

LEGAL NEWS UPDATE – AUGUST 2016

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1. GUIDELINES FOR EXEMPTION OF PERSONAL INCOME TAX FOR FOREIGN EXPERTS

On 28 June 2016, the Ministry of Finance promulgated the Circular No. 96/2016/TT-BTC on guidelines for documentation and procedures for exemption of personal income tax to foreign experts in implementation of programs and projects funded by foreign non-governmental aid in Vietnam.

Accordingly, the documentation and procedures for tax exemption include: The confirmation of foreign experts and request for personal income tax exemption submitted by the governing body (in case the foreign expert has a contract with the governing body) or foreign non-governmental aid manager (in case the foreign expert has a contract with the foreign non-governmental organization or aid manager) on the income from direct participation in a non-governmental program and project in Vietnam.

This Circular will become effective on 15 August 2016; and will substitute the Circular No. 55/2007/TT-BTC dated 29 May 2007.

2. NEW PROVISIONS ON THE IMPLEMENTATION OF INVESTMENT INCENTIVES

On 17 June 2016, the Ministry of Finance promulgated the Circular No. 83/2016/TT-BTC guiding the implementation of investment incentives under the provisions of the Investment Law No. 67/2014/QH13 and the Decree No. 118/2015/ND-CP dated 12 November 2015 of the Government.

Accordingly, the purchase of corporate bonds by credit institutions and branches of foreign banks shall comply with the laws. The currency used in the purchase of corporate bonds must be Vietnamese Dong. The credit institutions and branches of foreign banks are not allowed to take loans from other credit institutions and branches of foreign banks to buy types of corporate bonds.

Accordingly, incentives related to corporate income tax ("**CIT**"), import duty ("**ID**") and non-agricultural land use tax ("**NALUT**") are applied to new investment projects.

New investment projects that (i) satisfy conditions on sections to receive CIT incentives under the Law on CIT, or (ii) are performed in investment incentive locations, will receive CIT incentives according to the respective provisions of the Law on CIT.

Enterprises shall be exempted from ID on (i) goods which are imported in order to form fixed assets of investment projects, such as equipment according to the law, (ii)

raw materials, materials and component parts which are not yet able to be produced in Vietnam and are imported for manufacture by the investment projects (except for projects such as the manufacture and assembly of automobiles, motorcycles, air conditioners, electric heaters, fridges, etc.) within 05 years from the commencement of the production.

Enterprises shall be entitled to ID and NALUT incentives as investment projects implemented in an area with difficult socio-economic conditions.

This Circular takes effect on 1 August 2016.

3. GUIDELINES FOR FOREIGN EXCHANGE MANAGEMENT FOR OFFSHORE INVESTMENT ACTIVITIES

On 29 June 2016, the State Bank of Vietnam promulgated the Circular No. 12/2016/TT-NHNN guiding for foreign exchange management for offshore investment activities.

Accordingly, an investor is only allowed to transfer investment capital overseas if (i) is granted an offshore investment registration certificate ("**Offshore IRC**") in a foreign currency which the State Bank of Vietnam has confirmed the registration of exchange transactions; and (ii) the total amount of registered investment capital shall not exceed the investor's total investment capital in foreign currency specified in the Offshore IRC.

The investor is responsible for transferring profits, legal incomes and using profits for offshore re-investment as regulated in this Circular.

This Circular takes effect on 13 August 2016.

4. REGULATIONS ON OFFSHORE INDIRECT INVESTMENT FOR THE CASES APPROVED BY THE PRIME MINISTER

On 29 June 2016, the State Bank of Vietnam promulgated the Circular No. 10/2016/TT-NHNN guiding certain contents of the Decree No. 135/2015/ND-CP dated 31 December 2015 of the Government on offshore indirect investment.

Accordingly, the Circular concretized the conditions, applications and procedures regarding offshore indirect investment for the other investment cases which were approved by the Prime Minister as regulated in the Decree 135.

Other investment cases approved by the Prime Minister include: the activities of offshore indirect investment in a project approved by an authorized body and conducted by an economic organization which the State owned as from 65% of charter capital and more, or an economic organization performing offshore indirect investment with the value of VND800 billion and more; except (i) self-operated organization performing offshore indirect

investment; (ii) entrusted organization performing offshore indirect investment; (iii) self-operated and entrusted organizations making a direct purchase and sale of securities and other valuable papers in foreign nations, or (iv) self-operated and entrusted organizations making investments through the sale and purchase of certificates of securities investment funds offshore and entrusting investment to other intermediary financial institutions offshore.

This Circular takes effect on 13 August 2016.

5. REGULATIONS ON CONDITION FOR USING STAMPS

On 01 July 2016, the Government promulgated the Decree No. 99/2016/ND-CP on the management and use of the stamps.

Accordingly, the management and use of stamp shall comply with the constitution and laws, the stamp prescribed in this Decree is circle and red ink.

The state bodies, organizations and titles are only allowed to use their stamps upon regulations on the permission for using stamps in the legal normative documents or decision from the competent body; it is required to register their stamp specimens prior to such stamp use.

The state bodies, organizations and titles are only allowed to use one stamp under the stamp specimen stipulated by the

competent state body. In case of additional use of another stamp other than the issued one (wet stamp, embossed stamp, miniature stamp or wax stamp), comply with the following regulations: the State bodies, organizations and titles are required to obtain approval from the competent state body for use of an additional wet stamp; the bodies, organizations or titles can decide the their additional use of embossed, miniature or wax stamps; the economic organizations are free to decide their additional using stamps.

This Decree takes effect on 01 July 2016.

6. NEW CIRCULAR ON GUIDELINES FOR TAX REGISTRATION

On 28 June 2016, the Ministry of Finance promulgated the Circular No. 95/2016/TT-BTC on guidelines for tax registration.

Accordingly, each employer shall make tax registration for employees earning income from salaries or wages and make tax registration for employees' dependents once a year within 10 (ten) working days prior to the submission of annual statement of personal income tax.

In case enterprises shall apply for changing information for tax registration at the business registration authorities as prescribed in the Government's Decree on enterprise registration and prevailing documents.

In the event of a business entity, an other entity, a household business or an individual has registered for tax with the tax authority, if there is any change in tax registration form or the list enclosed with the tax registration form, it must complete the procedures for amendments to tax registration with the supervisory tax authority within 10 (ten) working days from the date on which the amendment occurs.

This Circular takes effect on 12 August 2016 and the Circular No. 08/2012/TT-BTC on 22 May 2012 is abolished.

7. REDUCTION IN PENALTIES FOR LATE TAX PAYMENT

On 1 July 2016, the Government promulgated the Decree No. 100/2016/ND-CP on the detailed regulations and guidelines for a number of articles of the Law on amendment of the Law on value-added tax, the Law on special excise duty and the Law on tax administration.

Accordingly, a taxpayer who fails to pay tax by the deadline, extends deadline or deadline written in the notice or tax decision issued by the tax authority shall fully pay tax and late payment interest rate of 0.03%/day on the tax arrears amount (according to the earlier regulation being 0,05%/day).

Regarding the tax arrears amount incurred prior to 01 July 2016 which the taxpayer has not paid into the state budget, including

tax arrears discovered through the inspections by competent authority, the late payment interest rate specified in this Decree shall be charged from 01 July 2016.

During paying the tax arrears amount in installments, the taxpayer has to pay late payment interest rate being at 0.03%/day of the tax arrears amount. The taxpayer is responsible for full payment of tax and late payment interest as committed.

This Decree takes effect on 01 July 2016.

8. CONDITIONS FOR GRANT OF BUSINESS LICENSES FOR PROVISION OF CYBER INFORMATION SECURITY SERVICES

On 01 July 2016, the Government promulgated the Decree No. 108/2016/ND-CP on the detailed regulations for provision of cyber information security services and products.

Accordingly, an enterprise shall meet all requirements stipulated in Article 42 of the Law on Cyber-Information Security and the conditions stipulated in this Decree in order to be granted the Business License.

Regarding import operations of information security products, an enterprise shall satisfy requirements as follows: having a management team satisfying professional requirements for information security; having technicians in-charge obtaining the bachelor degree or certificate of information security or information technology or electronics and telecommunications with the number of employees satisfying the business scale and requirement of the business methods.

Regarding manufacturing operations of information security products, an enterprise shall satisfy requirements as follows: having equipment, facilities and production technology compliance with the business methods of cyber information security products.

The Business License for provision of cyber information security services and products granted for enterprises shall be valid for 10 (ten) years.

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