

## 2016 Asia Pacific tax update

### Vietnam: Tax & Customs

The past year in Vietnam has seen a significant uptick in enforcement actions including aggressive claims on capital gains derived in offshore holding companies with underlying Vietnam assets. The enabling legislation is not exactly new, but it is also not complete when it comes to valuation and calculation of the taxable gain. Nevertheless, starting with the largest taxpayers, the authorities are steadily working their way through the most obvious cases, sometimes using the media to pressure the taxpayers into settlements. So long as the current fiscal position remains strained, we can expect similar focus on transfer pricing cases. In other respects, most of the work has been in the customs and excise taxes area, partly in order to comply with the new Trade Facilitation Agreement and other treaty requirements, but partly also to close loopholes and respond to various domestic pressures.

#### 1. Import / Export & Customs

##### 1.1 Law on Import and Export Duties 2016

On 6 April 2016, the National Assembly promulgated Law No. 107/2016/QH13 on Import and Export Duties ("Law No. 107") to replace Law No. 45/2005/QH11 on Import and Export Duties ("Law No. 45").

As one of the four key issues of customs modernization, Law on Export and Import Duties 2016 is expected to establish a more competitive business environment in Vietnam under the context of accelerating roadmap for duty elimination following Vietnam's commitments in international trade treaties.

To such extent, the new law supplements new regulations on customs duty, duty exemptions and time limits for duty payment. Certain key developments under Law on Export and Import duties 2016 are as follows:

##### 1.1.1 Duty exemption applicable to a larger number of imports and exports

The new Law grants duty exemption to 23 types of goods, which is significantly higher than those under the current regulations. In particular, pursuant to Law on Export and Import duties 2016, notable additional goods under such exemption include:

- i. *Raw material, supplies and accessories imported for export production under contract manufacturing, which are currently entitled to 275-day duty deferral;*
- ii. *Goods for temporary import/export for following purposes:*
  - a) *Machines and equipment for repairing marine vessels and airplanes: Under current regulations, only spare parts and accessories of temporary import/export are entitled to duty exemption. The new Law expands duty exemption to also cover the machines and equipment of temporary import/exports;*

[www.bakermckenzie.com](http://www.bakermckenzie.com)

For further information please contact

Fred Burke  
Tel: +84 8 3520 2628  
fred.burke  
@bakermckenzie.com

Nguyen Thanh Vinh  
Tel: +84 8 3520 2660  
thanhvinh.nguyen  
@bakermckenzie.com

- b) Temporary imports/exports for repair and warranty;
- c) Goods for trading business of temporary import/export (bank guarantee or deposit required);
- iii. *Fertilizer, pesticide which have not been domestically produced, subject to necessity appraisal of line ministries;*
- iv. *Goods for non-commercial purpose including: samples, photos, films, alternative models for samples, advertising publication in small quantities;*
- v. *Goods are not domestically produced, which are imported directly for educational purposes.*

Law on Export and Import duties 2016 also eliminates exemption for imports as fixed assets of investment projects of official development assistance (ODA) capital sources.

#### 1.1.2 Duty refund in the event of wrong declaration

Under the current regulations, wrong declaration may be entitled to duty refund if such wrong declaration is conducted within 365 days from the date of detection. This regulation accommodates the possibility of refunding the overpaid duty if such wrong declaration is detected within 365 days since the customs declaration. Nonetheless, the new Law has abolished this regulation. As such, taxpayers will no longer have chance to claim the overpaid duty if such mistakes are made by themselves.

#### 1.1.3 Time limits for duty payment

Privileged enterprises (under Authorized Economic Operators Scheme) are entitled to a grace period of up to 40 days in comparison with other taxpayers. As such, instead of paying duties before goods release, privileged enterprises may make payment no later than the 10th day of the month following the month of goods release or clearance.

#### 1.1.4 Anti-dumping duty, countervailing duty, safeguard duty

The new law supplements a Chapter to clarify application of the above-mentioned duties. The Ministry of Industry and Trade is the decision maker, and Ministry of Finance decides relating protocols, including declaration, collection, payment, refund of such duties.

Countervailing duty and anti-dumping duty shall be applied for up to five years from effective date. For safeguard duty, the duration will not exceed four years inclusive of the temporary period . Where necessary, these periods may be extended.

#### 1.1.5 Other Details of the new Law

According to Law No. 107, domestically exported or imported goods as well as goods exported and imported by enterprises exercising their right to export, import, or distribute are taxable.

Article 3 of Law No. 107 stipulates a more detailed list defining taxpayers, which includes:

- i. *Owners of imported/exported goods;*
- ii. *Authorized exporters and importers;*

- iii. *Persons entering and leaving Vietnam carrying exports or imports, as well as those sending or receiving goods through Vietnam's border gates;*
- iv. *Authorized persons guaranteeing and paying tax on behalf of taxpayers;*
- v. *Citizens buying and transporting goods within the tax-free limit resale area at the borders;*
- vi. *Persons owning duty-free imports and exports which become taxable later; and*
- vii. *Other entities provided by the laws.*

The ordinary tax rates shall be increased from 70% to 150% per the preferential rates.

The principles for issuing tax tariffs and tax rates are specified in Article 10 as summarized below:

- i. *Encouraging the import of raw materials in high demand domestically; focusing on the development of high technology, source technology, energy-saving and environmental protection technology;*
- ii. *Complying with Vietnam's socioeconomic development orientation and commitments to export and import duties codified in international treaties to which Vietnam is a signatory;*
- iii. *Contributing to the stabilization of the market and state budget revenues;*
- iv. *Being simple and transparent as well as facilitating tax payment and tax procedures; and*
- v. *Applying uniform tax rates for goods with the same nature, composition, use and technical features; the rates of import duties decline from finished products to raw materials and vice versa for export duties.*

To protect domestic production, Chapter III of Law No. 107 specifies conditions and application principles of anti-dumping duties, countervailing duties and safeguard duties. The Ministry of Industry and Trade decides on the application of such duties while the Ministry of Finance regulates the declaration, collection, payment and refunds of such duties. The National Assembly decides the application of other safeguard measures when necessary.

The list of goods entitled to duty exemption in Article 16 is expanded with new items, such as:

- i. *Goods within the duty-free limit for people entering or leaving the country and goods imported for sale at duty-free shops;*
- ii. *Duty-free goods as provided in international treaties to which Vietnam is a signatory;*

- iii. *Goods with eligible duties or with a value lower than the minimum threshold;*
- iv. *Raw materials, supplies and components imported to process exports, finished products imported to be used in domestically assembled processed products and processed products for export;*
- v. *Raw materials, supplies and components imported to produce exports or to be used in preferential projects;*
- vi. *Small quantities of non-commercial goods like samples, photos, films, sample models and promotional publications;*
- vii. *Seeds, certain species of animals, fertilizers and pesticides allowed to be imported by the competent authorities;*
- viii. *Certain items for shipbuilding projects or facilities of preferential lines and industries;*
- ix. *Machinery, equipment, raw materials, supplies, components, parts and spare parts for money printing and minting;*
- x. *Raw materials, supplies and components required for manufacturing information technology products, digital content and software;*
- xi. *Goods imported or exported for the purpose of environmental protection;*
- xii. *Imports for education, scientific research, technology development, technology incubation development, incubation of science and technology enterprises and technology innovation; and*
- xiii. *Imports and exports for ensuring social security, disaster relief, plague relief, and other special circumstances.*

Law No. 107 took effect on 1 September 2016.

## 1.2 Used Equipment Easier to Import under New Circular

On 13 November 2015, the Ministry of Science and Technology issued Circular 23/2015/TT-BKHHCN (“Circular 23”), on the importation of used machinery, equipment and technology (“Used Equipment”). Circular 23 replaces Circular 20/2014/TT-BKHHCN (“Circular 20”), which was criticized by industry representatives for hindering manufacturing investments in Vietnam.

### 1.2.1 Fewer Requirements for Importing Used Equipment

Circular 23 removes the “remaining value” criteria of Circular 20, and now permits the importation of Used Equipment that:

- i. *is less than 10 years; and*
- ii. *complies with the National Technical Regulations (QCVN), or National Standards (TCVN) of Vietnam, or otherwise meets the safety, energy saving and environment protection requirements set by the G7 countries.*

Additionally, Circular 23 now provides an exemption for otherwise covered Used Equipment (equipment not meeting (1) and (2) above) - if the Used Equipment was listed in an approved FDI project application. This change was made in response to requests from the business community and is intended to facilitate the relocation of production machines and equipment to Vietnam by foreign investors.

Although the National Technical Regulations apply to all imports, the wording of Circular 23 could be interpreted to mean that Used Equipment listed on approved FDI project applications need not comply with these regulations - possibly creating a conflict with Vietnam's goods quality regulations.

### 1.2.2 Simplified Importation Dossier Requirements

Under Circular 23, the technical documents that may be used to identify the year of manufacture of Used Equipment are: (1) a third party testing certificate, or (2) a confirmation letter from the manufacturer. The testing certificate must be issued within 6 months before the date of importation.

### 1.2.3 Importation Procedures Aligned with Vietnam's New Customs Regime

In accordance with Vietnam's customs procedures, inspections to ensure compliance with Circular 23 will take place after customs clearance has occurred. Although this may help expedite customs clearance, Used Equipment may be deemed non-compliant with Circular 23 after the consignment has been released from customs and thus will be prohibited from being distributed in Vietnam. This process creates uncertainty and risk for investors in the manufacturing sector.

Circular 23 took effect on 1 July 2016.

## 1.3 Used IT Products to Become Harder to Import

On 29 October 2015, the Ministry of Information & Communications ("MIC") issued Circular 31/2015/TT-BTTTT ("E-waste Circular") replacing Circular No. 11/2012/TT-BTTTT ("Circular No. 11") which promulgates a list of used IT products banned from importation into Vietnam. The intent of the E-waste Circular is to prevent the importation of harmful e-waste into Vietnam where it may be recycled in the informal economy and disposed of improperly, causing environmental harm.

### 1.3.1 Fewer exceptions for importation

Generally speaking, unless an exemption applies, all used electronic products or parts are banned from being imported by the E-waste Circular. Similar to Circular No. 11, Annex 1 of the E-waste Circular contains a comprehensive list of common used IT products banned from importation. The E-waste Circular, however, removes a considerable number of the exemptions previously contained in Circular No. 11.

Accordingly, as from 15 December 2015, there are only the following two exemptions to the E-waste Circular's importation ban:

- i. imports for scientific use;*

- ii. *imports for processing, recycling, repair for foreign merchants (but must then be re-exported).*<sup>1</sup>

The MIC may approve or reject applications for these exemptions on a case-by-case basis. Under the E-waste Circular, the MIC has seven (Exemption 1 above) or fifteen (Exemption 2 above) working days to review, and decide upon, a complete and valid application dossier for these exemptions.

### 1.3.2 Heavy paperwork for Exemption 2

In order to be eligible for Exemption 2, companies must go through rather heavy, and somewhat unspecific, paperwork by submitting a dossier to the MIC which includes, amongst others:

- i. *the applicant's capacity statement (including production line, equipment sufficient to provide the processing service for the relevant products; and personnel and financial capacity to carry out the service); and*
- ii. *a letter from the local Department of Natural Resources and Environment confirming that the applicant's plan to handle waste resulted from the processing activities is environmentally sufficient.*

This Circular took effect on 15 December 2015.

### 1.4 New Circular on Importation of Medical Devices

On 12 October 2015, the Ministry of Health ("MOH") issued Circular No. 30/2015/TT-BYT on the Importation of Medical Devices ("Circular No. 30" or the "Circular").

The definition of medical devices under Circular No. 30 is slightly different from the definition of medical devices in the ASEAN Agreement on Medical Device Directive ("AMDD") of which Vietnam is a member.

In the AMDD, the definition of medical devices, among other things, includes in vitro reagent and calibrator .

However, in Circular No. 30, the term of in vitro reagent and calibrator was replaced by the term "in vitro diagnostic chemical".

Circular No. 30 specifies that in vitro diagnostic chemical means reagent, diagnostic chemical, washing solution used for medical devices, however, it excludes in-vitro diagnostic biologicals.

Currently, in-vitro diagnostic biologicals are required to be registered for circulation under the MOH's Circular No. 44/2014/TT-BYT regarding drug registration.

Circular No. 30 took effect on 30 November 2015 and replaced Circular No. 24/2011/TT-BYT.

### 1.5 Decision regarding trade policy on duty-free goods

On 11 September 2015, the Prime Minister issued Decision No. 39/2015/QĐ-TTg on amending and supplementing trade policies on duty-free goods

<sup>1</sup> Articles 4 and 5 of the E-waste Circular.

stipulated in Decision No. 24/2009/QĐ-TTg dated 17 February 2009 and Decision No. 44/2013/QĐ-TTg dated 19 July 2013.

After completing check-in procedures, individuals entering the country are allowed to buy duty-free goods only within controlled and supervised areas in the airports. To buy duty-free goods, passengers are required to show their passports and boarding-passes.

As of 01 November 2015, airlines established and are operating in accordance with Vietnamese law are allowed to sell duty-free goods on their flights.

The maximum quantity of duty-free goods that can be bought is stipulated under the Prime Minister's Decision No. 31/2015/QĐ-TTg dated 04 August 2015.

This Decision took effect on 11 September 2015.

#### 1.6 Warranty period under import contract

On 4 September 2015, the General Department of Customs issued Official Letter No. 8086/TCHQ-GSQL detailing the implementation of Article 13.5 of Decree 187/2013/ND-CP dated 21 January 2015. Accordingly, the warranty period under import contracts shall be determined in the following ways:

- In accordance with the contract provisions/annexes, if the warranty period is regulated in the contract provisions/annexes.
- In accordance with official warranty information on the website of the Exporter, if, according to the contract, the warranty period is uploaded on the Exporter 's website.
- License issued by the Ministry of Industry and Trade is required in the remaining situations.

#### 1.7 Requirement to obtain a certificate of satisfying all conditions of environmental protection when importing scraps

On 9 September 2015, the Ministry of Natural Resources and Environment issued Circular No. 41/2015/TT-BTNMT on environmental protection in importing scraps for use as production materials.

Under this Circular, any organization or individual directly using imported scraps as production materials with the quantity from 50 tons/year of copper, nickel, aluminum, zinc scrap, etc., or 100 tons/year of silk waste, scrap glass, waste glass, etc., or 200 tons/year of paper or recoverable paperboard, plastic scraps, etc. (as specified in Appendix 1 of the Circular), and any organization or individual receiving entrustment of import on behalf of the organization or any individual directly using imported scraps as production materials must conduct the procedure of obtaining a certificate satisfying all conditions of environmental protection in the importation of scraps for use as production materials with the Ministry of Natural Resources and Environment as set forth in Article 3.1 of this Circular. Other cases shall conduct this procedure at a provincial-level Department of Natural Resources and Environment as set forth in Article 3.2 of this Circular.

The time-limit for granting the certificate is 40 working days by the Ministry of Natural Resources and Environment, and 30 working days by a provincial-level Department of Natural Resources and Environment. The certificate is valid for 02 years from the date of being granted.

This Circular also details the requirements of environmental protection in case of inspection, customs clearance of imported scraps, certification of satisfying technological regulations on the environment applicable to scraps imported for use as production materials and the responsibility for environmental protection when importing scraps for use as production materials.

This Circular took effect on 27 October 2015 and replaced Inter-Ministerial Circular No. 34/2012/TTLT-BCT-BTNMT dated 15 November 2012.

## **1.8 Higher Taxable Base for Imported Goods under New Decree on Special Consumption Tax**

The Government promulgated Decree No. 108/2015/ND-CP on 28 October 2015 (“Decree No. 108”) to implement the Law on Special Consumption Tax (“SCT”) which takes effect from 1 January 2016 and replaces Decree No. 26/2009/ND-CP as amended by Decree No. 113/2011/ND-CP (“Decree No. 26”). Decree No. 108 effectively increases the taxable base for imported goods and tightens the margin in selling prices between manufacturers, importers and distributors.

### **1.8.1 Increase of the taxable base of imported goods**

Prior to the effectiveness of Decree No. 108, the taxable price of imported goods is the dutiable price plus import duty.

From 1 January 2016, however, imported goods, except for gasoline, will be subject to SCT at two stages. When goods are imported, they will be subject to SCT at the import stage which is assessed based on dutiable price plus import duty (“import SCT”). When importers sell the imported goods, SCT will be assessed again based on the selling price before value added tax, environmental tax (if any) and SCT (“distribution SCT”).

Importers can deduct import SCT already paid against distribution SCT to arrive at the SCT amount payable upon selling imported goods. Deduction of import SCT will be further detailed in a coming circular by the Ministry of Finance.

Effectively, imported goods, except for gasoline, will be ultimately subject to SCT based on the importers’ selling price. This reflects the Government’s aim to unify the taxable price for both imported goods and locally produced goods.

### **1.8.2 Tightening the margin in selling prices between manufacturers and distributors**

Generally, the selling price of manufacturers/importers will be the taxable price at the distribution stage. According to Decree No. 108, however, the taxable price will be subject to stricter margins than those in the current regulations, particularly:

- i. *For importers (except for automobiles under 24 seats and gasoline), manufacturers (except for automobiles under 24 seats) selling imported goods via their distributors, the taxable price is the selling price which must not be 7% lower than the average selling price of the distributors. This current margin is 10%.*
- ii. *For imported automobiles under 24 seats, the taxable price is the importers' selling price which must not be 105% lower than the import cost. The import cost includes the dutiable price, import duty and import SCT.*
- iii. *For automobiles under 24 seats manufactured or assembled locally, the taxable price is the manufacturers' selling price which must not be 7% lower than the average selling price of the distributors. This current margin is 10%. The average selling price of distributors excludes prices for additional equipment or options as per customers' requests.*

If the selling price of manufacturers/importers is lower than the stipulated margins, the taxable price will be determined by the tax authorities.

#### 1.9 Tax applicable to baggage, movables, gifts, donations and sample goods

Decision No. 31/2015/QD-TTg was issued on 4 August 2015 by the Prime Minister on the allowance of baggage, movables, gifts, donations and sample goods that qualify for tax exemption consideration and non-taxable status.

Decision No. 31/2015/QD-TTg specifies allowance of baggage carried by passengers that enter into Vietnam through border checkpoints; allowance of imported movables; allowance of gifts, donations and sample goods issued by overseas organizations or individuals to Vietnamese organizations and individuals and vice versa.

Gifts and donations that qualify for tax exemption under Decision No. 31/2015/QD-TTg are those that fall outside of the list of goods subject to import and export ban and temporary suspension, as well as the list of excisable goods (exclusive to those serving the purpose of security and national defense) in accordance with laws.

Gifts and donations given by foreign organizations or individuals to Vietnamese individuals, and those given by Vietnamese organizations or individuals to foreign individuals that have hold a value of less than VND2 million, or more than VND2 million but on which the total amount of tax liability is less than VND200,000, shall be exempted from export and import duty as well as value-added tax.

Gifts and donations given by foreign organizations or individuals to Vietnamese organizations, and those given by Vietnamese organizations or individuals to foreign organizations with the value of less than VND30 million shall be entitled to export and import exemption consideration and exempted from value-added tax.

Gifts and donations which are emergency medications, medical equipment given to persons with serious illnesses or those who suffer from disasters or accidents, and have the value of less than VND10 million shall be exempt from all types of tax.

Goods being sample products of Vietnamese organizations or individuals consigned to overseas individuals, and those consigned by overseas organizations or individuals to Vietnamese individuals with the value of less than VND1 million or more than VND1 million but with total tax liability sum of less than VND100,000 shall be exempt from customs duty.

Goods being sample products of Vietnamese organizations or individuals consigned to overseas individuals, and those consigned by overseas organizations or individuals to Vietnamese organizations with the value of less than VND30 million shall be entitled to customs duty exemption consideration.

Decision 31/2015/QD-TTg took effect on 1 October 2015 and abolished Article 4.1 of the Prime Minister's Decision No. 210/1999/QD-TTg, dated 27 October 1999, on several policies that apply to Vietnamese expatriates.

#### 1.10 Promulgation of the special preferential import tariff schedule under the Vietnam–Korea Free Trade Agreement for the period of 2015-2018

On 16 December 2015, the Ministry of Finance issued Circular No. 201/2015/TT-BTC on the promulgation of the special preferential import tariff schedule under the Vietnam–Korea Free Trade Agreement for the period of 2015-2018 ("**Circular No. 201**").

Accordingly, in order for special import tariff rates ("**VKFTA**") to be applied, goods must fulfil the following requirements:

- Listed in the Schedule attached with Circular No. 201;
- Imported from Korea into Vietnam;
- Directly transported from Korea into Vietnam pursuant to the regulations of the Ministry of Industry and Trade; and
- Meet the rules of origin regulated by the Vietnam-Korea Free Trade Agreement and possess the KV Certificate of Origin pursuant to the regulations of the Ministry of Industry and Trade.

Circular No. 201 also regulates the conditions on applying special preferential tariff rates for (i) goods from non-tariff areas and (ii) goods manufactured at the Kaesong Industry Zone, reimported into Korea and exported into Vietnam.

Circular No. 201 took effect on 20 December 2015.

#### 1.11 Decision on procedures of granting import licenses online with respect to certain goods on the National Single Window system

On 19 January 2016, the Ministry of Industry and Trade issued Decision No. 280/QD-BCT on the procedures of granting import licenses online with respect to some goods administered by the Ministry of Industry and Trade.

Pursuant to the Procedures attached with the Decision, the granting of licenses online shall apply to (i) ozone-depleting chemicals, and (ii) motorbikes with high engine displacement.

The procedures for requesting a license are as follows:

- Step 1: Create an account on the Vietnam National Single Window website at the address, <https://vnsww.gov.vn/>.
- Step 2: Fill in and send the dossier which includes available forms on the website and required documents and/or vouchers in electronic format through the Internet.
- Step 3: The Ex-import Agency notifies whether a license will be granted after 5 working days from the receipt of the valid dossier.

The Decision took effect on 01 February 2016

## 1.12 Circular on selling duty-free goods

On 25 December 2015, the Ministry of Finance issued Circular No. 207/2015/TT-BTC amending and supplementing Circular No. 148/2013/TT-BTC dated 25 October 2013 together with Decision No. 24/2009/QĐ-TTg dated 17 February 2009 and Decision No. 44/2013/QĐ-TTg dated 19 July 2013.

This Circular amends some regulations on the responsibilities of Customs Sub-Departments in managing and doing business in duty-free goods.

Circular No. 207 supplements regulations on the responsibilities of the customs authority, particularly for selling duty-free goods to customers on international flights coming into Vietnam. The customs authority must supervise all goods which are loaded on carts and issue a Letter of Delivered/Received Goods as prescribed in Annex 1 of this Circular. Responsibilities include supervising carts, supervising remaining goods from international flights, and checking and confirming money and foreign currency amounts. The Customs authority must stop business activities if duty-free shops do not fulfil all regulatory requirements.

When selling goods, vendors must request that the buyer (excepting flight attendants and airline crew) present his/her passport and boarding pass, while also inputting the following information into the computer:

- full name of the seller according to the passport/laissez-passer;
- passport/laissez-passer number;
- the flight number and flight date on the boarding pass;
- the names and units of goods must be consistent with those on the import declaration; and
- quantity and value

If an outgoing passenger buys duty-free goods with a total value over the limit on the currency used for buying, the buyer shall present a paper proving the origins of the currency as prescribed by the State Bank of Vietnam, and include 01 photocopy of the paper proving its origins.

Circular No. 207 took effect on 10 February 2016.

### 1.13 Registration procedures for the List of Imported Goods and the List of Temporarily Imported then Re-Exported Goods of Foreign Contractors in the Construction Sector

On 30 December 2015, the Ministry of Industry and Trade ("MOIT") issued Circular No. 52/2015/TT-BTC detailing on registration procedure of the List of Imported Goods, Temporarily Imported then Re-Exported Goods of Foreign Contractors in the Construction Sector.

Accordingly, foreign contractors can choose between two means of registration:

#### 1.13.1 Direct registration with the MOIT or registration by post: Dossiers required for this means of registration include:

- i. *the registration form;*
- ii. *List of Imported Goods or List of Temporarily Imported then Re-exported Goods;*
- iii. *agreements between foreign contractors and the investors/project owners, if the foreign contractor registered the function of the imported goods as "for construction"; and*
- iv. *the foreign contractor's operational license in the construction sector. The MOIT will issue its approval within 05 working days from the date it received the complete dossiers.*

1.13.2 Electronic registration: To execute this means of registration, foreign investors are required to register for (a) the use of digital signatures under Vietnamese law; and (b) the use of an account in the MOIT's online system. Similar to the procedure of registration by post, approval will be granted within 05 days from the receiving date of complete dossiers.

This Circular took effect on 12 February 2016 and repealed Circular No. 15/2011/TT-BTC dated 30 March 2011.

### 1.14 Clarification of numerous regulations on customs procedures, supervision and inspection, as well as on export tax, import tax, and tax administration applied to exported and imported goods

On 8 December 2015, the Ministry of Finance issued Official Letter No. 18195/BTC-TCHQ to units which are under the purview of the General Department of Customs, clarifying Circular No. 38/2015/TT-BTC on customs procedures, customs supervision and inspection, export tax, import tax, and tax administration applied to exported and imported goods. The notable provisions should be as follows:

With respect to imports which are sea transport vehicles, the declarant can choose either to carry out the procedures for bringing in such vehicles first and then the importing procedures or both procedures at the same time.<sup>2</sup>

Upon declaration of goods transported under the customs' supervision as in Articles 50 and 51 of the Circular, the owners of the container freight station

<sup>2</sup> Article 1, Official Letter No. 18195/BTC-TCHQ.

and air logistics services must be customs agents in accordance with Article 5.5 of Decree No. 08/2015/ND-CP.<sup>3</sup>

The location commencing customs procedures for goods delivered to and dispatched from free trade zones within border economic zones for the purpose of warranty and repair shall be the customs department in charge of the respective free trade zone.<sup>4</sup>

#### 1.15 Circular guiding the export and import of used information technology products

On 29 October 2015, the Ministry of Information and Communication issued Circular No. 31/2015/TT-BTTTT guiding a number of articles of Decree No. 187/2013/ND-CP applicable to the export and import of used information technology products.

Accordingly, formulation principles for the list of products banned from import shall be based on the List of Products and the HS Codes under the export tariff and preferential import tariff, as well as according to the development of information technology and other legal provisions for the specific period of time.

Further, the Ministry of Information and Communications shall consider permitting the import of articles on the List for Scientific Research (including being the target of scientific research; being samples for the design, as well as research and development of products and testing in production activities).

Recycling and repair of used information technology products on the List of Products Banned from Import for Foreign Traders shall meet the requirements stipulated by Government Decree No. 187/2013/ND-CP, dated 20 November 2013.

This Circular took effect on 15 December 2015 and replaced Circular No. 11/2012/TT-BTTTT.

#### 1.16 Circular providing for provisions regarding the import of medical equipment

On 12 October 2015, the Ministry of Health issued Circular No. 30/2015/TT-BYT ("**Circular No. 30**") providing for provisions regarding the import of medical equipment.

Accordingly, the issue of obtaining an import permit for medical equipment ("**import permit**") only applies to imported medical equipment that is included in the List specified in this Circular. Medical equipment not included in the permissible List may be imported without an import permit but must still provide a dossier to trace its origin and determine the quality management of the medical equipment as prescribed by law.

<sup>3</sup> Article 2, Official Letter No. 18195/BTC-TCHQ.

<sup>4</sup> Article 5, Official Letter No. 18195/BTC-TCHQ.

In addition, authorization, dossiers and procedures for the issuance and modification of import permits are also stipulated in this Circular. Modification of content of an import permit is allowed in cases where the import permit is still valid but its content have changed. However, the duration of an import permit may not be modified.

This Circular took effect on 30 November 2015.

#### 1.17 Circumstances that enable the importation of used information technology products listed under import prohibition

On 6 May 2016, the Prime Minister issued Decision No. 18/2016/QD-TTg regulating the circumstances, conditions, criteria and procedures under which the importation of goods shown on the list of used information technology products under import prohibition may be considered and approved for importing.

##### 1.17.1 Necessary circumstances for approving prohibited products to be imported include the following:

- i. *Used information technology goods that are relocated as means of production within one single organization;*
- ii. *Used information technology goods that are imported to create devices that control, operate and inspect activities in one or all parts of a system or production line;*
- iii. *Used information technology goods that are imported as a direct part of software production, businesses outsourcing through informational technology and/or data processing devices for foreign partners;*
- iv. *Used specialized information technology products that are imported;*
- v. *Expired information technology goods which are being re-imported after being repaired overseas repair; and*
- vi. *Refurbished goods or components of a production that are imported to replace or repair those being used domestically.*

##### 1.17.2 Authority to permit importation of products under the import prohibition list belongs to the following authorities:

- i. *The Minister of Information and Technology shall have the authority to approve the importation of products under the import prohibition list pursuant to the circumstances as defined in Article 4 of this Decision; and*
- ii. *The Prime Minister shall determine the importation of products under the import prohibition list outside of the circumstances defined in Article 4 of this Decision.*

### 1.17.3 Procedures of approval for importation of products under the import prohibition list:

- i. *An application for importation of products under the import prohibition list shall be sent by post or by hand to the office of the Ministry of Information and Communications;*
- ii. *If the importer provides insufficient or invalid documentation, the Ministry of Information and Communications shall, in three (3) working days, notify the importer of its demand for supplementations in writing; and*
- iii. *Within five (5) working days upon its receipt of full and valid documents, the Ministry of Information and Communication shall grant approval in writing; if the application is rejected, the Ministry of Information and Communication shall provide its reasoning and rationale in writing.*

This Decision took effect on 1 July 2016.

### 1.18 Stricter sanctions on administrative violations and coercive implementation of administrative decisions in the customs sector

On 26 May 2016, the Government promulgated Decree No. 45/2016/ND-CP, amending and supplementing a number of articles in Decree No. 127/2013/ND-CP regarding sanctions on administrative violations and coercive implementation of administrative decisions in the customs sector.

Firstly, Decree No. 45 provides amendments and supplements to Article 4 with specific forms of sanctions that apply when individuals or organizations commit administrative violations in the customs sector. Decree No. 45 also provides for additional penalties, such as confiscating material evidence along with normal sanctions depending on the characteristics and level of the administrative violation in question, as well as methods to remedy the consequences that apply along with the sanctions and additional penalties.

Decree No. 45 also provides amendments and supplements to Article 5 regarding the circumstances in which sanctions of administrative violations in the customs sector do not apply, Article 6 regarding sanctions on violations pertaining to the deadline to declare tax records as well as customs procedures and Article 10 regarding sanctions on administrative violations pertaining to customs checks and inspection regulations, as well as others.

Decree No. 45 further provides supplementation to Article 16 in Article 16a, specifying sanctions pertaining to violating import management and/or export procedures at harbors, warehouses and dumps.

Article 19 of Decree No. 127 is supplemented by Articles 19a and 19b, specifying the authority of Borderland Security and the Coast Guard.

This Decree takes effect on 1 August 2016.

### 1.19 Updates on customs duties

On 17 November 2015, the Ministry of Finance issued Circular No. 184/2015/TT-BTC, regulating on the procedures for the declaration and

guarantee of taxes, tax collection and payment, delayed payment interests, fines, charges, fees, and other revenues for imported/exported or transited goods and means of transport. This Circular consists of 3 Chapters and 31 Articles with the following notable points:

1.19.1 Firstly, this Circular clarifies the identification of tax payment date:<sup>5</sup>

- i. *In respect to tax payment by electronic methods: tax payment date is identified when the tax payer commences tax payment through the electronic transaction, which is confirmed successful by the Core Banking system;*
- ii. *In respect to direct tax payment: tax payment date is identified when the State Treasury or the respective bank confirms the paid-in tax amounts of the tax payers.*

1.19.2 Secondly, this Circular regulates on the location, forms, methods of tax and fee payment:<sup>6</sup>

- i. *Tax payers shall pay taxes and fees at the State Treasury or banks;*
- ii. *Tax payers and customs declarer can choose to pay taxes, charges, fees and other revenues by cash or other payment methods without cash;*
- iii. *Tax payers for imported/exported goods pay taxes through electronic transactions or directly by cash.*

1.19.3 In addition, this Circular also guides the tax payment through collection coordinating banks:<sup>7</sup>

- i. *Tax payers for imported/exported goods shall declare related information to each payable amount of money on the list of tax payment or commence payment declaration on the electronic Customs postal sending to branches, trading points of the collection coordinating banks for tax payment or to require tax payers to deduct and remit payments;*
- ii. *In case tax payers for imported/exported goods use the electronic transaction channels of banks, they shall sign onto the tax collection and payment program for the purpose of tax declaration.*

The Circular took effect on 01 January 2016 and replaced Circular No. 126/2014/TT-BTC.

1.20 Amendments of the preferential import tax rate applicable to numerous goods in the preferential import tariff

On 21 January 2016, the Ministry of Finance issued Circular No. 16/2016/TT-BTC amending the preferential import tax rate applicable to numerous goods included in Classes 27.07, 29.02, 39.02 in the preferential import tariff.

Accordingly, the tax rate (%) is regulated as follows:<sup>8</sup>

<sup>5</sup> Art 4 Circular No. 184/2015/TT-BTC

<sup>6</sup> Art 16, Circular No. 184/2015/TT-BTC

<sup>7</sup> Art 17, Circular No. 184/2015/TT-BTC

- benzene (01%) and xylenes (01%) (Class 27.07: oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents);
- benzene (01%), xylenes (00%) and p-xylenes (01%) (Class 29.02: cyclic hydrocarbons);
- polypropylene (00%), dispersion form (01%) and other (01%) (Class 39.02: polymers of propylene or of other olefins, in primary forms).

In addition, this Circular also amends and supplements some provisions in respect to codes and the specific preferential import tax rate applicable to numerous groups of goods and goods as stipulated in Part II, Appendix II of the preferential import tariff attached with Circular 182/2015/TT-BTC.<sup>9</sup>

This Circular took effect on 06 March 2016.

#### 1.21 Tax management regarding traders at border marketplaces, border gate marketplaces and marketplaces in border gate economic zones

On 31 December 2015, the Ministry of Finance issued Circular No. 218/2015/TT-BTC on the policy and tax management regarding traders at border marketplaces, border gate marketplaces and marketplaces in border gate economic zones pursuant to Decision No. 52/2010/QĐ-TTg dated 20 October 2015 of the Prime Minister ("**Circular No. 218**").

Accordingly, traders conducting business at border marketplaces, border gate marketplaces and marketplaces in border gate economic zones must use invoices as follows:

Whenever selling any goods of which the value is more than VND200,000, the seller must issue an invoice and give it to the purchaser. The seller takes the responsibility for the origin of the goods. In case the purchaser does not take the invoice or provide his/her name, address and/or tax code, the seller still has to make an invoice in which it is written "the purchaser does not take the invoice" or "the purchaser does not provide his/her name, address and/or tax code".

Circular No. 218 took effect on 14 February 2016.

#### 1.22 Import and tax rates for implementation of bilateral trade agreements between Vietnam and Laos

On 31 December 2015, Circular No. 216/2015/TT-BTC was issued providing guidance on import and tax rates for implementation of bilateral trade agreements between Vietnam and Laos.

In its Annex 1, this Circular stipulates a list of goods originating from Laos imported into Vietnam that will enjoy a tax reduction of 50% under the ASEAN Trade in Goods Agreement ("**ATIGA**"). Additionally, in cases

<sup>8</sup> Article 1, Circular 16/2016/TT-BTC

<sup>9</sup> Article 2, Circular 16/2016/TT-BTC

where the export tariffs in the ATIGA are higher than the tariff regulations in the Most Favoured Nation (“**MNF**”) Rules, imported goods will be subject to a 50% tax reduction under the MNF.

In Annex 2 of the Circular, a list is provided regarding imported goods originating from Laos that are imported into Vietnam which are not eligible to receive import tax incentives.

Where goods originating from Laos are not listed in Annexes 1 or 2, the imported tax duty rate is 0%.

The Circular stipulates that the list of goods originating from Laos when imported into Vietnam shall have 0% of annual duty quotas applied to them.

This Circular took effect on 14 February 2016 and will expire on 03 October 2020; and replaced Circular 36/2012/TT-BTC dated 02/03/2012 guiding imported tax policy with respect to the goods applicable to imported tax duty incentives.

## 2. Corporate Income Tax, VAT, Excise Tax, Personal Income Tax and Fees

### 2.1 Instruction on CIT incentives for newly established enterprises in industrial parks

On 5 May 2016, Official Letter No. 1874/TCT-CS was issued by the General Department of Taxation, answering questions regarding Corporate Income Tax (“**CIT**”) incentives for enterprises established from investment projects in industrial parks being granted investment permits before 1 January 2014 (excluding industrial parks that have favorable socioeconomic conditions).

Depending on the time when such enterprise entered into operation and began generating turnover, enterprises shall be entitled to enjoy CIT incentives in new investment projects if they meet certain requirements as follows:

- If the firm in question operated and generated turnover in the taxable period of 2014, it must meet the requirements regulated in item a, Clause 5, Article 18 of Circular No. 78/2014/TT-BTC and Article 6 of Circular No. 151/2015/TT-BTC; and
- If the firm operated and generated turnover in the taxable period of 2015 and onwards, it must meet the requirements regulated in Clause 2, Article 13 of Circular No. 96/2015/TT-BTC and Article 6 of Circular No. 151/2015/TT-BTC.

### 2.2 More specific guidance on VAT declaration and CIT incentives

On 5 February 2016, in order to better guide the regulations laid out in Decree No. 111/2015/ND-CP, dated 3 November 2015, the Ministry of Finance issued Circular No. 21/2016/TT-BTC providing for guidance on value added tax (“**VAT**”) declaration and corporate income tax (“**CIT**”) incentives as set

forth in the above mentioned Decree in connection with the development of supporting industries.

The Circular sets out clear guidance on the scope of governing, application subjects, how to declare VAT, tax declaration dossiers and CIT incentive rates applied to each type of supporting industrial products.

Regarding the scope of governing, this Circular provides for guidelines on declaration of VAT and CIT incentives with respect to those projects producing supporting industrial products as specified under the list of priorities supporting industrial products for development issued under Decree No. 111/2015/ND-CP.

This Circular also applies to: (i) organizations and individuals producing supporting industrial products under the above-mentioned list, and (ii) tax authorities and other related agencies, organizations and individuals.

Accordingly, any organization producing supporting industrial products in the above mentioned list in the territory of Vietnam may perform a VAT declaration on revenue quarterly regardless of the amount of revenue. This form of quarterly VAT declaration also applies in cases where a taxpayer has generates revenue from supporting industrial products as well as revenue from other production and business activities.

Particularly for individuals generating revenue from supporting industrial products under the above stated priority list, tax declarations must be made on an annual basis and VAT payments must be made on a quarterly basis. Where an individual taxpayer generates revenue during each interval of time from supporting industrial products under the priority list, such a taxpayer may choose to declare and pay VAT at each interval or on a monthly basis.

CIT incentives are applied to an enterprise's income generated from the implementation of projects producing supporting industrial products since 1 January 2015 that meet the conditions stipulated in Law No. 71/2014/QH13, dated 26 November 2014, Amending and Supplementing a Number of Articles of the Laws on Taxes and guiding documents granted by competent authorities such as the Certificate of Preference on Production of Supporting Industrial Products (the "**Certificate of Preference**"). This Certificate shall be the basis for applying for CIT incentives. Regarding the incentive rate, the starting point for applying incentives and the forwarding of incentives shall comply with the provisions of laws on corporate income tax.

The formalities and procedures for certification and post-inspection of the projects producing supporting industrial products under the above list shall be implemented in compliance with the provisions of Circular No. 55/2015/TT-BCT, dated 30 December 2015, of the Ministry of Industry and trade.

In order to enjoy CIT incentives as prescribed, if an enterprise performs many manufacturing and business operations, it must separately determine the

income generated from projects producing supporting industrial products on the list of priority for development.

This Circular took effect on 1 April 2016 and the CIT incentives under this Circular apply to the CIT period beginning in the year 2015.

### 2.3 New preferential tax policies to promote information technology growth

Resolution No. 41/NQ-CP was issued by the Government on 26 May 2016 to supplement the execution of Resolution No. 36/NQ-TW encouraging development in the IT sector by applying preferential tax policies to individuals and enterprises working in the IT sector.

Resolution No. 41/NQ-CP states that the following are eligible to receive CIT incentives per the levels applicable to software product manufacturing projects:

- Hi-tech employees working, providing hi-tech services, managing hi-tech operations operating equipment and/or lines used for production of hi-tech products in the IT sector or managing information system safety will be eligible for a reduction of 50% of their personal income tax; and
- Enterprises implementing projects containing digital information content and/or software services or producing key information technological products.

### 2.4 CIT - deductibility of salary expenses for directors of SMLLCs

Official Letter No. 5168/TCT-CS of the General Department of Taxation dated 04 December 2015 provides that salaries and wages of owners of private enterprises or single-member limited liability companies (owned by an individual) and remuneration paid to the founding members, members of the Members' Council or Board of Directors who are not directly involved in directing production and business are non-deductible expenses for determining taxable income.

### 2.5 VAT applicable to specialized machines and equipment for agricultural production

On 15 September 2015, the Ministry of Finance sent out Official Letter No. 12848/BTC-CST to the Departments of Taxation of the provinces and centrally-run cities, and customs departments at the provincial-level, regarding the VAT applicable to specialized machines and equipment serving agricultural production.

Specialized machines and equipment for agricultural production include: tractors, harrowing machines, milling machines, sowing machines, root dozers, field levelling devices, and other specialized machines.

For calculating VAT, the Ministry of Finance specifically defined the term "other specialized machines," which are excluded from VAT, such as: aeration machines, combination harvesters, heating/cooling devices, and sowing trays, etc.

In addition, imported components that are used for assembling specialized machines, and equipment serving agricultural production that adhere to the same HS code as specialized machines and equipment serving agricultural production are also excluded from VAT.

## 2.6 VAT rate of 0% for leasing bonded warehouses services

Official Letter No. 5293/TCT-CS, issued 10 December 2015, states that in case an enterprise provides leasing bonded warehouses services for foreign enterprises to store materials used for processing export goods and such goods are actually exported, then this enterprise shall be entitled to apply for VAT with a rate of 0% if it meets the requirements regulated in Point c, Clause 2, Article 9 of Decree 209/2013/ND-CP.

## 2.7 Policies on VAT, invoices and CIT in money support programs

Official Letter No. 5165/TCT-CS of the General Department of Taxation dated 04 December 2015 asserts that enterprises are to implement money support programs for sale agencies having good sales performance under specific regulations in contracts and commitment documents between enterprises and sale agencies. When sales agencies issue VAT invoices with tax amounts for the enterprises and declare and pay VAT applicable to such invoices, then the enterprises shall be entitled to a VAT refund.

## 2.8 Application of risk management in tax administration

On 21 December 2015, the Ministry of Finance issued Circular No. 204/2015/TT-BTC, which consists of 3 Chapters and 28 Articles, specifying the application of risk management in tax administration.

Risk management will be applied to all major tax administration activities, including: tax registration; tax declaration and payment; tax debts and enforcement of tax administration decisions; tax refunds; tax audits and inspections; management and use of tax documents; other activities during the implementation of tax administration tasks, etc.<sup>10</sup> Accordingly, tax payers are subject to assessment and ranking on risk levels based on certain sets of criteria and indicators developed by the tax authorities,<sup>11</sup> namely to:

- assess the level of tax compliance of tax payers;
- evaluate the rating on risk levels of tax payers;
- select cases for audit of tax registration;
- choose tax declaration dossiers to audit at the tax office;
- clarify tax refund dossiers and select tax payers to supplement the plans for audit and inspection after refund;
- manage tax debt collection and application of enforcement; and
- identify risky cases to supplement the plans for audits and inspection of invoices and other tax documents.

<sup>10</sup> Article 6, Circular No. 204/2015/TT-BTC.

<sup>11</sup> Article 15, Circular No. 204/2015/TT-BTC.

Regarding the assessment of the compliance levels and rating of the risk levels of tax payers, this Circular classifies compliance levels into 03 categories, including: (i) high-compliance, (ii) moderate-compliance and (iii) low-compliance<sup>12</sup>; and rates the risk levels into the following 06 levels (i) very low risk, (ii) low risk, (iii) average risk, (iv) high risk, (v) very high risk, (vi) tax payers in operation for less than 12 months.<sup>13</sup>

This Circular took effect on 04 February 2016.

## 2.9 Resolution on Schedule of Royalty Tax Rates

On 10 December 2015, the Standing Committee of the National Assembly issued Resolution No. 1084/2015/UBTVQH13 providing for the new schedule of royalty tax rates.

Accordingly, the following groups of natural resources are imposed with increased royalty tax rates:

- Metallic mineral group: iron (14%), titan (16%), gold (17%), wolfram and antimony (20%), bronze (15%), manganese (14%), platinum, silver and tin (12%), lead and zinc (15%), rare earths (18%), cobalt, molybdenum, mercury, magnesium and vanadium and other metallic minerals (15%).
- Non-metallic minerals: white marble (15%), sand (15%), sand used for glass-making (15%), soil used for brick-making (15%), granite (15%), coal (12%), etc.
- Natural water group: natural mineral water, natural thermal water and refined natural water, bottled or canned (10%), natural water used for hydropower generation, natural water used for production and business activities (5% for water used for clean water production and 8% for water used for other purposes).

Royalty tax rates imposed on natural forest timber groups are decreased. Specifically, the royalty tax rate for timber from group IV is 18% and for timber from groups V, VI, VII, VIII and for timber of other types is 12%.

The royalty tax rates for the following groups remain unchanged: natural aquatic resources, natural swallows' nests, crude oil, natural gas, and coal gas.

The Resolution takes effect on 01 July 2016 and repeals Resolution No. 712/2013/UBTVQH13 dated 16 December 2013.

## 2.10 Guidance on excise tax

Circular No. 195/2015/TT-BTC dated 24 November 2015 on guiding the implementation of Decree No. 108/2015/ND-CP detailing and guiding the implementation of some articles of the Law on Excise Tax and the Law on Amending and Supplementing Articles of the Law on Excise Tax.

<sup>12</sup> Article 16, Circular No. 204/2015/TT-BTC.

<sup>13</sup> Article 17, Circular No. 204/2015/TT-BTC.

Under this Circular, the following commodities are not subject to special excise tax ("SET"): goods imported from abroad into a free trade zone; goods sold to a free trade zone from inland and used within the free trade zone; goods traded between free trade zones, except for goods taken into a free trade zone having residents, passenger cars having fewer than 24 seats and aircrafts serving national defence and security purposes.

#### 2.10.1 Taxable pricing

Where a trader imports goods subject to SET (except for gasoline) and a manufacturer of goods subject to SET sells goods via its financially dependent subsidiaries, the taxable price is the selling price imposed by such subsidiaries. Goods are sold by an agent at prices fixed by the importer (except for importers of gasoline) or manufacturer (the agents only receive commissions). Taxable prices are the prices imposed by the importer or manufacturers inclusive of commissions.

Where an importer of goods subject to SET (except for cars having fewer than 24 seats and for gasoline), or a manufacturer of goods subject to SET (except for cars having fewer than 24 seats) sells such goods to trading establishments, taxable prices are the selling prices imposed by such importer or manufacturer and must not fall below 7% of the average price of products sold by the trading establishments in the month, with regard to an importer, manufacturer, or assembler that sells cars having fewer than 24 seats to trading establishments. With regards to imported cars having fewer than 24 seats, the taxable price is the selling price imposed by the importer, which must not fall below 105% the cost price of an imported car. The taxable price of cars having fewer than 24 seats manufactured or assembled in Vietnam is the selling price of the same type of products manufactured which must not fall below 7% of the average price imposed by the trading establishments. With regard to imported goods, taxable prices at importation is determined as follows: taxable price = price on which import duty is imposed + import duty.

Where an exporter buys goods subject to SET from a manufacturer and sells them domestically instead of exporting, the taxable price is the selling price exclusive of SET, environmental protection tax (if any), and VAT, and is determined as follows: if the selling price (inclusive of VAT, environmental protection tax, and SET) declared by the exporter as the basis for determination of taxable price is lower than 7% of the selling price on the market, the taxable price shall be imposed by a tax authority in accordance with the Law on Tax Administration and its instructional documents.

The taxable prices for goods/services are inclusive of surcharges (if any) imposed by manufacturers or sellers. Taxable prices of tobacco are inclusive of mandatory contributions and a supportive budget specified in the Law on Prevention of Harmful Effects of Tobacco.

#### 2.10.2 Tax refunds, deductions and reductions

For biofuel, the amount of deductible SET in the period depends on the amount of paid SET on a unit of material purchased in the previous period for manufacturing of biofuel.

Payers of SET on goods subject to SET at import (except for gasoline) may deduct SET paid at importation from the SET payable on goods sold domestically. Deductible SET is equal to SET on goods subject to SET that are sold after import, and must not exceed the SET on goods sold domestically. The taxpayer may include SET that remains after deduction because of a force majeure event in expenses when calculating corporate income tax.

This Circular took effect on 01 January 2016 and replaced Circular No. 05/2012/TT-BTC.

## 2.11 Narrowing VAT Refund and Increasing Special Consumption Tax Cost Under Amended Tax Law

The National Assembly has passed a legally-binding amendment to the Law on Value Added Tax, the Law on Special Consumption Tax, and the Law on Tax Administration. The amendment, referred to in this article as “the new Law”, will take effect from July 1, 2016. While the new Law provides a welcome change by reducing the interest rate for late tax payment from 0.05 to 0.03 per cent per day, businesses may still face certain operational issues as discussed below.

### 2.11.1 Narrowing VAT refund

Under the existing law, VAT can be refunded if input VAT is not fully claimed after a 12-month or 4-quarter period. The new Law, however, abolishes this VAT refund, which may create significant cash flow problems for companies that need to carry large inventories and input materials due to the nature of their business. The new rule, therefore, calls for businesses to re-plan their supply chain and inventory levels in order to minimise the cash flow impact due to trapped input VAT.

VAT refunds for new investment projects during pre-operating periods still exist under the new Law. However, it introduces further restrictions whereby VAT refunds will not be allowed if the charter capital of the project is not properly contributed according to the registration, or in cases where the taxpayer fails to meet the operational requirements of its conditional business. VAT refunds will not apply to new investment projects licensed from July 1, 2016 and engaged in the exploitation of natural resources and minerals. Nor will it apply to business in production projects where the value of natural resources, minerals, and power costs account for 51 per cent or more of the cost of goods sold.

VAT refunds for export business under certain cases are still maintained in the new Law but it excludes the cases where goods are imported for export and

where export of goods is not conducted at customs operation zones stipulated by Customs Law.

#### 2.11.2 Increase in Special Consumption Tax for importers

The amendment in the new Law reintroduces changes that were already stipulated in Decree No. 108/2015/ND-CP, which took effect on January 1, 2016 (Decree No. 108). This has raised the issue that such significant changes had been introduced in a decree before being legislated under a law. Specifically, the taxable price of imports is being increased to match the selling price by importers under the new Law and Decree No. 108. Under the previous rule, this price was calculated as the dutiable price plus import duty.

The new Law introduces the taxable price of imports as the importers' selling price and the percentage cap on the difference between the manufacturers'/importers' selling price and the selling price by related distributors.

The new Law aligns the taxable price of imports with Decree No. 108 to the extent that it is the selling price by importers. However, under Decree No. 108 if distributors are dependent units of manufacturers/importers, the taxable price is the selling price by such dependent units. Furthermore, while the percentage cap on the difference between the selling price by manufacturers/importers and the selling price by related distributors applies when distributors are related parties of manufacturers/importers in accordance with the amended Law, this percentage cap applies to transactions between unrelated parties in accordance with Decree No. 108. Such inconsistencies between the new Law and Decree No. 108 need to be addressed in the coming implementation guidelines.

It is expected that the requirement for reference to the average selling price by distributors to determine the taxable price would create significant problems for manufacturers/importers since distributors may not want to provide information on their selling price to manufacturers/importers for reasons of confidentiality. Also, it is practically difficult to have such information on a timely basis for tax reporting purposes.

#### 2.12 The Law on Value Added Tax, Law on Excise Tax and Law on Tax Administration amended and supplemented

On 6 April 2016, the National Assembly promulgated Law No. 106/2016/QH13 ("**Law No. 106**") amending and supplementing a number of articles of the Law on Value Added Tax (No. 13/2008/QH12, amended and supplemented by Law No. 31/2013/QH13), the Law on Excise Tax (No. 27/2008/QH12, amended and supplemented by Law No. 70/2014/QH13) and the Law on Tax Administration (No. 78/2006/QH11, amended and supplemented by Law No. 21/2012/QH13 and Law No. 71/2014/QH13).

##### 2.12.1 Law on Value Added Tax

i. *Articles 5.1, 5.9 and 5.23 of the Law on Value Added Tax are amended and supplemented to exempt the following entities from paying VAT:*

- a) Enterprises and cooperatives buying cultivation, husbandry, aquaculture, and fishery products which have not been processed into other products or which have only been subject to conventional preliminary treatment for sale to other enterprises and cooperatives shall not have to declare and pay VAT and are eligible for input VAT deduction;
- b) Services for the elderly and the disabled; and
- c) Exports made from resources and minerals with the total value of resources, minerals and energy costs exceeding 51% of the products' value.

ii. *Articles 13.1 and 13.2 of the Law on Value Added Tax are amended so that business establishments:*

- a) Are no longer eligible for a VAT refund if input VAT is not fully claimed after at least twelve (12) months or four (4) quarters from the first month or quarter.
- b) Shall be not be entitled to a VAT refund and must forward the tax amounts which were not deducted of the investment project to the next period when: (i) the investment project does not have enough charter capital as registered; the establishment fails to satisfy or maintain the conditions while conducting business in industries and fields requiring conditions; and (ii) the investment project for resources or minerals exploitation with a license from 1 July 2016 or project producing goods with the total value of resources, minerals and energy costs exceeding 51% of the price.
- c) Shall be entitled to a VAT refund on a monthly or quarterly basis if such an establishment exports goods or services in a month or a quarter with an input VAT amount of VND300 million or more which has not been deducted unless such goods are imported to be exported or exporting goods are not exported within a customs controlled area as prescribed by the Law on Customs; the policy of "refund first, inspection later" shall be applied to (i) any manufacturer of exports that does not violate laws on taxation and customs for two consecutive years; and (ii) any taxpayer that is not considered high-risk as prescribed by the Law on Tax Administration.

#### 2.12.2 Law on Excise Tax

Articles 6.1 and 6.2 of the Law on Excise Tax are amended as follows:

- Taxable prices of goods which are sold to commercial business facilities where the seller and the facility have a parent company-subsidary relationship or are both subsidiaries of the same parent company must not be lower than the average price.
- The taxable price of imports is the taxable price for import plus import duty. The excise tax amount paid during the import stage of

such goods shall be deducted when determining the payable excise tax amount for the sale of goods.

- The tax rates applicable to passenger cars have been significantly adjusted, particularly: reducing the tax rates applicable to passenger cars with a cylinder capacity of 2,000 cm<sup>3</sup> or less and increasing the tax rates applicable to passenger cars with a cylinder capacity of 2,500 cm<sup>3</sup> or more. A tax rate of 70% shall be applied to motorhomes from 1 July 2016 to 31 December 2016 and 75% beginning on 1 January 2018.

### 2.12.3 Law on Tax Administration

Article 61 of the Law on Tax Administration is amended to exempt households and individuals having an annual non-agricultural land use tax of VND 50,000 or less from such tax.

The late payment interest rate in Article 106 is reduced from 0.05% to 0.03% per day.

Article 42.3 regulating the time limit for paying taxes on imports and exports shall be repealed on 1 September 2016.

Law No. 106 took effect on 1 July 2016.

### 2.13 Preparation of Value Added Tax (VAT) invoices for customers' deposits when purchasing an apartment

On 13 June 2016, the Department of Taxation in Hanoi issued Official Letter No. 39313/CT-HTr replying to various enterprises' questions regarding the preparation of VAT invoices for customers' deposits when purchasing an apartment.

According to Official Letter No. 39313, when an enterprise receives a customer's deposit before signing the contract in order to make reservations for the purchase of future apartments, if the deposit receipt is not included in the project's implementation schedule or money collection process, the enterprise shall not be required to prepare a VAT invoice.

### 2.14 Registration fee changes

On 24 May 2016, the Ministry of Finance issued Circular No. 75/2016/TT-BTC amending and supplementing Clause 2, Article 1 of Circular No. 34/2013/TT-BTC.

Circular No. 75 supplemented Circular No. 34/2013/TT-BTC to provide on situations that will require registration fee payment. Such situations include: changing names, changing founding shareholders (for joint-stock companies which have founding shareholders), changing shareholders that have initial charter capital (for joint-stock companies without founding shareholders), as well as other situations.

This Circular took effect on 10 July 2016

### 2.15 PIT in the last year for foreign employees under long-term labor contracts

On 17 May 2016, the Department of Taxation of Hanoi issued Official Letter No. 31787/CT-HT regarding the Personal Income Tax ("PIT") applicable to non-resident individuals.

According to Official Letter No. 31787, if a foreign employee is subject to PIT but has resided in Vietnam under 183 days in their last working year due to the long-term labor contract, the PIT-applicable income from this employee for the last year may be declared and paid at the 20% rate applied to non-resident individuals. Additionally, such employee would not be required to settle taxes when leaving Vietnam.

#### 2.16 Tax policies for employees under labor contracts with a term of under three months

On 30 May 2016, the General Department of Taxation issued Official Letter No. 2323/TCT-CS replying to questions about tax policies, including tax policies applicable for employees under seasonal contracts with a term of under three (3) months.

Accordingly, pursuant to Article 5 of Circular No. 62/2009/TT-BTC, and Article 1 of Circular No. 113/2011/TT-BTC, enterprises employing employees under seasonal contracts with terms of under three (3) months shall withhold Personal Income Tax in accordance with the regulated rates. Enterprises employing employees under seasonal contracts with term lengths of three (3) to twelve (12) months shall withhold Personal Income Tax in accordance with a partially progressive tariff.

#### 2.17 Amending and supplementing Circular No. 124/2011/TT-BTC regarding registration fees

On 3 September 2015, the Ministry of Finance issued Circular No. 140/2015/TT-BTC amending and supplementing Circular No. 124/2011/TT-BTC dated 31 August 2011 on guiding registration fees.

According to this Circular, as of 20 October 2015, public buses using green energy are exempt from registration fees. In particular, buses using the following sources of energy will be exempt from registration fees: (i) liquefied petroleum gas; (ii) natural gas; and (iii) electricity. These sources of energy must meet the technological criteria stipulated by the Ministry of Traffic and Transportation.

This Circular took effect on 20 October 2015.

