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Updates on Customs procedures, Trade, Tax and Labour

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Updates on Customs procedures

On 25 March 2015, the Ministry of Finance ("MoF") issued Circular No. 38/2015/TT-BTC on customs procedures; customs examination and monitoring; import, export duties and tax administration for imported and exported goods.

Circular No. 38/2015/TT-BTC took effect from 1 April 2015.

Some notable points of this document are as below:

Abolishment of a number of tax , customs procedures:

- This Circular abolished Circular No. 94/2014/TT-BTC, 22/2014/TT-BTC, 128/2013/TT-BTC, 196/2012/TT-BTC, 186/2012/TT-BTC, 183/2012/TT-BTC, 15/2012/TT-BTC, 190/2011/TT-BTC, 45/2011/TT-BTC, 45/2007/TT-BTC, 13/2014/TT-BTC, 175/2013/TT-BTC, 237/2009/TT-BTC.
- Some procedures on notification, receipt of processing contract and its annex; notification, receipt, amendment of the norms for export production, processing and finalization of materials and supplies for each processing contract... are removed.

Customs procedures for goods imported for processing, manufacturing to export:

- On an annual basis, by the 90th day after the end of the financial year, the customs declarants shall submit reports on the usage of raw materials, supplies, machineries and equipment and on the exported goods during the fiscal year to the Customs authority.

- The Export Processing Enterprises ("EPEs") are not required to submit reports for Quarter I 2015 to the Customs authority.
- In respect of the processing contracts which have already been notified to the Customs authorities and custom declarations of imported goods for export production which have already been registered before 1 April 2015 (i.e. the effective date of Circular No. 38/2015/TT BTC) for which the finalisation reports has not been submitted, such reporting obligation would be made in line with provisions of Article 60, Circular No. 38/2015/TT-BTC.

Simplification of the implementation of customs procedures with the implementation of e-customs procedures :

- The Customs authorities shall use information from e-customs declarations on the system for the implementation of customs procedures and related procedures, and may not require the custom declarants to submit the custom declaration in hard copies.

Taxing time and applicable foreign exchange rate for taxation of import and export goods:

- The timing for determining export and import duties is the registration date of the customs declaration.
- The General Department of Customs ("GDC"), in collaboration with the **Bank of Foreign Trade of Vietnam (Vietcombank)**, shall update the **buying exchange rate for bank transfers of Vietcombank Headquarter by the end of Thursday** or the exchange rate of the previous working day in case it falls on a non-working day; and **publish this exchange rate on the website of the General Department of Customs** and update to the Electronic customs database for determining the exchange rate applicable to the customs declarations registered in the next consecutive week.



Updates on Customs procedures (continued)

Custom procedures for goods imported, exported under the export right, import right, distribution right of EPEs:

- **EPEs**, which are allowed to performing trading and related activities in Vietnam in accordance with Decree No. 23/2007/ND-CP dated 12 February 2007 of the Government, **must maintain separate records for such operations and not consolidated with the manufacturing activities; and must arrange separate areas for storing the imported goods, exported goods under the import right, export right, distribution right.**
- The investment incentives, tax incentives and other financial incentives applicable to the export manufacturing operations of EPEs shall **not** apply to the purchase and sales of goods and directly related activities to the purchase and sales of goods of EPEs.

Some notable points on customs procedures related to the implementation of export right, import right of EPEs include:

- EPEs must provide the document number of the written approval from the competent authorities for the trading operations and related activities in the field "License No." on the e-customs declaration.
- **Customs procedures for goods imported under the import right of EPEs:**
 - When selling to domestic enterprises, **no** customs procedures would be required.
 - When selling to other EPEs or selling to enterprises located in non-tariff areas, the customs procedures applicable to on-spot export – import activities would be in force

Custom procedures for goods of EPEs which implement the export right:

- Regarding goods purchased from domestic market for export, when buying from domestic enterprises, **no** customs procedures would be required, while the export customs procedures shall be the same as for export trading activities.
- Regarding goods purchased from other EPEs for export, when buying from EPEs, the procedures are the same as for domestic enterprises purchasing goods from EPEs, while the export procedures shall be the same as for export trading activities; the declaration and payment of tax obligations (if any) would be required.



Updates on Trade regulations

Official Letter No. 3765/BCT-XNK dated 17 April 2015 of the Ministry of Industry and Trade (“MoIT”) regarding import, export activities of foreign invested enterprises (“FIEs”) with regards to the export of scrap materials, wastage from the production process and on the import of components and supplies for product warranty purposes.

Export of scrap materials, wastage of Companies which invest in machines, facilities to conduct production process as stated in the Investment Certificate:

- The scrap materials, wastage collected from the production process (which is stated in the Investment Certificate) are within the ownership of the Company, and the Company has the full authority over such items in line with current regulations, such as to sell them : domestically , or to export, etc.
- Accordingly, the MoIT agrees with the GDC that when FIEs export the scrap materials, wastage, the enterprises shall **not** be required to include such items in the Investment Certificate.

Import of components and supplies for product warranty (free of charge):

- According to international customs and practical cases, the MoIT noted that : Commonly, **the producers shall commit with their customers about a warranty period associated with some specific conditions** (referred to as product warranty) **without charging any fee**. Such warranty activities could be conducted in forms of repairing, replacement of the malfunctioned parts, components or exchange for goods within the same category, etc. which depend on the producer’s commitment for their products.

Therefore, in principle, the MoIT agrees with the idea of the GDC that: there shall be **no** need to include the name, category of materials, components and HS code in the Investment Certificate or Business License of the Company.

In order to avoid commercial fraud The MoIT has proposed that the GDC should consider regulations of customs procedures and devise mechanisms to strictly control the import of components and supplies for product warranty purposes mentioned above.

Official Letter No. 3149/TCHQ-GSQL dated 08 April 2015 of the GDC regarding issues associated with the guidance on tax procedures and tax treatment when importing goods under the EPEs’ import right then exporting into non-tariff zones.

Regarding customs procedures for goods imported under import right:

- These should be conducted in compliance with Article 77 of Circular No. 38/2015/TT-BTC dated 25 March 2015 of the MoF regarding customs procedures for import, export goods under EPEs’ import, export and distribution right.

Regarding the tax policies:

- Regarding tax refund, import duties shall be refundable where the goods imported under the import right of EPEs (for which import duties, value added tax have been paid for) are exported into non-tariff zones.
- The tax refund dossier shall be prepared in compliance with Article 122 of Circular No. 38/2015/TT-BTC.

Updates on Tax policies

Official Letter No. 1076/TCT-TNCN dated 30 March, 2015 of the General Department of Taxation (“GDT”) regarding the adjustment of Personal Income Tax (“PIT”) Finalization of foreigners.

The GDT issued a specific guidance on the case of foreign employees coming to work in Vietnam from 06 July 2013 to 19 September 2014:

- **In the first tax year** (from 06 July 2013 to 05 July 2014) if the foreign employee was present in Vietnam for more than 183 days, he /she would be considered as a resident in Vietnam. Accordingly, when finalizing the PIT for the first tax year, the progressive tax rates shall be applied.
- **In the second tax year** (from 01 January 2014 to 19 September 2014) if the foreign employees qualify as Vietnamese residents, the progressive tax rates would be applied for PIT finalization purpose.

In case the foreign employees are not qualified as Vietnamese residents, the flat tax rate of 20% of employment incomes would be applied for PIT finalization purpose.

Official Letter No. 2783/CT-TTHT dated 30 March 2015 of Ho Chi Minh City’s Department of Taxation regarding the use of commercial invoices for exporting services.

From 01 September 2014 when exporting services through e-commerce facilities to overseas, the Company shall use commercial invoices; when declaring in the List of output invoices (Form 01-1/GTGT), the date and number of output invoices shall be the date and number of the commercial invoices.

From 01 January 2015 the list and appendix attached with the VAT Declaration (Form 01/GTGT) shall be discarded. Accordingly, the Company is not obliged to provide the commercial invoices on the list but to declare revenue of commercial invoice to Form 01/GTGT.

Official Letter No. 1348/TCT-TNCN dated 13 April 2015 of the GDT, requesting the housing rental fee paid by the employer on behalf of employee to be included in the PIT-taxable income.

The GDT’s detailed guidance is as follows:

- Where the **Japanese employee is assigned to Vietnam by the parent company** (this employee neither holds any position nor is in charge of any job in the parent company) and **receives monthly incomes from the parent company**.
- The subsidiary in Vietnam is not required to reimburse such incomes to the parent company and at the same time, **pays monthly employment incomes and pays house rental fee on behalf of the employee**, then the house rental fee paid on behalf by the subsidiary in Vietnam shall be included in taxable incomes based on the actual amount paid on behalf, but shall **not exceed 15% of the total assessable incomes (excluding the housing allowance) derived at the parent company in Japan and the subsidiary in Vietnam**.

Grant Thornton Vietnam recommends that companies should review the PIT calculation of foreign employees in view of the above guidance.



Updates on Labour

Official Letter No. 1290/LDTBXH-LDTL dated 13 April, 2015 of Ministry of Labour, Invalids and Social Affairs ("MoLISA") regarding working hours, rest hours.

Regarding working hours, rest hours:

- The term "Working consecutively during 8 hours": means working in 8 consecutive hours in the sense of time **(including break time within a shift which is counted as working time)**.
- Rest during working hours shall be applicable when organizing working time in continuous shifts (03 shifts with 08 hours per shift or 04 shifts with 06 hours per shift).
- The current laws only prescribe limits on working duration, but not the starting time of working shift, thus, the starting time of a working shift shall be decided by each enterprise itself as per its labor policies.
- The current laws do not state that the lunch break is counted as working hours, however only promulgate that there must be at least 30-minute rest during working hours for daytime shifts and 45-minute rest during working hours for night shifts. The rest periods during working hours are included in the working hours.

Official Letter No. 1287/LDTBXH-LDTL dated 13 April 2015 of MoLISA regarding the calculation of annual leave payment.

Regarding the calculation of annual leave payment:

- Employees working overtime on days-off shall be paid at least 300% of salary calculated according to salary price unit or salary actually paid for jobs being done, not including the salary of the paid days-off for employee enjoying daily wage.

- Salary used to pay for an employee during the period he/she has not yet taken his/her annual leave or has not used all his/her annual leave is the average salary under the labor contract of 06 consecutive months before the employer calculates to pay in cash for the untaken annual leave days divided by the normal working days, according to internal regulations of the employer, of the month preceding the time the employer calculates for the payment multiplied by the untaken annual leave day.
- In case an employer asks employee for working overtime on annual leave days which have been internally regulated by the employer, the employee shall be paid with overtime salary at least 300% of the actually - paid salary, not including salary of the paid days-offs for employee enjoying daily wage.
- If the employee has not yet taken his/her annual leave or has not used all his/her annual leave due to job termination, redundancy or other reasons, he/she shall be paid in cash of 100% salary under labor contract.

Regarding Annual leave during probation period:

- In case the Company's policies allow for annual leave days corresponding to probation period, after the probation period, if a labor contract is signed, such days-off shall be included in the annual leave days. Otherwise, if the labor contract is not signed, the annual days-off of the probation time shall be paid in cash. Such regulation of the Company is not contrary to legal provisions.
- Where employees having 01 month of probation period are entitled to 01 annual day-off, this would be in line with the calculation of annual leave regarding working hours, rest hours and labor working safety.
- For employees having 6 days of probation, their annual day-off is rounded down to 0 day.

Contacts

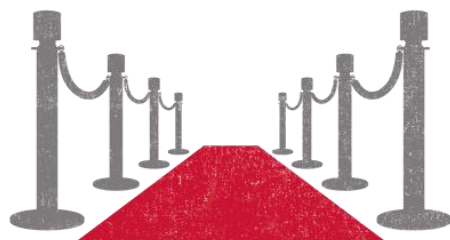
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Please visit our website:

www.gt.com.vn



Hanoi Office

18th Floor, Hoa Binh International Office Building
106 Hoang Quoc Viet
Cau Giay District, Hanoi
Vietnam
T + 84 4 3850 1686
F + 84 4 3850 1688

Hoang Khoi

Tax Partner
D +84 4 3850 1618
E Khoi.Hoang@vn.gt.com

Nguyen Dinh Du

Tax Partner
D +84 4 3850 1620
E Du.Nguyen@vn.gt.com

Pham Ngoc Long

Tax Director
D +84 4 3850 1684
E Long.Pham@vn.gt.com

Kaoru Okata

Director – Japanese Desk
D +84 4 3850 1680
E Kaoru.Okata@vn.gt.com

Kieu Hoai Nam

Tax Senior Manager
D +84 4 3850 1681
E Nam.Kieu@vn.gt.com

Ho Chi Minh Office

28th Floor, Saigon Trade Center
37 Ton Duc Thang Street
District 1, Ho Chi Minh City
Vietnam
T + 84 8 3910 9100
F + 84 8 3914 3748

Nguyen Hung Du

Tax Partner
D +84 8 3910 9231
E HungDu.Nguyen@vn.gt.com

Valerie – Teo Liang Tuan

Tax Director
D +84 8 3910 9235
E Valerie.Teo@vn.gt.com

Tran Hong My

Tax Director
D +84 8 3910 9275
E HMy.Tran@vn.gt.com

Tran Nguyen Mong Van

Tax Director
M +84 8 3910 9233
E MongVan.Tran@vn.gt.com

Tomohiro Norioka

Director – Japanese Desk
D +84 8 3910 9205
E Tomohiro.Norioka@vn.gt.com

Nguyen Bao Thai

Tax Senior Manager
M +84 8 3910 9236
E Thai.Nguyen@vn.gt.com

Questions & feedback

