

Transfer of right to use Trademark shall be subject to Value Added Tax

Tax Alert - Tax and Legal

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Following Official Letter No. 10453/BTC-CST dated 27 July 2016 ("Official Letter 10453"), the Ministry of Finance has issued Official Letter No. 15888/BTC-CST dated 07 November 2016 ("Official Letter 15888"), which is addressed to all provincial tax departments, on the subject of Foreign Contractor Tax ("FCT") policy with regards to the transfer of right to use trademark.

Official Letter 15888 reaffirms the FCT rates applicable to the transfer of the right to use trademark, which comprises 5% of Value Added Tax ("VAT") and 10% of Corporate Income Tax ("CIT").

For similar transactions concluded prior to 7 November 2016, on which taxpayers have declared and paid VAT and CIT not in accordance with the guidance of the Official Letter 15888, an amended tax declaration is not required to be submitted. Where the taxpayers have not declared, or did declare but not paid any VAT and CIT, the tax treatment per Official Letter 15888 will be applied.

Notwithstanding the above, the Ministry of Finance has not clearly stipulated to as whether this provision should be retroactively applied to cases whereby the taxpayers have declared the transactions as being not subject to VAT. It is also unclear how far back Official Letter 15888 may reach, in cases where the provision is required to be applied retroactively.

In order to avoid administrative penalties being imposed in a future tax audit, it is recommended that the taxpayers proactively review similar transactions, and declare and pay additional tax (if any) in accordance with the guidance of Official Letter 15888, or seek specific guidance from the tax authorities in this regard.

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