S&S’s Newsletter – October and November 2014

Dear our Readers,

Below are S&S's Newsletter updated for October and November 2014.

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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CIRCULAR 151/2014/TT-BTC DETAILED GUIDANCE DECREE NO.91/2014/ND-CP AMENDING, SUPPLEMENTING DECREES ON CIT, VAT, PIT AND TAX MANAGEMENT

The Circular guidance Decree No.91/2014/ND-CP and amending, supplementing some Decrees as follows:

1. Circular No.78/2014/TT-BTC dated 18 June 2014 issued by Ministry of Finance guidance Decree No.218/2013/ND-CP:

- Guidance the method to define the maximum level for employees’ welfare: not over the average salary of one month;

- Add in the guidance on don’t collect the CIT for the variance due to revaluation fixed assets in case of conversion to joint stock company, restructure, changing the 100% state own enterprise;

- Convertible CIT incentives for textile and garment company which no longer eligible for tax incentives due to WTO: it may decide whether to apply preferential tax rates and tax exemption period successively or concurrently for the remaining time to textile and garment products from 2007 depending on the business’ fulfillment of requirements.

2. Circular No.219/2013/TT-BTC dated 31/12/2013 issued by MOF guidance on the VAT Law and Decree No.209/2013/ND-CP:

- Add in the subject not paying VAT for the sold collateral for loans is an asset in secured transactions.

- Allow for deduct all VAT input for VAT input of car used for samples and trial run for business activity of car industry (no restraint the historical cost at 1.6billion dong)

- In case of haven’t got the payment documents via the bank transfer due to the payment not due yet, the company still can declare, deduct VAT input.

3. Circular No. 111/2013/TT-BTC dated 15/8/2013 issued by MOF guidance PIT Law, Amendment Law on PIT and Decree No 65/2013/ND-CP:
- Benefit on housing constructed by the employer, providing free for employees working at Industrial Zone, Economics Zone, etc will be deducted when calculates CIT.

- Amend guidance for individual, individual enterprise have income from business already paid tax follow fixed tax rate will not do the tax finalization for this income.

- With regard to a person using a transferred real estate during the period from July 1, 1994 to before January 1, 2009, if he is granted a Certificate of land use right, house ownership and other property thereon by regulatory agencies according to his application sent, he is eligible for personal income tax exemption.

4. Circular No. 156/2013/TT-BTC dated 06/11/2013 issued by MOF guidance some articles of Law on Tax Management:

- Suspended business operation: business registration authority and tax department have to co-ordinate to exchange information provided by the tax payer.

- Declare VAT Quarterly: besides the adjustment previous turnover 50 billion dongs and bellow, there is a guidance for apply period from Quarter IV/2014 and add in the subject to apply is new establishment company.

- Add in Form 07/GTGT – announcement for conversion period of VAT declaration from Quarterly to Monthly.

- Add in some cases the Company don’t need to declare the tax finalization and the Tax Dept don’t need to do the tax finalization: payment CIT follow the ratio, the company hasn’t got the income, etc.

- Cancel the guidance of CIT declaration quarterly and add in the penalty guidance for variance over than 20%.

- Add in the guidance on Tax Department place the order and using the result of auditing company, tax consulting company on tax to perform the tax inspection for bankrupt company, close company and guidance clearly the right and responsibility of tax department in renting auditing company.
- Add in some cases considered as suddenly accident, special difficulty.

- Amend form of declaration intercompany transactions for new establishment company.

- For the case of extend period for tax payment: Add in guidance on suddenly accident and condition for fatal disease. Add in some cases of difficulty.

**Effectively of this Circular:**

- **Apply for tax period for year 2014 for the guidance at Chapter I on CIT.**

- From 15 November 2014 for the remaining contents.

**OFFICIAL LETTER NO. 4200/TCT-CS ON THE LEVEL OF APPEAL FOR TAX PAYER**

In accordance with this Official Letter, the tax payer has the right to appeal when they have a basic to prove that the decision on administration penalty not correct, violates the rights and benefits of tax payer follow the procedure as bellows:

- First appeal will send to the person who issued the decision on administration penalty or the Office having the violate person or starting to sue at Court follow the Court of Administration Procedure.

- If don’t agree with the result of first appeal or over the timeframe for appealing, there is a second appeal to the Chief who directly control the authorize person or starting to sue at the Court follow the Court of Administration Procedure.

- After the second time appealing, if still don’t agree with the result, the tax payer can sue to the Court.

**OFFICIAL LETTER NO. 4281/TCT-KK ON VAT REFUND**

This Official Letter guidance further for Circular No. 219/2013/TT-BTC on VAT refund as follows:
- The Enterprise has a deductible VAT which not yet deduct all for monthly, quarterly from year 2013 transfer to year 2014 and satisfy the condition from 12 months or above 4 quarter, or total time including monthly declation, quarterly declaration from 12 continous months can get the VAT refund.

- The Enterprise has goods, export services which having the VAT input still can accumulate for deductible for month, accumulated for quarterly from 300 million dong and above can get the VAT refund.

OFFICIAL LETTER NO.4615/TCT-CS ON DEFINE FOREIGN CONTRACTOR WITHHOLDING TAX WHEN ASSIGN WORK FOR SUB-CONTRACTOR

This Official Letter guidance on the way of calculating CIT for foreign contractor when they sign the contract to assign the works for foreign sub-contractor. Therefore, the foreign contractor are allow to deduct the value of work assigned for the sub-contractor when calculates CIT if satisfy the bellows conditions:

- Sub-contractor is the company established forollow the Vietnam regulation or the foreign sub-contractor apply the method of deductible, declaration or apply the combined method.

- Foreign Contractor signs the Contract directly with the Vietnam sub-contractor or foreign sub-contractor but must shown their name on the list of foreign sub-contractor together with contract with main foreign contractor.

If does not satify 02 above conditions, the foreign contractor cannot deduct the value of works assigned for sub-contractor when calculates CIT.
OFFICIAL LETTER NO. 4693/TCT-TNCN ON REGISTER DEPENDANT PERSON

The Official Letter guidance further about the subject for register the dependant person such as nephew as follows:

- In case of the tax payer declare family deduction for their nephew while their nephew still have father/mother in range of labour ages, have still in normal health that such nephew will not belong to tax payer, they must belong to their father, mother.

- Therefore, the declaration as above will lead the under tax payment and that will be re-collect and penalty follow the Decree No. 98/2007/ND-CP, Circular No.61/2007/TT-BTC which apply for the tax payer who wrongly declare the dependant person.

OFFICIAL LETTER NO. 12271/TCHQ-TXNKO ON REFUND OVER IMPORT VAT PAYMENT

In order to solve out the concerning about the scope and place for carrying out the refund wrong import VAT, over payment of import VAT, General Department of Custom has guidance as follows:

- Amount of wrong, overpaid import VAT for Custom Declaration registered before 1 Jan 2014: Province Tax Department, City Tax Department will carry out the refund VAT for the Company;

- Amount of wrong, overpaid import VAT for Custom Declaration registered from 1 Jan 2014 onwards: Province, City Custom Department will carry out the refund VAT for the company;

- Custom Declaration registered from 1 Jan 2014 but Custom Department already verified the wrong, overpaid import VAT for the Company and the Tax Department already redund, deduct for the company will not resolve back.
OFFICIAL LETTER NO.12487/TCHQ-GSQL ON DESTROY PROCESSING RAW MATERIALS

In accordance with this Official Letter, in order to destroy the processing raw materials, the Company must follow the following steps:

- Between the Company and the party placed the processing order must prepare the confirmation to verify the quantity, types of raw materials to be destroyed in Vietnam due to out of date or this content already discussed on the Processing Contract;
- The destroyed raw materials out of dates must approve by Resource and Environment Department and it ensures the destroy hasn’t effect to the environment;
- Coordinate with Custom Department where the Company register the Processing Contract for monitoring the destroy follow item d, Article 27 of Circular No.13/2014/TT-BTC dated 24/01/2014 issued by MOF.

DECREE NO.96/2014/ND-CP GUIDANCE ON ADMINISTRATION PENALTY IN MONETARY AND BANKING

Some contents of Decree as follows:

- Form of penalty: warning or penalty by monetary or supplement penalty;
- Level of penalty and authority to issue the penalty;
- The recovery method;
- Procedure and authority to issue the penalty, making the minutes of administraton penalty.

OFFICIAL LETTER NO.4315/TCT-CS ON CORPORATE INCOME TAX

According to Official Letter No. 4315/TCT-CS dated 3 October 2014 of the General Department of Taxation, tax loss and outstanding payable of a liquidated independent branch to the company shall be treated as follows:

- The tax loss amount after liquidation of the branch is carried forward to the company’s accounts, with separate records per year of loss, on the following conditions.

- Details of yearly losses have been audited by the tax authorities.

In case the outstanding payable of the liquidated independent branch to the company is considered as investment capital amount of the company investing in the branch, the company is not allowed to make provision or claim deductible expenses for such payable for CIT purposes.

DECREE NO.95/2014/ND-CP DATED 17/10/2014 ON FINANCIAL REGIME FOR SCIENCE AND TECHNOLOGY ACTIVITIES

On 17 October 2014, the Government issued Decree 95/2014/ND-CP providing guidance on the financial regime for science and technology activities. There are a number of provisions under this Decree that are relevant to the CIT position, particularly:

+ It is mandatory for the State-owned enterprises to make fund for science and technology development in the range from 3% to 10% of CIT taxable income. Non-State enterprises are not required but have the right to make the fund amounting up to 10% of their CIT taxable income.

+ Expenses incurred from the science and technology development fund must be supported with legitimate documentation. Enterprises are required to submit a report on making and using the fund together with CIT finalisation dossiers to the local tax authorities.

In addition, the Decree also provides details on incentives for enterprises involving in science and technology activities. Decree 95 shall be effective from 1 December 2014.

LAW ON INVESTMENT

A list of 6 prohibited business lines and 267 conditional business lines is now clearly stipulated in the Law, instead of 51 prohibited business lines and 386 conditional business lines currently stipulated in various legal documents.
In principle, investors shall be permitted to carry out investment activities in the business lines which are not prohibited under the Law.

Besides a majority of conditional business lines applied to both local investors and foreign investors (such as doing business in chemical, pharmaceutical, medical equipment sectors, etc.), there are several conditional business lines solely applied to foreign investors, including: Trading activities and activities directly related to the trading activities (i.e. trading and distribution); Education and vocational training activities; Construction activities; Urban planning services.

The conditions applicable to investment in the conditional business lines shall be detailed in laws, ordinances, decrees and/or international treaties of which Vietnam is a member. No authorities below the Government shall be permitted to stipulate the investment conditions in the conditional business lines. All investment conditions stipulated in various legal documents issued prior to the effective date of this Law which are in contrary with this provision shall be abolished from 1 July 2016.

The following investment projects shall be also entitled to investment incentives, in addition to the investment projects entitled to investment incentives based on business sectors and locations:

- **Investment projects with investment capital of VND6,000 billion (i.e. around USD300 million) or more, disbursed within 3 years from the date of issuance of the Investment Registration Certificates or Investment In-Principle Approvals;**

- **Investment projects in rural areas using from 500 employees or more; and**

- **High-tech enterprises and scientific and technology enterprises/organisations**

New rules for treatment of business organisations with foreign owned capital in term of investment conditions and procedures when carrying out investment activities as follows:

(a) **It has foreign investor(s) holding 51% or more of its charter capital or, in case of partnership, having the majority of unlimited liability partner(s) being foreign individual(s); or**
(b) It has the business organisation(s) mentioned in (a) above holding 51% or more of its charter capital; or

(c) It has foreign investor(s) and the business organisation(s) mentioned in (a) above jointly holding 51% or more of its charter capital.

A business organisation with foreign owned capital does not belong to one of the cases mentioned above shall be treated as a “local investor”.

Investment procedures applied to investment activities of foreign investors shall be as follows:

For investment activities in establishment of business organisations: The enterprise registration procedures shall be separated from the investment procedures.

Prior to registering for establishment of business organisations in Vietnam, foreign investors must have investment projects and must conduct the investment procedures as follows: Obtaining the Investment In-Principle Approvals from the provincial People’s Committees, Prime Minister or National Assembly in respect of large investment projects or ones with significant economic-social impacts which are defined under this Law. The statutory timeframe for issuing the Investment In-Principle Approvals by the provincial People’s Committees is 35 days;

Investment Registration Certificates from the provincial Departments of Planning and Investment (instead of provincial People’s Committees) in respect of investment projects located outside the special-purpose zones (i.e. industrial zones, export processing zones, hi-tech zones and economic zones) or the Management boards of the special-purpose zones in respect of investment projects located inside the special-purpose zones. The statutory timeframe for issuing the Investment Registration Certificates is 5 working days for investment projects already granted with the Investment In-Principle Approvals or 15 days for other cases.

After obtaining the Investment Registration Certificates, foreign investors must also obtain the Enterprise Registration Certificates in accordance with the Law on Enterprises 2014. The statutory timeframe for obtaining the Enterprise Registration Certificates is 3 working days.

For investment activities in contribution of capital or acquisition of shares or capital contribution in business organisations (“Acquisition”): Foreign investors must register the Acquisition with the provincial Departments of Planning and Investment in the following cases prior to conducting the procedures for change of shareholders/members.

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If the Acquisition does not belong to the above cases, foreign investors shall conduct the procedures for change of shareholders/members only.

* The statutory timeframe for the provincial Departments of Planning and Investment to notify their approvals to the Acquisition is 15 days

Investors currently implementing investment projects pursuant to the Investment Licences or Investment Certificates which were issued prior to the effective date of this Law shall be permitted to continue implementing their investment projects pursuant to the issued Investment Licences or Investment Certificates.

Other notable points relating the implementation of investment projects: Investors shall be required to deposit 1% to 3% of the investment capital of an investment project in which the State assigns or leases the land or allows to change the land use purpose in order to ensure the implementation of the investment project.

A maximum operation term of 70 years shall be applicable to investment projects located in economic zones, areas with difficult and especially-difficult social-economic conditions or investment projects with large investment capital but slow capital recovery. Whilst, a maximum operation term of 50 years shall be applicable to investment projects not belong to the cases mentioned above.

Investors shall have the right to postpone the schedule for implementation of investment projects up to 24 months. In the event of force majeure, the time taken for taking the remedy is not counted in the period of postponement of the schedule for implementation of the investment projects.

For investment in the form of BCCs, provisions on the establishment and termination of operation of the project management offices of foreign investors in BCCs are now detailed in the Law.

**LAW ON ENTERPRISES**

Procedures for enterprise registration are now simplified under the Law as below: Registered business lines shall be no longer stated in the Enterprise Registration Certificates. This means that enterprises shall be no longer required to register for amendment of the Enterprise Registration Certificates in case of change of their registered business lines. However, it appears that enterprises shall still be required to notify the business registration authority in case of change of their registered business lines.

Statutory timeframe for issuance of the Enterprise Registration Certificates shall be **shorten to 3 working days**.
Dossiers for enterprise registration shall be no longer required to include documents confirming the legal capital or practicing certificates when registering the business lines that require legal capital or practicing certificates as stipulated in the specialised laws.

Enterprises shall be permitted to freely decide the form, contents and number of corporate seals/stamps to be used, provided that they must notify the specimen of their corporate seals/stamps with the business registration authority.

The Legal Representatives of the enterprises, their roles and duties are now more clearly defined under the Law. Of note, a limited liability company and joint stock company shall be permitted to have more than one Legal Representative.

Enterprises shall be required to notify the business registration authority within 5 days in case of change of information about the managerial persons of the enterprises, including members of the board of directors (for joint stock companies), controllers and/or directors/general directors.

A time-limit of 90 days for capital contribution, from the issuance of the Enterprise Registration Certificates, shall be applied to limited liability companies and joint stock companies.

For foreign investors, payment for all transactions for the purchase, sale and transfer of share or capital contribution and dividend distribution must be made via their capital accounts opened at a bank in Vietnam, except for payment in kind.

One-member limited liability companies shall be allowed to reduce their charter capital, besides limited liability companies with 2 members or more and joint stock companies.

For joint stock companies, a resolution of the General Meeting of Shareholders shall be passed if it is approved by 51% votes (for general issues or in case of collecting written opinions) or 65% votes (for important issues) of the attending shareholders.

**DECREE NO.105/2014/ND-CP ON HEALTH INSURANCE LAW**

We highlight the notable points of Decree No. 105/2014/ND-CP as follows:

**Health insurance premiums:**
- **Female labourers on maternity leave have to pay health insurance at the rate of 4.5% monthly salary entitled before leave;**
- **In case of labourers leave their job under sickness regime from 14 days and more within a month, they shall not be required to pay health insurance premium while still enjoying the health insurance benefits; and**
- **The period in which labourers are nominated to study or work abroad will be exempted from health insurance premium and it is regarded as the health insurance participation time until the day of coming back to work as Company/organization’s decision.**

**Health insurance contribution time:** the period the labourer implementing procedure for unemployment allowance is recorded as the time of health insurance contribution. Health insurance fund will pay for 80% of the cost of treatment for occupational accidents.

**DECREES NO.103/2014/ND-CP ON NEW REGIONAL MINIMUM WAGE LEVELS**

The Government has recently issued Decree No. 103/2014/ND-CP (“Decree 103”) dated 11 November 2014 replacing Decree No. 182/2013/ND-CP dated 14 November 2013 and stipulating region-based minimum wage levels for all types of enterprises.

Below are summary of the changes of regional minimum from 2014 to 2015 for your information:

- **Region I:** VND 3,100,000/month (increase VND 400,000);
- **Region II:** VND 2,750,000/month (increase VND 350,000);
- **Region III:** VND 2,400,000/month (increase VND 300,000); and
- **Region IV:** VND 2,150,000/month (increase VND 250,000).

The regions are defined in the Appendix to the Decree.

The regional minimum salaries shall be the minimum amount for employers and employees to negotiate and remunerate salary as per the labour contracts.

Decree 103 restates that the salary paid to employees who have passed vocational training must be at least 7% higher than the regional minimum salary.

**These new regional minimum salary levels are applicable from 1 January 2015.**