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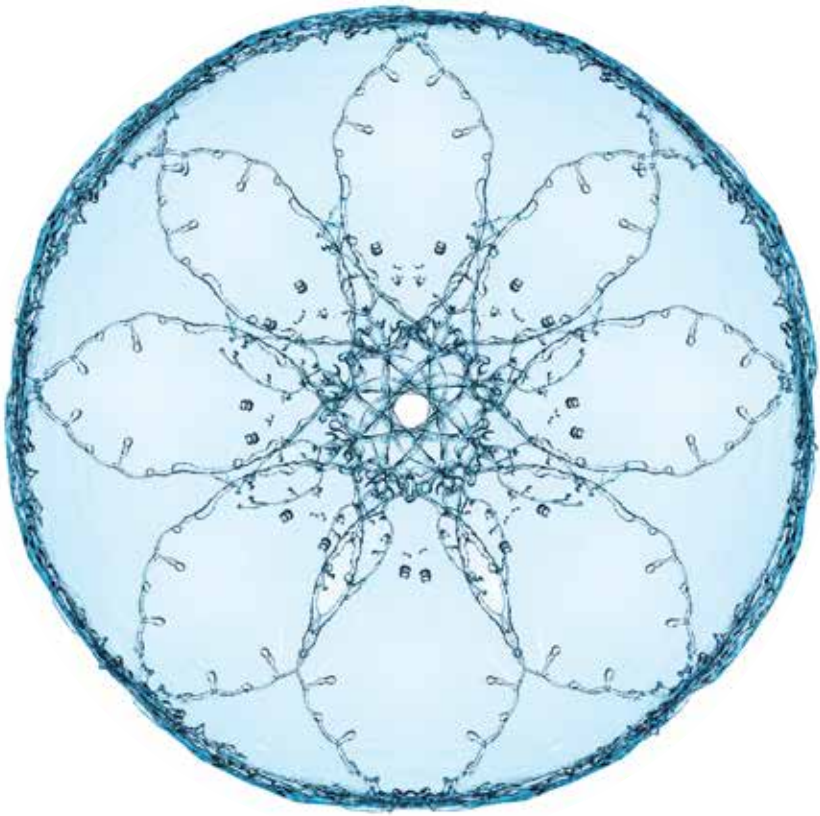

Tax Newsletter

October, 2017

For internal use only

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NEW DOCUMENTS

GUIDANCE DOCUMENTS

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NEW DOCUMENTS

Circular 93/2017/TT-BTC amending the regulations on administrative procedures for registration and change of VAT calculation methods

On September 19th 2017, General Department of Taxation issued Circular No. 93/2017/TT-BTC ("Circular 93") reforming the administrative procedures relating to registration and change of Value Added Tax ("VAT") calculation method. Details of the reforms are set out in Official Letter 4253/TCT-CS issued by General Department of Taxation dated September 20th 2017. Specifically the changes are :

- Abolish the guidance on submission Form 06/GTGT to register of VAT credit method applicable to newly established enterprises, enterprises in operation with VAT-able revenue of lower than VND 1 billion per year.
- Abolish the guidance to submit Form 06/GTGT to convert the VAT calculation method.
- Supplement the guidance on VAT calculation method for enterprises which are determined by VAT declaration dossier to be submitted to tax authority, specifically:
  - If an enterprise registers VAT credit method, the submission of Form 01/GTGT, 02/GTGT will be required;
  - If an enterprise registers VAT direct method, the submission of Form 03/GTGT, 04/GTGT will be required.
- Circular No. 93 is effective from November 5th 2017.

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Minimize the procedures –documents in taxation, customs and securities

On October 9th 2017, the Government issued Resolution No. 104/NQ-CP on simplifying administrative procedures relating including securities, customs and taxation.

Specifically, it may no longer be necessary to provide information such as ID number, passport number; date of birth, gender, country, nationality, etc. onapplication or registration forms, as such information will be changed to will be changed to gathered by reference to the applicants' personal identity number.

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GUIDANCE DOCUMENTS

Corporation Income Tax ("CIT")

Payment to the third party's bank account must be stated in agreements

On September 13th 2017, Hanoi Tax Department issued Official Letter No. 61647/CT-TTHT providing guidance in situations where sellers designate payments be made to third parties. Specifically:

- According to the regulations, bank payment to a third party under the seller's designation shall be only accepted if this is specifically stated in the sale and purchase contracts.

- In the case where the seller has already been dissolved and requires the buyer to pay to a third party's bank account. In such situation, if the third party has not inherited all legitimate rights and legal benefits from the seller as regulated, and this payment method is only mentioned in the reconciliations, but not stated in the sale and purchase contracts, this payment shall not be considered as a non-cash payment.

- Therefore, the input VAT of the above purchased goods shall not be creditable and the expenses of the aforesaid purchase shall not be deductible for CIT calculation purposes.

Personal Income Tax ("PIT")

Supportive loan interest for customers not required to withhold PIT

On October 3rd 2017, Hanoi Tax Department issued Official Letter No. 65558/CT-TTHT providing guidance on the PIT treatment of supportive loan interest for customers.

Specifically when a Company provides supportive loan interest in cash to customers for the purchase of houses, the Company shall not be required to withhold PIT when making such payment. The supportive loan interest shall not be included in taxable income for PIT purposes.

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The 13th month salary shall be withheld at the time of actual payment

On October 2nd 2017, Hanoi Tax Department issued Official Letter No. 65146/2017/CT-TTHT advising that PIT liabilities on the 13th month salary would be attributed to the year when actual payment was made.

Additionally, with regards to expenses relating to holiday, health insurance, etc. for employees, then if such expenses satisfy the conditions for being classified as welfare expenses, they shall be recorded as deductible expenses for CIT purposes. Total welfare expenses however must notexceed one average monthly salary in the taxable year of the Company.

Income received by non-residents from overseas shall be subject to PIT irrespective of where the payment is made

On September 5th 2017, Hanoi Tax Department issued Official Letter No. 60192/CT-TTHT providing guidance on the PIT treament of the income of non-tax resident invidudual who work in Vietnam, but are paid overseas.

Specifically the case addressed the situation where a foreign individual, assigned as chief representative officer in Vietnam, is non-tax resident and receives income from overseas. The Official Letter stated that in such instance the individual was required to declare and pay for PIT in Vietnam. The PIT liabilities shall be determined as per Circular No. 111/2013/TT-BTC.

Value Added Tax ("VAT")

L/C fee for guarantee of payment for purchasing goods for customers received by banks shall not be subject to VAT

On October 4th 2017, General Department of Taxation issued Official Letter No. 4520/TCT-DNL providing guidance on the VAT treatment of the fees charged for the guarantee letter of export goods. Specifically that:

- When the bank collects fees directly relating to the issuance, confirmation, notification of letters of credit (L/C) to guaran tee the payment for purchase of goods of customers - in accordance with the laws, international practices and under the banking guarantee regulations of the State Bank, then such fees shall not be subject to VAT.
- When a bank charges fees relating to letters of credit (L/C) but the bank is not the party being responsible for payment guarantee for the buyer, then such fees shall be subject to VAT at the VAT rate of 10%.

Conditions of 5% VAT entitlement applicable to science and technology services

On September 27th 2017, Ho Chi Minh City Tax Department issued Official Letter No. 64367/CT-TTHT providing guidance on the VAT treatment of science and technology services. Specifically:

- When a legal entity holds a Certificate of registration of science and technology activities granted by the Ministry of Science and Technology;
- The science and technology services are under the scope of advisory information, technology transfer, professional training, etc., and
- Such services are conducted under science and technology service agreements stipulated in Article 33 of Law on Science and Technology and in accordance to the Certificate of registration of science and technology activities,

Then in accordance with Clause 5, Article 10 of Circular No. 219/2013/TT-BTC issued by the Ministry of Finance, this service shall be subject to VAT rate of 5%.

VAT exemption on imported goods with discounted price in accordance with the prevailing regulations

On September 8th 2017, the General Department of Taxation issued Official Letter No. 4067/TCT-DNL providing guidance on the VAT treatment of goods imported at a discounted price.

It is stipulated in the Official Letter that when the Company enjoys discounts which are in line with permitted deductions of VAT-able imported price as prescribed in Clause 2, then under Article 15 of Circular No. 39/2015/TT-BTC, the Company could reduce the VAT-able imported price or request for the VAT refund in case of VAT overpayment.

No VAT exemption for transfer of projects which is not subject to VAT

On September 25th 2017, Hanoi Tax Department issued Official Letter No. 63770/CT-TTHT providing guidance on the VAT treatment when transferring school construction projects.

The Official Letter clarifies that the project of school construction is considered as investment project for business activities which are not subject to VAT. However, the transferor of an investment project is required to declare and pay for VAT with the VAT rate of 10%. Taxable VAT payable shall be based on the project value stated in the transfer contract (excluding the land lease value which is already paid to the State Budget).

VAT refund with respect to input invoices issued after export of goods

On September 18th 2017, the General Department of Taxation issued Official Letter No. 4202/TCT-KK relating to VAT refund on invoices issued by the seller after export of goods.

Specifically the Official Letter addresses the situation where the purchasing company has received invoices for goods purchased and freight fee related to exported goods, which are issued after customs authorities confirm the actual export of goods. In such cases if the purchase of goods has actually incurred; the seller has declared and paid output VAT; and the buyer has fully satisfied the conditions for creditability, refund of VAT on exported goods, then such invoices shall be considered for VAT refund.

Export Processing Enterprises (EPEs) are not entitled to VAT exemption on goods traded under import or export rights

On September 12th 2017, the General Department of Taxation issued Official Letter No. 4107/TCT-KK providing

guidance on the tax declaration required when for EPEs exercise their trading rights.

The Official Letter states that, pursuant to Article 77 of Circular No. 38/2015/TT-BTC:

- EPEs are required to separate accounts, and segregate storage of goods manufactured for export from goods to be traded under import or export rights.
- Goods traded under import-export rights must be declared and taxes are paid in full, and would not be entitled to any tax incentives afforded for goods manufactured for export.

Accordingly, EPEs are only entitled to VAT exemption with respect to goods manufactured for export. With respect to goods traded under import and export rights, it must be separately accounted to declare and pay output VAT.

VAT liabilities of investment projects which have been transferred Form 01/GTGT shall not be refunded

On September 20th 2017, the General Department of Taxation issued Official Letter No. 4278/TCT-KK in respect of VAT refund for investment projects.

Specifically when an investment project has come into operation; generated revenue; and the input VAT has not yet been declared on Form 01/GTGT as being applicable to business activities, then such input VAT shall not be considered for VAT refund under Clause 3, Article 1 of Circular No. 130/2016/TT-BTC.

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VAT rate for goods delivered overseas

On September 8th 2017, Hanoi Tax Department issued Official Letter No. 60970/CT-TTHT providing guidance on VAT rates applicable to goods sold from one Vietnamese company to another but the supply is overseas.

When a Vietnamese company purchases goods overseas and re-sells to other Vietnamese companies, and the terms of supply are delivery of goods at foreign ports, then the supply would be subject to VAT rate of 0%.

The Company issues commercial invoices (not VAT invoices) to its customers in this case.

However, this Official Letter does not mention how the buyers will declare and pay VAT if they continue delivering goods into inland to carry out production and business activities.

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Foreign contract Withholding Contractor Tax ("FCWT")

Fees paid for using images would be considered as the transfer of user rights of trademark and subject to 5% VAT and 10% CIT

On October 2nd 2017, Hanoi Tax Department has issued Official Letter No. 65148/CT-TTHT providing guidance on the FCWT of fees paid for the use of images. Specifically:

- Fees paid by a Vietnamese company to a foreign party to use its images on the Vietnamese company's products would be considered as the transfer of user rights of trademark rather than the transfer of intellectual property ownership.
- The transfer of user rights of trademark would be subject to VAT at 10% (in case of the Credit method) or the deemed VAT rate of 5% imposed on the taxable revenue (in case of deemed VAT method) and CIT at the deemed rate of 10% on taxable revenue.

Goods repaired in overseas are subject to FCWT exemption

On October 2nd 2017, Hanoi Tax Department issued Official Letter No. 65148/CT-TTHT providing guidance on the tax treatment on goods which are temporarily exported for repair overseas and then re-imported.

When a Company temporarily exports goods for repair overseas and subsequently re-imports with the terms of delivery of EXW, CIF at Vietnamese ports, then payments made (if any) to the overseas repair parties will not be subject to FCWT.

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Invoices

Using sale invoices to dispose assets after enterprise dissolves

On October 4th 2017, the General Department of Taxation issued the Official Letter No. 4528/TCT-CS providing guidance where enterprises dispose assets and are required to issue invoices to buyers after they have already been dissolved, bankrupted, conducted tax finalization and tax code closure.

The Official Letter advises that such enterprises shall be allowed to purchase sales invoices from local tax authorities to issue VAT invoice to buyers, and required to declare and pay VAT liabilities as regulated.

No requirement of change of invoice number template

On September 28th 2017, the General Department of Taxation issued Official Letter No. 4416/TCT-CS on the usage of invoices when there is a change in the business address. Specifically:

- When the change of business address does not result in a change in managing tax authority, then the enterprise is allowed to affix the new address on invoices which have been already printed with the old address.

- When the enterprises order for printing of new invoices occurs after changing their business addresses, then the new invoice template only needs to be changed with business address information without any requirement to change the invoice number template. However, the enterprises are required to send a notification of new invoice issuance to tax authority (ies) directly managing them.

Make list of goods or services in case list of goods and services exceeds the lines of invoices

On September 21st 2017, Hanoi Tax Department issued Official Letter No. 63354/CT-TTHT providing guidance on making a list of goods and services in case where the list of goods or services exceeds the lines of invoices.

Those items inclusive of "Ordinal number, name of goods and services, unit, quantity, unit price, total price" must be fully inscribed on the list but not necessarily inscribed on the invoices.

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Import and export duty-Customs

Some noteworthy points in the audit and determination of customs valuation

On September 27th 2017, the General Department of Customs issued Official Letter No. 6338/TCHQ-TXNK providing guidance on audit and determination of customs valuation. Specifically, the General Department of Customs requires local Customs departments to conduct inspection, consultation and any rejection of customs valuation, in strict accordance with the principles, procedures as regulated – to avoid increasing complaints and appeals from enterprises.

Some key points in the Official Letter the followings to Customs departments are:

- Checks should examine the detailed name of goods, factors affecting customs valuation under the guidance at Point 1, Section I of Official Letter No. 905/TCHQ-TXNK and to reconcile the declared value with the valuation database so as to accurately determine if there are reasons to doubt the declared values.
- There should be no imposition of additional tax liabilities without having consultation, or inspection after customs clearance, in respect to the imported goods.
- Any rejection of the declared value of goods, either during the consultation or post-customs clearance inspection, should be based on the 04 conditions for determining the transaction value under Article 6 of Circular No. 39/2015/TT-BTC and the basis for any rejection of the declared valuation should as stipulated in Article 142 of Circular No. 38/2015/ TT-BTC.
- Not to subjectively impose the valuation database, or determine too high or too low valuation, thereby causing complaints or appeals from enterprises or losses to the State budget.
- Not to utilize the results of the appeal of one enterprise as a basis for either challenging or accepting the declared valuation, or determining the valuation of another enterprise's goods.

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New regulations on verification and analysis of export goods

On September 6th 2017, General Department of Customs issued Decision No. 2999/QD-TCHQ on regulations for verification and analysis of export and import goods.

Specifically, the scope of goods required to be analyzed and verified includes:

- Goods being analyzed for classification as exported or imported goods which customs authorities do not have enough basis to determine type, composition, nature and properties of the goods for identification of name and HS code of goods under the tariff.

- Goods being analyzed for specialized inspection (quality inspection, food hygiene and safety control) being exported or imported goods on the list of goods assigned by the Prime Minister or recognized Ministries managing sectors, or designated to custom authorities to analyze.

- Goods for customs verification being exported or imported goods that Custom authorities suspect the customs declarations is not in line with the actual exported or imported goods.

In addition, the risk level of imported and exported goods and the compliance of enterprises are also one of the basis for Custom authorities to select and sample for further verification.

The Decision also sets out, in detail, the procedures for analysis, verification and handling of appeals against analysis and verification results.

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Expected adjustment of Import duty on certain goods

On October 11th 2017, Ministry of Finance issued Official Letter No. 13638/BTC-CST on adjustments of Import duty rates of certain goods.

Accordingly, when issuing Decree amending Decree No. 122/2016/ND-CP, Ministry of Finance may adjust, supplement Import duty rate for a number of following goods:

- Adding "Drug for acne treatment" in Chapter 98 (HS code of 3004.90.99) with import duty rate of 5% to avoid the significant difference with Import duty rate of "Cream for acne treatment" under the HS code of 3304.99.20 (10%);
- Adjust the Import duty rate under HS code of 1901.10.30, 1901.20.10, 1901.20.20, 1901.20.30, 1901.20.40, 1901.90.41, 1901.90.49, 1901.90.99 from 15%, 18%, 20%, 25% to the same rate of 18% in order to save the analyzing cost;
- Adjust the Import duty rate under HS code of 2106.90.6x (including HS code of 2106.90.61, 2106.90.62, 2106.90.64, 2106.90.65, 2106.90.66, 2106.90.67) from 20%, 15% to the same rate of 18% in order to save the cost of analysis and classification;

- Reduce Import duty on natural Bari carbonat (witherite) with HS code 2511.20.00 from 3% to 0%, which is equal to Bari carbonat under HS code 2836.60.00;

- Increase Import duty on steel with HS code 7210.41.11 from 20% to 25% in order to support domestic production.

Guiding the implementation of Circular No. 07/2017/TT-BKHCN on statutory audit of imported good quality

On September 27th 2017, General Department for Standards, Metrology, and Quality issued Official Letter No. 2421/TDC-HCHQ providing guidance on the implementation of Circular No. 07/2017/TT-BKHCN amending Circular No. 27/2012/TT-BKHCN on statutory audit of imported goods quality under the management of the Ministry of Science and Technology

Specifically, the audit of imported goods quality is implemented as follows:

- Circular No. 07/2017/TT-BKHCN took effective from October 1st 2017. Prior to this effective date, the audit of imported goods quality would be in accordance with guidance in Circular No. 27/2012/TT-BKHCN.

- Department of Standards, Metrology, and Quality only accepts the quality audit of imported goods which are subject to audit. For imported goods not subject to quality audit, the Department will refuse to conduct the audit, even if the enterprise requests.

- For imported goods such as steel (except for steels for concrete poles), helmets for motorcyclists, children's toys, concrete poles, electrical and electronic equipment, as defined in different documents, checks should be performed at the border on the validity and appropriateness of the documents, and strongly apply the post-audit procedure.

- The enterprise is responsible to make sure that imported goods are compatible with national standards, complete customs procedures and register with electronic declaration. Accordingly, customs authorities have a basis to determine the time of customs clearance.

- Issues related to administrative procedures such as processes, dossiers and responsibilities to comply with Circular No. 07/2017/TT-BKHCN are guided by General Department in the Official Letter.

Penalties on incorrect HS code declaration after classification results

On September 21st 2017, the General Department of Customs issued Official Letter No. 6200/TCHQ-TXNK on penalties for the change of HS code after classification results as follows:

- In case the imported goods have been liquidated and duties were refunded, however after the classification results, HS code are required to change, leading to an increase of the tax rate compared to the initial declaration, then tax payer is required to declare and pay for additional tax liabilities, using the same declared dutiable value and exchange rate of the declaration date. Accordingly, enterprises shall be imposed administrative fine, but not penalty on the late tax payment during the period when waiting for the classification results.

- When the enterprise fails to make supplemental declarations, customs authorities shall impose tax liabilities. In case goods are subject to tax refund/non-tax collection within 275 days as previously prescribed, late tax payment

shall be determined from the 276th day. When goods are subject to tax payment right before the goods are released, the late payment shall be calculated from the date of customs clearance.

Declaration and allocation of royalty fee in the valuation of imported goods

On October 2nd 2017, General Department of Customs issued Official Letter No. 6440/TCHQ-TXNK providing guidance on the declaration and allocation of royalty fee in valuation of imported goods.

Specifically, when the royalty fee depends on sales turnover after importation and the actual payment amount is determined only after the end of the fiscal year as agreed, then at the time of customs declaration, the customs declarant must clearly state the reasons for not declaring the royalty fee on customs declaration.

Within five days from the date of actual payment (the date of the actual royalty fee payment), enterprises are required to make supplementary customs declaration returns after customs clearance and pay customs duty due.

The royalty fee should be fully allocated to the imported goods by one of the following methods: Quantitative / weight / volume allocation and invoice value.

When the number of customs declarations and the number of lines to be additionally declared are numerous, then a supplementary declaration of royalty fees would need to summarize all the import declarations against which the royalty fee needs to be attributed.

Disposal of imported goods under the List of customs duty exemption

On September 22nd 2017, General Department of Customs issued Official Letter No. 6233/TCHQ-GSQL advising that when an enterprise disposes or changes the using purposes of the imported goods which is in the list of goods subject to customs duty exemption, then the enterprise is required to notify customs authorities at the place where the customs declaration for the importation of the goods was originally made.

Import duty exemption for synchronous components

On September 27th, 2017, General Department of Customs issued Official Letter No. 6337/TCHQ-TXNK providing guidance in the situation where a change of regulations results in the enterprise's project being changed from one not entitled to investment incentives into projects where imported forming fixed assets would be eligible for investment incentives. Specifically:

- When enterprises import spare parts for synchronous assembly or synchronization with machinery and equipment which have been imported before the time of investment incentives entitlement, such spare parts shall not be entitled to investment incentives.

- When enterprises import spare parts for synchronous assembly or synchronization with machinery and equipment which were imported from the time to be entitled to investment incentives, such spare parts shall be entitled to customs duty exemption according to the relevant regulations.

- When enterprises have not yet notified the list of duty-free goods to be imported to Customs authorities, the goods imported before the customs duty exemption notification shall not be exempted from import duty.

- When an enterprise imports new machinery/equipment to increase the productivity and assemble into a complete production line with previous imported machinery and equipment, the legislation on import duty does not specify the tax treatment in such cases.

"Unit of measure" on customs declaration could be based on actual transactions

On September 22nd 2017, General Customs Department issued Official Letter No. 6238/TCHQ-TXNK guiding customs procedures.

Pursuant to Appendix II – Information related to e-customs procedures for imported/exported goods issued with Circular No. 38/2015/TT-BTC dated March 25th 2015 by the Ministry of Finance, advises that Enterprises may either apply the unit of measure in accordance with the Vietnamese List of exported or imported goods or the unit of measure as stipulated on the commercial documentation when declaring the quantity of imported goods on customs declarations.

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Other guidance documents

Exemption of late tax payment as to late payment by the State Budget is not applicable for enterprises paying for tax on behalf

On October 10th 2017, General Department of Taxation issued Official Letter No. 4617/TCT-QLN on exemption for late tax payment. Accordingly:

- Exemption of late tax payment as to the late payment of goods, services by the State Budget is only applicable for suppliers of goods and services which receive payments from State Budget.
- In case Project management board is not the supplier of goods and services which receives payment from the State Budget but pays for tax on behalf of contractors, the Project management board shall not be subject to exemption for late payment.

Partners who do not directly sign business cooperation contracts with the Company are not considered as the Company's agents

On September 26th 2017, General Department of Taxation issued Official Letter No. 4361/TCT-DNL providing guidance on the tax obligations for partners signing business cooperation contracts with agents without any direct contracts with the Company. Accordingly, these partners are not considered as agents of the Company and therefore must fulfill VAT, CIT and PIT obligations according to the current regulations.

Application for grace of tax payment due to special difficulties must be certified by managing tax authorities

On September 14th 2017, the General Department of Taxation issued Official Letter No. 4169/TCT-QLN guidance on the grace period for payment of tax. Specificially:

Any application for extending the deadline of tax payment, due to special difficulties of enterprises, must be certified by the managing tax authorities to confirm the special difficulties, and the causes of difficulties, which result in the taxpayer's not being able to pay the tax liability on timely basis.

The granting of any grace period to pay the tax should not change the expected budget of the State Budget decided by the National Assembly, and be sent to the General Department of Taxation for consideration and submission to the Ministry of Finance in order to further report to the Prime Minister.

Payments made by a company on behalf of its branch must be maintained with an authorization letter

On September 21st 2017, Hanoi Tax Department issued Official Letter No. 63356/CT-TTHT providing guidance on payments made by a company on behalf of its branch.

Specifically, when goods and services are purchased by a company for the business activities of the branch; the VAT invoices are under the name of the Branch as purchaser, but are paid by the Company, there must be written authorizations for such payment on behalf between the branch and the Company.

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