

LEGAL UPDATES

APRIL 2019

NEW CRITERIA ON IMPORT OF USED MACHINERY AND EQUIPMENT

Decision No. 18/2019/QĐ-TTg dated April 19, 2019 of the Prime Minister provided the regulations on import of used machinery, equipment and technological lines.

This Decision provides regulations on criteria and procedures of import, quality inspection of used machinery, equipment and technological lines.

Accordingly, similar to former regulations provided by Circular No. 23/2015/TT-BKHCHN, the useful life of used machinery and equipment imported into Vietnam must not exceed 10 years.

However, some of importable machinery and equipment have useful life raised up to 15 years (such as wood, paper, cardboard drying equipment) or 20 years (such as rolling machines, moulds, processing machines, lathes, drilling machines, grinding machines, presses, etc.) (Appendix I).

For used technological lines, the import criteria does not depend on the useful life, but on the remaining capacity (at least 85%), the level of energy consumption (not more than 15% compared to the designed capacity) and the type of technology (not subject to technologies banned or restricted from transfer) (Article 5).

Machinery and equipment belonging to the following cases are not subject to import criteria and quality inspection: transferred from foreign partners after termination of processing contracts, financial lease- purchase contracts; repurposed for domestic use upon the expiration of the duration for temporary import for construction of works or temporarily imported in order to perform processing contracts (Point g, Clause 2, Article 1).

The Decision takes effect from June 15, 2019.



EQUIPMENT USED AS FIXED ASSETS ARE NO LONGER ENTITLED TO DEFERMENT OF VALUE ADDED TAX (VAT) PAYMENT AND REFUND

After May 20, 2019, VAT on imported machinery and equipment used as fixed assets in investment projects are no longer entitled to deferment of payment and refund.

The Ministry of Finance has promulgated Circular No. 18/2019/TT-BTC to abolish the whole Circular No. 134/2014/TT-BTC providing guidelines on the procedure for the deferment of VAT payment and refund for imported machinery and equipment used as fixed assets in investment projects stipulated in Resolution No. 63/NQ-CP dated August 25, 2014.



Previously, on December 13, 2018, the Government promulgated Resolution No. 150/NQ-CP to halt the implementation of solutions for deferment of payment and refund of VAT as stipulated in Resolution No. 63.

Accordingly, in order to give guidelines on the implementation of this content, the Ministry of Finance has promulgated Circular No. 18/2019/TT-BTC to abolish Circular No. 134 since May 20, 2019.

Circular No. 18 stipulates that with regard to the applications for deferment of VAT payment at the importation stage as regulated at Circular No. 134 of the Ministry of Finance enterprises submitted to customs authorities before May 20, 2019, the customs authorities shall continue to settle the tax payment deferment in accordance with Circular No. 134.

With regard to the applications for refund of VAT under Circular No. 134 enterprises submitted to tax authorities before May 20, 2019, the tax authorities shall continue to settle the tax refund in accordance with Circular No. 134.

ENTERPRISES WHOSE SHAREHOLDERS ARE FOREIGN INVESTORS MUST APPLY FOR A LICENSE FOR ESTABLISHMENT OF RETAIL OUTLET

Official letter No. 2482/BCT-KH dated April 10, 2019 of the Ministry of Industry and Trade refers to the guidance on the implementation under the provisions of Decree No. 09/2018/ND-CP.

As stipulated at Article 2 and Clause 5, Article 5 of Decree No. 09/2018/ND-CP, foreign-invested enterprises must apply for business licenses, licenses for establishment of retail outlet upon implementation of the rights of import, export and distribution of goods.

“Foreign-invested business organization” means a business whose members or shareholders are foreign investors (Clause 17, Article 3 of the Law on Investment No. 67/2014/QH13).

Accordingly, the Company whose members/shareholders are foreign investors is considered a foreign-invested business organization. The Company has to carry out procedures of obtaining a business license, a license for establishment of retail outlet in accordance with regulations of Decree No. 09/2018/ND-CP when performing the rights of import, export and distribution of goods.



INDIVIDUALS HAVING INCOME FROM THE TRANSFER OF SHARES IN COMPANIES (EXCEPT FOR JOINT STOCK COMPANIES) ARE SUBJECT TO 20% OF PERSONAL INCOME TAX (PIT)

As stipulated at Point 4, Article 2 of Circular No. 111/2013/TT-BTC, only income earned from the capital transfer (shares) in the joint stock company is subject to PIT under the form of transfer of securities, by 0.1% of the selling price.

Otherwise, income from the transfer of capital in other forms of companies (limited liability companies, partnerships, etc.) are subject to PIT under the form of capital transfer, by 20% of the assessable income (income after deducting the cost and expenses of the transfer).

Accordingly, an individual transferring shares in companies that are not joint stock companies must declare and pay tax under the form of the capital transfer.



PAYMENT ORDERS ARE CONSIDERED PAYMENT EVIDENCE VIA BANK

Official letter No. 1300/TCT-KK dated April 09, 2019 of the General Department of Taxation refers to payment vouchers of exported goods and services.

According to the guidance at Official letter No. 596/NHNN-PC dated January 25, 2019, payment order (order to pay) are considered a form of payment via bank.

For payment transactions with payment orders that the payer and the beneficiary have accounts at the same bank, the documentation and bookkeeping are carried out under the guidance at Clause 2, Article 5 of Decision No. 1092/2002/QD-NHNN.

Accordingly, a payment order shall be made into 3 copies, in which one copy is used as voucher to record Debit in Payer's account and Credit in the payee's account, one copy is used as Debit notice to be sent to the payer and one copy is used as Credit notice to be sent to the payee.

The beneficiary or payee may use the Credit notice which is sent by the bank as documentation for refund and deduction of VAT on exported goods.

According to Clause 3, Article 9 of Decision No. 226/2002/QD-NHNN, payment orders are payment instruments made by payers in accordance with the form stipulated by the bank and sent to the bank where their accounts are opened to instruct the bank to deduct an amount of money from their checking account to pay the payee with the name stated on the cheque or to the cheque holder.

Payment through banks means money transfer from the importer's account to the exporter's account opened in banks under the methods of payment compatible with the contractual agreement and the banks' provisions. The money remittance receipts are the Credit notices issued by the bank of the exporter on the amount of money received from the account of the importer... (Clause 3, Article 16 of Circular No. 06/2012/TT-BTC).

Notes:

"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".