

TECHNICAL UPDATES

Tax and Legal

January 2019

1. Corporate Income Tax (“CIT”)

(i) Technology transfer expense shall only be deductible when determining taxable income if the ownership of the technology or the right to transfer technology of the transferor can be demonstrated

According to Official Letter No. 4574/TCT-CS dated 20 November 2018 of the General Department of Taxation (“GDT”), in case that company A in overseas transfers “technical information” to company B in Vietnam, this is classified as technology transfer activity subject to the compliance provision of the Law on Technology Transfer. Accordingly, company A must be the owner of the technology or be permitted by the technology owner to transfer the technology to company B. In case the jurisdictions of the home country of company A does not require company A to register the ownership of the technology, the company B is responsible for providing dossiers, documents of commitment, to prove that company A is the technology owner.

(ii) Support payment to employees upon labour contract termination may be considered as a staff welfare expense

According to the guidance of GDT under Official Letter No. 4706/TCT/DNL dated 26 November 2018, in case a company provides support payments in addition to the job loss allowance to their employees upon their labour contract termination in accordance with the Collective Labour Agreement and the Agreement between the General Director and the Company’s Trade Union Chairman, this expense may be considered to be of a welfare nature and deductible when determining the CIT taxable income, not exceeding one (01) average monthly salary.

2. Value Added Tax (“VAT”) and invoices

(i) Guidance on e-invoice during the transition period

In accordance with Decree No. 119/2018/ND-CP dated 12 September 2018, new provision on

e-invoice took effect on 1 November 2018. The Ministry of Finance GDT recently issued Official Letter No. 14192/BTC-TCT dated 15 November 2018 and Official Letter No. 4763/TCT-CS dated 29 November 2018 providing some guidance as follows:

- During the transition period (from 1 November 2018 to 31 October 2020), taxpayers are still allowed to use and notify to issue paper-based invoices in accordance with the prevailing regulations.
- New businesses established during this transition period who have not yet received a notice of using electronic invoices from tax authorities, or not met the requirements of information technology infrastructure to apply e-invoices, can also be allowed to use paper-based invoices.

(ii) VAT refund for investment projects which have generated revenue

Under the guidance of the GDT in Official Letter No. 4261/TCT-CS dated 1 November 2018, VAT refund for investment projects after the construction period shall be as follows:

- If the investment project is divided into several phases, investment components:
 - For investment components which have been completed and generate revenue, they shall not be entitled to refund of input VAT arising after the time of revenue generation. The amount of input VAT incurred before the time of revenue generation and meeting the conditions for VAT credit will be eligible for VAT refund.
 - For remaining items which are under the construction period, the company is allowed to declare the VAT for investment project and apply for VAT refund if meeting the prevailing regulations.
- If the investment project is not divided into phases:
 - If the investment project has generated revenue, it shall not be entitled to a refund for the input VAT incurred after the time of revenue generation. The input VAT amount incurred before the time of revenue generation and meets the conditions for VAT credit shall be eligible for a VAT refund.

(iii) Input VAT of an investment project which is declared under an adjustment from VAT declaration form No. 01/GTGT to form No. 02/GTGT is eligible for VAT refund

On 8 October 2018, GDT issued Official Letter No. 3826/TCT-PC providing further guidance on VAT refund for investment project. Accordingly, the input VAT of an investment project, which incurred during the investment stage (i.e. before the time when the project is completed and comes into commercial operation), is still eligible for a VAT refund, even in the following cases:

- The taxpayer has declared those input VAT into VAT declaration form No. 01/GTGT instead of form No. 02/GTGT; and
- The taxpayer adjusted the declaration for related input VAT from 01/GTGT to 02/GTGT and applied for the VAT refund after the date when the project is completed and comes into commercial operation.

3. Export tax, import tax and customs

(i) Raw materials for on-site export production will not be subject to import tax exemption / refund

In accordance with the provision of Decree 134/2016/ND-CP, raw material imported for the production of export goods shall be entitled to import duty exemption / import duty refund. However, in case the finished goods are exported under the form of on-site export, the GDC is of the opinion under the recent rulings that the material is not subject to import duty exemption / import duty refund.

In cases enterprises already got import duty refund for material imported for production of export goods but the finished goods are not exported to overseas or non-tariff zone, the refunded taxes / duties shall be subject to claw-back.

(ii) Enterprises need to amend investment certificates to include the expansion of investment activities in order to enjoy import duty exemption

Under the provisions of the Law on Import Duty and Export Duty, goods imported to form fixed assets of an incentive investment, including new investment project and expansion investment project, are entitled to import duty exemption.

Related to this issue, according to GDC's opinion under Official Letter No. 6528/TCHQ-TXNK dated 7 November 2018, in case a company has expansion investment activities but did not register those activities under the investment certificate, that company does not satisfy the condition to notify List of Imported Goods subject to import duty exemption, and subsequently the imported goods is not entitled to import duty exemption.

4. Personal Income Tax ("PIT") and labour

(i) Base salary increased from 1 July 2019

In accordance with the provision of Resolution No. 70/2018/NQ-QH14 on the Estimation of State Budget for 2019 which has been ratified by the National Assembly, the monthly base salary shall be increased from VND1.39 million to VND1.49 million from 1 July 2019.

The base salary shall be considered as the salary base for compulsory social insurance and health insurance contribution (i.e. at contractual salary but not more than 20 times of the basic salary).

(ii) Regional minimum wage increased from 1 January 2019

According to Decree 157/2018/ND-CP dated 16 November 2018, the regional minimum wage shall be adjusted to increase from 1 January 2019.

The regional minimum wage is the lowest wage as a basis for employers and employees to negotiate the salary payment, and is also the salary base for unemployment insurance contribution.

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