

Update on guidance relating to tax policies, customs and labour issues

December 2017



JAN

02

03

APR

05

06

JUL

08

09

OCT

11

12

Contents

In this newsletter, Grant Thornton Vietnam would like to update some tax policies and new significant guidance as follows:

1.



Preferential export-import tariff schedule and changes in automobile import duty

2.



Regulation on information exchange and coordination between customs authorities and tax authorities

3.



Loan interest expense incurred by enterprises having related party transaction

4.



Value Added Tax on interest from overdue payments relating to economic contracts

5.



Tax policy on goods imported for manufacture of exported goods

6.



Report on salary payment status in 2017 and bonus plan for 2018 Tet holiday in Ho Chi Minh City

1. Preferential export-import tariff schedule and changes in the automobile import duty

On 16 November 2017, the Government issued Decree No. 125/2017/ND-CP amending and supplementing Decree No. 122/2016/ND-CP on the export tariff schedule, the preferential import tariff schedule, the list of commodities and their flat tax, compound tariff and out-of-quota import tariff. Some notable points include:

- The list of preferential import tariffs under Decree 125 increased by 1,255 tariff lines compared to the list attached to Decree 122.
- Preferential import duty rate of 0% for imported car parts applies effective from 16 November 2017 to 31 December 2022. The applicable conditions include:



Enterprises must commit to produce and assemble automobiles meeting the emission standard of level 4 (from 2018 to 2021) and level 5 (from 2022 onwards).



Enterprises must commit to produce and assemble automobiles meeting the regulatory requirement of output quantity and specific models.



The imported components must be in the regulatory group of products which cannot be produced domestically and meets the requirements of degree of completeness.

With regard to the procedures for implementation of the preferential import duty rate of 0%, at the time of import, enterprises still have to declare and pay duty at the normal import duty rates (or incentives, if any), without applying the preferential rate of 0%. Enterprises then submit application dossier to request for application of duty rate of 0% every six months (60 days from 30 June or 31 December each year at the latest) for the customs authority to conduct inspection and handling. If satisfying the conditions of the preferential import duty program, the enterprise shall be allowed to claim the overpaid import duty amounts in accordance with the regulations.

- The import duty rates on used passenger cars under 16 seats will increase whilst those for used passenger cars with 16 seats or more and trucks remain unchanged.

The new decree is an effort of the Government to promote the development of the domestic automobile manufacturing industry and the sustainable growth of the economy. Additionally, the Decree also aims to reduce the number of used cars imported into Vietnam, thereby improving the consumption of domestically produced cars as well as reducing the environmental pollution from older vehicles.

The Decree is effective from 01 January 2018. However, the preferential import duty rates applicable to imported automobile components shall come into force from the promulgation date of the decree (16 November 2017) to 31 December 2022.

2. Regulation on information exchange and coordination between Customs authorities and Tax authorities

The Ministry of Finance issued Decision No. 2413/QĐ-BTC dated 23 November 2017 promulgating regulations on the exchange of information and work coordination between Customs authorities and Tax authorities. Accordingly, the noteworthy points are as follows:

The provision and exchange of information

- The Decision indicates the List of information and documents which the Customs authorities and Tax authorities can exchange and provide for (according to the Appendix issued together with the Decision)
- Decision on the formality, mechanism of exchange and provision of information at each level includes three main forms:
 - ✓ Automatic data transmission: connecting and periodically transmitting large amounts of data between two systems.
 - ✓ Data query: online data mining via web service or search application on each others database on the basis of the connection between two systems.
 - ✓ Direct communication between the two offices.
- The exchange of information between the Customs authorities and the Tax authorities shall be made through the focal point units prescribed at each level.

The collaboration on implementation of risk management

The Customs authorities and the Tax authorities will jointly and uniformly formulate and implement the criteria for assessing the compliance of enterprises and rating enterprises' risk levels in customs and tax administration, thereby evaluating and rating the import – export businesses, identifying the prioritised enterprises and high-risk enterprises to apply appropriate customs and tax management measures.

The coordination between customs management measures and tax management measures

The Customs authorities and the Tax authorities shall coordinate to fight against fraud in Value Added Tax (“VAT”) refund through the development and application of risk assessment criteria in VAT refund. Additionally, the two offices will cooperate in inspecting, verifying and handling cases of violation of customs laws and tax laws.

When settling VAT refunds for enterprises, the tax authorities shall automatically offset the refundable amount against the tax payable amount, late payment interest and fines relating to imported/exported goods which enterprises owe the customs authorities on the basis of data exchange between the two authorities or the retrieval of tax debt information on the customs website.

3. Loan interest expenses incurred by enterprises having related party transactions

Binh Duong Tax Department issued Official Letter No. 19676/CT-TTHT dated 24 November 2017 providing guidance on interest expenses for enterprises having related party transactions. Accordingly, in case **enterprises subject to Decree 20/2017/ND-CP** incurred related party transaction during the year, the **total interest expense arising in the period** will be deductible for Corporate Income Tax (“CIT”) purpose provided it does not exceed 20% of the total net profit from business activities plus the interest expenses and depreciation and amortization expenses.

However, the guideline does not mention whether the said total interest expense includes or excludes the interest expenses from non-related parties. In addition, the Official Letter does not clarify whether this provision shall apply to enterprises not subject to Decree 20/2017/ND-CP. Therefore, enterprises should carefully consider the CIT deductibility of interest expenses (if any) in each specific case in line with Decree 20 and refer to the guidance of local tax authorities before actual implementation.

4. Value Added Tax (“VAT”) on interest from overdue payments relating to the economic contracts

On 9 October 2017, Hanoi Tax Department issued Official Letter No. 66392/CT-TTHT guiding the VAT treatment on interest from overdue payments relating to economic contracts. When e businesses receive interest from overdue payments due to their partners' failure to make payment on time, in accordance with the contractual terms, the interest received will be neither declared nor subject to VAT. Enterprises only need to compile the collection vouchers and recognise revenues to determine taxable income in compliance with CIT regulations.



5. Tax policy on imported goods for manufacture of exported goods

The General Department of Customs issued Official Letter No. 7817/TCHQ-TXNK dated 29 November 2017 addressed to provincial departments of customs to provide guidelines on imposition of tax on goods imported for the manufacture of exported goods. Accordingly, when enterprises import raw materials, supplies and components (“materials”) for manufacture of exported goods, then transfer these materials to their dependent branches for manufacturing, and later receive the goods back to continue the manufacture and export of the finished products; the **transferred** materials shall be exempt from import duties as regulated.



6. Report on the 2017 salary payment status and bonus plan for 2018 Tet holiday in Ho Chi Minh City

On 28 November 2017, the Ho Chi Minh City Department of Labour, Invalids and Social Affairs (“HCMC DOLISA”) issued Official Letter No. 30768/SLDTBXH-LD on creation and public announcement of the plan on 2017 salary payment and 2018 Tet holiday bonus as well as reporting adequate information of salary and bonus. Accordingly, businesses in Ho Chi Minh City are required to complete the **Report on 2017 salary payment status and the Bonus plan for 2018 Solar New Year and Lunar New Year (attached to the Official Letter)** and **submit by 16 December 2017** to the Office of Labour, Salary and Social Insurance, HCMC DOLISA; or the Office of Labour Management, Ho Chi Minh City Export Processing and Industrial Zones Authority (“HEPZA”) or the Office of Enterprises, Management Board of the Saigon Hi-Tech Park (“SHTP”).

Please contact our professional advisors at Grant Thornton Vietnam should you need our assistance with taxation, work permit for expatriates and legal issues during the course of your business.

Contacts

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