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S&S's Newsletter – July and Aug 2018

Dear our Readers,

Below are S&S's Tax and Legal update Newsletter for **July and Aug 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 48085/CT-TTHT DATED 10 JULY 2018 REGARDING TO RELATED PARTY TRANSACTION DOCUMENTATION

According to Clause 4 Article 10 of Decree No. 20/2017/ND-CP and Clause 2 Article 4 of Circular No. 41/2017/TT-BTC, in case a company has an overseas ultimate parent company, it is required submit a copy of its ultimate parent company's country-by-country report in the related-party transaction documentation (If such ultimate parent company is required to submit this report to the host-country tax authority).

If the company fails to provide the country-by-country report of the ultimate parent company prepared within the tax period relative to its tax accounting period, the company may provide the country-by-country report of the ultimate parent company prepared in the preceding financial year instead provided that a written explanation for such failure must be attached to the related-party transaction documentation.

Ultimately, if the company cannot provide any report of the ultimate parent company, it is obligated to **provide a written explanation letter** specifying reasons for such failure, legal bases, and references to specific legislative regulations of the counterparty country on not providing such report or regarding parent company which is not subject to preparation of the country-by-country report.

2. OFFICIAL LETTER 54155/CT-TTHT DATED 2 AUG 2018 REGARDING TO PERSONAL INCOME TAX (PIT)

In accordance with this OL, salary during probation period to be paid PIT will follow progressive tax rate or fixed rate 10% depend on after probation period, the Company signs Labour Contract or not. If the Company signs Labour Contract with period from and above 3 months, the employees will deduct PIT follow the progressive tax rate including salary during probation period. If not, there is a need to deduct PIT follow fixed rate 10% excluding the case employees commit that they have low income.

3. OFFICIAL LETTER 49275/TCT-TTHT DATED 16 JULY 2018 REGARDING TO VAT

According to Clause 2 Article 1 of Circular No. 130/2016/TT-BTC, the service of holding meetings, seminars in Vietnam shall not be entitled to apply 0% VAT. Accordingly, in case a company provides the service of holding meetings, seminars for an export processing enterprise (EPE) but locations for holding the meetings, seminars are outside the EPE, the company shall not be entitled to apply 0% VAT but has to apply 10% VAT.

If the Company has made invoice and applied incorrect VAT rate, the parties have to make a record specifying errors and make a corrective invoice according to the prescribed tax rate.



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4. OFFICIAL LETTER 4617/TXNK-TGHQ DATED 26 JULY 2018 REGARDING TO CUSTOM VALUE

According to point g Clause 2 Article 13 of Circular No. 39/2015/TT-BTC, transportation costs and any costs relating to the transportation of imported goods to the first importing checkpoint must be added to value of imports.

However, transportation costs shall be added to taxable value only when 3 conditions below are fully met:

- (1) *They are paid by the buyer and have not been included in the actual or future payment;*
- (2) *They are related to the imported goods;*
- (3) *There are objective and quantifiable data conformable with the relevant documents.*

5. OFFICIAL LETTER 4532/TCHQ-TXNK DATED 1 AUG 2018 REGARDING TO SETTLEMENT OF DUTY ON GOODS IMPORTED/EXPORTED ON THE SPOT

Relating to policy on exemption from or refund of import duty on materials imported for processing, production of goods for export and products are exported on the spot, the General Department of Vietnam Customs assumes that it will propose the authorities to amend, supplement to Decree No. 134/2016/ND-CP in line with actual situation.

However, at the present, the policy on exemption from or refund of import duty on materials shall be still complied with the regulations in Clause 1 Article 36 of Decree No. 134/2016/ND-CP. Accordingly, only when products are processed, manufactured and exported abroad or exported into non-tariff zones, import duty on materials shall be exempted or refunded. In contrast, if products are exported in the form of export on the spot (they are delivered in Vietnam under designation of the foreign party), import duty on materials shall not be exempted or refunded.

6. OFFICIAL LETTER 4829/TCHQ-TXNK DATED 16 AUG 2018 REGARDING TO DEDUCTION OF DISCOUNTS FOR IMPORTS

According to point d clause 2 Article 15 of Circular No. 39/2015/TT- BTC, discounts for imported goods shall be subtracted from taxable value only when the sale contract specifies discount conditions. At the same time, the application for consideration for deduction of discounts must have the seller's announcement of discounts.

Accordingly, in case a company applies for subtraction of discounts for imported goods from taxable value but in the sale contract having no specific discount conditions and the application having no the seller's announcement of discounts, the subtraction shall not be considered.



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7. OFFICIAL LETTER 3065/TCT-KK DATED 9 AUG 2018 REGARDING ISSUANCE OF TAX CODE FOR DECLARATION AND PAYMENT OF WITHHOLDING TAX BY USING HYBRID METHOD

According to the regulations at Decree No. 90/2007/ND-CP, foreign traders that have no presence in Vietnam are still allowed to participate in trading goods under the right to import/export provided that they have to register to be issued with the Certificate of registration of right to export/import.

At the same time, if such foreign traders wish to pay withholding tax directly at tax authorities in Vietnam after they are issued with the Certificate of registration of right to export/import, they have to apply for 10-digit Tax Codes in accordance with Clause 3 Article 7 of Circular No. 95/2016/TT-BTC.

The declaration and payment of withholding tax by using the Hybrid method shall be carried out according to the guidelines in Official letter No. 4431/TCT-KK dated September 23rd, 2016.

8. OFFICIAL LETTER NO. 4363/TXNK-CST DATED 6 AUG 2018 REGARDING TO SETTLEMENT OF TAX ON BURNT GOODS

Duties on exports and imports under customs supervision shall be reduced under Article 32 of Decree No. 134/2016/ND-CP if the goods are burnt.

However, enterprises must fully provide these documents, otherwise duty shall not be reduced:

- A written request for duty reduction according to Form No. 08 (Appendix VII);
- Confirmation of scope insurance compensation without tax indemnification;
- A confirmation of damage issued by a local authority issued within 30 days from the occurrence of damage;
- An original assessment certificate of the lost quantity or actual damage rate of exports or imports.



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9. LAW NO. 23/2018/QH14 DATED 11 JUNE 2018 OF THE NATIONAL ASSEMBLY ON COMPETITION

This Law sets forth anti-competitive practices, economic concentration that causes or may cause anti-competitive effects on the market of Vietnam; unfair competition practices; competition legal proceedings; sanctions against violations of competition law; state management of competition.

Accordingly, in comparison with the regulations in the earlier Law, this Law enlarges regulated entities. In particular, apart from enterprises, industry associations, this Law also applies to public sector entities (Article 2).

In addition, this new Law also supplements some agreements which are considered to be anti-competitive agreements such as: agreements on distributing customers; agreements on not trading with enterprises other than the parties to the agreements; agreements on restricting consumption market, sources of supply of goods and services from enterprises other than the parties to the agreements (Article 11).

Relating to criteria for determining an enterprise or a group of enterprises holding a dominant position on the market, apart from market share, this new Law also supplements the criterion “substantial market power”. In particular, it shall base on these factors; financial strength and size of the enterprise; advantages in technology and technical infrastructure; right to own, obtain and assess infrastructure, etc. (Article 26).

This Law takes effect from **1 July 2019** and replaces the Law on competition No. 27/2004/QH11 dated December 14th, 2004.

10. DECISION NO 27/2018/QĐ-TTg DATED 06 JULY 2018 ON ISSUING THE SYSTEM OF ECONOMIC BRANCHES OF VIETNAM

Following this decision, new system also comprises of 05 level similar with old system. However number of Level 4 and Level 5 add in new branches, detailed with Level 4 increases from 437 branches to 486 branches and Level 5 from 642 branches to 734 branches. For detailed, please refer to Annex I.

In additional, new system also supplements contents of guidance and explanation about the economic activities. For detailed, please refer to Annex II.

The Decision takes into effect from 20 Aug 2018 and replaced Decision 10/2007/QĐ-TTg dated 23 Jan 2007.



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11. CIRCULAR 21/2018/TT-BCT DATED 20 AUGUST 2018 AMENDING A NUMBER OF ARTICLES OF CIRCULAR NO. 47/2014/TT-BCT DATED 5 DECEMBER 2014 ON MANAGEMENT OF E-COMMERCE WEBSITES AND CIRCULAR NO. 59/2015/TT-BCT DATED 31 DECEMBER 2015 PRESCRIBING THE MANAGEMENT OF E-COMMERCE ACTIVITIES VIA APPLICATIONS ON MOBILE EQUIPMENT

One of the new noticeable points of this Circular is the removal of the regulations on notifying online e-commerce shopping websites provided in Article 8 and registration for e-commerce website rating provided in Article 21 of Circular No. 47/2014/TT-BCT.

However, regarding subjects that have to register e-commerce service provision websites (Article 13), they include all traders or organizations having e-commerce websites which provide at least one of the following services: Service of e-commerce trading floor, online promotion service, online auction service. Under the earlier regulations, registrants are only traders or organizations operating in trade promotion or enterprise support.

In addition, regarding subjects must make notification of goods sale applications on mobile equipment (Article 10 of Circular No. 59/2015/TT-BCT), they are traders, organizations or individuals that have been granted tax identification numbers and own sale applications.

This Circular takes effect from 18 October 2018.