

LEGAL UPDATES

MAY/2016

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1. Law on amendment of tax laws 2016

On April 06, 2016, the National Assembly adopted the Law No. 106/2016/QH13 amending, supplementing a number of articles of the Law on value added tax (VAT), the Law on excise tax, the Law on tax administration.

One of the important amendments of the Law is no longer allowed for tax refund on the case that the amount of the input VAT which is not completely deducted after the accumulation of 12 months or 4 quarters. According to the new Law, VAT which is not completely deducted in the month or in the quarter (including the case of after the accumulation of 12 months or 4 quarters) is only allowed to transfer to be deducted in the next period and not allowed to be refunded.

For investment projects, it is not refundable and must be transferred to be deducted in the following period if it is subject to the below cases:

- a) Investment projects of business establishments that do not contribute sufficient charter capital according to the registration; engage in conditional business lines, sectors when they fail to meet the business conditions under provisions of the Investment Law or fail to maintain the eligibility for the business during the operation;
- b) Investment projects on exploitation of minerals, natural resources licensed from July 01, 2016 or investment projects on production of goods, products with the total value of the minerals, natural resources added energy expenses accounting for 51% product price or more according to the investment projects.

In the field of tax administration, the Law has made the adjustment to decrease the fine level on due tax from 0.05 per day to 0.03% per day.

The Law takes into effect since July 01, 2016. The Clause 4 Article 3 of the Law will take effect since September 01, 2016.



2. Law on import-export duties 2016

On April 06, 2016, the National Assembly adopted the Law No. 107/2016/QH13.

This Law provides regulations on taxed goods, taxpayers, basis for tax calculation, time for tax calculation, tariff schedules, anti-dumping duty, countervailing duty, safeguard duty imposed upon exports and imports; tax exemption, tax reduction, refund of export and import duties.



Compared with the old Law, the Clause 3 Article 2 of this Law has clarified more about the objects subject to the import export duties, which even includes the forms of indirect import-export, import-export under the form where FDI (foreign direct investment) enterprises exercise their right to export, import, or distribute. However, the Government will promulgate more details on the objects subject to the import export duties under the new Law.

About the calculation method on the import export duties, in addition to the calculation methods of proportional tax, fixed tax, the new Law also supplements by adding the mixed duty. Mixed duty means the total amount of proportional tax and fixed tax (Article 6).

The tax payment deadline is also amended. Accordingly, duties on exports and imports have to be paid before customs clearance unless it is guaranteed or entitled to priority. According to the old Law, the tax payment deadline of the duties on exports and imports is within 30 days since the registration date of the declaration, while the materials imported for production to export has the deadline of 275 days, the goods temporarily imported for re-export's is 15 days (Article 9).

The Law takes effect since September 01, 2016 and replaces the Law on Export and import duties No. 45/2005/QH11 dated June 14, 2005.

3. Imported materials for trading changing its purpose for production to export is also entitled to tax refund

That is the content guided at Official letter No. 3349/TCHQ-TXNK dated April 21, 2016 of General Department of Customs on refund of import tax.

Accordingly, in the provisions of Point c2 Clause 5 Article 114 Circular No. 38/2015/TT-BTC, in case that the organization, individual imports the materials/supplies to manufacture goods for sale in Vietnam, but then uses them to manufacture goods to be exported which are then actually exported, it can also be considered for the tax refund.

However, the time limit is 02 years from the registration date of the customs declaration of such imported materials/supplies to the registration date of the customs declaration of exported goods made from such materials/supplies.



Application for tax refund shall be performed under the regulations at Article 119 of Circular No. 38/2015/TT-BTC.

4. Leaving Vietnam, the foreigners shall calculate the personal income tax (PIT) based on the status of residence

On April 20, 2016, The General Department of Taxation promulgates Official letter No. 1657/TCT-TNCN providing the guide on the PIT refund when the individual changes the status of residence:

According to the regulations at Clause 1, Clause 2, and Article 1 of Circular No. 111/2013/TT-BTC, the foreigners present in Vietnam less than 183 days in the year shall be determined as non-residents who are subject to the PIT at the rate of 20%.

Accordingly, in case that the foreigner who signs the labor contract in Vietnam for many years is considered resident whose PIT is calculated by the progressive table of tax but if such foreign is present in Vietnam less than 183 days in the final year, such foreigner shall be considered as non-resident and the applicable PIT rate for the final year is 20%; however, such foreigner is allowed not to make the tax finalization upon leaving Vietnam.



However, in the case that the change of residence status and the calculation of PIT mentioned above lead to an overpaid tax amount, the foreign individual is allowed to submit the application for tax refund under the guide at Article 53 Circular No. 156/2013/TT-BTC. If such foreigner is overseas, he can authorize his income-paying unit to conduct the application for tax refund.

5. Imported goods delivered at the bonded warehouse is subject to the withholding tax

On April 04, 2016, the General Department of Taxation issued Official letter No. 1368/TCT-CS guiding on the withholding tax on the case of imported goods delivered at the bonded warehouse:



According to the regulations at Clause 2 Article 7 of Circular No. 60/2012/TT-BTC (now it is Circular No. 103/2014/TT-BTC), if the imported goods are delivered inside the territory of Vietnam or accompanied with other services conducted inside the territory of Vietnam such as installation, testing, maintenance, then those shall be subject to the withholding tax.

On the other hand, according to Clause 7 Article 4 of the Law on National Border No. 06/2003/QH11, as the bonded warehouse is not a border gate, it shall be considered as a location within the territory of Vietnam.

Accordingly, in case that the Company imports the goods as agreed with the delivery condition at bonded warehouse accompanied with the maintenance service, such goods shall be subject to the withholding tax.

6. Officially allow the foreign currency loans from June 01, 2016 onwards

On May 27, 2016, The State Bank of Vietnam released the Circular No. 07/2016/TT-NHNN (Circular No. 07) amending, supplementing some articles of Circular No.24/2015/TT-NHNN promulgating on foreign currency loans.

Accordingly, the entities as export enterprises will be allowed to access foreign currency loans again after this access was repealed from April 01, 2016.

In particular, new issuance of Circular No. 07 allows credit institutions, branches of foreign banks who are entitled to conduct foreign currency operation in Vietnam to consider the provision of foreign currency loans to their borrowers as residents in order to meet the domestic capital need for implementing their plans on production, business of exported goods via Vietnam's border gate when the borrowers have enough foreign currencies from revenue of production and business for debt payment.



However, this access goes with corresponding conditions as follows: when credit institutions and foreign bank branches disburse the loans, the borrowers must sell their foreign currencies to those credit institutions and foreign bank branches in the form of spot transactions, excluding the case that borrower's loans used for payment transaction must be in foreign currencies as regulated in the law.

The regulation mentioned above will be implemented till December 31, 2016 inclusive.

This Circular takes into effect from June 01, 2016 onwards.

Notice

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