Grant Thornton

An instinct for growth™

Significant points in a new decree and tax guidelines

December 2017

Contents

In this newsletter, Grant Thornton Vietnam would like to update certain significant points in a new decree and some tax guidelines as follows:

1. 

Some notable points in Official Letter No. 7380/TCHQ-TXNK dated 09 November 2017 issued by the General Department of Customs relating to tax treatment on imported goods.

2. 

Guidance on foreign exchange rate used for calculating Foreign Contractor Tax.

3. 

Declaration and update of information relating to the personnel in charge of accounting, or chief accountant services in accordance with the current regulations

4. 

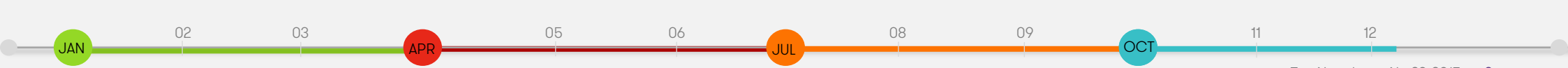
Value Added Tax calculation method in case of late submission of Form 06/GTGT

5. 

Some notable points relating to Engineering Procurement and Construction ("EPC") contracts

6. 

Tax provisions on Merger and Acquisition



1. The notable points in Official Letter No. 7380/TCHQ-TXNK dated 09 November 2017 issued by the General Department of Customs relating to tax treatment on imported goods

On 9 November 2017, the General Department of Customs has issued Official Letter No. 7380/TCHQ-TXNK on tax treatment on imported goods. Accordingly, the following points should be noted:

Import duty on goods imported for manufacture of exports but destroyed later

- Goods imported for manufacturing exports but destroyed later are not subject to import-duty exemption.

Taxable value of refuse, scrap, redundant raw materials and supplies whose use is converted to sales in the domestic market

- For surplus raw materials and supplies, customs value is the purchase price of goods at the first importing checkpoint, which was declared in the initial customs declaration form.
- For refuse and scrap during manufacturing, customs value is the actual or future payment at the time of changing the use. Customs authorities determine the customs value based on rules, valuation method, database and relevant documents.

2. Guidance on foreign exchange rate used for calculating Foreign Contractor Tax ("FCT")

On 6 October 2017, the General Department of Taxation issued Official Letter No. 4587/TCT-CS to confirm that the guidelines mentioned in Official Letter No. 2935/TCT-CS dated 3 July 2017 addressed to Yen Bai Tax Department and Phu Tho Tax Department regarding the foreign exchange rate used for computing FCT is only applicable to the specific cases of these two tax departments. Their cases are associated with foreign contractors carrying out Official Development Assistance ("ODA") projects. In other words, it is noting that Official Letter No. 2935/TCT-CS is not applied in all circumstances.

Thus, enterprises should carefully consider applying the appropriate exchange rates for calculating FCT, in compliance with current regulations as well as refering to other guidance of local tax departments in advance.

3. Declaration and update of information relating to the personnel in charge of accounting, or performing chief accountant services in accordance with the current legislation

The General Department of Taxation issued Official letter No. 4564/TCT-KK dated 05 October 2017 providing guidance on declaring, updating information of personnel in charge of accounting, or performing chief accountant services as follows:

Some enterprises only have personnel in charge of accounting instead of a chief accountant. Under the current regulations, individuals performing accounting services or chief accountant services have the rights and responsibilities of a chief accountant in accordance with Article 55 of Accounting Law. However, in the **"Application Form for Enterprise Registration"** and **"Notification Form on changes in enterprise registration information"** attached to Circular 20/2015/TT-BKHDT dated 01 December 2015 issued by Ministry of Planning and Investment, there is only a section to declare information of the chief accountant. There is no section to declare information on personnel in charge of accounting or performing chief accountant services. Consequently, such information cannot be transferred to the tax authorities.

Accordingly, in order to ensure the consistent application of regulations on chief accountants and personnel in charge of accounting, as well as to support tax authorities in obtaining sufficient information for tax management, the General Department of Taxation suggested to the Business Registration Department – Ministry of Planning and Investment considering and having written guidance to enterprises on completing information about "personnel in charge of accounting" or "personnel performing chief accountant service" on the above-mentioned Forms.

4. Value Added Tax calculation method in case of late submission of Form 06/GTGT

On 13 November 2017, the General Department of Taxation issued Official letter No. 5232/TCT-CS guiding VAT calculation method in the case of late lodgement of **Form 06/GTGT – Notification on the applied VAT calculation method**. Accordingly, in case enterprises, at the year-end, submitted Form 06/GTGT (to notify the application of credit method) to the tax department after the statutory deadline, but actually issued VAT invoices in the following year, these enterprises can be allowed to continue applying VAT credit method.

5. Some noteworthy points relating to Engineering Procurement and Construction ("EPC") contracts

The Ministry of Construction issued Official letter No. 2525/BXD-KTXD dated 26 October 2017 providing guidelines on EPC contracts. In particular:

For sub-contract value:

- The EPC contractor cannot sub-contract more than 60% of the work within the EPC contract.

For definition of contract compensation and responsibility limitation:

- For projects sponsored by state budget, the contractual penalty cannot exceed 12% of the violating part of the contract.
- The guarantee value for conducting projects is determined from 2% to 10% of contract value. In the event of preventing high risk, the guarantee amount for conducting projects can be higher but cannot exceed 30% of the contract value and must be approved by the relevant investment decision maker.

6. Tax provisions on Merger and Acquisition ("M&A")

The Ministry of Finance has recently issued Official letter No. 14881/BTC-CST dated 3 November 2017 to give some guidance on tax provisions on merger and acquisition transactions, in which:

Value Added Tax

According to Point b, Clause 7, Article 5, Circular 219/2013/TT-BTC, when circulating assets of a merging party, the enterprise is not required to issue invoice and declare VAT. Instead, the enterprise will prepare an asset circulation order enclosed with documents about the assets origin.

when circulating assets of a merging party, the enterprise is not required to issue invoice and declare VAT

The merged party is obligated to finalise its Corporate Income Tax ("CIT") liability up to the point of merging and fulfill its tax liabilities

Corporate Income Tax

- For revaluating assets after merging

  The merged party is obligated to finalise its Corporate Income Tax ("CIT") liability up to the point of merging and fulfill its tax liabilities in compliance with Article 16, Circular 151/2014/TT-BTC. Accordingly, the figures declared on tax finalisation returns are the current values, not the revaluated value of assets.

  The merging party is allowed to revaluate assets to record in the accounting books. Any increase or decrease between the actual payment (to acquire the merged party) and the revaluated asset value can be recorded as an increase or decrease in other income should be depreciated or amortised based on the revaluated asset value.

- For loan interest

  Loan interest incurred before 2015 from acquiring another enterprise are to be included in the acquisition price when transferring investment capital. Otherwise, it is considered as an expense if incurred from 2015 onwards.

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.

Contacts

This newsletter is for reference purposes only. Grant Thornton Vietnam holds no responsibility for mistakes therein, as well as damages caused by the use of information from this newsletter without official advisory opinions from Grant Thornton Vietnam before practice.

Should you need to us information from this newsletter or support from Grant Thornton Vietnam, please contact our professional consultants

To view more information
Please visit our website

grantthornton.com.vn

Head Office in Hanoi

18th Floor, Hoa Binh International Office Building
106 Hoang Quoc Viet Street, Cau Giay District, Hanoi, Vietnam
T + 84 24 3850 1686
F + 84 24 3850 1688

Hoang Khoi
Tax Partner
National Head of Tax
D +84 24 3850 1618
E khoi.hoang@vn.gt.com

Nguyen Dinh Du
Tax Partner
D +84 24 3850 1620
E du.nguyen@vn.gt.com

Kaoru Okata
Director – Japanese Desk
D +84 24 3850 1680
E kaoru.okata@vn.gt.com

Ho Chi Minh City Office

14th Floor, Pearl Plaza
561A Dien Bien Phu Street, Binh Thanh District, Ho Chi Minh City, Vietnam
T + 84 28 3910 9100
F + 84 28 3910 9101

Nguyen Hung Du
Tax Partner
D +84 28 3910 9231
E hungdu.nguyen@vn.gt.com

Valerie – Teo Liang Tuan
Tax Director
D +84 28 3910 9235
E valerie.teo@vn.gt.com

Tran Hong My
Tax Director
D +84 28 3910 9238
E hmy.tran@vn.gt.com

Masato Karoji
Director – Japanese Desk
D +84 28 3910 9135
E masato.karoji@vn.gt.com

Tran Nguyen Mong Van
Tax Director
D +84 28 3910 9233
E mongvan.tran@vn.gt.com

Grant Thornton
An instinct for growth™