

LEGAL UPDATES

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Recommendation on common tax violations in associated enterprises

The information recommended by the taxation department of Ho Chi Minh City refers to common tax violations in related transactions.

To avoid being inspected and incurred tax penalties, the taxation department of Ho Chi Minh City recommends that enterprises having related transactions should not make tax evasion through following transfer pricing behaviors:

- 1.** Transfer pricing by increasing input expenses, such as: over-valuation of machinery, equipment and assets for capital contribution; purchases of raw materials in the same group with high prices so as to incur high historical cost which leads to losses or low profit; etc.
- 2.** Transfer pricing through output factors, such as: selling products, merchandise and providing services to the parent company with the price which is lower than the market price.
- 3.** Transfer pricing through providing services, marketing, advertising, advisory management, supporting, etc. which do not take place in practice.

- 4.** The costs that the parent company allocates to subsidiaries, on-behalf payment in the group with non-transparent nature, services provided not being able to proved.

- 5.** Payment of trademark, copyright, training costs without proper evidence.

- 6.** Loan interest payable to related parties higher than the interest rate of the bank or giving loans with no interest in order to transfer the profit to related parties being incurred losses or entitled to tax incentives (exemption from and reduction of corporate income tax).



- 7.** Having transactions with companies which enjoy preferential tax rates, or companies having the headquarters located in "tax havens".

In the coming time, the taxation department of Ho Chi Minh City will strengthen inspections of enterprises having related transactions in the following cases:

- Having incurred loss over several years, loss over the owner's equity but still running operation;
- Having high revenue during the preferential period but declining revenue upon having no tax incentives;
- Having profit margin constantly lower than the local industrial average profit.



Conditions for application of 0% VAT on forwarded processed goods

Official letter No. 10350/CT-TTHT dated March 20, 2019 of the taxation department of Ha Noi City responded about value added tax (VAT) applicable for forwarded processed goods.

Forwarded processed goods are cases entitled to 0% of VAT (Clause 2, Article 9 of Circular No. 219/2013/TT-BTC). However, they have to satisfy the conditions of forwarded processing contract according to the Law on Foreign Trade Management and fulfill all documents and documentations as follows (Clause 1, Article 17 of Circular No. 219/2013/TT-BTC):

- Export processing contract and its appendices (if any) signed with the foreign party, specifying the recipient of goods in Vietnam.
- VAT invoices specifying the processing price and the quantity of processed goods and name of the recipient appointed by the foreign party.
- A forwarding note certified by the sender, the recipient, and the customs authority that monitors the processing contract.
- Payment for processed goods must be made by bank transfer.

Failure to obtain one of the aforesaid documents and documentations may lead to the situation that the forwarded processed goods shall be subject to pay VAT as VAT on goods which are sold domestically.

“According to Article 43 of Decree No. 69/2018/ND-CP, “further processing” (or forwarded processing) is understood as:

- The processed products of a processing contract will be used as materials for another processing contract in Vietnam.

- The processed products of the former processing contract shall be transferred to the trader according to designation of the ordering party for the latter processing product.”

Are overseas payments allowed to take place through a representative office in Vietnam?

Official letter No. 1521/NHNN-QLNH dated March 13, 2019 of the State Bank refers to the payment for international trade contracts.

According to Clause 1, Article 7 of Circular No. 16/2014/TT-NHNN, non-resident organizations are only allowed to receive wired payments by Vietnam dong accounts for earnings from the provision of merchandise, salary, etc. and from other legal sources in Vietnam dong.

However, according to Article 30 of Decree No. 07/2016/ND-CP, a representative office of a foreign trader shall conduct liaison activities, market

research, and trade promotion rather than conducting business operation in Vietnam, therefore, thereby it does not earn legal receipts from business activities in order to transfer them into its Vietnam dong account.

In addition, according to Clause 1, Article 5 of Circular No. 16/2014/TT-NHNN, non-resident organizations are only allowed to receive wired payments in foreign currency by foreign currency accounts opened in Vietnam if they fall into cases allowed to receive foreign currency.

However, according to the regulations on limitation on the use of foreign currencies

in the territory of Vietnam, payment transactions between a non-resident and a resident in the territory of Vietnam shall not be performed in foreign currency (except some allowable cases).

Therefore, an overseas Company **is not allowed to designate** a Vietnamese Company to make payments for merchandise into accounts of a representative office, regardless of Vietnam dong accounts or foreign currency accounts.



Criteria for determining foreigners subject to social insurance payment

Official letter No. 1064/LDTBXH-BHXH dated March 18, 2019 of the Ministry of Labour - Invalids and Social Affairs replies to issues in the course of implementation of Decree No. 143/2018/ND-CP.

As stipulated at Clause 1, Article 2 of Decree No. 143/2018/ND-CP, foreigners shall be required to participate in the compulsory social insurance program when they obtain work permits/practicing

certificates/practicing licenses issued by the authorities in Vietnam, enter into employment contracts valid for at least one year with employers in Vietnam.

However, Clause 2, Article 2 of Decree No. 143/2018/ND-CP regulates two following cases which are exempted from participation in social insurance program: “intra-company” transferees, and employees who “reach the retirement ages”.

Therefore, foreigners are only required to participate in the social insurance program when they fulfill all following conditions:

- Having work permits, practicing certificates, practicing licenses issued by the authorities in Vietnam;
- Having labor contracts valid for at least one year;
- Those who aged under 60 years (for male) and under 55 years (for female);
- Those who are not intra-company transferees (including administrators, executive officers, experts and technicians assigned by foreign enterprises to work at their commercial presence in Vietnam).

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.”