT dossiers at the time of declaration for the re-import. However, in case the enterprise has been refunded for SCT for materials and supplies imported for exported manufacturing, when re-importing the product, it must return the refunded SCT corresponding to the imported raw materials and supplies used to manufacture export goods but must be re-imported.

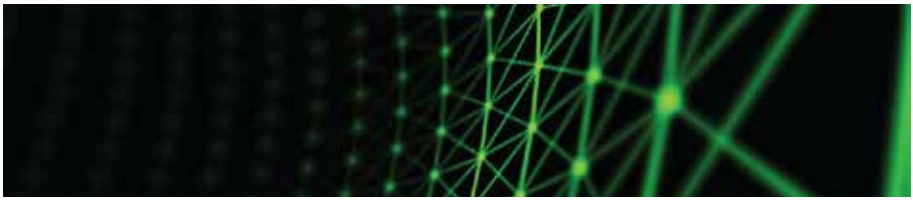
Regarding transferring goods to domestic sales after re-import

In case the enterprise does not re-export but transfers the re-imported goods manufactured for export to domestic consumption, it must submit a declaration of changing usage purpose of raw materials and supplies imported for export manufacturing as prescribed in Clause 12, Article 1 of Decree No. 59/2018/ND-CP.

Materials imported for export processing and manufacturing under on-the-spot export mode as assigned are entitled to import duty exemption

On 25 June 2019, GDC issued Official Letter No. 4138/TCHQ-TXNK regulating tax policies for imported raw materials and supplies used for export processing and manufacturing under the on-the-spot import-export mode. Accordingly, in case an enterprise imports materials and supplies for export processing and manufacturing, then re-exports and sells products processed from imported raw materials and supplies to foreign enterprises but is instructed to deliver the products to other enterprises in Vietnam (on the spot export) shall be exempt from import duty for materials and supplies according to Decree No. 134/2016/ND-CP.

This Official Letter replaces the content at Point 2 of Official Letter No. 5826/TCHQ-TXNK dated 05 October 2018.



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Other documents

Adjustment of Health Insurance benefit regimes upon the new common minimum wage (VND 1.490.000 per month)

On 23 May 2019, the Social Insurance Department of Ho Chi Minh City has published Official Letter No. 314/BHXH-GD1 giving instructions on the implementation of the new common minimum wage under Decree No. 38/2019/ND-CP in covering healthcare fee, in detail:

The full coverage for each occurence of health check/treatment is VND 223.500, which is equivalent to 15% of the common minimum wage VND 1.490.000. In case of using upgraded services, the high fee of certain services in accordance with regulation, the maximum coverage is VND 67.050.000, which is equivalent to 45 months of the common minimum wage.

The co-coverage of healthcare fee within the year, which is above 6 months of common minimum wage, has consequently increased.

The above benefit regimes take effect from 01 July 2019.

Foreigners granted a TT type temporary resident card, should have it switched to LD type if they would like to work

On 21 May 2019, the Ministry of Public Security issued Official Letter No. 1343/BCA-V03 advising on the procedure of requesting the Temporary Resident Rard ("TRC") for foreign labor.

If the foreigner is granted the TRC (type TT) under the guarantee of spouse, they could keep on using it to stay in Vietnam. However, the employment must be approved by the company that guarantees for the TRC. Accordingly, to prevent any challenges for the foreigner, the company should carry out the guarantee procedure and apply visa/temporary resident card (type LD) for such foreigner.

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