



LEGAL, LABOR AND TAX UPDATES

February 2019



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A. NEW LEGAL INSTRUMENT

❖ GOVERNMENT

22/01/2019| Decree No. 05/2019/NĐ-CP on internal audit.

Scope

This Decree prescribes the internal audit carried out by state regulatory authorities, state-owned public service units and enterprises.

Enterprises that have to perform the internal audit shall include the followings:

- Listed companies;
- Enterprises with 50% of their charter capital is held by the State, which are parent companies operating in a parent - subsidiary business model;
- State enterprises which are parent companies operating in a parent - subsidiary business model.

Other enterprises shall be encouraged to perform the internal audit.

Enterprises may hire independent audit bodies legally accredited to render their audit services.

Within duration of 24 months from the entry into force of this Decree, units subject to internal audit requirements as prescribed in Article 8, Article 9 and Article 10 hereof must complete tasks necessary for performing internal audit activities in accordance with this Decree.

(This Decree shall take effect on 01 April 2019)

01/02/2019| Decree No. 14/2019/NĐ-CP amending a number of articles in Decree No. 108/2015/NĐ-CP providing guidelines on the implementation and the amendments of the Law on excise duty

Content:

1. Aircraft used for spraying pesticides, fires extinguishing, filming, photographing and measuring maps shall not be subject to excise tax

“3. Aircraft, cruise ships for the transport of cargo, passengers, tourists, and aircraft used for spraying pesticides, fires extinguishing, filming, photographing, measuring maps serving national defense and security purposes.

Aircraft and cruise ships not serving the transport of cargo, passengers, tourists, or spraying pesticides, fires extinguishing, filming, photographing, measuring maps, serving national defense and security purposes are subject to excise tax according to the Law on excise duty and instructions of the Ministry of Finance. ”

2. Adding the condition for excise tax.

- Payers of excise duty on imported goods subject to excise duty may deduct the excise duty upon importation including the amount paid according to the decisions of tax

imposition of customs agencies, unless penalties for tax avoidance are imposed by the customs authority.

- The amount of deductible excise duty depends on the amount of imported goods subject to excise tax that are sold, and will be deducted upon the total excise duty on goods sold in Vietnam. The non-deductible difference between the excise duty paid at importation and the excise duty on goods sold domestically shall be accounted as deductible expense for CIT.

For bio-petrol products, Decree No. 14/2019/NĐ-CP stipulates that taxpayers manufacture goods subject to excise duty using materials also subject to excise duty shall be able to deduct the excise duty paid for the imported materials (including the amount paid according to the decisions of tax imposition of customs agencies unless penalties for tax avoidance are imposed by the customs authority) or the materials purchased directly from suppliers in Vietnam. The amount of deductible excise duty is equivalent to the excise duty amount of raw materials used to manufacture the goods subject to excise duty.

3. Amendment on the procedures, dossiers, order and competence for excise duty refund for temporarily imported goods for re-export and imported materials for export manufacture

* In case of importing materials subject to excise duty to manufacture goods subject to excise duty and importing goods subject to excise duty, the basis for deduction shall be the receipt for the excise duty paid at importation.

* In case of directly purchase material from domestic suppliers:

- The sale contract, which must show that the goods are directly manufactured by the supplier; a copy of supplier's business certificate (signed and sealed by the supplier);
- Banking payment;
- Excise duty deduction voucher is the purchasing VAT invoice. The excise duty amount the buyer paid for the materials = the excise duty price (x) excise duty rate.

4. Promulgating excise duty declaration, forms to determine the deductible excise duty, and refund requests

(This Decree shall take effect on 20 March 2019)

B. GUIDANCE

+ CUSTOMS

03/1/2019| Official letter No. 79/TCHQ-TXNK on tax policy for imported goods for export

Customs instructed that from 01 September 2016 (according to Decree No. 134/2016/NĐ-CP) organizations or individuals importing goods to manufacture exported goods, yet outsourcing part of or the entire manufacture process, or outsourcing part of the process and retrieve the product to continue manufacturing shall not subject to get tax exempt (*), hence, the imported goods that have been produced or processed by other enterprises are not eligible for import tax exemption (in case the import tax has been paid at the importation, there is no import tax refund).

(Because of not meeting the conditions for ownership or usage rights for production machinery and equipment in accordance with materials, supplies and components imported to produce exported goods.*

Therefore, enterprises manufacturing export should pay attention to **declare the change in usage purpose** for the processing products to limit the import tax risks.

+ GENERAL TAX DEPARTMENT

03/1/2019| Official letter No. 37/TCT-CS on VAT refund

In this official letter, the General Tax Department restated the VAT refund guidance for imported materials for export manufacturing and processing (Official letter No. 12247/BTC-CST dated 05 October 2018) and imported goods for export (Official letter No. 5537/BTC-CST dated 14 May 2018). Accordingly, the VAT refund policy is as follows:

1. For imported materials used for export manufacturing and processing:

- ✓ If the goods are materials, supplies, and components imported for export manufacturing and processing under contracts signed with foreign parties, which have paid VAT at importation, the VAT paid shall be considered as overpaid, and customs shall proceed to refund according to the guidance at Clause 64, Article 1, Circular No. 39/2018/TT-BTC.
- ✓ If the goods are materials, supplies, and components imported for export manufacturing and processing not under contracts signed with foreign parties, the enterprise will have to pay VAT when importation as regulated. When exporting, the goods shall be subject to VAT 0% and the tax authority shall have the VAT refund as prescribed.

Customs, and tax departments shall check the enterprise's dossiers for tax refunds according to regulations.

2. For imported goods then exported

- ✓ From 01 July 2016 to before 01 February 2018;
Pursuant to Clause 6, Article 1, Decree No. 100/2016/NĐ-CP: *“Tax shall **not be refunded in case goods are imported and then exported** outside a customs controlled area according to the Law on Customs and its instructional documents”.*

As the result, during this period, the enterprise shall not receive tax refund for imported goods the exported.

- ✓ From 01 February 2018:
Pursuant to Clause 2, Article 1, Decree No. 146/2017/NĐ-CP: *“In a month (in case of monthly declaration) or quarter (in case of quarterly declaration), **if the input VAT on exported goods/services (including goods that are imported and subsequently exported to non-tariff areas and the goods that are imported and subsequently exported to other countries)** of a business entity remains at least VND 300 million after being offset against, it shall be refunded by month or quarter. If such input VAT is less than VND 300 million, it shall be offset against in the next month/quarter. In case a business establishment has both exported goods/services and goods/services sold domestically and input VAT on exported goods/services that remains at least VND 300 million after being offset against tax payable, **it shall be refunded.**”*

As the result, from 01 February 2018, the enterprise shall be subject to get tax refund.

03/1/2019| Official letter No. 39/TCT-CS on CIT policies

By this Official letter, the Ministry of Finance has clarified **that preprocessed aquatic products** (determined according to the guidance and regulation on VAT) shall not be defined as seafood processing, hence, the enterprise shall not get CIT incentives.

*“In principle, income of cooperatives from **aquaculture activities, and seafood processing** (if they meet the conditions as prescribed) shall be exempted from corporate income tax. In case of **preprocessed aquatic products (in accordance with the VAT regulations)**, the income from this activity shall not get CIT for seafood processing”*

28/1/2019| Official letter No. 310/TCT-DNL 2019 answering inquires from security companies on the implementation of Clause 3, Article 20, Decree No. 20

Pursuant to Clause 3, Article 8, Decree No. 20 on loan interest cost arising when determining CIT:

“3. Taxpayer’s total loan interest cost arising within a specified tax period qualified as a deduction from income subject to corporate income tax shall not exceed 20% of total net profit generated from business activities plus loan interest costs and amortization costs arising within that period.

This regulation shall not apply to taxpayers who are subjects of application of the Law on Credit Institutions and the Law on Insurance Business.”

In according to the regulations on controlling the loan interest for enterprises having associated transactions, this shall not apply to taxpayers who are subjects of application of the Law on Credit Institutions and the Law on Insurance Business. At the same time, the taxpayer’s total loan interest expense shall be deducted when determining CIT on the total interest expense regardless of interest expenses arising from loan transactions with associated parties or independent parties.

The General Tax Department is in the process of receiving, and collecting inquiries and petitions of taxpayers related to the implementation of Decree No. 20 and the provisions of Clause 3, Article 8, Decree No. 20 to report to the Ministry of Finance. During the reporting period, the General Tax Department requests the enterprises to determine the deductible loan interest when determining CIT as regulated.

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