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Tax Newsletter

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NEW REGULATIONS

Decree No. 28/2018/ND-CP providing detailed guidance on the Law on Foreign Trade Management regarding some foreign trade development measures

On 1 March 2018, the Government issued Decree No. 28/2018/ND-CP ("Decree 28") (replacing Decree No. 100/2011/ND-CP) providing detailed guidance on the Law on Foreign Trade Management regarding certain measures for foreign trade development.

There are several key amendments relating to Representative Office ("RO") in Vietnam as compared to the former Decree, namely:

- Requiring the registration of employees of the RO in Vietnam with the licensing authority (the former Decree only required the chief representative to be registered).
- Listing further examples of organizations not being allowed to establish a RO in Vietnam, which applied for the foreign trade promotion organizations on the list of being subject to sanctions under resolutions of the United Nations Security Council.

The Decree takes effect from the issuance date.

Decree No. 39/2018/ND-CP providing detailed guidance on some articles of the Law on Assistance to small and medium-sized enterprises

On 11 March 2018, the Government issued Decree No. 39/2018/ND-CP ("Decree 39") providing detailed guidance on some articles of the Law on Assistance to small and medium-sized enterprises (replacing Decree No. 56/2009/ND-CP). The Decree 39 has some notable changes as follows:

- Amending the criteria to determine small and medium -sized enterprises entitling special support policies, namely:

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- An "ultra-small-sized enterprise" has no more than 10 employees registering with Social Insurance, Health Insurance and Unemployment Insurance (SIHIUI) authority and total revenue of no more than VND 3 billion or the total working capital of no more than VND 3 billion per annum (or no more than VND 10 billion per annum for the trade and services sector). Under the former Decree, an ultra-small-sized enterprise was defined as one having no more than 10 employees.

- A "small-sized enterprise" has no more than 100 employees registering with SIHIUI authority (down from 200 employees under the former Decree) and the total working capital of no more than VND 20 billion or the total revenue of no more than VND 50 billion per annum. For the trade and services sector, a small-sized enterprise has no more than 50 employees with the total working capital of no more than VND 50 billion (up from VND 10 billion in the previous Decree), or the total revenue of no more than VND 100 billion per annum.

- A "medium-sized enterprise" has no more than 200 employees (down from 300 employees under the former Decree) registering with SIHIUI authority with the total working capital of no more than VND 100 billion, or the total revenue of no more than VND 200 billion per annum. For the trade and services sector, a medium-sized enterprise has no more than 100 employees with the total working capital of no more than VND 100 billion (up from VND 50 billion in the previous Decree), or the total revenue of no more than VND 300 billion per annum.

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- Supplementing the policies to support small and medium-sized enterprises, particularly:

  Small and medium-sized enterprises:

  - can get access to the National Information Portal free of charge;

  - are supported from 10% to 100% of the consulting service contract value through the consultants in the National Information Portal;

  - can respectively get a minimum reduction of 50% fees for business start-up and corporate training courses; and

  - can get free short-term training courses.

- Small and medium-sized enterprises converted from household business are exempted from:

  - the license fees for 3 years from the date of receiving the first enterprise registration certificate;

  - the fee for the first business registration; and

  - the fee for publicizing the content of the first business registration on the National Business Registration Portal.

Decree 39 takes effect from the date of issuance.

Increase the penalty up to VND 100 million for accounting and independent auditing sector

On 12 March 2018, the Government issued Decree No. 41/2018/ND-CP ("Decree 41") (replacing Decree No. 105/2013/ND-CP) stipulating administrative penalties in the field of accounting and independent audit. The notable changes are as follows:

- Increase in the maximum penalty, for each act of administrative violation in the field of accounting, independent audit, from VND 30 million to VND 50 million for individuals, and from VND 60 million to VND 100 million for organizations;

- Increase the monetary penalty for any of the following acts:

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- Incorrectly applying the regulations on script, numerals, monetary unit or accounting period: a penalty from VND 5 million to VND 10 million is amended to from VND 10 million to VND 20 million;

- Counterfeiting and incorrect statement of accounting figures in financial statements: a penalty from VND 20 million and VND 30 million is amended to VND 40 million and VND 50 million;

- Additional penalties for other acts of administrative violation, as follows:

  - Failure to comply with accounting standard: a penalty from VND 10 million to VND 20 million;

  - Signing accounting vouchers in red ink, or fading ink; signing accounting documents by engraved stamp; payment records are not signed in order: a penalty from VND 3 million to VND 5 million;

  - Failure to provide accounting records translated into Vietnamese upon request by the competent authorities: a penalty from VND 5 million to VND 10 million;

  - Failure to make financial statements in accordance with the regulations: a penalty from VND 5 million to VND 10 million.

Decree 41 takes effect from 1 May 2018.

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New Regulations on Certificate of Origin ("C/O")

On 8 March 2018, the Government issued Decree No. 31/2018/ND-CP (“Decree 31”) (replacing Decree No. 19/2006/ND-CP) detailing the Law on Foreign Trade Management regarding the Origin of Goods.

Decree 31 has added several new regulations relating to the criteria for certifying and issuing certificates of origin. Some key provisions are as follows:

- It is compulsory to register trader’s dossiers before applying C/O for the first time;
- It is permitted for the place of C/O application/issuance to be different to the place of registration in the trader’s dossier;
- C/O application dossiers are specific to each export shipment;
- It is possible to apply for C/O through electronic (online) declaration procedure;
- C/O can be issued retroactively within 1 year (from the date of goods delivery), if not issued at the time of export;
- It is possible to re-issue C/O in cases of error, loss, misplacement or damage; and to separate the C/O into 2 or more sets;
- Governing the issuance of C/O for goods of unchanged origin, applied in cases where goods are brought from overseas into the bonded warehouses of Vietnam and subsequently exported to other countries, or imported to domestic areas;
- Clear guidance on cases for refusing to grant, or withdrawal/cancellation of previously granted C/O;
- Allowing traders to self-certify the origin of the export goods;

Note: From 8 March 2018 to 30 June 2018, application dossier for C/O, procedures for declaration and issuance of C/O shall remain in compliance with the regulations of the Decree No. 19/2006/ND-CP dated 20 February 2006.

The Decree takes effect from the date of issuance.

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GUIDING DOCUMENTATIONS

Personal Income Tax ("PIT")

Penalties for incorrect declaration of PIT finalization

On 28 February 2018, the General Department of Taxation issued Official Letter No. 687/TCT-TNCN guiding the administrative penalty for incorrect declaration of PIT finalization of enterprises, specifically as follows:

- In case of incorrect declaration of PIT as stipulated in Clause 1, Article 10 of Decree No. 129/2013/ND-CP, the penalty for the violations mentioned in Clause 1 of this Article is 20% of the outstanding tax, the refund, reduction, or exemption of tax as prescribed by in Clause 2, Article 10 of this Decree.

- If the incorrect declaration does not result in under-declared liabilities or an increase for tax exempted or reduced, or tax refund has not been granted, penalty from VND 1,200,000 to VND 3,000,000 shall be imposed for one of such violations in accordance with Clause 4, Article 6 of Decree No. 129/2013/ND-CP.

Value Added Tax ("VAT")

VAT refund for imported goods which then are exported

On 9 March 2018, Tax Department of Hanoi issued Official Letter No. 9135/CT-TTHT guiding VAT tax refund for imported goods then exported.

The Letter stipulated that if the Company exports the goods imported from 1 July 2016 to 31 January 2018 (the effective date of Circular No. 130/2016/TT-BTC), then the Company would not be entilted to VAT refund under Clause 3, Article 1 of Circular No. 130/2016/TT-BTC.

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Foreign Contractor Withholding Tax (FCWT)

Overseas money-transfer fee is subject to FCW

On 12 February 2018, the General Department of Taxation issued Official Letter No. 563/TCT-DNL providing guidance on FCWT for money transfer service to overseas.

In brief, where foreign intermediary organizations, which are not banks, have income in Vietnam based on the service contract of transferring money abroad for the customers of the banks in Vietnam, then such income is subject to Vietnamese FCWT.

When paying the remittance charge to a foreign intermediary organization, the bank must withhold, declare and pay FCWT liability on behalf of the intermediary organization (VAT rate 5%, CIT rate 5%) calculated on the income received from the customers.

Invoice

Invoices to include both name and code of the goods

On 14 March 2018, the Tax Department of Hanoi issued Official Letter No. 9729/CT-TTHT guiding the issuance of invoice for the item “name of goods” on the invoices.

Accordingly, in cases where the enterprise sells products having requirement of product codes for management purpose, upon issuing invoices, the enterprise shall write both the name and code of the goods on the invoices.

No adjustment invoice would be made to reduce VAT revenue in cases where the customers go into insolvency

On 15 March 2018, the Tax Department of Hanoi issued Official Letter No. 9842/CT-TTHT providing guidance on making adjustment invoice to reduce revenue.

Specifically, where a company signs contracts with customers but cannot collect the money from the customers because the customers are insolvent, this would be regarded

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as case where it is allowed to make adjustment invoices to reduce VAT revenue as stipulated in the Circular No. 39/2014/TT-BTC.

Guidance on invoice issuance, VAT declaration for payment on behalf of the customers

On 19 March 2018, the Tax Department of Hanoi issued Official Letter No. 10384/CT-TTHT providing guidance on invoice issuance, VAT declaration for payment on behalf of customers. Specifically, when the company makes payments for expenses incurred on behalf of the customer as stipulated in the contract, the invoice for such expenses must be issued under the name and tax code of the customer. Accordingly:

- In case where invoices are issued by the supplier under the name and tax code of the customer: The Company does not declare or credit input VAT for these invoices. Upon recovering such payment, the Company only needs to issue a receipt, instead of an invoice.

- In case where suppliers already issued invoices under the name and tax code of the Company: Suppliers have to retrieve such invoices to re-issue under the name and tax code of the customers. If suppliers do not retrieve the invoices, when receiving the payment from customers, the Company shall have to make invoices, declare and pay VAT according to regulations.

Notes for using e-invoice

On 6 March 2018, the Tax Department of Hanoi issued Official Letter No. 8610/CT-TTHT guiding the usage of e-invoice as follows:

- Regarding the signature of buyer on e-invoice: Where the buyer is not an accounting entity, or the buyer is an accounting entity, and receives documents in relation to supplies of goods or services, between the seller and the buyer (such as: economic contract, delivery bill, good delivery minute, receipt, etc.), no signature of buyer is required for e-invoice.

- Regarding issuing e-invoice having rows more than one page: the enterprise makes e-invoice in the same manner as making self-printed invoice as guided in Clause 1, Article 19 of Circular No. 39/2014/TT-BTC.

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Penalty for loss of goods delivery note

On 2 February 2018, the General Department of Taxation issued Official Letter No. 474/TCT-CS providing guidance on the penalty for loss of goods issue/internal transfer note.

Where a company either:

- loses the second slip of the goods issue/internal transfer note, which has been notified but not yet issued or used, or
- issued incorrectly and has been canceled, but such note is still in the storage timeline requirement,

then the Company will be subject to penalty from VND 4 million to VND 8 million as regulated in Clause 4, Article 3 of Decree No. 49/2016/ND-CP.

No penalty for tax finalization having tax overpaid submitted after deadline

On 6 March 2018, the General Department of Taxation issued Official Letter No. 740/TCT-TNCN providing guidance on the administrative penalty for late submission of the finalization returns.

In cases where a taxpayer, having conducted PIT finalization, determines there has been a tax overpayment, and is requesting refund, or offset against the tax liability of next period, misses the submission deadline for tax finalization, no administrative penalty would apply for such violation.

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Guidance on tax declaration for newly-established enterprise

On 9 March 2018, the Tax Department of Hanoi issued Official Letter No. 9136/CT-TTHT providing guidance on tax declaration for newly-established enterprise at the end of the year, specifically as below:

- License tax: The enterprise established in the last 6 months must declare and pay 50% license tax of full year as regulated in Article 4 of Decree No. 139/2016/ND-CP.
- Value Added Tax: The enterprise declares VAT on quarterly basis. After operating for 12 months, in the next calendar year, the enterprise must determine (based on revenue from selling goods and services from previous year), whether to declare VAT on monthly or quarterly pursuant to Article 15 of Circular No. 151/2014/TT-BTC.
- Corporate Income Tax: If the first tax year is under 3 months, this period could be combined with the tax period for the subsequent year for tax finalization purpose.
- Personal Income Tax: If during a month or quarter, the company does not incur any withholding PIT, no PIT declaration is required as regulated. If the company does not make any remuneration payment on an annual basis, no PIT finalization is required.
- Invoice: Where since establishment, an enterprise has applied credit method for VAT declaration, has not registered for printed invoice or self-printed invoice, and not yet submitted the notification of invoice issuance to the tax authority, then the enterprise would not need to submit invoice usage report.

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Import-Export Duties and Customs

Goods trading among Export Processing Enterprises (“EPEs”) are exempted for foreign trade control

On 27 February 2018, the General Department of Customs issued Official Letter No. 517/GSQL-GQ2 providing guidance for goods trading of EPE as follows:

- For customs procedure: Goods trading among EPEs can choose to comply with the custom procedure or not. In case of applying the customs procedure, the company will follow the on-spot import-export procedure as regulated in Article 86 of Circular No. 38/2015/TT-BTC.
- For goods trading policy: The foreign trade control policies would not apply for goods traded/transferred between customs areas (e.g. non-tariff zones) in Vietnam.
- For scrap selling: EPEs with foreign investment capital could export scrap of manufacturing or processing procedure in compliance with the company’s Investment Registration Certificate.

General Department of Customs provides guidance on customs valuation

On 5 March 2018, the General Department of Customs issued Official Letter No. 1158/TCHQ-TNXK providing guidance on customs valuation as follows:

- Suspicion on declared customs values: Where the Customs have suspicion of the declared customs dutiable value, they should inform their suspicion through the database systems of the Customs authority (VNACCS) or update by Form No. 02A/TBNVTG/TXNK attached with Appendix VI of Circular No. 38/2015/TT-BTC.
- For determination of customs dutiable value: If during the consultation or post-clearance audit, Customs have sufficient evidence to reject the declared value, then they would determine the customs dutiable value following the order, principles and customs valuation methods as regulated in Circular No. 39/2015/TT-BTC.

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The information used to determine the customs value should be relevant to the customs valuation method applied by the Customs authority. When collecting the information, the Customs authority must verify, and apply to the same trading condition.

- Regarding the database of customs value: the enterprise must self-declare paid/to-be-paid value and take responsibility for the accuracy of the declared value. The customs values on the database are for internal use in identifying suspicious values, and not for imposing the customs value.

- For implementation: Relevant legislative documents provide sufficient clear and transparent guidance for inspection, identifying suspicion, rejection basis of customs value, customs valuation. However, it is recognized that some Customs officers in provinces and cities, have not complied with the provided regulations. The General Department of Customs has already issued guidance to reinforce application of the legislation, and to adjust the incorrect implementation of some provincial/ municipal Customs authorities.

Additive adjustment of transportation fee and associated surcharges to the customs dutiable value

The General Department of Customs issued Official Letter No. 1237/TCHQ-TXNK dated 8 March 2018 and Official Letter No. 1395/TCHQ-TXNK dated 16 March 2018 providing additive adjustment of the transportation charge and associated surcharges to the customs dutiable value.

According to the guidance in the above letters, if the importer incurs CIC/EIS Charges, D/O (document fees), container cleaning charges, etc., these fees may be considered as additive adjustment when determining the customs dutiable value of the imported goods, if the conditions of additive adjustment are met as follows:

- Paid by the buyer and not included in the value actually paid or to be paid;

- Must be related to imported goods;

- Have objective, quantitative data, and in accordance with the relevant documents.

Accordingly, in order to ensure the sufficient declaration of expenses relating to the transportation of goods to the first import border gate, the General Department of Customs requests the provincial/ municipal Customs Departments to:

- Instruct the enterprises to fully declare all the charges relating to the transportation of imported goods to the first import border gate which satisfy the conditions of additive adjustment;
- Reinforce the inspection at the importation stage, timely identify and request the enterprises to make amendment declaration to customs dutiable value in cases the enterprises have not yet fully declared;
- Conduct review, post-clearance customs audit of the customs returns undergone customs clearance to identify cases where enterprises make incomplete declaration to claw-back taxes and impose administrative penalties;

In addition, Official Letter No. 1395/TCHQ-TXNK also provides guidance on amendment declaration of the additive adjustment in the customs system in case the enterprise declared the customs value classification code as 7 (applying the transaction method in case of having special relationship but not affect the transaction value).

Importing automobile from 1 January 2018 must have license granted by the Ministry of Industry and Trade

On 26 February 2018, the General Department of Customs issued Official Letter No. 500/GSQL-GQ1 providing guidance on import customs procedure of automobiles from 1 January 2018.

Specifically, as stipulated in Article 31 of Decree No. 116/2017/ND-CP, from 1 January 2018, the enterprises can only import cars after being granted car import license by the Ministry of Industry and Trade.

If due to force majeure, the enterprise cannot meet the provisions in Decree No. 116/2017/ND-CP mentioned above, the issue is subject to assessment by the Government, rather than the General Department of Customs. The enterprises should report to the Government for their consideration and resolution.

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C/O of imported raw materials for manufacturing export products will no longer valid when diverting to domestic consumption

On 14 March 2018, the General Department of Customs issued Official Letter No. 1332/TCHQ-TXNK providing guidance on customs duties treatment of export manufactured product diverted to domestic consumption.

Under Point a, Clause 1, Article 33 of Decree No. 134/2016/ND-CP, where exported goods have been subject to export duty but are subsequently returned for domestic consumption, they will be exempted from import duty, and be refunded the export duty paid. However, when transferring the goods to domestic consumption, enterprises must declare and pay import duty on the raw materials that were exempt from duty at the initial import.

In order for the C/O to be accepted at the time the goods are declared for domestic consumption:

- the C/O must still be valid, and
- the goods must be determined not to undergone any production or processing process (i.e. remain in original condition of origin) from the time of initial import registration to the time of registration for diversion declaration.

Where imported raw materials were used in the production of products that have been exported, and subsequently returned, those raw materials would have lost their original status and any C/O relating to those raw materials would not be accepted.

HS classification results must not be re-applied for goods where it is difficult to determine their composition

On 13 February 2018, the General Department of Customs issued Official Letter No. 964/TCHQ-TXNK providing guidance on application of HS classification results.

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Pursuant to Clause g, Article 18 of Circular No. 38/2015/TT-BTC, the results of analysis and classification of previous consignment, which were cleared from customs procedures, can be used to declare names and codes on subsequent importations, where:

- the goods have the same name, composition, physical and chemical properties, features, use,
- are imported from the same manufacturer, and
- are imported within a period of 3 years from the date of the analysis.

However, for those goods whose composition, physical and chemical properties, features and use, could only be identified through analysis in the laboratory (rather than visual inspection), then:

- Samples would need to be taken for each consignment, and
- The classification results of the previous consignments must not be re-applied.

Tax policy for goods being changed HS codes from 1 January 2018

On 12 February 2018, the General Department of Customs issued Official Letter No. 974/TXNK-PL providing guidance on the customs duties treatment for HS codes that expired on 1 January 2018.

Specifically, the General Department of Customs has proposed a temporary solution to the Ministry of Finance in those case where:

- enterprises imported goods, and applied the special preferential duty rates under Decree No. 124/2016/ND-CP (implementing the Vietnam – Laos Free Trade Agreement),
- the HS codes have been changed or deleted from the List of import-export goods under Circular No. 65/2017/TT-BTC from 1 January 2018.

The General Department of Customs's proposed solutions are as follows:

- The enterprises declare new HS codes according to Circular No. 65/2017/TT-BTC and temporarily apply MFN customs duty rates for goods clearance;

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- After the amendment of the FTA Tariff, the enterprises can file retrospective claims to apply the FTA preferential tax rate-provided all conditions for FTA eligibility are met.

The General Department of Customs will provide detailed guidance on this content after obtaining approval from the Ministry of Finance.

Imported automobiles will aggressively be subject to customs valuation review

On 12 February 2018, the General Department of Customs issued Official Letter No. 928/TCHQ-TXNK requiring provincial/ municipal Customs authorities to intensify their review of the customs valuation of imported automobile, including performing the following actions:

- Review the name of imported automobile to examine and determine the customs value: Detail of goods' name, brand, model, cylinder capacity; number of seat; number of door, number of wheel drive, gear type (automatic or manual); using fuel (petrol or oil), new or second hand, Model, Other models if any (e.g. Limited, Premium, XLE, LE...); Year of manufacture, number of running km (for second-hand automobile);
- Conduct consultation, post-clearance audit for the consignments where Customs have suspicion on customs value(s) declared - in accordance with Circular 39/2015/TT-BTC and Circular No. 38/2015/TT-BTC;
- Follow the guideline for information collection, method of conversion and verification of information for customs valuation purposes;
- Regularly review and propose for amendment, supplement the List of exported, imported goods with the risk related to customs valuation for imported automobile. Implement additional proposal for the new model and brand.

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Other guiding Documentations

Deadline for Tax declaration submission in case of error caused by General Taxation Department's Information Portal

On 12 February 2018, the General Department of Taxation issued Official Letter No. 559/TCT-KK regarding the submission deadline of tax declaration.

Where there are any errors/faults in the electronic information portal of the General Department of Taxation, which then affects the taxpayers' ability to meet the deadline for submission and payment, the General Department of Taxation will take responsibility to announce (according to Form No. 02/TB-TĐT issued with Circular No. 110/2015/TT-BTC dated on 28 July 2015 by the Ministry of Finance) on:

- the Information Website (www.gdt.gov.vn), and
- the electronic information portal of the General Department of Taxation to the taxpayer.

Taxpayers should submit the tax declaration dossiers on the next day after General Department of Taxation's Information Portal resumes operation.

Taxpayers will not be subject to administrative penalty for late submission of electronic tax dossier, and exempted from the late payment interest for the tax payable arising in the period of the system error following the notification of the General Department of Taxation. The exemption of late payment interest will be automatically processed by the General Department of Taxation's tax administration system.

Draft amendment on the policy on charged-off debt and remission of tax debts

On 13 February 2018, the Ministry of Finance issued Official Letter No. 1930/BTC-TCT requesting for opinions to the draft Resolution of the National Assembly on the resolution plan for bad debts to relevant competent authorities.

According to the draft Resolution, the Ministry of Finance intend to supplement some policies on charged-off debt and remission of tax debts, late payment interest/ penalties as below:

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- Charge off the tax debts (temporarily not collect and calculate the late payment interest of tax liabilities) starting from 1 January 2018 for taxpayers having tax debts that have postponed their business activities over 1 year and being withdrawn the Enterprises Registration Certificate, Business License, Practicing License.

- Remit the late payment interest for enterprises that provide goods, service paid from or having payment source from the State budget but not received payment.

- Remit the penalty for late tax payment, late payment interest of tax debts arising before 1 January 2018 of taxpayers due to natural disaster, fires, unexpected accidents or force majeure circumstances.

- Remit tax debt, late payment interest, penalties for cases of charged-off debts due to the fact that the taxpayers have been dissolved, bankrupt, or terminated business activities, have no longer conducted business activities before 1 January 2017 and have no payment capability, and being withdrawn the business license.

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Plan for upgrading applications to comply with Circular No. 133/2016/TT-BTC

On 15 March 2018, the General Department of Taxation issued Official Letter No. 845/TCT-CNTT announcing the plan to upgrade some applications to adapt to the requirements in Circular No. 133/2016/TT-BTC as follows:

- The General Department of Taxation will upgrade and deploy the tax declaration support called "HTKK application" for small and medium-sized enterprises to prepare Financial Statements regulated in Circular No. 133/2016/TT-BTC and submit online via iHTKK, eTax, or through the TVAN providers from 23 March 2018.

- The General Department of Taxation has announced the format of the XML declaration form of Financial Statements satisfying the requirements in Circular No. 133/2016/TT-BTC on online tax filing websites (http://kekhaithue.gdt.gov.vn) and Electronic tax webpage (http://thuedientu.gdt.gov.vn).

- The General Department of Taxation continues to plan to synchronize online-declared contents of iHTKK application, eTax application and financial statements application for tax administration.

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