

LEGAL UPDATES

JUNE 2018

HIGHLIGHTS

- 1 Re-exported goods are only entitled for tax refund if they are not put in use
- 2 New regulations on establishment of the RO of trade promotion
- 3 VAT which is eligible for deduction is not allowed to be counted into expenses
- 4 Some of the mistakes on the certificate of origin of goods are acceptable
- 5 VAT of exported goods having import origin
- 6 The invoices of expenses incurred abroad must be translated into Vietnamese

Re-exported goods are only entitled for tax refund if they are not put in use

Official letter No. 2261/TXNK-CST dated May 08, 2018 of the General Department of Customs provided the guidelines on the import duty and the value added tax.

As stipulated in Article 19 of the **Law on import and export duties No. 107/2016/QH13** and Clause 1 Article 34 of the **Decree No. 134/2016/ND-CP**, paid import duties on the imports that have to be re-exported or exported into a free trade zone shall be considered for tax refund.

However, in order to be refunded for the import duty, the re-exported goods must ensure the following conditions: new and not yet put into use, machining and processing.

According to Clause 13 Article 1 of the **Law No. 21/2012/QH13**, with regard to the import duty to be refunded, the Company can reserve in the period of 10 years and it is settled according to the following forms: offsetting with the tax amount, late payment interest and outstanding fines, including the offset among the taxes; offsetting with the tax, late payment interest, fines of the next payment; or applied for the refund.



New regulations on establishment of the representative office (RO) of trade promotion



Decree No. 28/2018/ND-CP

dated March 01, 2018 of the Government provided the detailed regulations on the Law on Foreign Trade Administration on some measures to develop the foreign trade. Accordingly, the Decree also provides the detailed regulations on the trade promotion activities, including trade promotion in the domestic market and abroad.

Similar to the current regulations, if trade promotion organizations (excluding foreign traders) want to implement the activities related to trade promotion in Vietnam, they must establish ROs.

Conditions for the establishment of ROs in Vietnam by trade promotion organizations basically remain the same, however, this Decree additionally requires to register the personnel with the licensing authority, instead of only required to register the head of the RO previously (Article 24).

In addition, the Decree also supplements the case not being granted a license to establish an RO in Vietnam for foreign promotion organizations that are in the list subject to the sanctions under the Resolution of the United Nations Security Council (Article 26).

Cases in which the RO establishment license is revoked in Vietnam of the foreign trade promotion are also specified in detail in Article 33, such as: The representative office fails to officially come into operation within 06 months or has shut down its operation for 06 consecutive months without notifying the licensing authority or violates labor laws so seriously that it faces criminal charges.

The Decree takes effect from the signing date and replaces Decree No. 100/2011/ND-CP dated October 28, 2011.

VAT which is eligible for deduction is not allowed to be counted into expenses

The General Department of Taxation released the **Official letter No. 5475/TCT-CS** dated November 28, 2017 regarding the tax policy.

As stipulated in Clause 8 Article 14 of the Circular No. 219/2013/TT-BTC and Clause 3 Article 1 of the Circular No. 130/2016/TT-BTC, in respect to the VAT amount that is eligible for the deduction, the enterprise is allowed to declare fully deducted in the period or moved for the deduction in the coming period (if any).

However, there is no regulation allowing the enterprise to select for the recognition in the deductible expense for the VAT amount that is eligible for the deduction. Currently, **Clause 9 Article 14 of the Circular No. 219/2013/TT-BTC** only allows the enterprise to recognize those VAT amounts that are not eligible for the deduction.



Some of the mistakes on the certificate of origin of goods are acceptable



According to the guideline at **Circular No.**

38/2018/TT-BTC, the Customs authority still

accepts proof of origin having the mistakes and differences in the following cases:

- **Spelling errors or typing errors not changing the information;**
- Differences in marking at Items in the C/O: marked by hand or computer, marked with "x" or "√";
- **Minor differences between the signature in proof of origin and sample signature;**
- Differences between measurement units used in proof of origin and in other documents enclosed in the customs dossier (such as customs declaration, invoice, bill of lading);
- **Differences between the paper size of C/O submitted to the customs authority and that as required;**
- Differences in ink colors of information declared in proof of origin;
- **Minor differences between description of goods provided in proof of origin and that in other documents;**
- Differences between the number in proof of origin and that in declaration of imported goods but not changing the origin of goods and goods imported must be consistent with the description declared in proof of origin;
- **Other minor differences as agreed in International Agreements to which Vietnam is a signatory notified by the General Department of Customs.**

Circular No. 38/2018/TT-BTC takes effect since June 05, 2018.

VAT of exported goods with import origin is not entitled for tax refund if it is incurred during the period from July 01, 2016 to February 01, 2018

Official letter No. 2453/TCT-CS dated June 20, 2018 of the General Department of Taxation provided the guidelines on the VAT refund.

As stipulated in Clause 2 Article 1 of the **Decree No. 146/2017/ND-CP**, in respect of VAT of exported goods having the import origin, only the VAT amount incurring from February 01, 2018 is considered for the refund.

For the amount of VAT incurred from July 01, 2016 to February 01, 2018 (the validity period of Circular No. 130/2016/TT-BTC), it is not refunded, can only be moved to the deduction.

The invoices of expenses incurred abroad must be translated into Vietnamese

Official letter No. 37844/CT-TTHT dated June 05, 2018 of the Tax Department of Ha Noi City provided the guidelines on the documents in foreign languages.

As stipulated in Clause 4 Article 5 of **Circular No. 156/2013/TT-BTC**, the invoices of expenses incurred abroad are also used as the accounting recording vouchers, however, they must be translated into Vietnamese.

The Company can self-translate, self-sign and stamp and solely responsible for the translation content.

NOTICE:

"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".

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