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LEGAL UPDATES
SEPTEMBER 2016

Headlines

Introducing the new amendment on the tax policy of Circular No. 130/2016/TT-BTC

On 16 September 2016, the General Department of Taxation released Official letter No. 4238/TCT-CS introducing some new contents of Circular No. 130/2016/TT-BTC dated 12 August 2016 of the Ministry of Finance providing the guidelines on Decree No. 100/2016/ND-CP dated 01 July 2016 of the Government stipulating the details on the implementation of the Law on amendments and supplements of the Law on Value added tax, the Law on Special Excise Tax, and the Law on Tax Administration and amending some articles of the Circulars on taxation.

According to this Official letter, the Circular No. 130/2016/TT-BTC has some significant amendments and supplements on tax policy related to the Value added tax (VAT), the Corporate income tax (CIT), the Law on tax management as follows:

- Supplementing the objects which are not subject to VAT (including: caring for the elderly and disabled, carriage of passengers by tram; export product having the total value of natural resources and minerals adding the energy costs which account for over 51% of the cost);
- Removing the regulation on VAT refund for domestic purchase;
- Supplementing the conditions for VAT refund in respect of new investment projects;
- Supplementing the cases where the exported goods are not entitled to VAT refund (including the goods imported for export and the exported goods outside the customs area);
- Reducing the late tax payment interest from daily rate of 0.05% to daily rate of 0.03%;
- Supplementing the case where the additional investment in machinery and equipment is not considered as the expansion investment.

Accordingly, in the period from 2009 to 2013, expansion investment is not mandatory for the enterprises that utilized their fixed asset depreciation fund; net profit for reinvestment or investment capital registered into additional machines and equipment on regular basis, but did not increased the capacity of production and business according to the registered or approved business plan. It means that the revenue acquired from the additional investment in machines and equipment on regular basis will not be excluded when considering the tax incentives for the period from 2009 to 2013.

Guidelines on new policies on exemption from import export duties

On 31 August 2016, the Ministry of Finance released Official letter No. 12166/BTC-TCHQ on the implementation of the provisions of the Law on the Export, Import Tax of 2016.

Accordingly, some of the imported goods will be exempted from the import duties as follows:

Regarding exemption from tax on goods imported for export production:

1. Raw materials, supplies, components, semi-products, finished products imported for export production shall be exempt from import duty, including:

   a. Raw materials and supplies (including supplies used for making packaging or packaging used for packing exports), components, semi-products imported for directly constituting exports or directly participating in the process of production of exports but not directly transforming into goods;

   b. Finished products imported for attaching to or packaging exports, installing to the exports or packaging together with the exports to form a synchronous goods item;

   c. Components, accessories imported for warranty for exports;

   d. Imported goods which are not used for sale and purchase, exchange or consumption other than being used as samples.

2. Dossier of, procedures for tax exemption are carried out according to the Government's Decree No. 08/2015/ND-CP dated 21 January 2015 and Circular No. 38/2015/TT-BTC dated 25 March 2015 of the Ministry of Finance with regard to goods imported for processing.

Additionally, the Official letter also provides the guidelines on the case of import tax exemption for goods imported for production of export goods, goods temporarily imported for re-export for which the customs declarations are made before 01 September 2016 including:

Goods being raw materials, supplies, accessories imported for production of exports which have not been exported yet (inventory of raw materials which have not put into production yet or already produced but the products have not been exported yet); goods temporarily imported for re-export which have not been re-exported yet, for which the declarations are registered with customs authorities before 01 September 2016 and tax on such goods have not been paid yet, are exempt from tax according to Clause 7 and point dd Clause 9 Article 16 of the Law on import duty, export duty.

Accordingly, in order to be exempt from the import tax, taxpayers shall submit written requests to customs authorities for settlement of procedures for tax exemption with regard to the customs declarations registered before 01 September 2016, in which clearly stating quantity of goods and amount of tax for which tax refund/tax exemption procedures are made; quantity of goods and tax amount to be exempt under the provisions of the Law on import duty, export duty.

Quantity of goods and amount of tax on such quantity of goods to be exempt shall be declared in new customs declarations as prescribed in the current regulations on transforming intended use (bases for tax calculation are taxable value, tax rate and exchange rate applied at the time the initial declarations are made). Deadline for carrying the declaration is to the end of 31 December 2016.

For goods whose products are exported, re-exported, taxpayers shall submit the dossiers of tax refund/tax exemption according to the current regulations.

Principles for determining the level of import duty under the Law on Export duty – Import duty 2016

On 07 September 2016, the General Department of Customs released Official letter No. 8600/TCHQ-TXNK on the application of import duty rates according to the provisions of the Law on import duty, export duty.

Following the Official letter No. 12167/BTC-TCHQ dated 31 August 2016, this Official letter provides clearer guidelines on the principles for determining the tax rate of import goods according to the provisions of Clause 3 Article 5 of the Law on Export-Import duty No. 107/2016/QH13 (taking into effective from 01 September 2016).

Accordingly, in case that the imported goods originating from the country, group of countries or territories that made most favored nation treatment to Vietnam shall apply the preferential tariffs (MFN Tariff) corresponding to each goods item specified in Section I, II, and III, Annex II of Decree No. 122/2016/ND-CP.

If the imported goods originating from the country, group of countries or territories that have an agreement of the special incentives on import duty with Vietnam shall be applied the especially preferential duty rates corresponding to each goods item prescribed at the table of especially preferential import Tariffs, including VKFTA; AKFTA; VJFTA; AJFTA; ACFTA; AANZFTA; AIFTA; ATIGA; VCFTA and the table of especially preferential Tariffs applied for the goods imported from Laos.

If the imported goods is not in the cases mentioned above, it shall be applied the common duty rates by 150% of MFN tariffs prescribed in Annex II of Decree No. 122/2016/ND-CP or by 5% (if subject to the list of the Annex issued together with the Decision No. 36/QD-TTg).

The especially preferential duty rates mentioned above are applicable to the imported goods originating from the country, group of countries as follows:

- VKFTA, for goods imported from South Korea;
- AKFTA, for goods imported from the countries of ASEAN and South Korea ;
- VJFTA, for goods imported from Japan;
- AJFTA, for goods imported from the countries of ASEAN and Japan;
- ACFTA, for goods imported from the countries of ASEAN and China;
- AANZFTA, for goods imported from the countries of ASEAN and two countries of Oceania which are Australia and New Zealand;
- AIFTA, for goods imported from the countries of ASEAN and India;
- ATIGA, for goods imported from the countries of ASEAN;
- VCFTA, for goods imported from Chile.

Complaint against the Decision on tax sanction is only allowed within 90 days.

According to the Official letter No. 4264/TCT-CS dated 16 September 2016 of the General Department of Taxation on tax policy, in case that the enterprises having grounds to believe that an decision on handling the violations of the laws on taxation by the tax authorities does not comply with the provisions of the law and the actual situation of the enterprises, the enterprises have the right to make complaint.

The order and procedure of complaints are implemented under the regulation at Clause 1 Article 7 and Article 9 of Law on Complaints No. 02/2011/QH13. In particular, it should be noted about the time limit for complaint is 90 days from the date received or learned of the decision of tax sanctions.

According to Clause 1 Article 7 of the Law on Complaints No. 02/2011/QH13, order of making the complaints are implemented as follows:

- The first time: a first-time complaint with the person who has issued such administrative decision or the agency that manages the person who has committed such administrative act, or institutes an administrative lawsuit at court;
- The second time: if the complainant disagrees with the first-time complaint settlement decision or the complaint remains unsettled although past the prescribed time limit, he/she may make a second-time complaint with the direct superior of the person competent to settle the first-time complaint. In the second time, the complainant has right to institute an administrative lawsuit at court.

Out of the valid of making complaints in 90 days, the complainant can only file a court for resolution and arbitration.