

Significant points relating to the recent guidelines issued by the tax authorities

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Contents

In this newsletter, Grant Thornton Vietnam would like to update some significant points relating to the recent guidelines issued by the tax authorities as follows:

1.



Official Letter No. 65143/CT-TTHT dated 02 October 2017 issued by Hanoi Tax Department in response to the Japanese Business Association in Vietnam's (JBAV) queries about tax policy

2.



Tax treatment on refuse, scrap, redundant raw materials and supplies imported for processing in Vietnam

3.



Determination of tax residency status of Vietnamese individuals assigned to work overseas

1. Official Letter No. 65143/CT-TTHT dated 02 October 2017 issued by Hanoi Tax Department in response to the Japanese Business Association in Vietnam's queries about tax policy

On 02 October 2017, Hanoi Tax Department issued Official Letter No. 65143/CT-TTHT to reply to the queries of enterprises who are members of Japanese Business Association in Viet Nam (JBAV). The Official Letter includes the following noteworthy points:

- Tax treatment on the expense corresponding to Personal Income Tax ("PIT") compliance services paid by an enterprise for their expatriate staff:

For Corporate Income Tax ("CIT"), the expense is deductible given that it satisfies the conditions indicated at Point 1, Article 4, Circular 96/2015/TT-BTC and is specifically mentioned in the written contract or agreement between the enterprise and the employee.

For Personal Income Tax ("PIT"), the expense is treated as taxable income of the expatriate and subject to PIT.

- A company in Vietnam has an expatriate, who is a tax resident in Vietnam. Upon his termination of assignment in Vietnam, according to the parent company's global mobility, he submitted his PIT finalisation return, fulfilled his PIT obligation in Vietnam and then returns to his home country. Afterwards, the company in Vietnam pays the expatriate a bonus corresponding to his working period in Vietnam upon its parent company's request. Accordingly, such bonus (which is paid by the company after the expatriate returns to his hometown) is subject to PIT at the flat tax rate of 20% applicable to tax non-residents, in Vietnam. The company in Vietnam is responsible for withholding PIT imposed on such income before making payment.
- It is re-affirmed that Export Processing Enterprises ("EPEs") are allowed to sell their products into the domestic market according to Point 5, Article 1, Decree 114/2015/ND-CP amending and supplementing Article 21, Decree 29/2008/ND-CP on industrial parks, export processing zones and economic zones.



2. Tax treatment on refuse, scrap, redundant raw materials and supplies imported for processing in Vietnam

Currently, many companies have difficulties in applying regulations on refuse related to imported materials, scrap, redundant raw materials and supplies for processing purposes, in Vietnam due to different points between Decree No. 134/2016/ND-CP (“Decree 134”) and Circular No. 38/2015/T-BTC (“Circular 38”).

In particular, Point 4, Article 10, Decree No. 134/2016/ND-CP stipulated: “**Refuse, scrap, redundant raw materials and supplies** imported for processing under a processing contract shall be exempt from import duties when they are sold domestically provided that they do not exceed 3% of the quantity of each type. However, Value Added Tax, Special Sales Tax and Environment Protection Tax (if any) shall be paid to **the customs authority**”.

On the other hand, Point 5, Article 64, Circular No. 38/2015/TT-BTC regulated: “If the amount of **redundant raw materials and supplies** imported for processing do not exceed 3% of the total amount of materials and supplies imported, the customs procedures relating to the change in use purpose are not required, when these redundant materials and supplies are sold in the domestic market. However, tax liabilities must be declared and paid to **the tax authorities** in accordance with tax provisions”.

The first difference is that Decree 134 had regulations on refuse, scrap, redundant raw materials and supplies whereas Circular 38 only mentioned redundant raw materials and supplies. Additionally, the rate of 3% applied to refuse and scrap is not reasonable, in practice, according to the opinions of enterprises as for certain types of imported goods and raw materials, the rate of refuse and scrap when initially imported is higher than 3%.

Another difference is that the tax declaration and payment must be made to the customs authorities in compliance with Decree 134 whilst those must be paid to the tax authorities under Circular 38.

In this regard, on 02 November 2017, the General Department of Customs issued Official Letter No. 7166/TCHQ-TXNK to have a uniform treatment on refuse, scrap, redundant raw materials and supplies imported for processing purpose to comply with Decree 134/2016/ND-CP.

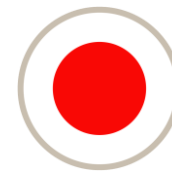
Also, the General Department of Customs has requested the Ministry of Finance to collect opinions from other relevant Ministries and Authorities. Then, based on the result of the opinions collected, the General Department of Customs will submit a proposal to the Ministry of Finance, so that the Government can consider amending and supplementing the regulations appropriately.

3. Determination of tax residency status of Vietnamese individuals assigned to work overseas

The General Department of Taxation has recently issued Official Letter No. 4936/TCT-TNCN dated 25 October 2017 providing guidelines on determining tax residency status of Vietnamese individuals who are assigned to work/ attend training in Japan. Accordingly, an individual who has permanent residence in Vietnam but is physically present in Vietnam less than 183 days in the tax year will determine his residency status in Vietnam as below:

- In case an individual is a tax resident in Japan, under Japanese regulations he will be considered a tax non-resident in Vietnam. Consequently, PIT withheld from his Vietnam-sourced income under the progressive tax rates shall be re-calculated at the flat tax rate applied to tax non-residents.
- In case an individual is a tax non-resident under Japanese regulations, he will be treated as a Vietnamese tax-resident and his worldwide income will be subject to PIT under the progressive tax rates.

Please contact our professional advisors at Grant Thornton Vietnam for assistance with taxation, work permits for expatriate and legal issues you may have during the course of your business.



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In case an individual is a tax non-resident under Japanese regulations, he will be treated as a Vietnamese tax-resident

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