

Tax Newsletter - August 2016

In this Newsletter, Grant Thornton Vietnam would like to highlight the following updates relating to taxation and customs:

1. Guidance from the Ministry of Finance on VAT refund and penalty for late tax payment from 1st July 2016
2. Procedures for payment to State Budget for tax liability and domestic revenue from 1st August 2016 onwards
3. Sponsorship expenditure to Clients shall not be regarded as tax deductible expenses
4. House lease expense of individuals
5. Sponsorship cost of Master's Degree programs for employees shall be regarded as tax deductible expenses for CIT purpose
6. Approval on "Bilateral agreement and documentation to implement the Foreign Account Tax Compliance Act between Vietnam and the United States"
7. Procedures on cancellation, liquidation and tax refund for defective goods of foreign invested enterprises
8. Procedures on adjustment to the duration of processing contract
9. Trading of goods of Exporting-Processing Enterprises



1. Guidance from the Ministry of Finance on VAT refund and penalty for late tax payment from 1st July 2016

The Ministry of Finance has issued an official letter providing further guidance on above matter as follows:

- **VAT refund:** The Tax Department will continue to accept and process applications for VAT refund from enterprises having input VAT which has not been fully credited, which was incurred prior to the tax declaration period of July 2016 (for monthly tax declaration) or prior to the tax declaration period of Quarter II/2016 (for quarterly tax declaration) and satisfying the conditions for tax refund in accordance with Item 1, Article 18 of Circular 219/2013/TT-BTC dated 31st December 2013 issued by the Ministry of Finance, to be in line with the law.

- **Penalty on late tax payment:**

- ✓ For tax arrears incurred before 1st July 2016 which have not been remitted to the State Budget by the taxpayers by 1st July 2016 the reduced rate of interest for late payment, which is 0.03%/day will apply from 1st July 2016.
- ✓ In the event tax payers make incorrect declarations which lead to lower tax payable before 1st July 2016 and detected by the tax authority via tax inspection, investigation or self-detected by the tax payers after 1st July 2016, of the rate for late payment of 0.05%/day (or the appropriate rate in accordance with the law of each period) computed from the payment deadline to 30th June 2016 and apply the rate of late tax payment of 0.03%/day on the tax arrears incurred from 1st July 2016 to the actual payment date to the State Budget.



2. Procedures for payment to State Budget (SB) for tax liability and domestic revenue from 2nd August 2016 onwards

The Ministry of Finance has issued Circular 84/2016/TT-BTC (“Circular 84”) providing guidance on procedures on making payment to the State Budget for tax liability and domestic revenue (excluding revenues from import and export); for which Circular 84 takes effect from 2nd August 2016 onwards.

Grant Thornton Vietnam would like to draw your attention to several important contents as follows for your reference:

In order to assist the taxpayer in preparing the payment slip to State Budget quickly, accurately, and securely during the process of electronic tax payments via the web portal of the General Department of Taxation, Circular No.84/2016/TT-BTC has provided detailed guidance on the preparation of payment slip to State Budget (Form No. C1-02/NS attached together with Circular No.84/2016/TT-BTC) for both cases, the tax payer making payment directly to the State Budget as well as for the representative making payment on behalf of the tax payer to the State Budget under the declaration of 8 groups of information:

- (1) Information on currency for tax payments
- (2) Information on taxpayer and representative
- (3) Information on commercial bank/State Treasury and account making tax payments

- (4) Information on kind of State Budget account
- (5) Information on State Treasury’s account
- (6) Information on payment under written instruction issued by competent authorities.
- (7) Information on names of tax collection agency
- (8) Information on payment description to State Budget

In order to complete payment slip: Taxpayers sign and send the payment slip to State Budget via the electronic tax payments system.

Furthermore, Circular 84 provides detailed guidance on following situations:

- Providing guidance on the implementation of electronic tax payments via electronic tax payment service provided by banks (Article 8)
- Providing detailed guidance on making tax payment vouchers at the transaction counter of banks coordinating collection, banks authorized to collect on behalf of the State Treasury agency (Article 9)
- Amending and supplementing regulations on handling errors, inspection and adjustment on tax collection information (Article 17). In which, Ministry of Finance requires to use form C1-07/NS in the event if taxpayers and other organizations investigate, request adjustment tax collection information with local Tax Departments and State Treasury.



3. Sponsorship expenditure to Clients shall not be regarded as tax deductible expenses

On 27th May 2016, Ho Chi Minh Tax Department has issued Official Letter providing guidance on tax deductible expenses of enterprises for sponsorship expense to its Clients. In particular:

In the event if the Company incurs sponsorship expenses in cash or goods for its Clients to participate in overseas conventions, organizing parties, holidays instead of sponsorship for education, health, disaster recovery, building gratitude houses, such expenses shall not be regarded as tax deductible expenses when determining taxable income.



4. House lease expense of employees

Tax Department of Hanoi has issued a guidance on tax policy on employees' house lease expense as follows:

Accordingly, the Tax Department will not issue invoices to households / individuals who rent their assets to enterprises. Supporting documents for determining deductible expenses for CIT purpose in case enterprises lease assets from households / individuals include the lease contract, payment voucher and tax payment voucher on behalf of lessor (in case the lessee is the tax payer on behalf of lessor), and there is no requirement to prepare Form 01/TNDN as stipulated in Circular No. 78/2014/TT-BTC.

Of note, pursuant to Decision No. 2469/QD-TCT dated 31st December 2015 issued by the General Department of Taxation promulgating the formality of tax administration for individual's leasing assets; if individuals / households deriving income from leasing of assets such as: houses, machines, devices or cars which results in taxable income (i.e. total income of VND100 million/year or above), the lessor is required to register the contract with the Tax Authorities for issuance of a managing code to each respective contract.

Therefore, enterprises should request individuals / households to provide a copy of the contract registration form in accordance with the Decision No. 2469/QD-TCT for filing and as a supporting document for tax purposes.

5. Sponsorship for cost of Master's Degree program for employees shall be regarded as tax deductible expenses for CIT purpose

Official Letter No. 46804/CT-HTr dated 13th July 2016 issued by Tax Department of Hanoi responded to the tax policy on cost for Master's Degree program for employees.

Accordingly, in the event a Company sponsors for the cost of Master's Degree program for employees, this expense shall be regarded as tax deductible expenses for CIT purposes. For proper recording of this legitimate expense, the Company should file the payment receipt of tuition fee if the tuition fee collection belongs to State Budget or file the invoice as prescribed in law if that tuition fee does not belong to State Budget.



6. Approval on "Bilateral agreement and documentation to implement the Foreign Account Tax Compliance Act between Vietnam and the United States"

On 30th June 2016, the Government has issued Resolution No. 57/NQ-CP on the approval of "Bilateral agreement and enclosed documents in order to implement Law on Tax Compliance for US's foreign accounts between the Socialist Republic of Vietnam and the United States of America" ("Agreement").

The Agreement has been issued to stipulate the implementation of Law on Tax Compliance for organizations and individuals from the US having accounts opened at financial institutions outside of the US. The Law aims to prevent tax evasion as prescribed in the regulations and Laws of The United States of America. Accordingly, the Law on Tax Compliance requires all financial institutions outside the US to provide information on financial accounts held by their clients such as US organizations and individuals to the Tax Department in the USA.

In any case where the financial institutions fail to comply with providing such information, the US Government can impose a 30% withholding tax on (i) income from stocks having origin in the US, (ii) interest from bank deposits opened in a US or foreign branch of an American bank and (iii) total revenue from stocks traded in the USA.

We will keep you updated of the content of Agreement as well as the required documents for implementation of the Law on Tax Compliance once those contents have been promulgated.

7. Procedures on cancellation, liquidation and tax refund for defective goods of foreign invested enterprises

Pursuant to Official Letter No. 849/GSQL-GQ2 dated 23rd June 2016, the Customs Control and Supervision Department provides guidance on procedures on cancellation, liquidation and tax refund for defective goods of foreign invested enterprises, as follow:

Foreign invested enterprises have the right to decide on the liquidation of imported goods, in which import tax has been paid to meet the conditions for liquidation of imported goods in accordance with Circular No. 04/2007/TT-BTM dated 4th April 4th 2007.

In a situation where the Company imports goods under the form of commercial import and upon having defective goods and decides to liquidate it, the Company shall not be eligible for tax refund in accordance with Article 114, Circular 38/2015/TT-BTC dated 25th March 2015 issued by the Ministry of Finance.



8. Procedures on adjustment to the duration of processing contract

The General Department of Customs has provided guidance on adjustments to the duration of processing contracts. In which:

Pursuant to Decree No.187/2013/ND-CP dated 20th November 2013, if both the supplier and processor need to extend the duration of a processing contract, both the supplier and processor shall be required to sign an additional agreement before the expiry of the processing contract.

In the event if the processing contract is terminated or expired, the parties signing the processing contract shall be required to carry out the procedures on the contract liquidation in accordance with Decree No.187/2013/ND-CP dated 20th November 2013 issued by the Government.

The General Department of Customs requires the Ho Chi Minh Customs Department to control, follow up and compile a list of enterprises that requested adjustment to the validity period of processing contracts. In case the Ho Chi Minh Customs Department suspects that the enterprises amend the duration of a processing contract for the purpose of postponing the liquidation of raw materials, left-over materials, defective machines and equipment, the Ho Chi Minh Customs Department has a right to inspect the usage status of raw materials at the headquarters of the enterprises. These enterprises on the list will be consolidated and dealt with by the Ho Chi Minh Customs Department at one instant.

9. Trading of goods of Exporting-Processing Enterprises

Pursuant to the guidance of the Customs Department of Dong Nai province:

- In the event an EPE has established a branch offices to operate under the Business Registration Certificate with the scopes of work related to trading of goods or other activities directly relevant to trading of goods in Vietnam, these branch offices are allowed to operate under the granted Business Registration Certificate.
- In the event an EPE has no plans to maintain the operations of its branch offices, the EPE shall be required to carry out the liquidation of the branch offices. Furthermore, in order to continue the operation, the EPE has to maintain separate accounting books for the branch offices to record the revenues and costs relating to the purchase and sale of goods in Vietnam and shall arrange a storage area separately from the storage area of goods serving the production of the export-processing enterprises.



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