

Update new legal documents and important tax policies

December 2018 – No.1



Content

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

1.



Circular 95/2018/TT-BTC repealing a number of import and export duty regulations

2.



Guidance on registration of technology transfer agreement

3.



Issuance of adjustment invoice of revenue reduction is allowed for discontinued service

4.



Procedures of renting warehouse outside of Export Processing Enterprises (“EPEs”) for the purpose of storing machinery

5.



Severance allowance in excess of levels stated in the regulations will be subject to Personal Income Tax (“PIT”)

6.



Management fees paid to the parent company is considered non-deductible expenses

7.



Is cash payment in transaction of share purchase from individuals acceptable?

1. Circular 95/2018/TT-BTC repealing a number of import and export duty regulations

On 17 October 2018, the Ministry of Finance (“MOF”) issued Circular No. 95/2018/TT-BTC (“Circular 95”), effective from 01 December 2018, repealing a number of Circulars on import and export duty.



Accordingly, Circular 95 repealed the following legal documents:

- Circular No. 35/2010/TT-BTC (“Circular 35”) dated 12 March 2018 issued by the MOF providing guidelines on export duty of wood and coke produced from imported materials;
- Circular No. 118/2011/TT-BTC dated 16 August 2011 issued by the MOF providing guidelines on import duty and Value Added Tax (“VAT”) on imported goods of electricity projects; and
- Circular No. 10/2015/TT-BTC dated 29 January 2015 issued by the MOF detailing the implementation of the Prime Minister’s Decision No. 54/2014/QD-TTg dated 19 September 2014 on import duty exemption for components imported to produce or assembly medical equipment prioritized for research and manufacture.

2. Guidance on registration of technology transfer agreement

The Ministry of Science and Technology issued Official Letter No. 3457/BKHCHN-DTG dated 30 October 2018 and Official Letter No. 3050/BKHCHN-DTG dated 28 September 2018 providing guidance on registration of technology transfer agreement.

➤ New registration of technology transfer agreement

Technology transfer agreements which were entered into before the effective date of 2017 Technology Transfer Law (01 July 2018) will continue to be implemented until the term of the agreement ends in accordance with regulations of 2006 Technology Transfer Law No. 80/2006/QH11.

In case the parties would like to register the agreements signed before 01 July 2018 (effective date of 2017 Technology Transfer Law), the procedures for registration is in line with 2017 Technology Transfer Law and Decree No. 76/2018/ND-CP dated 5 May 2018. However, in case there are supplements, amendments to these agreements, the parties can choose to register or not register the agreements with the competent authorities.

➤ Definition of price auditing

According to Decree No. 76/2018/ND-CP, Article 4, clause 3, “the audit of prices will be carried out by using the technology valuation methods as prescribed by laws and as required by the tax authority”, this is interpreted that during the state administration of taxation, if the tax authority find out any issues of transfer pricing and tax evasion, the tax authority will conduct the price audit. The process and procedure of price audit will be regulated by the tax authority.

➤ The term “technology” in Technology Transfer Law

According to definition of this terminology, in case the showroom design and computer software used for data management and data archive of the products are not directly involved in production process, such showroom design and computer software are not considered as technology.

➤ Guidelines on filing in Registration Form for technology transfer

- Name of technology: the name of specific technology that Transferor will transfer to Transferee. The name of technology needs to reflect the most general information about the technology.
- Field of transferred technology: the enterprises fill in this section basing on Vietnam Standard Industrial Classification to ensure consistency.
- Price of transferred technology: a specific price and method of payment must be determined in technology transfer agreement. In case there are differences in determination of prices in different periods, upon registration with the authority, the object, content and period of transfer will be used as the base to determine the price of each object.
- Quality standard of technology products: criteria for any products produced and sold to the market. This criteria is associated with the liabilities of Transferor and it cannot be stated generally in the Form.

- Quantity of technology products: the total number of expected output that are produced as a result of applying transferred technology (in a production year or in a period corresponding to the term of transfer technology contract) per the agreement by the parties in the contract.



3. Issuance of adjustment invoice to record revenue reduction is allowed for discontinued service

Hanoi Tax Department issued Official Letter No. 74022/CT-TTHT dated 06 November 2018 providing guidance on tax treatment on issued invoices.



According to this Official Letter, in case the company issued the VAT invoice to its customer based on periodic maintenance service agreement and both parties declared VAT of such invoice. However, thereafter, due to the change in demand for the service, the customer has no demand for continuation in maintenance service, the company and customer will prepare the liquidation minutes or a written letter in which the reason why the provision of service ceases must be indicated.

Simultaneously, the company will issue adjustment invoice to reduce revenue in accordance with the regulations.

4. Procedures of renting warehouse outside of Export Processing Enterprises (“EPEs”) for the purpose of storing machinery

On 18 November 2018, the General Department of Customs issued Official Letter No. 6537/TCHQ-GSQL providing guidelines on renting warehouse outside EPEs (hereinafter referred to as “external warehouse”) for storage of imported machinery and equipment while waiting for the completion of its own warehouse.

According to this Official Letter, the external warehouse must satisfy criteria stipulated in Article 80 of Circular No. 38/2015/TT-BTC dated 25 March 2015 issued by the MOF.

In the meantime, the EPE has to complete the procedures when storing machinery and equipment in external warehouse as follows:

- Submission of written notice to Customs sub-department managing EPEs to inform about location, rental period (beginning and ending time) of the external warehouse and plan on moving back the machinery and equipment so that the authority can inspect the handing-over and returning of machinery and equipment among the parties.

- When delivering machinery and equipment into the external warehouse, the EPE has to make the transfer minutes at the EPE’s factory (or at the external warehouse in case such machinery and equipment are delivered from port to external warehouse) and have the goods sealed or record the status of the goods in picture form if the goods cannot be sealed.

Of note, the transfer minutes must have acknowledgement of the three parties including: the EPE, the warehouse owner, a representative of Customs sub-department managing EPE; together with the machinery/equipment documents stating name of goods, quantity, model, codes, delivery date, number/date of Declaration Form of imported goods and seal number or pictures of the goods if the goods cannot be sealed.



- When receiving machinery and equipment back from the external warehouse, the EPE prepares the transfer minutes at the EPE's factory, then inspect and make comparison between the status of goods sealed or pictures taken at the point of time of being handed over to external warehouse with the status of goods at the point of time of being received warehouse.

Of note, the second transfer minutes must have acknowledgement of three parties including: the EPE, the warehouse owner, a representative of Customs sub-department managing EPE together with a confirmation stating that there is no difference between the received and the handed-over machinery and equipment.

Additionally, during the storage time, the EPE needs to preserve the status of machinery and equipment and take full responsibility in case the machinery and equipment (stored in the external warehouse) are sold to domestic market without customs declaration. If the Customs sub-department managing EPE find anything suspicious, they will carry out unusual inspections of machinery and equipment in the warehouse.

5. Severance allowance in excess of levels stated in the regulations will be subject to Personal Income Tax (“PIT”)



Hanoi Tax Department issued Official Letter No. 70182/CT-TTHT dated 19 October 2018 on PIT treatment on exceeding severance allowance and redundancy pay.

If the company pays allowances (severance allowance and redundancy pay) in addition to other allowances stipulated by the Labor Code and the Law on Social Insurance to the employees upon the termination of employment agreement, then:

- In case the company pays such allowances before termination of employment agreement, the company will add such allowances to incomes from wages in the tax period for PIT withholding purpose under progressive tax rates.
- In case the company pays such allowances after termination of employment agreement, the company is required to withhold 10% PIT on each payment with value of VND2 million or above before making payment to employees.

6. Management fee paid to the parent company is considered non-deductible expense

Hanoi Tax Department issued Official Letter No. 72368/CT-TTHT dated 30 October 2018 on the management fee paid to the parent company.

According to the guidelines in this Official Letter, in case the parent company receives the payment of management fee from its subsidiaries to form its management fund, the parent company needs to record such payments as their other incomes and accordingly pay Corporate Income Tax (“CIT”) on these incomes.

To the subsidiaries, the corresponding expenses are not deductible for CIT purpose in accordance with Circular No. 96/2015/TT-BTC, Article 4.

7. Is cash payment in transaction of share purchase from individuals acceptable?

On 7 November 2018, the MOF issued Official Letter No. 13666/BTC-TCDN to address the queries about the payment method in the transaction of share purchase.

Accordingly, in case the company purchases shares in another company, and the holder of those shares is an individual, the company is not allowed to make payment in cash for this transaction.

Contact

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.

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