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Tax Newsletter

November, 2017

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NEW DOCUMENTS

Decision No.1848/QD-TCT regarding process of publicizing the steps for settling complaints to the Tax Authorities

On October 24th, 2017, the General Department of Taxation issued Decision No.1848/QD-TCT providing guidance on the handling, and settling of complaints made by taxpayers to the tax authorities.

Specifically, Decision No.1848 stipulates that the procedures, timeline, and the results of the review of taxpayers' complaints will be published on the Electronic Taxation Information Portal. This will enable both taxpayers and tax authorities to monitor the handling of complaints filed, with the intention of improving the accuracy, transparency and timeliness of the complaining process.

Once taxpayers' complaints have been settled, the tax authorities are required to post their conclusion (on the electronic portal, or on the electronic information site of the complaint-settling authorities) no later than 15 days from the day the decision being issued.

Forms to be used in the handling of taxpayers' complaints include:

- Form No.01/KN-MS: Notification of reference code for complaint settlement profile;
- Other 13 Forms as stipulated in Decision No.878/QD-TCT dated May 15th, 2015 by the General Department of Taxation.

This decision took effect on October 24th, 2017. The process attached to this Decision shall be applicable from January 1st, 2018.

Applicable Custom Tariffs from January 1st, 2018

On November 16th, 2017, the Government issued Decision No.45/2017/QD-TTg regarding Regular Customs Tariffs, and Decree No.125/2017/ND-CP regarding Incentive Customs Tariffs. These two Customs Tariffs will be effective from January 1st, 2018.

Highlighted points are as follows:

- Regarding Export Tariff: When export goods being supplies, raw materials, semi-finished products that are not specified in the Export Tariff, and have total value of mineral resources plus energy costs accounting for 51% or above of the cost price, enterprises must declare

HS code of 8 digits corresponding to the Import Tariff and 5% tax rate will be applicable.

- Regarding Import Tariff: From 2018, only certain tax lines in relation to cars under 9 seats with heading 87.03 would be eligible for import tariff cuts according to WTO commitment.
- Regarding Special Incentive Import Tariff under Chapter 98: The Decree provides additional eligible conditions for incentive import tariff for some commodities, such as Set-top boxes under heading 98.46; Neoweb made from Nano-composite Polymeric Alloy (Neoweb) under heading 98.47.
- For automobile components under HS heading 98.49, the incentive import tariff program with the tariff rate of 0% will be applicable until the end of the year 2020 provided that the standards of automobile manufacturing and assembling enterprises (in accordance with current regulations) are satisfied.

Requirements of licenses for automobile manufacturing, assembling and importing

On October 17th, 2017, Decree

No.116/2017/ND-CP of the Government regulating on requirements of automobile producing, assembling, importing and operating in maintenance business was issued and came into effect.

Under the Decree, enterprises may only produce, assemble or import automobiles if licensed by the Ministry of Industry and Trade and fully satisfy the minimum requirements prescribed in this Decree.

Enterprises providing automobile warranty and maintenance services must be licensed by the Vietnam Register Department.

There are some exceptional cases where enterprises are exempt from obtaining the license for automobile production, assembly, import and maintenance & warranty service business, for example:

- Production and assembly of automobiles not using public roads and operating in a small scale only;
- Importation of automobiles which are gifts, donated properties;
- Temporarily imported for re-export;

- Temporarily exported for re-import or transfer to another country.

Apart from satisfying the specified requirements on the production facilities, technology, and automobile test roads, enterprises that manufacture, assemble or import automobiles, must also have appropriate warranty and maintenance facilities to meet their warranty obligations for the duration of the specified minimum warranty period.

Enterprises producing or assembling automobiles can (for a period of up to 18 months from the effective date of the Decree) operate with existing facilities, but at the end of this transition period, the requirements stated in this Decree must be fully satisfied.

For those enterprises that import automobiles for trading will, effective from January 1st, 2018 need to obtain the required license as prescribed in this Decree.

Requirements for production, business and importing of chemicals

On October 9th, 2017, the Government issued Decree No.113/2017/ND-CP providing detailed regulations and

guidance on the implementation of certain articles of the Law on Chemicals. The Decree takes effect from November 25th, 2017.

The Decree provides details on the requirements that have to be satisfied for production and trade of chemicals; HS classification of chemicals; and chemicals declaration procedure. In addition, the Decree lists new chemicals with specific English name; HS code and chemical formula of each chemical:

Appendix I: Chemicals produced with conditions;

Appendix II: Chemicals produced with limits;

Appendix III: Prohibited chemicals;

Appendix IV: Chemicals which require development of incident response plan;

Appendix V: Chemicals which require declaration.



Additionally, the Decree provides some exemptions for chemical declaration. These include: Chemicals that have been granted production or importing license; Importing chemicals under 10kg per time; Chemicals used as raw materials for the production of drugs and medicine already licensed for circulation, etc.

GUIDANCE DOCUMENTS

Personal Income Tax (“PIT”)

Determining resident status of Vietnamese individuals on oversea assignment

On October 25th, 2017, the General Department of Taxation issued Official Letter No.4936/TCT-TNCN providing guidance on resident status of Vietnamese individuals who work abroad and are present in Vietnam for less than 183 days per annum. Details are as follows:

- If the individual can prove that he/she is a resident of a foreign country in accordance with that country’s regulations, the individual will be considered as a non-resident of Vietnam. Taxable income generated in Vietnam should be declared and subject to the flat tax rate - which can be adjusted if the employer has deducted and declared PIT in accordance with the progressive tax rates.

- If the individual cannot prove that he/she is a resident of a foreign country in accordance with that country’s regulations, the individual will be considered as a resident of Vietnam. On this basis, the individual would be responsible to declare both income generated inside and outside of Vietnam territory (if any) which would be subject to the progressive tax rates.

Tuition fees for step-children of foreigners’ spouse are exempted from PIT

On October 26th, 2017, the General Department of Taxation issued Official Letter No.4964/TCT-TNCN providing guidance that tuition fees paid by a representation office for the spouse’s stepchild (of a non-Vietnamese head of a representative office) would be exempted from PIT.

Value Added Tax (“VAT”)

Transfers of retail banking business activities are not exempted from VAT

On October 11th, 2017 the General Department of Taxation has issued Official Letter No.4658/TCT-DNL providing further guidance on the VAT treatment on transfer of business activities.

As prescribed in Circular No.219/2013/TT-BTC, capital transfer activities are not subject to VAT. Capital transfer activities include the transfer of one part or all of the capital invested in other economic organization, transfer of securities, transfer of capital contribution rights and other forms of capital transfer in accordance with the provisions of law, including cases where enterprises are sold to other enterprises for operating business and purchasing enterprises inherit all the rights and obligations of the selling enterprises according to the provisions of law.

Official Letter No.4658/TCT-DNL addressed the situation where two banks entered into a purchasing contract, namely the transfer of entire business operation of retail banking. The transfer of the retail banking business activities was not considered to be a capital transfer, and accordingly would not fall under the category of activities not subjected to VAT and, therefore subject to VAT.



Electronic Invoice

Scan of commercial invoices are not considered as electronic invoices

On October 13th, 2017, the General Department of Taxation issued Official Letter No.4721/TCT-DNL providing guidance on the use of electronic invoices for tax declaration and payment purpose.

Clause 2 Article 3 Circular No. 32/2011/TT-BTC stipulates that invoices in paper form but processed, transmitted or archived electronically shall not be considered as electronic invoices. Scanned copies of commercial invoices, received via email from suppliers, are not considered as electronic invoices and enterprises must use the original copy of invoices for accounting, declaration and payment of tax.

Illegal sale of invoices will be fined from VND 20 million to VND 50 million

On October 31st, 2017, the General Department of Taxation issued Official Letter No.5058/TCT-CS advising on penalties that could be applied for violation of invoices. Specifically:

- Penalty for acts of illegal invoice usage: When an enterprise reports loss of blank invoices (i.e. that have yet to be used) but the tax authorities discovers that in fact the enterprise has given or sold these invoices to other organizations, or individuals, the enterprises will be fined for using invoice illegally with a fine ranging from VND 20 to 50 million.
- Penalty on loss of established invoices: In cases where enterprises lose the first or third copy of established invoices, the tax authorities shall implement punishment on violation acts as guided in Official Letter No.4213/TCT-CS issued by the General Department of Taxation dated September 29th, 2014.

Import/ Export duties - Customs

Certain imported commodities are exempted from submission of the inspection result

On October 16th, 2017, the General Department of Customs has issued Official Letter No.2478/GSQL-GQ1 providing guidance on the quality inspection of imported commodities. Specifically:

Importers of certain products are not required to submit the Government's quality inspection results when carrying out importing procedures in accordance with Circular No.07/2017/TT-BKHCN. For example:

- For steel (except steel used for concrete reinforcement): Importers are only required to submit the registration form certified by the inspection authorities to the Customs Authorities for customs clearance;
- For helmet for motorbike riders; children's toys; steel used for concrete reinforcement; electrical and electronic equipment (safety, electromagnetic compatibility): Importers are only required to submit registration form certified by the inspection authorities to the Customs Authorities for customs clearance;
- For petrol, diesel fuel and biofuels, liquefied petroleum gas (LPG): Importers are only required to submit a stamped copy of quality inspection results to the Customs Authorities for customs clearance.



FDI enterprises are not allowed to conduct on-the-spot exporting of goods which are not self-produced

On October 11th, 2017, the Customs Department has issued Official Letter No.1385/XNK-CN regarding on-the-spot exporting activities of FDI enterprises. Based on the Official Letter, FDI enterprises are allowed to implement following activities:

- On-the-spot exporting of goods self-produced by FDI enterprises in Vietnam;
- On-the-spot exporting of processed products; machineries, equipment for rent or loan; material, auxiliary materials, excessed supplies; scraps under agreement and in accordance with the provisions of law for ordering party;
- Processed products; rented or leased machineries, equipment; materials, auxiliary materials, excessed supplies; scraps under the commission of the processing -ordering party toward the processor;
- Exporting of goods purchased in Vietnam, including commodities produced or imported to Vietnam, when implementing exporting rights.

In addition, there is no provision under the current Vietnamese regulations which allows FDI enterprises to conduct on-the-spot export of goods produced by other enterprises. In other words, FDI enterprises are not allowed to sign exporting contracts with foreign traders but purchase goods domestically and assign these goods to other domestic enterprises.

Additional annotation of SEN 2017

On October 18th, 2017, the General Department of Customs has issued Official Letter No.6803/TCHQ-TXNK provided guidance on implementation of additional annotation of SEN 2017.

SEN will be used as references, supplementing the classification process of import/export commodities – in accordance with Vietnamese import/export commodities list and Circular No.65/2017/TT-BTC dated July 26th, 2017 from the Ministry of Finance.

Note: Additional annotation of SEN is not a part of ASEAN Harmonized Tariff Nomenclature (AHTN), but can be used as a technical reference for classification of commodities. SEN was developed as a supporting tool to classify certain types of commodities which are specified in 8-digit level in AHTN list.

Official Letter No.6803 replaces Official Letter No.6901/TCHQ-TXNK dated July 29th, 2015 of the General Department of Customs.

Customs clearance of commodities subjected to specialized inspection

On October 23rd, 2017, the General Department of Customs has issued Official Letter No.6902/TCQH-GSQL providing guidance on customs clearance procedures and timeline following satisfactory completion of specialized inspection.

Specifically, when the specialized inspection is concluded, and the result has been granted through National one-door mechanism, enterprises should state the Quality certification number on the customs declaration via the Electronic Customs data processing system.

Within 2 hours after receiving the additional declaration information from enterprises, Customs officers are responsible for accessing Electronic customs clearance system for retrieval.

Other guidance documents

Bank account amendment is not required to be reported to the Tax authorities

On October 17th, 2017, the General Department of Taxation has issued Official Letter No.4807/TCT-KK providing guidance on amendment and supplementary registration of bank account information. Specifically, enterprises who are amending, or supplementing their bank account information, are only required to send a notification to the Business Registration Division where the headquarters is located. Enterprises do not need to declare amendment information to the tax authorities.

Notification of amendment or supplement to bank account information shall be implemented in accordance with forms provided in Appendix II-1 issued together with Circular No. 20/2015/TT-BKHDT.

Summary of Q&As on tax policies

On October 2nd, 2017, Hanoi Tax Department has issued Official Letter No.65143/CT-TTHT providing solutions for problems asked by Japanese Enterprises in Vietnam Association on tax policies. Some highlights are as follows:

PIT declaration and calculation expenses for expatriates are deductible for CIT purpose

When a company pays service fees for PIT declaration and calculation for expatriate specialists working in Vietnam, this expense is considered a deductible expense when determining CIT taxable income provided that:

- The requirements in accordance with Clause 1 Article 4 Circular No.96/2015/TT-BTC are met; and
- The expenses item is specified in the contracts or written agreements between two parties.

Insurance fees for assigned expatriates, paid by the parent company, are subject to foreign contractor with holding tax

Expenses for insurance and medical for expatriates working in Vietnam paid by the parent company overseas and recharged to a Vietnamese company would be subject to foreign contractor withholding tax.

Contributions to "Favor returning" and "Children sponsorship" funds of the City are deductible when determining CIT liabilities

Contributions to qualified beneficiaries of the funds "Favor returning" and "Children sponsorship" are considered as deductible expenses when determining CIT liabilities, provided that the supporting documents are available, including:

- Confirmation of donation signed by the donor (representative of the company) and the receiving party in accordance with form No.07/TNDN issued together with Circular No.78/2014/TT-BTC;
- Invoices, purchase documents (in case of in-kind donation) or payment vouchers (in case of cash donation).

PIT finalization for expatriates

- Regarding PIT finalization: If the expatriates satisfy requirements to be considered as a tax resident of Vietnam in the calendar year, taxable income in the calendar year will be the total of incomes generated both inside and outside of Vietnam counting from the beginning of the calendar year. If the expatriates already completed his/her PIT obligation according to the country of origin's law, the amount of PIT payable already

paid in the country of origin can be offset with the PIT payable amount in Vietnam. However, offset amount cannot exceed the tax payable amount according to Vietnamese tax tariff on the distribution of incomes generated abroad.

- Regarding PIT reduction: Incomes received from working in the economic zones are eligible for 50% reduction of PIT payable amount within this year. Incomes received from the parent company not because of working in the economic zones are not eligible for tax reduction.

Business expansion of an export processing enterprise (EPE)

If an EPE would like to change its business activities by extending its scope of business, the change in business activities should be registered with the relevant licensing authorities rather than the tax authorities.



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