Baker & McKenzie

Client Alert

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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.

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.

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

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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.

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