

Technical Update

Tax and Legal

November 2019

1. Corporate Income Tax (“CIT”)

(i). Tax loss of an independent-accounting branch accumulated prior to the conversion into a dependent-accounting branch is not allowed to carry forward

According to the Official Letter No. 11243/BTC-TCT dated 24 September 2019 issued by the Ministry of Finance, the prevailing tax regulations only allow loss inheritance in case of enterprise transformation, split, spin-off, merger and acquisition while there is no similar provision in case of branch transformation. Therefore, the losses accumulated by an independent-accounting branch before its transformation into dependent-accounting branch shall not be allowed to carry forward.

(ii). Land use right and machineries attached to the factory are considered as immovable properties

According to the Official Letter No. 3402/TCT-HTQT dated 27 August 2019 of the General Department of Taxation, the assets taken into account immovable properties test for double tax treaty purpose include the land use right and any machineries and equipment which are attached regularly and stably to the factory on a long-term basis, and together with the factory, form a complete production line to carry out the principle production function of the enterprise.

2. Value Added Tax (“VAT”)

(i). Circular 68/2019/TT-BTC subordinating Decree 119/2018/ND-CP on e-invoices

According to the Official Letter No. 11243/BTC-TOn 30 September 2019, the Ministry of Finance issued Circular 68/2019/TT-BTC providing further guidance to Decree 119/2018/ND-CP on e-invoices. Some notable clarifications of Circular 68 are as follows:

- Specifying some exceptional cases whereby the e-signatures of the sellers and buyers are not required on e-invoices, and some exceptional cases whereby some items of the e-invoices are not mandatorily fulfilled.
- Timing for e-invoice issuance shall be determined based on the signing date of the e-invoice by the seller and be suitable with the timing as stipulated by laws.
- Electronic VAT invoice or electronic sales invoice shall be required for sales of export goods and services. Meanwhile, under the current regulations, a company is only required to issue a commercial invoice in similar cases. Timing for an e-invoice issuance for exported goods shall follow the completion of customs declaration.
- An e-invoice must be in Extensible Mark-up Language (“XML”) format, which comprises two components: (i) data for the e-invoice, and (ii) data for the e-signature.
- Specifying the procedures and requirements of transferring e-invoice data from the taxpayers to the tax authorities.

Circular 68 takes effect from 14 November 2019. From 1 November 2020, enterprises, organisations and individual businesses are required to register for e-invoice application in accordance with the provision of Decree 119 and Circular 68.

(ii). Construction subcontractors carrying out extra-provincial activities are subject to extra-provincial VAT payment

According to the Official Letter No. 3724/TCT-KK of the General Department of Taxation, in case a construction subcontractor does not have the head office or a business unit registered in a province where the project owner has the construction and installation work, the construction and installation work carried out by the subcontractor shall be considered as extra-provincial activities. The subcontractor therefore is subject to extra-provincial VAT payment.

(iii). Input VAT incurred prior to the establishment of the contractor's project management office is not creditable

According to the Official Letter No. 3577/TCT-CS dated 10 September 2019 of the General Department of Taxation, in case a foreign contractor registers to declare and pay tax under the hybrid method and if the Vietnamese project owner has withheld, declared and paid withholding tax on the deemed method for the advance payment settled prior to the project management office set-up, the VAT element of the withheld tax shall not be allowed to offset against the output VAT generated after the tax registration certificate is granted. Additionally, any input VAT incurred prior to the project management office set-up shall not be creditable.

3. Foreign Contractor Tax ("FCT")

(i). The branch of a Vietnam-domiciled company set up in overseas shall be regarded as a foreign organisation for withholding tax purpose

According to the Official Letter No. 3645/TCT-CS dated 13 September 2019 of the General Department of Taxation, in case a Vietnam-domiciled company sets up a dependent-accounting branch in overseas under the foreign jurisdiction's laws and that branch generates revenue from the goods sales to domestic customers, the branch shall be regarded as a foreign organisation when assessing withholding tax liability. The withholding tax liabilities should be determined on specific contract term basis.

4. Import Duty

(i). Interest on late payment is not deductible from customs value

According to the Official Letter No. 6275/TCHQ-TXNK dated 1 October 2019 of the General Department of Customs, in case a Vietnamese importer must pay interest on late payment to a foreign exporter, the interest is not regarded as a price reduction that is deductible for customs value purpose.

(ii). Domestic enterprise borrowing machineries and equipment from an Export and Processing Enterprise ("EPE") is subject to import duty

According to the Official Letter No. 6098/TCHQ-TXNK dated 24 September 2019 of the General Department of Customs, in case an EPE lends the machineries and equipment to a domestic company, the lending transaction shall not be of customs duty-free. The domestic company must declare and pay import duty and would get the tax refunded when the machineries and equipment are re-exported to overseas or to a non-tariff zone based on the remaining value when re-exported. In case the machineries and equipment are assessed not having the usable value anymore, no tax refund would be provided.

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