

# Technical Update

## Tax and Legal Services

February 2017



### 1. Corporate Income Tax ("CIT")

- (i) *A taxpayer acquiring assets of a project is eligible to inherit the associated CIT incentives and does not qualify to enjoy CIT incentives as a new investment project ("NIP")*

In accordance with the guidance of Official Letter No. 5391/TCT-CS dated 23 November 2016, in case company A is established in 2005 and granted an investment certificate to develop an expansion investment project ("EIP") B in 2007 and EIP B has neither been completed by 31 December 2008 nor generated revenue in 2009, EIP B is entitled to enjoy the CIT incentive either following the incentive scheme under the provision of prevailing regulations in 2007, or Law 32/2013/QH13 and Law 71/2014/QH13 for the remaining period from tax period 2015.

Where company A transfers a part of EIP B's assets to company C to develop the project, company C is not allowed to enjoy CIT incentives as a NIP. Instead, company C is eligible to inherit the incentives of EIP B as aforementioned.

### 2. Value Added Tax ("VAT") and invoices

- (i) *Certain notable points of Circular 130/2016/TT-BTC addressed by the General Department of Taxation*

On 23 November 2016, the General Department of Taxation issued Notification No. 6294/TB-TCT addressing queries related to Circular 130/2016/TT-BTC. The following points from Notification 6294 are notable:

- Mineral and natural resource products, which are not subject to output VAT upon exportation, must have domestic origin. However, where a company imports coal to use as a material for production and processing of mineral products, the expenses of the coal are considered power expenses to determine the ratio of the mineral value and power cost;
- Where a company transfers an investment project to another party who continuously implements the project to manufacture VAT-liable products, the VAT refund to the former project is not subject to a tax claw-back.

- (ii) *Authorising the payment for a goods and services purchase by an employee, which is settled with an individual credit card, is considered as non-cash payment method*

In accordance with Official Letter No. 5465/TCT-KK dated 25 November 2016, in case a company authorises its employee to make payment for a goods and services purchase with an individual credit card, and this payment method is stipulated in the company's Financial Policy or in the Decision to authorise the employee, then this payment method is considered a non-cash payment for VAT credit and CIT deductibility purposes.

- (iii) *List of non-VAT liable machinery and equipment used for agricultural production, and the solution where a company has declared and paid VAT for such machinery and equipment*

On 22 November 2016, the Ministry of Finance issued Official Letter No. 16659/BTC-CST, containing a list of non-VAT liable machinery and equipment used for animal feed production, and for caring for cattle and poultry. Where a company has declared and paid VAT, or declared and credited VAT on the aforementioned machinery and equipment during the period from 1 January 2015 till 21 November 2015, no revision of VAT declaration is required. However, where a company imported or purchased the machinery and equipment domestically, and already paid the related import VAT or input VAT but sold the machinery and equipment on or after 22 November 2016, then such a company is allowed to offset the settled import VAT / input VAT against the VAT payable for other goods and services.

- (iv) *Entrusted export fee is subject to VAT at 0%*

In accordance with Official Letter No. 5361/TCT-CS dated 21 November 2016, in case a company performs entrusted export services, which is associated with the export of goods, such services are subject to VAT at 0%.

- (v) *Invoice usage for on-the-spot export activity*

In accordance with Official Letter No. 16809/BTC-TCT dated 25 November 2016 of the Ministry of Finance, the type of invoice applicable for on-the-spot export activities shall be as follows:

- From 1 January 2014 to 30 September 2014: a VAT invoice shall be used;
- From 1 October 2014 onwards: a commercial invoice shall be used.

(vi) *Circular 176/2016/TT-BTC supplementing and amending a number articles of administrative penalties on invoicing*

On 31 October 2016, the Ministry of Finance issued Circular 176/2016/TT-BTC supplementing and amending certain articles of Circular 10/2014/TT-BTC on administrative penalty for invoicing incorrectly. Circular 176 takes its effect on 15 December 2016.

### 3. Export duty and import duty

*No tax claw-back imposed on the discrepancy between the actual consumption of material and the material balance per the finalisation report if the customs authority cannot prove the domestic sales*

In accordance with the Official letter No. 9376/TCHQ-TXNK dated 29 September 2016, where an export and processing enterprise ("EPE") imports material to produce goods for export, and incurs a discrepancy between the material balance per the finalisation report and the actual consumption level, the case shall be handled as follows:

- Where the material balance is higher than the balance per the finalisation report, no tax claw-back is imposed;
- Where the material balance is lower than the balance per the finalisation report, and the EPE commits to not selling the material to the domestic market, and the customs authority does not have information to prove domestic sales have occurred, no tax claw-back is imposed. However, the EPE is subject to an administrative penalty in this regard.
- Where the customs authority identifies the difference is a result of domestic sales, the EPE is subject to an import duty and import VAT claw-back, and subject to a penalty for tax evasion.

### 4. Foreign Contractor Tax ("FCT")

(i) *Transfer charge for money remittance to overseas is not subject to FCT*

Following Official Letter No. 209/TCT-DNL dated 17 January 2017 and the concurrent opinion from the State Bank of Vietnam in Official Letter No. 695/NHNN-PC dated 9 February 2017, transfer charges that a foreign bank earns for money transfers leaving Vietnam to be received overseas is considered to be income derived from services provided outside Vietnam. Subsequently, the income a foreign bank receives from OUR, BEN, and SHARE transfer methods are not subject to FCT.

Previously, in accordance with Official Letter No. 1924/TCT-DNL dated 20 May 2015, a transfer charge collected under either the OUR, BEN, or SHARE method is subject to FCT. However, the OL doesn't provide guidance on how to determine taxable revenue under BEN and SHARE methods.

### 5. Special Consumption Tax ("SCT")

*Pre-discount price is taken into account for SCT calculation purposes*

In accordance with Official Letter No. 5230/TCT-DNL dated 10 November 2016 of the General Department of Taxation, as the prevailing regulations do not have any provisions whereby the price subject to SCT is the price after the discount, the General Department of Taxation currently is of the opinion that the price for SCT calculation purposes should be the price before sales discounts offered to customers.

## Contact us

### KPMG Tax and Advisory Limited

Warrick Cleine  
Chairman & CEO  
Vietnam and Cambodia  
Tax Managing Partner

#### Hanoi

Do Thi Thu Ha, Senior Partner  
Hoang Thuy Duong, Partner  
Le Thi Kieu Nga, Partner  
Nguyen Thu Huong, Partner  
Nguyen Ngoc Thai, Director  
Nguyen Hai Ha, Director  
Pham Thi Quynh Ngoc, Director  
Ho Dang Thanh Huyen, Director  
Nguyen Huong Giang, Director  
Nguyen Manh Cuong, Director  
Taninaka Yasuhisa, Japanese Desk

46<sup>th</sup> Floor, Keangnam Landmark 72  
E6 Pham Hung Road, Me Tri Ward  
South Tu Liem District, Hanoi

T: +84 4 3946 1600

F: +84 4 3946 1601

E: [kpmghanoi@kpmg.com.vn](mailto:kpmghanoi@kpmg.com.vn)

#### Ho Chi Minh City

Nguyen Cong Ai, Partner  
Richard Stapley-Oh, Partner  
Ninh Van Hien, Partner  
Ta Hong Thai, Partner  
Ho Thi Bich Hanh, Partner  
Huynh Ngoc Nhan, Partner  
Nguyen Thanh Hoa, Director  
Nguyen Thanh Tam, Director  
Joost van Vliet, Director  
Tran Duy Binh, Director  
Bui Thi Thanh Ngoc, Director  
Michal Jacob, Director  
Watari Takashi, Japanese Desk

10<sup>th</sup> Floor, Sun Wah Tower  
115 Nguyen Hue Street,  
Ben Nghe Ward, District 1,  
Ho Chi Minh City, Vietnam

T: +84 8 3821 9266

F: +84 8 3821 9267

E: [kpmghcmc@kpmg.com.vn](mailto:kpmghcmc@kpmg.com.vn)

[kpmg.com.vn](http://kpmg.com.vn)

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