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S&S's Newsletter – January 2018

Dear our Readers,

Below are S&S's Tax and Legal update Newsletter for **January 2018**.

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. OFFICIAL LETTER NO 5960/TCT-DNL DATED 28 DEC 2017 ISSUED BY GENERAL TAX DEPARTMENT ON RESEARCH AND DEVELOPMENT FUND

On 28 Dec 2017, General Tax Department issued OL 5960/TCT-DNL guidance on unused up 70% Research and Development Fund. In accordance with Article 14 Internal Circular No 12/2016/TTLT-BKHCN-BTC, after period of making R&D Fund 5 years, if the Company hasn't used up to 70% Fund, there is a need to payback Corporate Income Tax (CIT) based on remaining fund with interest rate accordingly.

Tax rate uses for calculating CIT payable is the tax rate at the time of making the Fund.

Interest rate use for calculation is the interest rate of Bond or Treasury bill with term 1 year which apply at the time payback and period of calculation interest is 2 years.

Note that, the interest incurs from CIT additional payable due to unused up 70% Research and Development Fund is considered as **non-deductible expenses**.

2. OFFICIAL LETTER NO.1520/CT-TTHT DATED 10/1/2018 GUIDANCE ON MAKING PROVISION FOR SHARES

On 10 Jan 2018, Ha Noi Tax Department has issued OL 1520/CT-TTHT guidance on making provision for shares.

In accordance with item 1, Article 5 of Circular 228/2009/TT-BTC, at the time of making provision if the shares (stocks) which invested by the Company devaluation compared with price per book must provide provision.

Level of making provision for devaluation of share at preparation financial statement is defined at **number of shares devaluation multiplied by variance price between market and book**.

However, in case of the Company has balance of provision, the Company only provide the variance of under provision or don't need to make further provision if the balance is equal with provision for devaluation need to provide.



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3. OFFICIAL LETTER NO. 1990/CT-TTHT DATED 15 JAN 2018 REGARDING LOAN INTEREST COSTS UPON SUFFERING FROM LOSSES FROM BUSINESS ACTIVITIES

On 15 Jan 2018, Ha Noi Tax Department issued OL 1990/CT-TTHT regarding loan interest costs with related parties in case of the making loss from business activities as follows:

According to Clause 3 Article 8 of Decree No. 20/2017/ND-CP , when an enterprise borrows loans from a related party, it is only allowed to make cost accounting for loan interest costs not exceeding 20% of total net profit generated from business activities plus loan interest costs and amortization costs arising within that period.

Under this regulation, the enterprise is only allowed to make cost accounting for loan interest costs with the factor a related-party transaction when the total net profit generated from business activities plus loan interest costs and amortization costs arising within that period (EBITDA indicator) is larger than 0, it means there are profits.

In contrast, if the EBITDA indicator within the period is less than 0 (there are losses), total loan interest costs within the tax period shall not be deducted when determining taxable corporate income.

4. OFFICIAL LETTER No. 3966/CT-TTHT DATED 24 JAN 2018 GUIDANCE ON RECORDING LOAN INTEREST COSTS AT COMPANY HAVING RELATED PARTIES TRANSACTIONS

In accordance with item 3, Article 8 of Decree 20/2017/ND-CP, in case of the Company has borrowing transactions with related parties, the loan interest costs only records maximum 20% of total net profit.

"Loan interest costs" is limit as above cap including all loan interest costs incurs during period, including loan interest costs incurs from non-related parties.

However, to be excluded loan interest costs which satisfied condition for capitalized into value of project comply with the rule mentioned at Vietnamese Accounting Standard No 16 attached together with Decision No 165/2002/QĐ-BTC.

Beside that, in case of the Company has interest income from deposit and lending, there is not allow to offset with loan interest cost when defined the limit.



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5. OFFICIAL LETTER NO. 4884/CT-TTHT DATED 30 JAN 2018 ON TAX POLICY FOR TRAINING AND CONSULTING ACTIVITIES

According to contents of this OL, in case of the Company signs contract with mother company training for experts and consulting for prepare bidding documentation, if satisfy the condition at point 1, Article 4 of Circular 96/2015/TT-BTC, training costs and consulting fee are fully recorded as deductible expenses.

For training activity for experts, if the services implement in oversea (excluding online training), it is not subject to foreign contractor withholding tax (point 4, Article 3 of Circular 103/2014/TT-BTC).

Beside that, if training course related to job, specialist skills of employees or in line with training program schedule of the company, it is also subject to exempt Personel Income Tax (point đ.6, item 2, Article 2 of Circular 111/2013/TT-BTC).

However, for consulting activity for preparing bidding documentation, it is subject to withhold FCT in which 5% VAT and 5% CIT (Article 12, Article 13 of Circular 103/2014/TT-BTC).

6. DECREE NO.09/2018/NĐ-CP DATED 15 JAN 2018 GUIDELINES FOR SALES OF GOODS AND OTHER ACTIVITIES DIRECTLY RELATED TO SALE OF GOODS OF FOREIGN INVESTORS AND FOREIGN-INVESTED BUSINESS ENTITIES IN VIETNAM

On 15 Jan 2018, Government issued Decree No.09/2018/ND-CP, following that Decree specifies requirements for foreign direct investment (FDI) enterprises to be eligible for exercising exportation right; exercising importation right; exercising distribution right and services directly related to goods sale and purchase.

One of the new noticeable regulations of this Decree is [the removal](#) of the requirement relating to the application for a license for the exportation right, importation right with regard to FDI enterprises.

FDI enterprises shall apply for a license only when they perform the activities specified in Article 5 of this Decree, including: the retail distribution right, wholesale distribution right, logistics services, commercial promotion services, commercial intermediary service, electronic commerce services, etc.



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In addition, the scope of exercising the exportation/importation right of FDI enterprises is also expanded by allowing them to export goods processed in Vietnam.

Furthermore, this Decree also provides for some requirements for allowing FDI enterprises to trade goods items for which Vietnam has not committed in the World Trade Organization such as lubricants; rice; sugar; recorded items; books, newspapers and magazines.

Regarding procedures for licensing, the competence to issue the license now is transferred to the Departments of Industry and Trade instead of the People's Committees under the earlier regulations

This Decree takes effect from 15 Jan 2018 and replaced Decree No 23/2007/ND-CP dated 12 Feb 2007.

8. OFFICIAL LETTER NO.1246/CVL-QLĐNN GUIDANCE ON WORK PERMIT OF CHIEF OF REPRESENTATIVE OFFICE IN VIETNAM

According to Clause 3 Article 172 of the Labor Code No. 10/2012/QH13, with regard to a foreign citizen acting as a Head of a representative office in Vietnam, he/she shall be only exempt from the work permit when he/she is the Head of Representative Office of an international organization, non-governmental organization.

If he/she is a Head of Representative Office of a foreign business entity in Vietnam, he/she shall be also subject to the grant of work permit according to the regulations at Decree No. 11/2016/ND-CP.

A foreigner who acts as a Head of representative office in Vietnam shall be considered to be an administrator (point a Clause 4 Article 3 of Decree No. 11/2016/ND-CP). Grounds used for proving that the foreigner is the Head of representative office in Vietnam is the license to set up such representative office.

9. OFFICIAL LETTER NO. 384/BHXH-CSXH DATED 31 JAN 2018 ISSUED BY VIETNAM SOCIAL INSURANCE DEPARTMENT ON LAUNCHING SOME REGULATION OF LAW ON SOCIAL INSURANCE

In terms of Compulsory Social Insurance, this OL reminds the Company on some regulations take effect from 1 Jan 2018, comprise of:

- (i) *required to pay social insurance for foreigners and for labor contracts with term of full 1 month to less than 3 months*



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(ii) Salaries for contribution SI, beside basic salary, allowance, also including other additional allowances.

Further more, Vietnam Social Insurance Department also requires further checking, inspection duties of contribution compulsory Social Insurance and considered as basic for criminal legal procedure.

Minimum wage levels on which compulsory social insurance premiums are based from January 1st, 2018 shall be also increased according to the region – based wage levels as prescribed in Decree No. [141/2017/ND-CP](#). In particular:

- Region I: VND 3,980,000/month;
- Region II: VND 3,530,000/month;
- Region III: VND 3,090,000/month;
- Region IV: 2,760,000/month.

7. OFFICIAL LETTER NO.70/TCT-CS DATED 5 JAN 2018 ISSUED BY GENERAL DEPARTMENT OF TAXATION ON EXEMPTION SUBMISSION NOTICE ON CONVERTING VAT METHOD

According to Circular No. 93/2017/TT-BTC, from 5 Nov 2017, the Company is allow exempted to submit Notice Form 06/GTGT in case of converting VAT method.

Tax Department will base on VAT Form submission by the Company to define the method of VAT calculation, it will be deductible method if the Company submits Form 01/GTGT, 02/GTGT or direct method if submission Form 03/GTGT, 04/GTGT.

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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HAPPY NEW YEAR 2018