

Technical Update

Tax and Legal Services

November 2016



1. Corporate Income Tax ("CIT")

- (i) *Conditions and supporting documents to deduct warranty expenses*

According to Official Letter No. 4738/TCT-CS dated 13 October 2016, where a company provides warranty services free of charge to its clients following the provisions in the sales contract, and the company makes a provision for warranty expenses in accordance with the prevailing regulations, the relating warranty expenses shall be deductible for CIT calculation purpose. Documents required to be kept to support the transaction include: (i) Minutes of product examination, (ii) Goods delivery note for the replacement products, and (iii) Goods receipt note for the faulty products collected from the clients.

- (ii) *Interest expenses shall not be deductible where a company makes a non-business related advance payment to an employee and funds loans to other companies at 0% interest, and tax collection shall apply*

According to Official Letter No. 2323/TCT-CS dated 30 May 2016 and Official Letter No. 4975/TCT-CS dated 26 October 2016, where a company makes an advance payment to an employee without having in place any supporting documents to verify the business purpose of the advance, and the advance payment leads the company having a shortage of financial resources, prompting the enterprise to take out loans from other parties, and at the same time, the company funds loans to other companies at 0% interest, the related interest expenses will not be deductible for CIT calculation purposes. The lending transaction at 0% interest is considered to not be in accordance with the arm's length principle, and hence shall be subject to tax reassessment and collection.



2. Value Added Tax ("VAT") and invoice compliance

- (i) *Circular 173/2016/TT-BTC amending and supplementing a number of VAT circulars related to the non-cash payment requirement*

On 28 October 2016, the Ministry of Finance issued Circular No. 173/2016/TT-BTC amending and supplementing a number of circulars that provide guidance on VAT. Circular 173 has removed the requirement for the taxpayers to register the bank accounts with the tax authorities, or notify the tax authorities thereof, for VAT credit purposes. Previously, the tax authorities determined under several private rulings that a VAT refund / VAT credit is not allowed if both the buyer and the seller settle payment via unregistered bank accounts.

Circular 173 takes effect on 15 December 2016.

- (ii) *Applicable exchange rate for invoice issuance in the case where a company uses foreign currency as its functional currency for accounting record*

According to Official Letter No. 4886/TCT-KK dated 21 October 2016, where a company uses a foreign currency (e.g. US dollar) as its functional currency in its accounting records and generates sales revenue in that foreign currency (i.e. US dollar), such a company shall issue an invoice in US dollar, using the buying exchange rate of the US dollar announced by the commercial bank where the company opened its account to receive the payment, subject to the corresponding provisions of Circular No. 200/2014/TT-BTC, Circular No. 26/2015/TT-BTC, and Circular No. 53/2016/TT-BTC.

- (iii) *Input VAT for trial production must be declared on a VAT declaration form for investment stage (i.e. Form 02/GTGT)*

According to Office Letter No. 5123/TCT-KK dated 4 November 2016, where a company is in the investment stage and generates sales revenue from trial production, the input VAT related to the investment stage must be declared on form 02/GTGT while the sales revenue from trial production must be declared on form 01/GTGT. After offsetting the creditable input VAT on form 02/GTGT against payable output VAT on form 01/GTGT, the remaining input VAT may be refunded as being input VAT related to the investment stage.

3. Personal Income Tax (“PIT”) and labour compliance

- (i) *Circular 40/2016/TT-BLDTBXH guiding Decree 11/2016/ND-CP on issuing work permits for foreigners working in Vietnam.*

On 25 October 2016, the Ministry of Labour, Invalids and Social Affairs (“MOLISA”) issued Circular No. 40/2016/TT-BLDTBXH that provides guidance on issuing work permit to foreigners working in Vietnam. The following are some notable points of Circular 40:

- Circular 40 switches the authorisation to approve a Proposal for labor needs for certain enterprises from the provincial People’s Committee to the MOLISA. The enterprises include foreign non-governmental organisations, international organisations in Vietnam, operational offices of foreign entities in Vietnam, and operational offices of international organisations in Vietnam;
- Circular 40 transfers the authorisation to issue work permits for certain enterprises from the Department of Labour, Invalids and Social Affairs (“DOLISA”) to the MOLISA. The enterprises include non-governmental organisations, international organisations in Vietnam, operational offices of foreign entities in Vietnam, and operational offices of international organisations in Vietnam;
- If a foreigner has been granted a work permit, and is appointed, mobilised or seconded to other provinces or cities to work in the same work position for a period of ten (10) consecutive days or longer, a new work permit shall not be required if the old work permit is still valid. In such a case, the employer must notify the DOLISA of where the foreigner is dispatched to.

Circular 40 takes effect on 12 December 2016 and supersedes Circular 03/2014/TT-BLDTBXH.

- (ii) *An individual receiving remuneration for a director position is not eligible for PIT exemption or reduction under the double tax agreement*

According to Official Letter No.4395/TCT-HTQT dated 21 September 2016 issued by the General Department of Taxation, where an individual earns income for being a member of the board of directors, such an individual is considered to receive director remuneration, which is distinguished from the employment income. Subsequently, such an individual is not eligible to enjoy PIT exemption or reduction in accordance with the double tax agreement, and is subject to Vietnamese PIT in accordance with the domestic regulations.

- (iii) *A company paying salaries to employees that have signed labour contracts with its branches is responsible for withholding PIT, and declaring and paying PIT to the tax authority*

According to Official Letter No. 4100/TCT-CS dated 09 September 2016, where a company authorises its branch to sign labour contracts with the employees while the company still makes salary payments to those employees, the company is responsible for withholding PIT, and declaring and paying PIT to the tax authority.

- (iv) *Increase of region-based minimum salary as from 1 January 2017*

On 14 November 2016, the Government issued Decree No. 153/2016/ND-CP, replacing Decree No. 122/2015/ND-CP, stipulating the region-based minimum wage levels for all types of enterprises.

Accordingly, the regional minimum salary in 2017 will increase between VND180,000 and VND250,000, equal to between 7,1% and 7,5% compared to the minimum wages in 2016.

The regional minimum salaries shall be the minimum amount for the basis of salary negotiations between employers and employees, and the minimum remuneration as should be included in labour contracts. This is also the base to determine the maximum salary paid in unemployment insurance benefits.



4. Export duty, import duty and compliance to customs regulations

- (i) *Container imbalance charge is included in the customs valuation for import duty calculation*

According to Official Letter No. 10111/GDC-TXNK dated 25 October 2016 issued by the General Department of Customs, where a company incurs a container imbalance charge ("CIC") relating to the transportation of imported goods, the CIC shall be included in the customs valuation for import duty calculation purposes, provided that the following conditions are satisfied: (i) the CIC is paid by the buyer, and has not been included in the selling price actually paid or payable; (ii) the CIC is related to the imported goods; and (iii) the CIC is determined based on objective and quantitative data and is supported by proper documentation.

- (ii) *A financial leasing company importing goods and leasing such goods to an Export and Processing Enterprise ("EPE") is liable to import duty at the importation stage.*

According to Official Letter No. 16346/BTC-TCHQ dated 15 November 2016, where a financial leasing company imports goods from overseas into Vietnam in order to lease to an EPE, such a company is liable for import duty at the time of import and is eligible for a refund of import duty upon the exportation of the goods to a non-tariff zone. Upon importation of the goods from a non-tariff zone into the domestic market, the financial leasing company is responsible for declaring and paying import duty in accordance with the current regulations.

- (iii) *If goods traded between an EPE and a domestic company have a certificate of origin form D, the domestic company shall be eligible to enjoy a special preferential import rate on these goods*

According to Official Letter No. 1417/GSQL-TH dated 20 October 2016, where the goods are imported from a non-tariff zone into the domestic market and such goods are granted a certificate of origin form D issued by the Ministry of Industry and Trade, the domestic company shall be eligible to enjoy special preferential import tax rate under the ASEAN trade in goods agreement.

- (iv) *Enforcement of the post-clearance customs inspection on customs valuation*

According to Official Letter No. 10482/TCHQ-TXNK dated 04 November 2016, Official Letter No. 10773/TCHQ-TXNK dated 15 November 2016 and Official Letter No. 10838/TCHQ-KTSTQ dated 16 November 2016 issued by the General Department of Customs, the customs authorities shall enforce the following customs management measures:

- Where a company imports goods and declares a taxable price that is lower than the reference price, and the company is ranked as a grade 6 or grade 7 company in the Risk Management Information System, the customs authority will request further explanation and clarification on the declared price as at the customs registration. Where the company fails to do so, the customs authority would re-assess and collect import duty in accordance with the current regulations. Simultaneously, the customs authority would carry out a post-clearance inspection at the taxpayer's premises to identify any violations of the customs valuation;
- Where the customs authority has sufficient grounds for rejecting the value declared at the consulting stage but the taxpayer disagrees with the basis of the rejection, or the taxpayer agrees with the basis of rejection but does not lodge a supplementary declaration, the customs authority would carry out a post-clearance inspection of the customs valuation within 30 days of receipt of the consulting result.

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