

Technical Update

Tax and Legal Services

August 2016



1. Corporate Income Tax ("CIT")

(i) *Expenses relating to late issued invoices are deductible*

According to Official Letter No. 2731/TCT-CS dated 20 June 2016, when a company purchases goods or services from a supplier and the associated invoice is issued after the goods ownership has transferred, if the company can provide other supporting documents such as quotation, contracts and handover minutes when inquired, the relevant invoice is still legitimate for CIT deductibility. Nevertheless, the supplier will be subject to an administrative penalty for late invoice issuance.

(ii) *Circular 83/2016/TT-BTC providing guidance on investment incentives under the provisions of the Law on Investment and of Decree 118/2015/ND-CP*

On 17 June 2016, the Ministry of Finance issued Circular 83/2016/TT-BTC guiding CIT incentives, import duty incentives, and non-agriculture land use tax incentives in accordance with the provisions of the Law on Investment and Decree 118/2015/ND-CP. Notably, Circular 83 confirms that CIT incentives will be determined based on provisions of CIT regulations. Subsequently, given that industrial zones and export-and-processing-enterprise zones are regarded as areas with difficult socio-economic conditions as per Annex II of Decree 118, CIT incentives for new investment projects located in these areas must be determined based on current CIT legislation.

2. Value Added Tax ("VAT") and invoices

(i) *Where the taxable price for Special Consumption Tax ("SCT") is adjusted, no VAT adjustment should be required.*

According to Official Letter No. 2820/TCT-CS dated 23 June 2016, in case a company manufactures SCT-liable goods to sell to other trading companies at the price of 7% lower than the selling price of the trading companies, but declares taxable revenue for SCT calculation at the price of 7% higher than the average selling price of the trading companies, while the selling price to trading companies remains unchanged, such company is not required to make an incremental adjustment to the relevant VAT payable.

(ii) *Circular 99/2016/TT-BTC providing guidance on VAT refund management*

On 29 June 2016, the Ministry of Finance issued Circular 99/2016/TT-BTC ("Circular 99") providing guidance on VAT refund management. Notably, Circular 99 sets out certain professional measures on customs and tax management, applicable to high-risk companies. Accordingly, companies should take note of the following points related to VAT refunds:

- The tax authorities shall coordinate with the customs authorities regularly to check the VAT refund dossier. It therefore is crucial that the customs dossier associated with the VAT refund dossier should be consistent with that submitted to customs authorities.
- The tax authorities shall carry out the tax inspection to both the buyer and the seller if there is a sign of tax evasion. Companies therefore may be exposed to risk if purchasing goods / services from suppliers having tax evasion action.
- Upon detecting signs of tax evasion or tax fraud in accordance with the tax regulations and signs of crime, the tax authorities will transfer the case to the police authorities.
- Where the schedule for tax inspection and tax audit has passed while the tax authorities have not received a response on the case from competent authorities, the VAT refund application shall be handled as below:
 - If the proposed VAT refund amount is bigger than the qualified amount, the taxpayer is refunded the qualified amount.
 - If the proposed VAT refund amount is smaller than the qualified amount, the taxpayer is refunded the proposed amount.
 - If the tax authority can determine the qualified amount for VAT refund, the tax authority must process the VAT refund application based on the qualified amount, instead of postponing the whole application.

Circular 99 takes effect on 13 August 2016.

(iii) Determining permanent establishment eligible for 0% VAT rate

On 2 August 2016, the General Department of Taxation issued Official Letter No. 3426/TCT-HTQT on the permanent establishment to apply 0% VAT rate for the period prior to 2014.

Accordingly, the General Department of Taxation confirmed that the provision of double taxation agreements is applied to determine direct tax liabilities (such as CIT and PIT), but not other indirect taxes (such as VAT and SCT). Subsequently, the determination of permanent establishment to verify 0% VAT rate application to exporting services should be based on domestic regulations (i.e. CIT regulations) instead of double taxation agreements between Vietnam and other engaging states.

3. Tax administration

(i) Circular 95/2015/TT-BTC on tax registration

On 28 June 2016, the Ministry of Finance issued Circular 95/2016/TT-BTC ("Circular 95") supplementing and amending the guidance on tax registration with certain notable points as below:

- Harmonise the guidance and procedures on tax registration and changes of tax registration.
- Supplement the provision on PIT code registration for dependants. Accordingly, the income payers are required to register PIT code for individuals having income from salary and wage and their dependants once per year, duly 10 working days prior to the due date of year-end PIT finalisation.
- Where the transfer of rights to participate into oil exploitation contract leads to change of the owner of foreign contractor holding the right, the foreign contractor engaging into the oil exploitation contract is responsible for (i) declaring and paying capital assignment tax on the net gain on behalf of the transferor, using its 13-digit tax code, and (ii) processing tax registration change to the 10-digit tax code of the Operator, or the Operating company, or the operating joint venture.
- Provide detailed procedures relating to cases whereby a company relocates its business head office leading to the change of managing tax authority, and other cases of business restructuring (e.g. split, merge, acquisition).
- Provide guidance on the handling of tax liability in case of business split, merge and acquisition if the former entity has not fulfilled its tax obligations.
- Supplement the provision and procedures for tax code reactivation in certain cases.
- Harmonise the deadline for tax registration applicable for Vietnamese parties declaring and paying FCT on behalf of foreign contractors and foreign sub-contractors. Accordingly, the deadline for tax registration in this case should be within 10 working days from the arisen date of tax withholding and payment obligations.

Circular 95 takes effect on 12 August 2016.

(ii) Cut-off of the tax declaration period eligible for VAT refund prior to the effect of Law 106 and interest rate for tax under-declaration

According to Official Letter No. 10315/BTC-TCT ("Official Letter 10315") dated 25 July 2016, where a company accumulates input VAT which has not been fully creditable prior to the tax declaration for July 2016 (applicable for VAT declaration on monthly basis), or prior to the tax declaration for the third quarter of 2016 (applicable for VAT declaration on quarterly basis), and the accumulated input VAT is qualified for VAT refund under provisions of Circular 219/2013/TT-BTC, such company is allowed to apply for a VAT refund.

In relation to under-declared tax liabilities relating to tax periods prior to 1 July 2016 detected by the tax authorities or by the taxpayers from 1 July 2016, according to the guidance of Official letter 10315, the interest on late payment is determined as below:

- 0,05% per late day on the under-declared amount, or following the interest rate in accordance with the applicable regulations of the corresponding periods, applied for the period from the due date till 30 June 2016;
- 0,03% per late day on the under-declared amount, applied for the period from 1 July 2016 to the payment date of the under-declared amount.

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