

## LEGAL UPDATES

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### Non-resident individuals receiving income from abroad are still subject to the personal income tax (PIT).

That is the guiding content at Official letter No. 2700/TCT-TNCN dated June 21, 2017 of the General Department of Taxation regarding the policy of PIT.

According to the regulations at Clause 8 Article 26 Circular No. 111/2013/TT-BT, non-resident individuals if having the income arising in Vietnam must be subject to the PIT, even receiving the income from abroad.

Accordingly, for foreign experts who are assigned to work in Vietnam by the foreign contractor, although they are non-resident individuals who receive income from abroad, they are also subject to the PIT in Vietnam.

In principle, the foreign experts must self-declare and pay PIT (quarterly) to the tax authorities in Vietnam. However, according to the Civil Law, the foreign experts may also authorize the relevant party in Vietnam for declaration, deduction, on-behalf payment of PIT (by the Form No. 02/KK-TNCN accompanied with Circular No. 92/2015/TT-BTC).



## The Ministry of Finance answers 06 important issues related to the imported and exported goods.



Official letter No. **7778/BTC-TCHQ** dated June 13, 2017 of the Ministry of Finance regarding the guideline on settlement of difficulties when implementing the Law on import and export duties No. 107/2016/QH13 and the Decree No.

The letter gives answers to 06 issues related to the tax policies applicable to the imported and exported goods.

Accordingly, the level of tax exemption for donated or imported goods not for commercial purpose and express delivery stipulated at Article 8, Article 27, and Article 29 Decree No. 134/2016/ND-CP is applied for each time of import and export (Point 1 of the Official letter).



- ◆ For goods which have been exported but have to be re-imported for recycling, they shall not be subject to tax payment upon re-import; however, if the registered recycling period has expired (maximum 275 days) but such goods still have not been re-exported, the tax imposed on those shall be retrospectively collected (Point 2 of Official Dispatch).
- ◆ The tax policy applicable to the surplus raw materials and supplies depends on the form of treatment, if they are under the cases of tax exemption or tax free, they will be settled as those exempted from tax or free of tax; on the contrary, they must be declared to pay tax (Point 3 of the Official Letter).
- ◆ From September 01, 2016, the trading goods temporarily imported for re-export are exempted from the special sales tax according to Clause 3 Article 6 Decree No. 108/2015/ND-CP; however, if exceeding the deadline, such goods still have not been re-exported, the special sales tax imposed on those shall be retrospectively collected and then will be refunded upon actual re-export.
- ◆ For the goods imported for production to export, they are currently considered for the exemption of import duties and value added tax only while they are still subject to the environmental protection tax (Point 4 of the Official letter).

It should be noticeable that if the goods imported for production to export do not meet the conditions stipulated at Article 12 Decree No. 134/2016/ND-CP, the enterprises must declare those under the form of goods imported for trading (code A12) which is not entitled for the tax exemption (Point 6 of the Official letter).

## Time for preparing invoices for exported goods must be suitable to the date of performing the customs procedures.



Official letter No. **40667/CT-TTHT** dated June 16, 2017 of the Tax department of Ha Noi City regarding the time of preparing the invoices for exported goods.

According to the amendment at Clause 7 Article 3 Circular No. 119/2014/TT-BTC, from September 01, 2014, the enterprises must use the commercial invoices for the exported goods, but not the export invoices.

The date of the invoices the enterprises themselves determine must be in conformity with the date of performing the customs procedures. The date to determine revenue from export to calculate tax is the date on which customs procedure completion is confirmed on the customs declaration.

Earlier, Official letter No. **74112/CT-TTHT** dated December 02, 2016 stipulated that the time of preparing the invoices for exported goods is negotiated by the exporter and the importer.

This Official letter replaces the Official letter No. **74112/CT-TTHT** dated December 02, 2016 .



## Solutions supporting the development of enterprises for the period 2017-2018

That is one of the contents of Directive No. 26/CT-TTg dated June 06, 2017 of the Prime Minister on the effective implementation of Resolution No. 35/NQ-CP dated May 16, 2016 in the spirit of being accompanied with the enterprises of the Government.

Accordingly, the Directive assigns the ministries and sectors to focus on implementing a number of tasks and solutions to support the development of enterprises in the period 2017-2018, especially small and medium enterprises.

In which, there are some noticeable solutions as follows:

- Amending the regulations on administration procedures in the direction of inter-connection between the investment procedures with the procedures of land, construction, procurement and environment;
- Amending the regulations on tax administration, customs in the direction of inter-connection between the ministries and sections to minimize the time and cost of implementation for the enterprises;
- Renovating the specialized inspection on the principle of risk management; applying the priority in inspection; changing the time of performing the specialized inspection from the stage of customs clearance to the stage of after customs clearance;
- Drawing up a decree on electronic invoices and vouchers for basic implementation in 2018 for the entire economy;
- Checking the fees directly related to the expenses of the enterprises for consideration of reducing the charges, input costs for the enterprises;
- Amending the regulations on construction licensing and administrative procedures related to the construction management activities in the direction of simplification, reduction of time and expenses for implementation;
- Speeding up the issuance of construction permits via the internet;  
Etc.



### New guidelines on tax administration for the enterprises having related transactions

Circular No. 41/2017/TT-BTC dated April 28, 2017 of the Ministry of Finance provides the guidelines on the implementation of some articles of Decree No. 20/2017/ND-CP dated February 24, 2017 of the Government stipulating on the tax administration for the enterprise having related transactions.

The Circular provides detailed guidelines on the subjects of application as well as the order of implementation of transfer pricing methods, including: how to determine the nature of the related transactions, comparable factors between the related transactions and the uncontrolled transactions; the process of comparing the price of the related transactions based on the profit ratio.

Accordingly, the nature of the related transactions will be determined by comparing the legal or written agreements, transaction agreements of the associated parties with the actual implementation of the parties (such as the actual production and business activities, the functions of each party).

The comparison between the related transactions and the uncontrolled transactions will base on the following factors: the characteristics of assets, goods and services that affect the price of the product; the operational functions of each party; contractual terms; the economic conditions of the transactions and the market conditions at the time of the transactions, etc.

In addition, the Circular also provides specific guidelines on how to use the forms to declare the information of the associated relationship, prepare the report of transfer pricing. The details can be referred at the attached appendices.

The Circular takes effect from the date that Decree No. 20/2017/ND-CP having the implementation effect (which is on May 01, 2017).

The Circular No. 66/2010/TT-BTC dated April 22, 2010 and the Form No. 03-7/TNDN accompanied with the Circular No. 156/2013/TT-BTC 06/11/2013 have been repealed.



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*"The purpose of this news is to provide the clients with further information. Although we have focused much on the ensure of accuracy, the information that is given on this news is not absolutely thorough and the clients would better consult professional opinions before application".*