

# LEGAL UPDATES

FEBRUARY 2014



## I - Guidance on Value added tax (VAT)



### Taxpayer

On December 31, 2013, the Ministry of Finance promulgated the Circular No. 219/2013/TT-BTC dated December 31, 2013 guiding the implementation of Law on Value added tax and the Government's Decree No. 209/2013/ND-CP dated December 08, 2013 guiding and detailing the implementation of a number articles of Law on Value added tax by illustrative examples of mass. Next, on February 27, 2014, the General Department of Taxation promulgated the Official Letter No. 586/TCT-CS providing guidance with noteworthy points as follows:

Guiding the taxpayers for Branches of export processing enterprises established to purchase and sell of goods and activities directly related to the purchase and sell of goods in Vietnam under the legal provisions in industrial parks, export processing zones and economic zones.

*Example 1: Sanko Co., Ltd is a processing enterprise. Other than its production activities for export, Sanko Co., Ltd granted license to perform the import right to sell out or export, Sanko Co., Ltd has to establish a Branch to perform this activity under legal provisions that the Branch separately accounts, declares and pays VAT for this activity, not general account to production activities for export.*

*When importing goods to perform the distribution (sale out), the Branch of Sanko Co., Ltd shall declare and pay VAT at import stage and when selling out (including export), Sanko Co., Ltd shall use invoices, declare and pay VAT under provisions.*

### Receive the fund in cash to perform works such as promotion, advertisement etc.

Distributors receive the finance in cash to perform works such as promotion, advertisement etc. should calculate and declare VAT of 10%.

In case the business establishments receive cash from organizations and individuals to perform services for organizations and individuals such as to repair, guarantee, promote, and advertise shall declare and pay tax under provisions.

*Example 15: ABC Dairy Joint Stock Company paid amounts to distributors (i.e. organizations, and individuals do their businesses) to perform programs of promotion (under legal provisions on trade promotion activities) , marketing, product display for the Company (distributors receive amounts to perform services for the Company), when receiving such amounts, in case distributors are the Value added taxpayers by Value added tax deductible billing and calculate Value added tax by tax rate of 10%, in case distributor are Value added taxpayers by direct method, they shall use sales invoices and determine tax amount payable by the rate (%) on revenue under provisions.*

## I- Guidance on Value added tax (VAT) (continued)

### Value added tax refund

To supplement the tax refund quarterly, accordingly in case the business establishments are the subjects to quarterly declaration if they have input VAT amounts which are not deducted in full in the quarter, they shall be deducted to the following period; in case after four quarters from the first quarter arising VAT amount has not been deducted but there is also input VAT amount which has not been deducted, they are entitled the tax refund.

To amend the tax refund method: from "in 03 consecutive months there is tax amount has not been deducted in full" into "after at least 12 months from the first month if there is negative tax shall be entitled to tax refund".

To amend the minimum tax level is entitled to refund for investment and export is being regulated is 200 million dong to 300 million dong.

### Effectiveness

The Circular No. 219/2013/TT-BTC takes effect as from January 01, 2014 and replaces the Circular No. 06/2012/TT-BTC dated January 11, 2012 and the Circular No. 65/2013/TT-BTC dated May 17, 2013 of the Ministry of Finance.

## II - Goods purchasing and selling activities in Vietnam of processing Enterprises granted the license to perform goods purchasing and selling activities and activities directly related to the purchase and sale of goods

According to the provisions of the Decree No. 164/2013/ND-CP which takes effect from January 01, 2014 and the guidance in the Official Letter No. 1047/TCHQ-GSQL of the General Administration of Customs on January 27, 2014. Accordingly:

- Goods exchange relationship produced at processing zones and processing enterprises with other zones in Vietnam territory, except for non-tariff barriers are the import and export relationships.
- Processing enterprises granted the business licenses for goods purchasing and selling activities and activities directly related to the purchasing and selling of goods in Vietnam **have to establish the separate branches outside the processing enterprises and processing zones to perform those activities.**

## III- Guiding on submission of report on the performance of use of invoices

On January 17, 2014, the General Department of Taxation promulgated the Official Letter No. 237/TCT-CS guiding on submission of report on the performance of use of invoices. Accordingly:

In case the enterprises have prepared announcement of invoice issuance and submitted those to tax authorities to be able to use invoices, in the reporting period they do not use invoices (the number of using = 0) they **still have to submit the report on the performance of use of invoices** to the direct tax management authorities under provisions.

*In accordance with Article 25 of Circular No. 153/2010/TT-BTC dated September 28, 2010 of the Ministry of Finance regulating:*

*"Article 25. Report on use of invoices*

*Quarterly, sellers of goods and services (except those obtaining invoices from tax offices) shall submit reports on use of invoices to managing tax offices. Reports on use of invoices shall be sent together with dossiers of value-added tax declaration in the first month of the subsequent quarter (Form No. 3.9, Appendix 3 to this Circular).*

*In accordance with point b, clause 3 in Article 33 of the Government Decree No. 51/2010/ND-CP dated May 14, 2010 regulating:*

*"3. 3. A fine from 2 million dong to 10 million dong shall be imposed for acts of:*

*b) Failing to submit the report under provisions on invoices which have been used".*

**To avoid penalty due to the negligence, the Enterprise should highly pay attention and ensure that the report on the performance of the use of invoices has been prepared (write down the number of using = 0) in case not issuing invoice.**



#### IV - Invoices with the wrong presentation are entitled to tax deduction and refund if those reflect correctly the business nature and there is payment via bank

On February 11, 2014, the Ministry of Finance promulgated the Official Letter No. 1781/BTC-TCT guiding the tax deduction and refund in case enterprises issue invoices with the wrong presentation such as:

- On-spot export goods used VAT invoices;
- Invoices abbreviated of name, address of purchasers but having correct tax code;
- Invoices written but the rest blank has not been crossed out under provisions.

For case above, the Ministry of Finance requested the Tax Departments to examine in practice if invoices prepared in accordance with accounting books, reflecting the business nature and there is payment via bank under provisions), the Tax Departments provide guidance and remind enterprises and perform tax refund or deduction in accordance with the actual arising.

#### V - Guidance on VAT deduction

On January 17, 2014, the General Department of Taxation promulgated the Official Letter No. 239/TCT-CS VAT guiding on VAT deduction for cases:

- Input VAT invoices arisen within the day of the same supplier in value of less than 20 million dong but if these above mentioned invoices are plus more than 20 million dong, VAT of those invoices are only declared and deducted for cases having payment vouchers via bank;
- The Company has payments for VAT invoices of entertainment cost from 20 million dong or more than by **Visa/ Master cards in which the card holder is the Company's name** shall be accepted as eligible for payment via bank to VAT deduction.

#### VI- Not allowed to pay by cash for some financial transactions of Enterprises from March 01, 2014

Accordingly, as from March 01, 2014:

- Enterprises do not perform cash payment in transactions of capital contribution purchase and sale and transfer of the capital contribution amounts into enterprises;
- Enterprises which are not credit institutions do not use cash when borrowing and providing loans each other.



That is one of provisions on cash payment and State management on cash payments in a number of transactions in Vietnam's territory under the Decree No. 222/2013/ND-CP. This Decree replaces the Government's Decree No. 161/2006/ND-CP dated December 28, 2006 on cash payment.

**The End**

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