

# Technical Update

## Tax and Legal Services

January 2016

### 1. Corporate Income Tax ("CIT")

- (i) *Tuition and fees paid by employers for children of Vietnamese employees are considered as staff welfare for CIT calculation purpose*

According to Official Letter No. 5452/TCT-CS dated 18 December 2015, if a company directly pays tuition and fees for children of its Vietnamese employees and in accordance with the company's policies and supported by proper supporting documents as prescribed in regulations, those payments should be considered as deductible expenses for CIT calculation purpose, capped at one average actual monthly salary.

- (ii) *Requirement to lodge the financial statements or audited financial statements in fiscal year end CIT finalization dossier*

According to Official Letter No. 5236/TCT-KK dated 8 December 2015, tax authorities will only acknowledge CIT finalization submission of dossiers that include financial statements or audited financial statements (applicable to companies that are required to have its financial statements audited such as foreign direct investment companies, financial institutions, insurance firms, etc.).

For companies that declare and pay taxes online, the General Department of Taxation will upgrade the online portal before the 2015 CIT finalization deadline so that tax payers could upload the scanned copy of financial statements or audited financial statements onto the portal.

### 2. Value Added Tax ("VAT")

- (i) *Adjustment to invoices issued with exchange rate not in accordance with Circular 26/2015/TT-BTC*

According to Official Letter No. 5456/TCT-CS dated 18 December 2015, from 1 January 2015, where a company issued an invoice with foreign exchange rate not in accordance with guidance under Circular 26/2015/TT-BTC, the buyer and the seller have to enter into an agreement or written minutes to acknowledge the mistake, and the seller has to issue an adjustment invoice to amend the previous one. To relief the administrative burden for companies, the General Department of Taxation allows companies to issue

one invoice to correct multiple exchange rate mistakes for each buyer on the basis that the goods or services traded enjoy the same VAT rate.

- (ii) *Supplement criteria to determine the priority for tax refund payment and detailed guidance on tax refund procedures for accounting-dependent branches*

According to Official Letter No. 18832/BTC-TCT dated 17 December 2015, some provisions on VAT refund management specified under Official Letter No. 10492/BTC-TCT and Official Letter No. 13822/BTC-TCT are amended and supplemented as below:

- Supplement the criteria to determine the priority level for tax refund payment for manufacturing companies with 51% of revenue deriving from export, national key investment projects, and new critical investment projects in the area;
- Supplement 5 cases eligible for priority tax refund, including: (i) cases entitled to diplomatic privileges (ii) foreigners buying duty-free goods when exiting the country, (iii) foreign contractors undergoing dissolution and business termination, (iv) companies undergoing dissolution, bankruptcy, business termination, and (v) projects with ODA grants or humanitarian aid grants.
- Supplement guidance on VAT refund for accounting-dependent branches, according to which:
  - Head office shall prepare a list of outstanding taxes of the head office and branches to be offset against the input VAT eligible for refund.
  - Branches that are authorized to perform tax refund by the head office company shall submit tax refund dossier to tax authorities that directly manage the branch.

- (iii) *Services rendered attributable to production of export products are considered as export services*

In the spirit of Decree No. 89/NQ-CP dated 31 December 2015 of December Regular Meeting Session of the Government, services performed in Vietnam serving the production of products that will be exported entirely such as: developing sample products, choosing sources of materials, choosing providers, monitoring manufacturing progress, will be considered as export services and enjoy a VAT rate of 0%.



### 3. Personal Income Tax (“CIT”), compulsory insurance, and labor policies

- (i) *Conditions on the number of working years to be granted work permit in Vietnam*

In the spirit of Decree 89/NQ-CP dated 31 December 2015 by December Regular Meeting Session of the Government, to be eligible for working in Vietnam, foreign experts must have a bachelor degree or equivalent which is relevant to the intended job in Vietnam, and have at least 3 years of work experiences in the profession.

The Ministry of Labor, Invalids and Social Affairs will issue official guidance on this matter in the decree detailing the implementation of some articles of the Labor Code on foreigners working in Vietnam.

### 4. Foreign Contractor Tax (“FCT”)

- (i) *Management fee allocated to permanent establishments in Vietnam are exempted from FCT*

According to official letter No. 5367/TCT-CS dated 14 December 2015, foreign companies that receive the management fee allocated to its permanent establishments in Vietnam will be exempted from FCT corresponding to the deductible portion under CIT regulations.

- (ii) *FCT policies for income from financial leases of foreign financial lease companies located abroad*

According to official letter No. 4765/TCT-CS dated 11 November 2015, if a company in Vietnam rent from a foreign company machineries and equipment satisfying all conditions to be a financial lease asset according to Circular 45, and the foreign company is a financial lease company, then the income from this activity will be subject to FCT at the CIT rate 5% and VAT is not applicable.

### 5. Export Duty, Import Duty, and Customs Procedures

- (i) *Further guidance on implementation of some provisions on import duties, export duties, and custom procedures in Circular 38/2015/TT-BTC*

On 8 December 2015, the Ministry of Finance issued official letter No. 18195/BTC-TCHQ containing detailed guidance for 21 concerns of companies arisen during the implementation of Circular 38/2015/TT-BTC. Among the others, the official letter notably addresses to the following issues:

- For trading activities carried out under the export rights / import rights, export processing enterprises (“EPE”) must account separately purchases from domestic sources for export purpose, and register and declare VAT and tax refund with the local tax authorities, similarly to other normal companies; and
- For disposal or changing usage purpose of duty-free imported goods of foreign direct investment company, it is now allowable that the number of customs declaration will not be required upon the disposal or changing of usage purpose, provided that the deadline for customs declaration filing has passed (i.e. 5 years since import date), or even in the effective period of customs declaration filing if the imported products are tools.

- (ii) *Export tariff schedule and preferential import tariff schedule for taxable items*

On 16 November 2015, the Ministry of Finance issued Circular No. 182/2015/TT-BTC on export tariff schedule and preferential import tariff schedule, replacing Circular 164/2013/TT-BTC and circulars that amended and supplemented Circular 163 on some groups of items eligible for preferential tax treatment. Circular 182 takes effect on 1 January 2016.

- (iii) *Rules of origin in the Vietnam – Korea Free Trade Agreement*

On 18 November 2015, the Ministry of Industry and Trade issued Circular No. 40/2015/TT-BCT on rules of origin in the Vietnam – Korea Free Trade Agreement. This circular takes effect on 1 January 2016.



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