

# TAX NEWSLETTER

March 2021



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# CONTENS

- CUSTOMS \_\_\_\_\_ 3
  - Not accepting monitoring sheet in case of late submission after Customs clearance \_\_\_ 3
  - Duty-free imported machinery which has been fully depreciated still required to undergo the Customs declaration and pay tax upon liquidation \_\_\_\_\_ 3
  - Guidance on tax treatment in case of exported products being re-imported but kept in Vietnam longer than the registered timeline (for re-export back abroad) \_\_\_\_\_ 4
  - Packaging pre-printed with foreign origin is prohibited from import \_\_\_\_\_ 4
  - Not accepting C/O with multi-nation origins \_\_\_\_\_ 5
  - Guidance on Customs procedure and tax treatment in case local contractors import construction materials for EPE customers \_\_\_\_\_ 5
  
- CORPORATE INCOME TAX (CIT) \_\_\_\_\_ 6
  - Corporate income tax declaration of the Branch in form of consolidation \_\_\_\_\_ 6
  - Corporate income tax policy for real estate transfer activities \_\_\_\_\_ 6
  - Conducting procedures for corporate income tax incentives \_\_\_\_\_ 7
  
- VALUE ADDED TAX (VAT) \_\_\_\_\_ 8
  - Declaring value added taxes off a dependently accounting Branch \_\_\_\_\_ 8
  
- CONTACT US \_\_\_\_\_ 9

## CUSTOMS

### **Not accepting monitoring sheet in case of late submission after Customs clearance**

Official letter No.1088/TCHQ-TXNK dated 09/03/2021 from the General department of Customs.

According to Article 8 of Circular No.14/2015/TT-BTC, in case of importing machinery and equipment in in unassembled or disassembled forms, the Customs will use the presented dossier and monitoring sheet (i.e. the Master list of all items to be imported belonging to the registered machinery/ equipment with information on the quantity imported in past consignments and remaining quantity) to classify HS code and calculate Customs duties for the imported items (e.g. separated items registered under the Master list can be classified under the HS code and duty tariff of the finished-assembled machinery/equipment if certain conditions are satisfied, in accordance with rule 2a of the 6 rules of tariff classification). Therefore, the importer needs to present the monitoring sheet to the Customs authority right at import stage for this special treatment.

If the monitoring sheet is not presented at import stage, the Customs will not accept the application for special tariff treatment as aforementioned, even in case the Customs import declaration form was classified under green channel (i.e. accepting the declarant's declared information without further checking on the goods and dossier).

### **Duty-free imported machinery which has been fully depreciated still required to undergo the Customs declaration and pay tax upon liquidation**

Official letter No.1092/TCHQ-TXNK dated 09/03/2021 from the General department of Customs.

According to the guidance in Circular 38/2015/TT-BTC, in case the enterprise imports duty-free goods to implement an investment project, then changes the purpose of use which is different from the declared tax exemption purpose, the enterprise must declare and calculate additional tax on a new declaration. Therefore, before disposing of tax-free imported machinery and equipment - even if the machinery is fully depreciated, the enterprise must send a written notice of the liquidation to the customs office where the import was initially registered and carry out the procedures for change of purpose of use, including tax calculation as prescribed. Enterprises must specify which import declarations the liquidated goods belong to, and are only allowed to liquidate - change the purpose of use - when the customs procedures have been completed.

Taxable value in such case of liquidated duty-free imported goods is specified in Article 17 of Circular 39/2015/TT-BTC (as amended by Circular 60/2019/TT-BTC).

## Guidance on tax treatment in case of exported products being re-imported but kept in Vietnam longer than the registered timeline (for re-export back abroad)

Official letter No.693/TCHQ-TXNK dated 05/02/2021 from the General department of Customs.

In the response letter sending to the Customs department of Binh Duong province, the General department of Customs provided guidance on the tax treatment for this case as follows:

- **When the exported product is re-imported into Vietnam:** There will be no import duty. Paid export duty (i.e. paid upon the export of product, if any) shall be refunded based on the dossier submitted by the declarant.
- **When the product is re-exported back abroad:** The exporter must pay export duty (if any) for the exported volume, same as when they export new product for the first time.

The company must report the re-import and re-export volume on corresponding criteria on the Customs finalization report. In case the re-imported products were kept in Vietnam for more than 275 days, their volume must be recorded on the Customs finalization report until when they are re-exported. If the company does not re-export but sell them in the domestic market, the Company must declare on such change of purpose of the corresponding imported material in accordance with the provision of Decree no. 08/2015/ND-CP (Article 25, as amended & supplemented by Decree no. 59/2018/ND-CP).

## Packaging pre-printed with foreign origin is prohibited from import

Official letter No. 974/TCHQ-GSQL dated 02/03/2021 from the General department of Customs.

This is the order from the General department of Customs sending to provincial Customs departments regarding the import of packaging (without goods inside) as follows:

- If there is no information printed on the packaging: The Customs authority carries Customs procedure in accordance with the provision of Circular no. 38/2015/TT-BTC (amended & supplemented by Circular no. 39/2018/TT-BTC).
- In case there is certain information printed on the packaging: The Customs authority must not carry out Customs procedure for packaging pre-printed with information about foreign origin (e.g. made in Japan, made in USA, etc.).

The content printed on packaging must be aligned with the provision of Article 9, Decree no. 60/2014/ND-CP. Regarding imported packaging used for containing food, it must satisfy the special conditions and procedures as set out under Decree no. 15/2018/ND-CP and related guidance.

In case the Customs authority has any doubt on counterfeit goods during the process of Customs clearance for imported package, they may launch Customs audit to check and verify, as well to identify violations and give sanctions (if any).

## Not accepting C/O with multi-nation origins

Official letter No.75/GSQL-GQ4 dated 11/01/2021 from the General department of Customs.

If the goods are declared in the C/O with the note “made in TH, CN, PH, JP, MY, VN”, this is not appropriate in accordance with the rules of origin of each goods item, as prescribed in clause 5, article 6 of the Appendix I attached to Circular no. 19/2020/TT-BCT dated 14/08/2020 of the Ministry of Industry & Trade. Therefore such C/O(s) are not accepted to enjoy special-preferential import duty rate.

## Guidance on Customs procedure and tax treatment in case local contractors import construction materials for EPE customers

Official letter No.768/TCHQ-TXNK dated 08/02/2021 from the General department of Customs.

This is the guidance for local companies being contractors to Export Processing Enterprises (“EPE”) and importing construction materials for the work. In particular:

- **Regarding tax policy:** In case the local contractor imports goods from overseas straight to the non-tariff zone for the construction and installation of offices and factories for its EPE customer under a signed contract, they will be exempted from import declaration and duty. Regarding VAT, the local contractor is required to pay VAT at import stage; 0% VAT rate shall be applied on their revenue when they export these goods into the EPE, and the contractor is allowed to credit the paid import VAT if conditions on VAT credit are satisfied.
- **Regarding Customs procedure:** The importer needs to follow the guidance of Circular no. 38/2015/TT-BTC and Circular no. 39/2018/TT-BTC. Accordingly, the contractor must deliver the imported goods to the EPE’s site right after Customs clearance. After 30 days from the end of contract, the EPE and the importer must report the volume of goods imported under the contract to the Customs office supervising the EPE, using Form No. 20 / NTXD-DNCX / GSQL.

# CORPORATE INCOME TAX (CIT)

## Corporate income tax declaration of the Branch in form of consolidation

Ha Noi Tax Department answers the queries of Petrolimex Asphalt Company Limited in Official Letter No. 6268/CTHN-TTHT dated 01 March 2021.

In case an affiliate of the Company (13-digit tax code) converts the independent accounting form to a dependent accounting, such affiliate of the Company will change the tax registration information as specified in Section 2 of Circular 95/2016/TT-BTC and is not required to re-register taxes. From 17 January 2021, the change of tax registration information will comply with Circular 105/2020/TT-BTC of the Ministry of Finance.

In case the Company's branch converts from independent accounting to dependent accounting, at the end of the fiscal year when filing corporate income tax returns, the Company will declare taxes in consolidation with the head office, including the arising part of the dependently accounting branch as prescribed by law.

## Corporate income tax policy for real estate transfer activities

Ha Noi Tax Department answers the queries of Asia Pacific Investment Joint Stock Company in Official Letter No. 5793/CTHN-TTHT dated 25 February 2021.

In case a (Ha Noi-based) Company has a mixed apartment building project in Bac Giang province, corporate income tax declaration for the transfer of real estate under the project therein is conducted as follows:

- In principle, the Company can declare corporate income tax each time the real estate transfer arises in case of a need as stated in Article 12.2 of Circular No. 156/2013/TT-BTC (as amended in Article 16 of Circular No. 151/2014/TT-BTC); for cases that arise frequently in real estate transfer activities, the Company must pay provisional corporate income tax quarterly according to Article 12.4(c) of Circular No. 156/2013/TT-BTC (as amended in Article 16 of Circular 151/2014/TT-BTC).
- If the Company collects money from the customer but has not yet determined the cost corresponding to the revenue, the Company must temporarily pay corporate income tax at the rate of 1% on the revenue collected at the Tax Department of Bac Giang province as stipulated in Article 12.4(d) of Circular No. 156/2013/TT-BTC dated 06 November 2013, as amended and supplemented in Article 16 of Circular No. 151/2014/TT-BTC dated 10 October 2014 of the Ministry of Finance.
- At the end of the taxation year, the Company carries out formal finalization procedures for the corporate income tax amount for the real estate transfer. If the temporarily paid tax amount is lower than the payable tax amount according to the corporate income tax

finalization declaration, the company must fully pay the outstanding tax amount into the state budget at the head office.

- From 2021, the Company will declare and pay corporate income tax in accordance with the Law on Tax Administration No. 38/2019/QH14 and its guiding documents.

## **Conducting procedures for corporate income tax incentives**

Ha Noi Tax Department answers the queries of Humax Vina Company Limited in Official Letter No. 5723/CTHN-TTHT dated 24 February 2021.

In principle, if an enterprise implements a new investment project in the field of software product manufacture in 2017, the income from this new investment project is eligible for CIT incentives according to Article 15.1(b) of Decree No. 218/2013/ND-CP, Article 1.16 of Decree No. 12/2015/ND-CP.

The duration of application of preferential CIT tax rates, CIT tax exemption and reduction is specified in Articles 15.6 and 16.4 of Decree No. 218/2013/ND-CP.

In case of the taxation period of 2020, if the enterprise is enjoying CIT incentives due to its satisfaction of the conditions for CIT incentives in accordance with the law on corporate income tax, the enterprise must carry out the procedures for CIT incentives under Article 22 of Circular No. 78/2014/TT-BTC.

# VALUE ADDED TAX (VAT)

## Declaring value added taxes off a dependently accounting Branch

Ha Noi Tax Department answers the queries of Zema Vietnam Company Limited - Ha Noi Branch in Official Letter No. 6146/CTHN-TTHT dated 01 March 2021.

In case the Company is a dependently accounting unit under its parent company in Ho Chi Minh City, if the total revenue from goods sales and service provision in 2020 is from VND 50 billion or less (meeting quarterly tax declaration criteria as prescribed in Article 9.1 of Decree No. 126/2020/ND-CP), in 2021, branches may choose to declare tax monthly or quarterly for the whole calendar year as prescribed in Article 9.2 of Decree No. 126/2020 ND-CP.

From 2022, the Company will conduct a declaration in consolidation with the head office in accordance with Article 11.2 of Decree No. 126/2020/ND-CP.



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# Thank you



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