



Tax Newsletter

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NEW REGULATIONS

Issuance of AHKFTA Tariff for 2019-2020

On 05 January 2020, the Government issued Decree No. 07/2020/ND-CP regulating on Vietnam tariff of Special Preferential Import Rate to implement the ASEAN Free Trade Agreement – Hong Kong, China for period 2019-2022, effective from 20 February 2020. In particular, the Decree regulates:

Conditions for goods to apply Special Preferential Import Rate are:

- Subject to the Special Preferential Import Rate list issued under this Decree.
- Imported from countries that are members of the ASEAN Free Trade Agreement – Hong Kong, China, including the following countries:
 - a) Brunei;
 - b) Cambodia;
 - c) Indonesia;
 - d) Myanmar;
 - e) Philippines;
 - f) Singapore;
 - g) Thailand;

- h) Hong Kong Special Administrative Region of the People's Republic of China;
- i) Vietnam (including goods from the non-tariff zone imported into the domestic market).

- Shipped directly from exporting countries to importing countries among the above list.
- Met the qualifying conditions for origin and obtained certificate of origin of (C/O) goods Form AHK, as prescribed under AHKFTA Agreement and the Regulations of the Ministry of Industry and Trade.

The tax rate in the tariff consists of 4 columns corresponding to its period of application:

- (i) From 11 June 2019 to 31 December 2019
- (ii) From 01 January 2020 to 31 December 2020
- (iii) From 01 January 2021 to 31 December 2021
- (iv) From 01 January 2022 to 31 December 2022

Replacement of commodities in Group 2, for electricity, electronics, home appliance

On 18 December 2019, the Ministry of Science and Technology issued Decision No. 3810/QĐ-BKHCHN on the announcement of products and goods of Group 2, being under responsibility of management of the Ministry of Science and Technology.

Compared to the former list of the Group, the new one has supplemented some goods into Group 2, subject to quality inspection; and concurrently, modifies and replaces some standards used as the basis for quality inspection as follows:

- LED used for conventional purposes (including LED bulb, tube LED, LED downlight, Luminaire LED Light Kit...) will be required to register for the quality inspection, certificate of conformity, conformity announcement, from 01 July 2020 as per QCVN 19:2019/BKHCHN;
- Meat grinders, egg-marking machines, blender, fruit presses are subject to have certificate of conformity, conformity announcement as per standard

of electromagnetic compatibility EMC QCVN 9:2012/BKHCHN and Modified version 1:2018 QCVN 9:2012/BKHCHN;

- Application of new technical requirements on safety for toys under QCVN 3:2019/BKHCHN;
- Introduction of a number of other new standards, applied to the products of the Ministry of Science and Technology.

The Decision came to effect on 18 December 2019.

Additional list of HS with details on goods under the management of the Ministry of Industry and Trade

On 16 December 2019, the Ministry of Industry and Trade issued Circular No. 41/2019/TT-BCT to provide list of additional HS codes on the exported or imported goods specified in a number of Circulars previously issued by the Ministry of Industry and Trade. The revisions and additional list cover:

- (i) Rice for export as previously regulated in Circular No. 30/2018/TT-BCT (appendix I);

- (i) Essential oil supplies temporarily imported, re-exported as previously regulated in Circular No. 10/2011/TT-BCT (appendix II);
- (ii) Crude diamond as previously regulated in Circular No. 14/2009/TTLT-BCT-BTC (appendix III);
- (iii) Petrol, oil as previously regulated in Circular No. 38/2014/TT-BCT (appendix IV);
- (v) Mineral export as previously regulated in Appendix 1 of Circular No. 12/2016/TT-BCT (appendix V);
- (vi) Tobacco raw materials, cigarette paper as previously regulated in Circular No. 57/2018/TT-BCT (appendix VI);
- (vii) Machinery and equipment specialized in tobacco as previously regulated in Appendix 72 of Circular No. 57/2018/TT-BCT (appendix VII);
- (viii) Export coal as previously regulated in Appendix 1 of Circular No. 15/2013/TT-BCT (appendix VIII).

Circular No. 41/2019/TT-BCT came into effect from 29 January 2020.

GUIDANCE RULINGS

Corporate Income Tax ("CIT")

Income from capital transfer

On 31 December 2019, Hanoi Tax Department issued Official Letter No. 98064/CT-TTHT providing guidance on the determination of foreign exchange rate on income from capital transfer for CIT declaration.

In particular, in accordance with Article 14 of Circular No. 78/2014/TT-BTC, in case the Transferor and the Transferee are foreign-based enterprises, the Vietnamese company at which the capital transfer incurred is responsible for filing CIT declaration on be half of Transferor and Transferee.

In addition, the taxable income from capital transfer equals to the transfer price minus (-) the purchase price of the capital and the transfer cost.

In which, the "purchase price of capital" is the value of contributed capital which is accumulatively calculated at the time of transfer based on its accounting book, accounting documents and

confirmation of investors or audited financial statements in case it is a 100% foreign investment company; and not to be based on investment certificate (Article 8, Circular No. 96/2015/TT-BTC).

Regarding exchange rates to convert foreign currencies to Vietnamese dong, taxpayers follow the guidance in Clause 4, Article 2 of Circular No. 26/2015/TT-BTC.

Issuing invoice for the land rental fee collected from business partners

On 30 December 2019, Hanoi Tax Department issued Official Letter No. 97435/CT-TTHT providing guidance on tax policy for the land rental fee.

Accordingly, the company having a business cooperation contract with other parties with provisions on responsibility, the division of the products and the right to use the divided land area based on the proportion of capital contribution of each party, the company must issue the invoice to each party in case there is an additional land rental fee and tax on using non-agricultural land incurred, upon collection of the proportion of land rental fee of each party to

lodge to the State budget, so that they can accordingly record the land rental fee.

However, there is no VAT on the invoice for land rental fee.

Condominium Management Fee

On 30 December 2019, Hanoi Tax Department issued Official Letter No. 97454/CT-TTHT providing guidance on VAT policy for the condominium management fee.

Accordingly, the condominium management fee is subject to VAT. Company must issue invoice and declare VAT returns per prevailing regulations upon collection of management fee from organizations and individuals in accordance with its contract. The provisions in the contract/agreement between parties will determine if the condominium management fee is inclusive or exclusive of VAT.



Use of invoices of export processing enterprises

On 30 December 2019, Hanoi Tax Department issued Official Letter No. 97491/CT-TTHT to respond the question on using invoices of Export Processing Enterprises ("EPE").

Accordingly, based on the provisions of Clause 1, Article 5 of Circular No. 119/2014/TT-BTC, when an EPE sells goods and provides services to another EPE, the company must issue sale-invoice which clearly states "for organizations and individuals in the non-tariff zone" (Form No. 5.3, Appendix 5 attached to Circular No. 119/2014/TT-BTC).

Manufacturing units are allowable to declare tax centrally upon cessation of sale activities

On 06 January 2020, Hanoi Tax Department issued Official Letter No. 329/CT-TTHT giving guidelines on implementing the tax policy for manufacturing units upon cessation of sale activities.

Accordingly, in case the company narrows functions of its branch in

different provinces to be an assembly unit only without accounting system and sales activities, the company shall declare VAT for the branch at the headquarters and allocate the tax payable to the relevant tax department managing the branch at a rate of 2% or 1% as specified in Point D, Clause 1, Article 11, Circular No. 156/2013/TT-BTC.

For CIT, the company is responsible for the declaration of incomes and expenses arising at the assembly unit and performs the allocation of tax payable to the tax departments where the headquarters and the assembly locate under the guidance of Article 12, Circular No. 78/2014/TT-BTC.

Software technical support services

On 11 December 2019, Hanoi Tax Department issued Official Letter No. 92387/CT-TTHT giving guidance on invoice issuance for provision of services.

Accordingly, the provision of software technical support which meet the provisions of Decree No. 71/2007/ND-CP shall not be subject to VAT and its input VAT shall not be creditable (Article 4,

Clause 7, Article 14 of Circular No. 219/2013/TT-BTC).

The time for invoice issuance is the time of service completion or the time of service fee collection (Clause 2 of Article 16 of Circular No. 39/2014/TT-BTC).

Invoice issuance upon recollection of electricity and water expense from tenant

On 06 January 2020, Hanoi Tax Department issued Official Letter No. 419/CT-THTT giving guidance on invoice issuance upon recollection of electricity and water expense from tenants.

Accordingly, if the company proceeds the payment of electricity and water bill in accordance with the amount of electricity and water consumed in the rental premises and the company is the contractual party with the electricity/water supplier at these locations, the company must issue VAT invoices and declare VAT upon recollection of electricity and water expense from tenants.

Invoice issuance when transferring assets to subsidiary

On 12 December 2019, Hanoi Tax Department issued Official Letter

No. 92945/CT-THTT providing guidance on invoice issuance when transferring assets to subsidiary.

Accordingly, as specified in Clause 6, Article 5 of Circular No. 219/2013/TT-BTC, the parent company when transferring its newly built fixed assets ("FAs") to its subsidiary (transferred value is the book value), to serve for VATable business activities, shall not be required to issue VAT invoice nor VAT declaration. The company is however required to prepare a transfer dossier along with the original supporting documents for the FAs recording at the subsidiary.

However, in case the company re-valuate the value of the FAs before transferring or the transfer to the subsidiary to serve for non-VATable business activities, then it is required to issue invoice and declare VAT.

With respect to interest expense during investment period which is capitalized into historical cost of the FAs, such expense shall not be considered as deductible expenses (Clause 2.17, 2.18, 2.31, Article 4 of Circular No. 96/2015/TT-BTC).

Invoice for apartment management fee

On 16 December 2019, Hanoi Tax Department issued Official Letter No. 93847/CT-TTHT on invoice for apartment management fees.

Accordingly, in the event that the company enters into a rental contract with landlord for which the contract mentions that the company is responsible for utilities and management fees, yet the invoices are issued to the landlord, then such expenses shall not be deductible and creditable for VAT and CIT purposes. In relation to electricity, water expenses, the company shall follow guidance in Clause 2.15, Article 4, Circular No. 96/2015/TT-BTC.

Sports zone investment by welfare fund is not permitted for depreciation

On 18 December 2019, the General Department of Taxation issued Official Letter No. 5305/TCT-DNL in terms of tax policy for costs arising related to fixed assets serving workers in the enterprise invested by welfare fund.

As defined in Clause 2, Article 34, Point 1 of Article 63, Circular

No. 200/2014/TT-BTC, the depreciation of fixed assets invested by welfare fund used for cultural needs, welfare of the enterprise, will not be allowed for deduction for CIT purpose. Instead, the depreciation will be debited to welfare fund.

Accordingly, in case the company invested in building sports zone for workers from its welfare fund, the property is not allowed to depreciate for CIT deduction.



Personal Income Tax ("PIT")

Sale commission outside of Vietnam is PIT exemption

On 13 September 2019, Ho Chi Minh City Tax Department issued Official Letter No. 10149/CT-TTHT guiding the PIT treatment for the brokerage service in foreign countries.

Accordingly, for foreigners being non-residents performing sale brokerage services for Vietnamese enterprises in a foreign country, the sale commission arising outside the territory of Vietnam will be exempted from PIT.

No requirement for submission of income certificate for dependent

On 06 January 2020, Hanoi Tax Department issued Official Letter No. 330/CT-TTHT regarding the supporting documents for dependent registration.

Accordingly, there is not any requirement on dependent registration's supporting document to include certificate of income (i.e. not more than VND 1 million/month) of the dependent. The taxpayers commit themselves

and are responsible for their information declared.

In addition, if the taxpayers apply for family deduction being for their parents, they are not required to make a list detailing individuals who they have the obligation to nurture.

Multiple amendments of PIT finalization filing

On 16 December 2019, the General Department of Taxation issued Official Letter No. 5247/TCT-QLN on adjustment of interest on late settlement of tax liability.

Accordingly, in case the company amends the filing of the PIT finalization for the second time, which leads to an increase in tax liabilities, interest payment on late settlement of tax liability will arise. However, when the company files third amendment of PIT finalization before a tax inspection decision is issued, and this time the total tax liability is reduced, the interest payment on late settlement of tax liability will be reassessed accordingly.



Electronic invoices

Use of electronic invoices

On 27 December 2019, Hanoi Tax Department issued Official Letter No. 96741/CT-TTHT on the use of electronic invoices.

Accordingly, the enterprises being eligible to initiate electronic invoices as prescribed in Clause 2, Article 4, Clause 1, Article 7, Circular No. 32/2011/TT-BTC can use electronic invoices. Before its use, enterprises need to carry out the electronic invoice releasing notice in accordance with Clause 2, Article 7 of Circular No. 32/2011/TT-BTC.

In addition, starting from the date of application of the use of electronic invoices, enterprises must stop using paper-invoices purchased from the Tax authority, and carry out cancellation of the unused invoices, as specified in Circular No. 39/2014/TT-BTC. Enterprises shall submit a report on the use of invoices on monthly basis from the beginning of the month to the date stop using paper invoices. Enterprises will then submit the report on the use of invoices on quarterly basis counting from the day following the day stop using paper-invoice in accordance with Article 27 of Circular No. 39/2014/TT-BTC.

Self-printed invoice used up to 31 October 2020

On 27 December 2019, Hanoi Tax Department issued Official Letter No. 96977/CT-TTHT on the use of self-printed invoices.

As regulated in Clause 2, Article 27, Circular No. 68/2019/TT-BTC, during the period from 01 November 2018 to 31 October 2020, companies can continue using their self-printed invoices unless being requested by the Tax authorities to use electronic invoice, instead.

Starting from 01 November 2020, the company is required to stop using self-printed invoice to convert to the new electronic invoice.

Minute to correct electronic invoice must have both buyer and seller signatures

On 30 December 2019, Hanoi Tax Department issued Official Letter No. 97492/CT-TTHT on correction of electronic invoice.

In the event company issues electronic invoice incorrectly and the goods have not been delivered to the buyer or the company have not made any tax declaration on

this, the correction of invoice will be made in accordance with the instructions in Clause 1, Article 9 of Circular No. 32/2011/TT-BTC.

In the other case, when the company has delivered goods to the buyer and all parties have declared tax, the incorrect invoice shall be handled in accordance with the instructions in Clause 2, Article 9 of Circular No. 32/2011/TT-BTC.

When the buyer does not have an electronic signature, a paper minute on invoice correction fully signed by both the buyer and the seller is required.

The use of list attached to electronic invoice is not permissible

On 30 December 2019, Hanoi Tax Department issued Official Letter No. 97494/CT-TTHT on electronic invoices.

According to Official Letter No. 2047/TCT-CS dated 22 May 2019 of the General Department of Taxation, electronic invoices is a collection of electronic data on the sale of goods, service provision, without any limitation of the number of lines per invoices. Therefore, using another list attached to electronic invoice is not permissible.

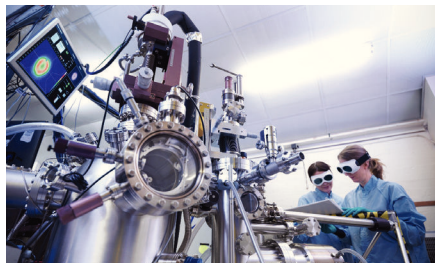
Value Added Tax ("VAT")

VAT on financial support paid by insurance company to its bank

On 26 December 2019, Hanoi Tax Department issued Official Letter No. 96643/CT-TTHT regarding VAT on financial support paid by insurance company to its bank.

In particular, in case insurance company signs an insurance agency contract with commercial bank, the financial support the bank received from the insurance company to perform its services (i.e. advertising, marketing, etc.) will be subject to VAT with the applicable tax rate of 10%.

To the extent the bank does not directly carry out services to the insurance company, it is not the responsibility of the bank to file and declare VAT. Instead, the bank will issue the cash collection receipts only.



VAT invoice issuance upon collection of job search fee for its branch

On 30 December 2019, Hanoi Tax Department issued Official Letter No. 97636/CT-TTHT with regard to VAT on financial income.

Following this guidance, in case the company performs job search services for its branches and receives fee as a proportion of revenue on the work assigned to the branch, the company must issue VAT invoice, declare and pay tax at the rate of 10% according to Point a, Clause 7, Article 3, Circular No. 26/2015/TT-BTC dated 27 February 2015 and Article 11, Circular No. 219/2013/TT-BTC dated 31 December 2013 issued by the Ministry of Finance.



Applicable VAT rate for software services

On 06 January 2020, Hanoi Tax Department issued Official Letter No. 332/CT-TTHT on VAT for software services.

As stipulated in Clause 21, Article 4, Circular No. 219/2013/TT-BTC, the software service is not subject to VAT (i.e. VAT exemption) in general. However, VAT exemption would only apply to software services qualifying condition as stated in Article 9, Decree No. 71/2007/ND-CP. Otherwise, 10% tax rate will apply to software services not meeting the aforementioned condition.

Bonus and financial support for Life Insurance Agency

On 16 December 2019, Hanoi Tax Department issued Official Letter No. 96644/CT-TTHT providing guidance on VAT policy for bonus and life insurance agent support.

Accordingly, in case the insurance company pay the financial support to insurance agents to perform services such as advertising, sales marketing, etc., such transactions is subject to VAT at the rate of 10%. However, in case insurance agents

do not directly perform the above services, then such financial supports will not subject to VAT declaration and payment.

Creditable VAT for graphic design field

On 19 December 2019, Hanoi Tax Department issued Official Letter No. 93729/CT-TTHT on VAT creditable for enterprises in graphic design field.

In particular, enterprise self assess whether their scope of business operation subject to VAT exemption pursuant to Article 4, Circular No. 219/2013/TT-BTC. For case of VAT exemption, no input VAT is creditable.

In case the enterprise has already issued a 10% VAT invoice, the corresponding input VAT is eligible to be creditable if fully satisfied the conditions stated in Article 15, Article 13, Circular No. 219/TT-BTC.

In case of incurring export activity, the respective input VAT is eligible to be creditable when fully satisfied with the conditions stated in Article 16, 17, Circular No. 219/2013/TT-BTC.

Customs, Import-Export duties

EPEs must pay taxes on duty-exempted machinery when converting into non-EPE

On 27 February 2019, the General Department of Customs issued Official Letter No. 8004/TCHQ-TXNK in relation to the transformation of the business model.

In case the company, imported machinery and equipment, which were duty-exempt, to originally form fixed assets of the Export Processing Enterprises (“EPEs”), now wants to convert from EPE to non-EPE status, then the Company must declare, pay tax and duties in accordance with the new customs declaration. At the same time, the company must implement the imported goods management policy at the time of registration of the new customs declaration, except the case of full implementation of this policy at the time of registration of the original declaration.

In case the company has not been approved by board of management for the transformation of enterprises from EPE to non-EPE enterprise, then the company

must carry out the customs procedures for on-spot import/export when buying, selling with domestic enterprises as prescribed in Clause 2, Article 75, Circular No. 38/2015/TT-BTC (amended and supplemented at Circular No. 39/2018/TT-BTC dated 20 April 2018 of the Ministry of Finance).

Rules for declaring information on import-labels

On 27 December 2019, the General Department of Standards of Quality Measurement, under the Ministry of Science and Technology, issued Official Letter No. 424/TDC-QLCL responding to concerns in handling imported goods in violation of labeling.

As regulated in Clause 3, Article 7 and Clause 4, Article 9 of Decree No. 43/2017/ND-CP, the time to attach the sub-label to the imported goods on which original label has not yet been presented, or not had enough content required in Vietnamese, is as "when in circulation".

As regulated in Clause 7, Article 3 Decree No. 43/2017/ND-CP, "circulation of goods is for display, promotion, transport and storage of goods during the sale of goods, except for the transport of goods

of individuals, organization to import goods from the border gate to the storage".

Accordingly, at the border gate, the goods having labels which do not fully present the required contents in Vietnamese, are not considered as a violation of labeling, however, the importer (i.e. individual/organization) must ensure to attach sub-label in Vietnamese before circulation.

In addition to administrative sanctions on labeling, Clause 1, Article 31 of Decree No. 119/2017/ND-CP also excludes sanctions on the case of imported goods with only the original label, no sub-label when clearing from customs.



Customs duties on parts imported to replace the defective ones

On 02 January 2020, the General Department of Customs issued Official Letter No. 13/TCHQ-TXNK on duties and customs valuation of parts imported to replace the defective ones.

Accordingly, pursuant to Article 2 of the Law on Import and Export duty No. 107/2016/QH13, goods, provided by foreign partners to replace defective goods, are subject to import and export duties. Customs value of goods imported to replace defective goods, without commercial contracts/ invoices is the values declared.

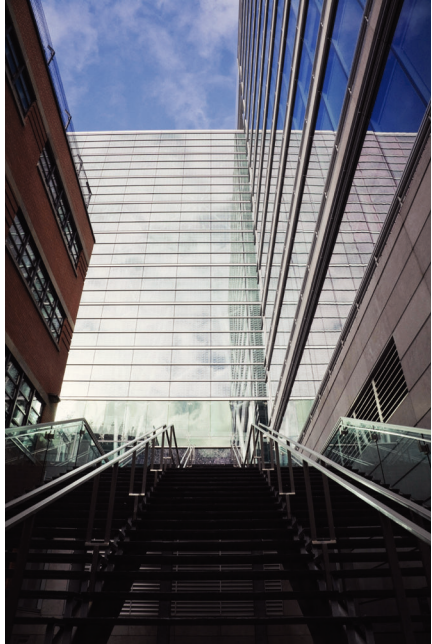
Accounting regulations for EPEs implementing import and export rights

On 16 December 2019, the General Department of Taxation issued Official Letter No. 5252/TCT-CS giving some accounting regulations for EPEs implementing import and export rights.

In particular, those EPEs, entitled to exercise the import and export rights, must maintain separate

accounting books for revenues and expenses and operation costs of such goods in Vietnam, and are required to declare duties, pays taxes for these activities, without involving export activities.

In addition, the calculation method of VAT for exercising import and export rights is regulated in Article 1, Circular No. 93/2017/TT-BTC; and invoices used for revenue from the operation of import and export rights are prescribed in Article, 5 Circular No. 119/2014/TT-BTC and Circular No. 39/2014/TT-BTC.



Temporarily imported goods converted into domestic sales must register new declarations and make payment of duties

On 02 January 2020, the General Department of Customs issued Official Letter No. 07/TCHQ-TXNK guiding on conversion for domestic sales of machinery and equipment temporarily imported. Accordingly:

- **With regard to import mode:** the Company declares import code A21 for goods transferred to domestic consumption for those temporarily imported; or declare import code A42 for the transfer the goods into domestic sales from other sources.
- **With regard to customs procedures:** The Company follows guidance in accordance with Clause 5, Article 25 of Decree No. 08/2015/ND-CP, amended and supplemented in Clause 12, Article 1, Decree No. 59/2018/ND-CP and Article 21, Circular No. 38/2015/TT-BTC amended and supplemented in Clause 10, Article 1, Circular No. 39/2018/TT-BTC.
- **With regard to duty policies:** goods being raw materials, supplies imported for processing, manufacturing finished goods to export, and temporarily imported and re-export, which have been released or cleared customs but then change purpose for domestic sales, must register new customs declaration. Goods-management policies and duty policies for exported/imported goods must be applied at the time of registration of the new customs declaration unless otherwise completed on the original declaration. In case the companies imported goods as borrowing, and later do not re-export, but transfer to domestic consumption (transfer of ownership), then the Companies are required to declare and make payment of import duties, VAT as regulated.
- **With regard to Customs values:** It is the declared value, which is determined on the basis of the actual selling price. In the case of Customs authorities having grounds to determine the values of goods inappropriately declared, customs value shall be determined as prescribed.

Branch of the company is not eligible to apply the Authorized Economic Operator ("AEO") status

On 25 December 2019, the General Department of Customs issued Official Letter No. 7963/TCHQ-KTSTQ guiding eligibility for the AEO regime.

Accordingly, as branch is a dependent unit of the company, without legal entity rights, it can not on its own to join the legal relations as independent one. Therefore, there is insufficient basis to apply AEO status to the company's branch.

Exemption from filing C/O for imported goods with FOB values not exceeding 200USD

On 18 December 2019, Ho Chi Minh City Customs Department issued Official Letter No. 3724/HQHCM-GSQL guiding on imported goods subject to exemption of filing C/O.

Accordingly, pursuant to the instructions of Official Letter No. 3724/HQHCM-GSQL on 18 December 2019 and Article 15, Appendix VII of Circular No. 22/2016/TT-BCT, Article 26, Circular No. 12/2019/TT-BCT, goods imported from ASEAN and China will be exempted from filing C/O (Form D and Form E) in the event that the goods have a FOB value not exceeding USD 200.

The goods imported by mail are also applicable to the above regulations.



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