

# Update on the latest regulations and important tax policies

September 2018



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# Content

In this newsletter, Grant Thornton Vietnam would like to update the latest regulations and notable policies on taxation as follows:

1.



Goods imported, then outsourced to another party for processing and thereafter exported is not entitled to import duty exemption

2.



Exemption from declaration for related-party transaction with independent branch in case of revenue being under VND50 billion and total value of related-party transactions being under VND30 billion

3.



Record of expense relating to Information Technology project formed in a foreign country

4.



Whether or not interest expenses from related-parties are deductible for Corporate Income Tax purpose

5.



The investment project which uses assets of another investment project currently in operation is not considered a new investment project.

6.



Issuance of tax code and Foreign Contractor Tax declaration under hybrid method for foreign contractors doing trading business in Vietnam

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## 1. Goods imported, then outsourced to another party for processing and thereafter exported is not entitled to import duty exemption

The Ministry of Finance issued Official Letter No. 8628/BTC-TCHQ dated 19 July 2018 on duty exemption for imported goods which are outsourced for processing and thereafter exported. Pursuant to this Official Letter, the Ministry of Finance confirms that from 01 September 2016 (effective date of Decree 134/2016/ND-CP), the following cases do not meet the criteria for duty exemption:



Individual, organisation which do not directly involve in whole production of all imported goods but (i) wholly or partly outsource to another party to process part of or all of imported goods, then (ii) receive the processed goods to continue to produce the finished goods for export.

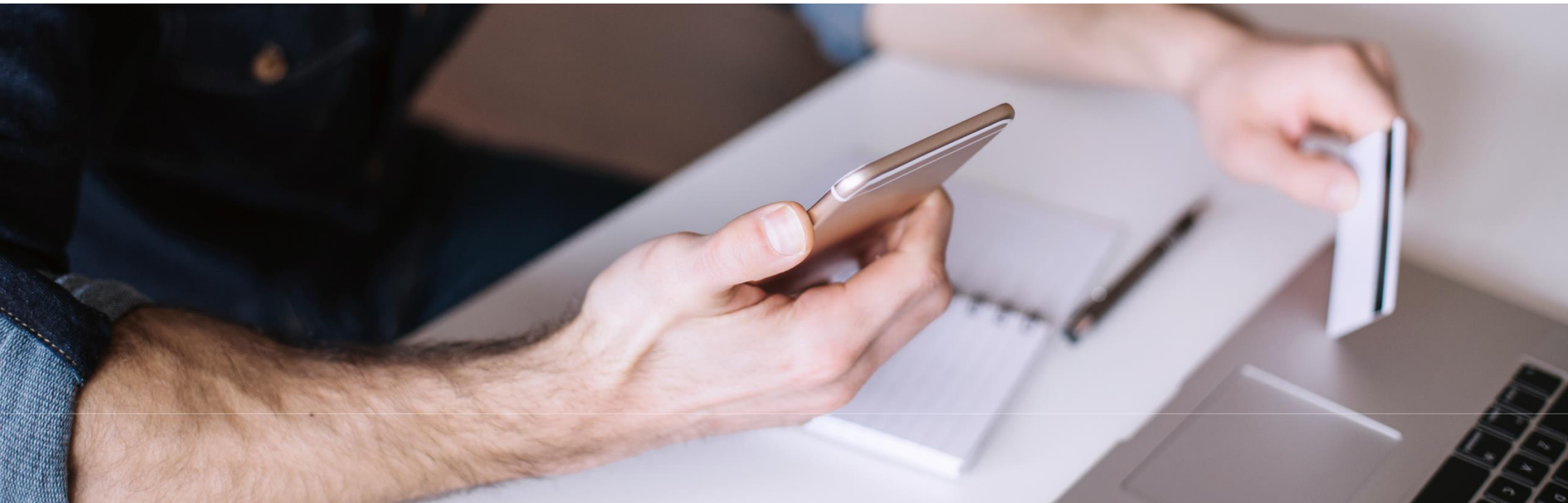


Individual, organisation who import goods, put into production process, then outsource to another party to partly implement the processing of goods, then receive the processed goods to continue its production process and/or export thereafter.

In the above-mentioned cases, the portion of goods outsourced for processing is not entitled to import duty exemption.

## 2. Exemption from declaration for related-party transaction with independent branch in case of revenue being under VND50 billion and total value of related-party transactions being under VND30 billion

On 02 August 2018, Hanoi Tax Department issued Official Letter No. 54153/CT-TTHT providing guidance on filing Transfer Pricing (“TP”) documentation. Accordingly, in the event if (i) the branch of tax payer maintain its accounting books independently to record its profit/loss, and (ii) total revenue of the branch is under VND50 billion and total value of all related-party transactions is under VND30 billion, the Branch is exempt from filing TP documentation in accordance with Decree No. 20/2017/ND-CP.



### 3. Record of expenses relating to Information Technology project formed in a foreign country

Hanoi Tax Department issued Official Letter No. 53064/CT-TTHT dated 31 July 2018 providing guidelines on recognition of expenditure of IT project formed in a foreign country.

This guidance is applicable for Vietnamese company signing a cooperation agreement with a foreign entity to carry out IT project. According to the agreement, the foreign entity is responsible for labour/employment expense, hardware and software purchasing expense and for provision of attached services to Vietnamese Company to build and operate the project. The Vietnamese Company and its foreign partner are able to separate value for each type of expense (hardware, software, service) in the agreement. After the project is completed, the Vietnamese Company makes payment for these expenses to the foreign entity and receives all assets from the foreign entity with detailed information of each asset/equipment including serial number, software license, name of subcontractors and the foreign entity's confirmation on the Vietnamese company's ownership of all assets after the handover. In this case, if (i) those hardware and software meet the statutory criteria to be treated as tangible/ intangible fixed assets, (ii) the Company has legitimate documents proving its ownership of assets and (iii) confirmation issued by the Vietnamese authority on the Company's legal ownership of the assets is obtained, the Company is allowed to record depreciation expenses of the assets under the current regulation. The depreciation expense which meets the requirements according to the regulation is deductible for Corporate Income Tax ("CIT") purpose.



In case the Company does not obtain sufficient legal supporting documents to prove its ownership of the server in line with the regulation, the Company is not allowed to record depreciation expense of the assets.

## 4. Whether or not interest expenses from related-parties are deductible for Corporate Income Tax purpose

Hanoi Tax Department issued Official Letter No. 43767/CT-TTHT dated 16 June 2018 on Corporate Income Tax (“CIT”) treatment on interest expense from related-parties. Accordingly, the tax department continuously affirm that in case the taxpayers have related party transactions and incur interest expense, their total interest expense will be subject to the regulatory cap of 20% EBITDA as stipulated in Decree 20 irrespective of whether such total interest expense arises from loans with independent parties or related parties.





## 5. An investment project using assets of another project currently in operation is not considered a new investment project

Hanoi Tax Department issued Official Letter No. 43609/CT-TTHT dated 25 June 2018 on CIT incentives on investment project using assets of another investment project currently operating. According to this official letter, for an investment project in a new province which uses certain equipment, machinery transferred from a currently operating investment project in other province, when this investment project comes into operation and generates revenue, the Company opts to apply CIT incentive for new investment project meeting the conditions of preferential locations as below:



The investment project in a new province which uses equipment, machinery transferred from other investment project currently in operation is not considered as a new investment project or a project independent of the currently operating investment project.



In case this project meets one of three criteria of expansion investment project under the regulations and its location is not in areas with normal social-economic conditions, the Company is allowed to apply tax holidays and reductions on the increased income generated from the expansion investment project (preferential tax rate is not applicable) which is equal to the tax holidays and reductions applying to new investment project in the same locations (in particular, CIT exemption in two years and 50% deduction of CIT in the following four years).

## 6. Tax code issuance and Foreign Contractor Tax (“FCT”) declaration under hybrid method for foreigners doing trading business in Vietnam



On 09 August 2018, the General Department of Taxation issued Official Letter No. 3065/TCT-KK providing guidelines on issuance of tax code for FCT declaration and payment under hybrid method. Particularly, in case a foreign trader not having a commercial presence in Vietnam would like to do business in form of foreign contractor without establishing a legal entity in Vietnam and sign contracts with Vietnamese customers, the foreign contractor is obligated to obtain Certificate of export, import right granted by the competent authority.

Upon receipt of the above-mentioned Certificate, the foreign contractor has to register and declare tax under hybrid method in compliance with the regulations.



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# Contacts

Please contact 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.

For more detailed information, please visit our website

[grantthornton.com.vn](http://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](mailto:khoi.hoang@vn.gt.com)

### Nguyen Dinh Du

Tax Partner  
D +84 24 3850 1620  
E [du.nguyen@vn.gt.com](mailto:du.nguyen@vn.gt.com)

### Kaoru Okata

Director – Japanese Desk  
D +84 24 3850 1680  
E [kaoru.okata@vn.gt.com](mailto:kaoru.okata@vn.gt.com)

### Hiroshi Mitsushige

Manager – Japanese Desk  
D +84 24 3850 1689  
E [hiroshi.mitsushige@vn.gt.com](mailto:hiroshi.mitsushige@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](mailto:hungdu.nguyen@vn.gt.com)

### Valerie – Teo Liang Tuan

Tax Director  
D +84 28 3910 9235  
E [valerie.teo@vn.gt.com](mailto:valerie.teo@vn.gt.com)

### Tran Nguyen Mong Van

Tax Director  
D +84 28 3910 9233  
E [mongvan.tran@vn.gt.com](mailto:mongvan.tran@vn.gt.com)

### Masato Karoji

Director – Japanese Desk  
D +84 28 3910 9135  
E [masato.karoji@vn.gt.com](mailto:masato.karoji@vn.gt.com)

### Nguyen Thu Phuong

Tax Director  
D +84 28 3910 9237  
E [thuphuong.nguyen@vn.gt.com](mailto:thuphuong.nguyen@vn.gt.com)

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