

# Update on new Decrees, Circulars and guidance relating to tax policies

**June 2018**



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In this newsletter, Grant Thornton Vietnam would like to update significant points as follows:

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Decree 39/2018/ND-CP providing guidance for Law on support for small and medium size enterprises

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Circular 25/2018/TT-BTC supplementing certain new guidelines on Value Added Tax, Corporate Income Tax and Personal Income Tax

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## 1. Decree 59/2018/ND-CP and Circular 39/2018/TT-BTC providing guidelines on customs procedures

Decree 59/2018/ND-CP and Circular 39/2018/TT-BTC, which were issued by the Government and the Ministry of Finance respectively on 20 April 2018, effective from 5 June 2018, amending and supplementing some significant regulations on customs. Accordingly, the new significant points comprise:



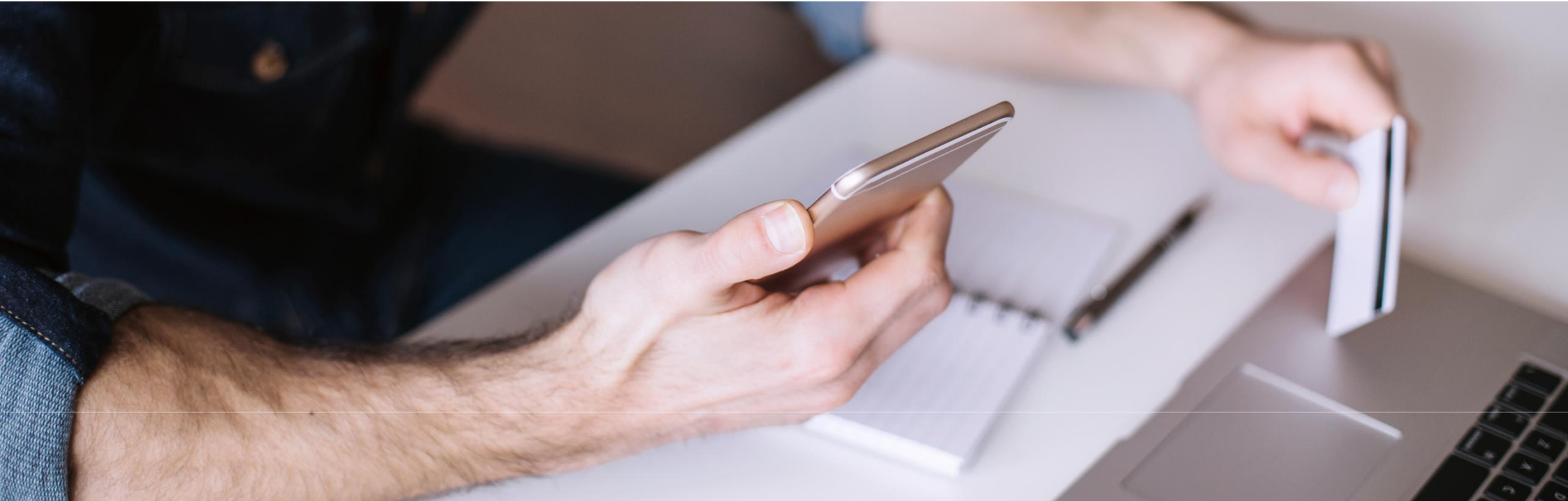
Enhancement of electronic customs (e.g. customs dossier will be submitted online immediately upon registration; procedures for amending declarations will be done via the e-customs system; submission of the finalization reports on material will be exempt for processing and manufacturing-for-export enterprises which have data connected with and transferred to Customs Authorities etc;



Supplement on new specific and detailed guidelines on customs dossiers and procedures as well as other procedures related to receiving, processing tax refunds, overpaid tax amounts, etc.

## 2. Decree 39/2018/ND-CP providing guidance on the Law on support for Small and Medium Sized Enterprises (“SMEs”)

The Government issued Decree No. 39/2018/ND-CP (“Decree 39”) dated 11 March 2018 to detail the Law on support for SMEs effective since 01 January 2018. Accordingly, one of the noteworthy points is that Decree 39 issued amendments to have stricter criteria of determining SMEs entitled to benefits of special supporting policy compared with the previous Decree No. 56/2009/ND-CP dated 30 June 2009 (“Decree 56”). In particular, to be regarded as an SME, a business is required to meet only one of two conditions (i) the number of employees or (ii) total capital under Decree 56/2009/ND-CP whereas it has to meet **both** the said conditions under Decree 39.



## 2. Decree 39/2018/ND-CP providing guidance on the Law on support for Small and Medium Sized Enterprises (“SMEs”)

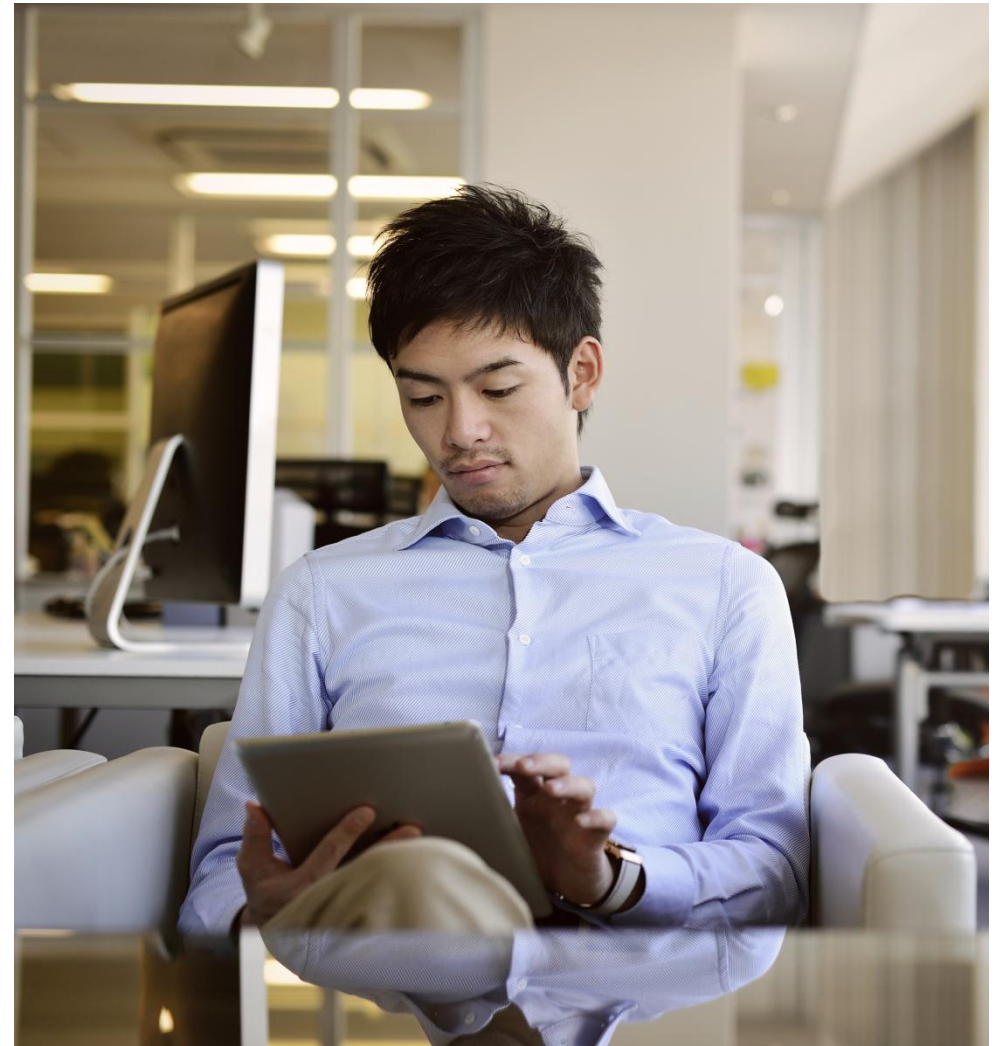
Accordingly, a SME is determined on the following criteria:

	Microenterprise	Small-sized enterprise	Medium-sized enterprise
<b>Agriculture, forestry, aquaculture, industry and construction</b>			
Annual average number of employees contributing Social Insurance	No more than 10 employees	No more than 100 employees (compared to no more than 200 employees under Decree 56)	No more than 200 employees (compared to no more than 300 employees under Decree 56)
Total capital Or Total revenue	No more than VND3 billion	No more than VND20 billion	No more than VND100 million
	No more than VND3 billion/year	No more than VND50 billion/year	No more than VND200 billion/year
<b>Trading and Services</b>			
Annual average number of employees contributing Social Insurance	No more than 10 employees	No more than 50 employees	No more than 100 employees
Total capital Or Total revenue	No more than VND3 billion	No more than VND50 billion (compared to no more than VND10 billion under Decree 56)	No more than VND100 billion (compared to no more than VND50 billion under Decree 56)
	No more than VND10 billion/year	No more than VND100 billion/year	Not more than 300 billion/year

Law on support for SMEs as well as Decree 39 permit SMEs to apply the CIT rate lower than the standard rate for a limited period. However, the rate has not been specified yet. The SMEs are additionally supported with access to financial credits, location for manufacturing, technology, consulting and legal issues.

### 3. Circular 25/2018/TT-BTC supplementing new points on Value Added Tax, Corporate Income Tax and Personal Income Tax

On 16 March 2018, the Ministry of Finance issued Circular No. 25/2018/TT-BTC (“Circular 25”) to detail Decree 146/2017/ND-CP and amend/supplement Circular No. 78/2014/TT-BTC and Circular No. 111/2013/TT-BTC.





### 3. Circular 25/2018/TT-BTC supplementing new points on Value Added Tax, Corporate Income Tax and Personal Income Tax

Some new notable points of Circular 25 are as follows:

#### Value Added Tax (“VAT”)

##### Supplementing VAT implication on exported natural resources and minerals without being processed into other products

-  Circular 25 stated that the conditions to determine value of natural resources/minerals are direct and indirect costs relating to exploiting natural resources/minerals and exclusive of expenses of transporting natural resources/minerals to the place of processing.
-  In the meantime, Circular 25 abolishes the case where the total value of natural resources/ minerals plus energy cost accounts for at least 51% of the cost of goods sold of the exported products are exempt from VAT.

##### VAT refund on exported goods/services

Circular 25 supplements the case where an enterprise imported goods then exported then into non-tariff zones or exported overseas and states that the enterprise is entitled to VAT refund in accordance with the regulation. However, Circular 25 does not mention the tax treatment in case the goods were imported before the effective date of Circular 25 (and Decree 146/2017/ND-CP) and then exported after the effective date of Circular 25.



# 3. Circular 25/2018/TT-BTC supplementing new points on Value Added Tax, Corporate Income Tax and Personal Income Tax

## Corporate Income Tax (“CIT”)



### Depreciation of fixed assets in case of capital transfer transaction

In case an enterprise transfers partly or wholly its capital to another enterprise, if fixed assets are transferred, the transferee is only allowed to depreciate the transferred fixed assets according to the remaining value recorded in accounting book of the transferor.



### Statutory cap of VND3 million/month/person for life insurance expenses, pension fund and voluntary pension insurance

Circular 25 adds the expense of life insurance premium to the group of expenses subject to statutory cap (together with pension fund and voluntary pension insurance) for CIT deduction and simultaneously increases such cap amount to VND3 million/month/person.



### 3. Circular 25/2018/TT-BTC supplementing new points on Value Added Tax, Corporate Income Tax and Personal Income Tax

#### Personal Income Tax (“PIT”)

Under Circular 111/2013/TT-BTC, income generated from transferring shares of individual shareholders in a joint stock company is grouped into taxable incomes from transferring securities. However, according to Circular 25, the definition of incomes from transferring shares is changed into incomes from transferring stocks of the individuals in a joint stock company.

Circular 25 came into effect from **01 May 2018**.



## 4. A royalty charged by the parent company to a subsidiary without the parent company's certificate of intellectual property ownership right is not deductible for CIT calculation purpose

On 15 January 2018, the General Department of Taxation (“GDT”) issued Official Letter No. 231/TCT-CS providing guidance on CIT treatment on royalty fees paid by Vietnamese subsidiaries to foreign parent companies. In particular, the subsidiary in Vietnam pays its parent company a royalty fee for patent of production. However, the certificates proving the parent company's ownership of industrial property rights and intellectual property rights, which are granted by the Competent Authority of Japan are not available. Correspondingly, the subsidiary's royalty expense is not accepted by Vietnamese tax authorities for CIT deduction.

Based on the above, it is noted that the tax authorities have recently tended to have a stricter view and treatment on the typical related party transactions such as intra-group management services; transferring use right of trademark and copyright. The enterprises which have related party transactions should pay close attention to the nature of transactions and relevant supporting documents as well as updating themselves on the guidelines from local tax authorities in order to have proper tax treatment. When necessary, enterprises should consider seeking advice from professional advisors before applying.

## 5. Requirement of issuing VAT invoice in case the imported machinery is delivered directly from port to dependent-cost-accounting branches of the enterprise

The General Department of Taxation (“GDT”) issued Official Letter No. 1167/TCT-CS dated 5 April 2018 guiding VAT treatment on imported machinery/equipment delivered directly to dependent-cost-accounting branches of the enterprise. In particular, a company signed a contract on importing the high-value machinery/equipment for all investment projects implemented by its dependent-cost-accounting branches.

The company paid import duty and VAT at the import stage to the customs authorities upon completion of customs procedures. Then, machinery/equipment was delivered directly from port to the branches (NOT delivered neither from the company to its branches nor from branches to branches). Correspondingly, according to this official letter, the company is required to issue VAT invoices to its branches for the imported machinery/equipment for tax declaration purposes.



## 6. Expatriates who re-visit Vietnam to work after assignment termination and home country return are required to re-determine tax residency status

In accordance with Official Letter No. 14675/CT-TTHT dated 4 April 2018, Hanoi Tax Department mentioned the creditability of SST paid at the import stage. In particular, an enterprise declared and paid SST at the import stage, then the Customs authorities issued Decision on deemed SST payable (not penalty for tax fraud, tax evasion) and the company made payment for such additional SST (supported with tax payment voucher). In this regard, Hanoi Tax Department mentioned that this deemed/additional SST amount based on the above-mentioned Decision will not be creditable against SST paid at selling stage but deducted for CIT purpose only.

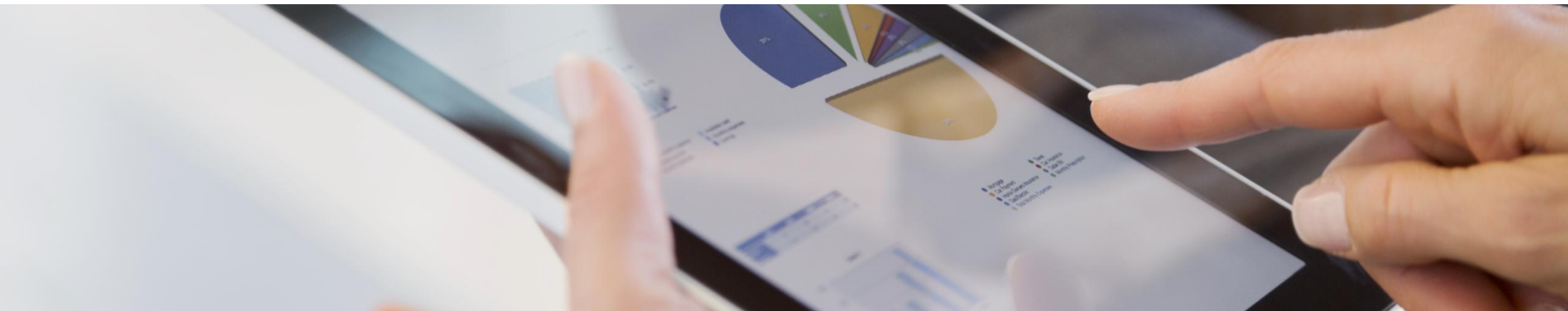


## 7. Deemed Special Sales Tax (“SST”) at import stage is not creditable against SST payable at selling stage



In accordance with Official Letter No. 14675/CT-TTHT dated 4 April 2018, Hanoi Tax Department mentioned the creditability of SST paid at the import stage. In particular, an enterprise declared and paid SST at the import stage, then the Customs authorities issued Decision on deemed SST payable (not penalty for tax fraud, tax evasion) and the company made payment for such additional SST (supported with tax payment voucher).

In this regard, Hanoi Tax Department mentioned that this deemed/additional SST amount based on the above-mentioned Decision will not be creditable against SST paid at selling stage but deducted for CIT purpose only.



## 8. Compensation from cancellation of contract is subject to withholding Foreign Contractor Tax (“FCT”)

Hanoi Tax Department issued Official Letter No. 11503/CT-TTHT dated 26 March 2018 to provide guidelines on FCT implications on the compensation paid to a foreign contractor. In particular, a company had signed a Share Purchase Agreement (“SPA”) to transfer capital to a foreign buyer. However, after that, this SPA was cancelled and the company had to pay compensation to the foreign buyer. Accordingly, as guided in this official letter, the payment of compensation is subject to FCT with CIT rate of 2% (which is applied to incomes from other business activities). No VAT is applicable.

## 9. Value Added Tax implication on services provided for Exporting Processing Enterprises

The General Department of Taxation (“GDT”) issued Official Letter No. 1992/TCT-CS dated 24 May 2018 to indicate VAT treatment on services provided for Exporting Processing Enterprises (“EPEs”). Accordingly, the services provided for Samsung Electronics Vietnam Company Limited, an EPE, including public relations, endorsement of image of Samsung, endorsement of Samsung events, monitoring information relating to Samsung on public media channels are considered to be carried out and consumed out of non-tariff zones and therefore subject to VAT at 10%.



## 10. VAT Refund on goods imported then exported in the period from 01 July 2016 to 31 January 2018

The Ministry of Finance issued Official Letter No. 5537/BTC-CST dated 14 May 2018 to respond to Vietnam Business Forum (“VBF”) and confirm that enterprises are not entitled to VAT refund on imported goods which were subsequently exported in the period from 01 July 2016 to 31 January 2018. From 01 February 2018, these enterprises will be entitled to VAT refund applied to goods imported and then exported in accordance with the provisions of Decree No. 146/2017/ND-CP.

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*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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