

2016



2017

LEGAL UPDATES

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Regarding to the refund of input Value Added Tax incurred before 01 July 2016

Official letter No. 373/TCT-KK dated 06 February 2017 by the General Department of Taxation regarding to the refund of value added tax (VAT).

According to the guideline at Official letter No. 10315/BTC-TCT dated 25 July 2016 and Official letter No. 13804/BTC-TCT dated 30 September 2016, only the input VAT arising after 01 July 2016 of the goods which are sold or purchased domestically is not entitled to tax refund, while the input VAT incurred before that time is still considered for refund (if eligible). However, the entire refund application dossier of this case will be put under inspection before tax refund to avoid fraud.

In addition, according to this Official letter, in case when preparing the tax declaration for the period as

of June 2016 or the second quarter of 2016, the enterprise did not request for refund of accumulated value added tax which has not been entirely deducted and at the same time declared those with the tax payable for the period as of July 2016 or the third quarter of 2016 for the purpose of tax deductible; the enterprise then is not entitled to tax refund, but just tax deductible.

Goods re-exported to foreign countries or non-tariff areas is entitled for import tax refund

Official letter No. 155/TXNK-CST dated 12 January 2017 of the General Department of Customs stipulates the settlement of tax.

According to Clause 8 Article 114 of Circular No. 38/2015/TT-BTC, imported goods imported but have to re-export

for returning the goods to the foreign owner or re-export to the third countries, re-export into the non-tariff areas is allowed to have the import tax refund corresponding to the actual re-export amount of goods and it does not need to pay export tax.

The dossiers applied for import tax refund in respect of re-exported goods are stipulated under the regulations at Article 122 Circular No. 38/2015/TT-BTC.

The re-exporting mode is B13 applied commonly for all modes of re-exporting to return to the foreign owner, re-exporting to the third countries or re-exporting to non-tariff areas.

Materials imported for export production shall not be allowed for exemption from import tax if the enterprise does not have the factory.

Official letter No. 782/TCHQ-TXNK dated 13 February 2017 of the General Department of Customs regarding to the obstacles for the goods imported for export production.

According to the regulations at Clause 2 Article 12 of Decree No. 134/2016/ND-CP and guideline at Official letter No. 22567/TCHQ-TXNK dated 8 December 2016, one of the conditions for tax exemption of goods imported for the export production is that the enterprise must have the facility of producing export goods based on the territory of Vietnam and have adequate paper documents proving the right to use precise of production and factory.

Accordingly, if the enterprise has no production facility, non-manufacturing organizations but only hire other units to re-manufacture or has the production facility but not having adequate proof of legal right to use the precise of production and factory, the enterprise will not be entitled for the tax exemption of importing materials.



03

GOODS IMPORTED FOR EXORT PRODUCTION



Export processing enterprise is allowed to make domestic sales in accordance with the Law of investment and trade

Official letter No. 38/TCT-CS dated 05 January 2017 of the General Department of Taxation regarding to the tax policy for export processing enterprise (EPE).

According to Article 1 of Decree No. 114/2015/ND-CP, the EPE is allowed to make domestic sales of the enterprise's liquidation assets and the goods in accordance with the Law of investment and trade. Thus, the EPE is allowed to sell goods at the domestic market or not, it must be pursuant to the provisions of the law on investment and trade.

In case the EPE is allowed to sell goods at the local market, the EPE shall use the sales invoice, "For organizations and individuals in the non-tariff areas" must be stated clearly on the invoice and the import-export procedures must be performed in place as prescribed in Circular No. 38/2015/TT-BTC. In addition, the EPE must separately account the revenue, cost of sales in Vietnam.

With scraps, waste products in the norm of export production, if the EPE makes the domestic sale, the EPE must implement in accordance with the guideline at Official letter No. 4415/TCT-CS dated 26 October 2015. Accordingly, EPE shall issue the sales invoice to the domestic buyer for making the import procedures. Value added tax of scraps and waste products sold in the domestic market shall be paid at the import stage by the buyer.

04 EXPORT PROCESSING ENTERPRISES

New regulations on lending transactions of the banks

The State Bank has just issued the Circular No. 39/2016/TT-NHNN on 30 December 2016, stipulating the lending transactions of credit institutions, branches of foreign banks with customers.

Compared with the old regulations, this Circular has been amended, supplemented in respect of the loan demands which are prohibited on lending. Accordingly, the banks shall not be allowed to approve the following loan demands:



1. Loans used for investing in sectors or activities prohibited by laws.
2. Loan used for paying expenses or meeting financial demands of transactions or acts which are prohibited by laws.
3. Loans used for purchasing or using goods or services in the list of sectors or activities prohibited by laws.
4. Loans used for buying gold bullions.
5. Loans used for repaying loan debts owed to lending credit institutions (except for those used for paying loan interest arising during the construction process of which cost is accounted for in the construction cost estimate).
6. Loans used for repaying loan debts owed to other credit institutions and foreign loan debts (except for loans used for repaying debts prior to the payment due date).

The Circular takes effect from 15 March 2017.

HIGHLIGHTS

Official letter No. 373/TCT-KK dated 02/06/2017 of the General Department of Taxation on the value added tax

Official letter No. 155/TXNK-CST dated 01/12/2017 of the General Department of Customs on tax settlement

Official letter No. 782/TCHQ-TXNK dated 02/13/2017 of the General Department of Customs on the obstacles of goods imported for export production

Official letter No. 38/TCT-CS dated 01/05/2017 of the General Department of Taxation on the tax policy for the export processing zone

Circular No. 39/2016/TT-NHNN dated 12/30/2016 of the State Bank on the regulations of lending transactions

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".