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S&S's Newsletter – Dec 2019

Dear our Readers,

Below are S&S's Tax and Legal update Newsletter for **December 2019**.

We trust that you will enjoy this edition and welcome any feedback or queries that may arise to our email address: samuel230@hanmail.net

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Enjoy your reading! And we would be happy to meet up with you to discuss how best we can assist your company in this regard.





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1.1 OFFICIAL LETTER NO.5398/TCT-CS REGARDING TRANSFER OF MONEY BETWEEN PROJECT OFFICE OF THE SAME OVERSEAS PARENT COMPANY

On 20 Dec 2019, General Department of Taxation issued OL 5398/TCT-CS answered to Ha Noi Tax Department. Following that:

In case the activity of internal transfer of money between project offices of the same parent company outside Vietnam in reality is the loan provision activity, it shall be subject to withholding tax.

The determination of market price in transactions between related parties shall be carried out according to current regulations

1.2 OFFICIAL LETTER NO. 88466/CT-TTHT REGARDING WITHHOLDING TAX POLICY

In case a parent Company outside Vietnam provides software services for subsidiary company in Vietnam (example ERP software), a parent Company outside Vietnam earns monthly fixed incomes in Vietnam from allowing its subsidiary company which is in Vietnam to use ERP software copyright, this activity shall be subject to withholding tax according to the guidelines at Circular No. 103/2014/TT-BTC dated 6 August 2014 of the Ministry of Finance.

If the parent Company outside Vietnam fails to meet any of the conditions provided at Article 8 of Circular No. 103/2014/TT-BTC, the Company in Vietnam shall withhold tax before making payment for ERP software copyright to the parent Company.

Corporate Income Tax (CIT): to apply the percentage of CIT calculated upon taxable revenue with regard to income from copyright is 10% according to the regulations at Clause 2 Article 13 of Circular No. 103/2014/TT-BTC.

Value added tax (VAT): income of the parent company outside Vietnam is income from activity of provision of software copyright and this activity belongs to software service according to Article 9 of Decree No. 71/2007/ND-CP, Article 4 of Circular No. 219/2013/TT-BTC, this activity shall not be subject to VAT.

1.3 OFFICIAL LETTER NO. 91914/CT-TTHT REGARDING DECLARATION OF VAT FOR A BRANCH WHICH IS SUSPENDED UNDER A FIXED PERIOD

On 9 Dec 2019, Ha Noi Tax Department issued OL 91914/CT-TTHT, following that a Company in Ha Noi has a dependent branch in HCM City suspends its business operation under a fixed period, its parent company in Ha Noi is not allowed to transfer to deduct the branch's input VAT which has not completely deducted.

When it resumes its business operation, the branch shall continue deducting such input VAT amount.



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1.4 OFFICIAL LETTER NO. 95772/CT-TTHT REGARDING VAT POLICY APPLICABLE TO HOUSE CONSTRUCTED FOR FOREIGN EXPERTS

On 23 Dec 2019, Ha Noi Tax Department issued OL No. 95772/CT-TTHT, following that in accordance with Clause 1 Article 14 of Circular No. 219/2013/TT-BTC, in case a company constructs or buys houses outside industrial parks to serve workers working in the industrial parks, the constructed or bought houses are carried out according to regulations of laws and standards on design of housing for workers in industrial park, input VAT shall be wholly deducted.

However, if the Company construct houses for foreign experts who are not the company's employees (they do not sign labor contract with the company), input VAT shall not be deducted.

Remarks:

- With regard to house rents for foreign experts, if the foreign experts sign labor contract with a company in Vietnam and receive salary in Vietnam, input VAT on such house rents shall not be deducted.
- In contrast, if the foreign experts are still a parent company's employees and receive salary from the parent company during their working period in Vietnam, concurrently, in the agreement signed between the Vietnamese company and the foreign company defines that the Vietnamese company shall pay accommodation costs, the VAT on house rents shall be deducted.

1.5 OFFICIAL LETTER NO. 5252/TCT-CS REGARDING MAKING OF INVOICE OF EXPORT PROCESSING ENTERPRISE

On 16 Dec 2019, General Tax Department issued OL No. 5252/TCT-CS, following that based on Clause 7 Article 30 of Decree No. 82/2018/ND-CP, if an export processing enterprise (EPE) is licensed to perform exportation right, importation right and distribution right to sell goods into the inland market, it has to open separate accounting books for revenue and expenses related to these activities in Vietnam in order to declare and pay tax separately instead of including it in the tax on manufacturing for exportation.

Regarding method of VAT calculation with regard to activities of exportation right, importation right and distribution right to sell goods into the inland market, it shall be determined according to VAT declaration documentation of the EPE according to Article 1 of Circular No. 93/2017/TT-BTC.

Regarding type of invoice to be used upon receiving payments from activities of exportation right, importation right and distribution right to sell goods into the inland market, it is required to comply with Clause 1 Article 5 of Circular No. 119/2014/TT-BTC and Clause 2 Article 3 of Circular No. 39/2014/TT-BTC.



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1.6 OFFICIAL LETTER NO. 95764/CT-TTHT REGARDING INVOICE FOR BUSINESS TRIP IN OVERSEA

On 23 Dec 2019, Ha Noi Tax Department issued OL 95764/CT-TTHT guidance on recording payment for overseas business trip expenses. Following that, expenses for employees going to business trip in overseas if having full necessary supporting documents like invoices, documents as guidance at Article 4, Circular 96/2015/TT-BTC to be recorded as deductible expenses.

However, in related to invoices, documents incurred in overseas, there is a need to comply with guidance at such country and must translate into Vietnamese (item 4, Article 5 of Circular 156/2013/TT-BTC).

1.7 OFFICIAL LETTER NO. 5246/TCT-QLN REGARDING SENDING OF ANNOUNCEMENT FORM 07/QLN VIA EMAIL

On 16 Dec 2019, General Department of Taxation issued OL No. 5246/TCT-QLN regarding sending of Announcement Form 07QLN via email.

According to point 3.2 Section II Part II of the Process of management of tax arrears promulgated together with Decision No. 1401/QD-TCT dated 28 July 2015, with regard to tax arrears which are 31 days or more overdue, tax authority shall make the Announcement of tax arrears according to form No. 07/QLN to send to the tax debtor.

Normally, this Announcement is sent in the form of paper-based document via post office. However, the General Department of Taxation allows local tax authorities to sign and send it to tax debtor via email.

1.8 OFFICIAL LETTER NO. 5241/TCT-KK REGARDING PENALTIES FOR ADMINISTRATIVE VIOLATIONS UPON CARRYING OUT PROCEDURES FOR INVALIDATION OF TAX IDENTIFICATION NUMBER

On 16 Dec 2019, General Department of Taxation issued OL No. 5241/TCT-KK, following that:

- **Relating to procedures for invalidation of tax identification number** (closing Tax Code), the General Department of Taxation request to carry out according to Articles 17 and 18 of Circular No. 95/2016/TT-BTC.
- **Regarding taxpayer's obligation to submit tax declaration dossier:** taxpayer must be declared monthly, quarterly or annually but no tax is incurred during the period, or the taxpayer is eligible for tax incentives exemption or reduction, the tax declaration still have to be submitted on time, except for the cases in which the business is shut down or suspended as mentioned in Point dd Clause 1 of this Article, or submission of tax declaration is exempt as prescribed in Article 16, Article 17 and Article 18 of Circular 156/2013/TT-BTC.
- **Regarding cases in which decision on sanctioning administrative violations shall not be issued:** In accordance with point d, item 1, Article 26 of Circular 166/2013/TT-BTC, a penalty decision shall not be made in case the violator is dead, missing, the violating organization has issued a decision to dissolve or declare bankrupt pending the issue of the penalty decision.



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2.1 OFFICIAL LETTER NO. 424/TĐC-QLCL REGARDING HANDLE IMPORTS COMMITTING REGULATIONS ON LABELING

On 27 Dec 2019, the Directorate for Standards, Metrology and Quality (the Ministry of Science and Technology) issued OL No. 424/TĐC-QLCL. According to Clause 3 Article 7, Clause 4 Article 9 of Decree No. 43/2017/ND-CP, the time when the supplementary label for imports of which the original label has been represented insufficiently mandatory information must be supplemented is the time of putting the goods into circulation.

"Circulation of good" means displaying, promoting, transporting or storing goods in the process of goods sale and purchase, except the transport of goods by importers from a checkpoint to a storehouse guidance at Clause 7 Article 3 of Decree No. 43/2017/ND-CP.

Accordingly, if goods at a checkpoint have original labels which have been represented insufficiently mandatory **information in Vietnamese**, they shall not be considered to commit regulations on goods labeling; it is required to make a supplementary label before the goods are put into circulation.

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Should you have any query, please do not hesitate to contact with our company – **S&S Auditing and Consulting Co., Ltd**

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