

Vietnam News Brief

An update on Value Added Tax ("VAT")

5 July 2010

NEW GUIDANCE ON VAT REFUNDS FOR IMPORTED FIXED ASSETS

Under the pre 2009 VAT regulations (i.e., Circular 32/2007/TT-BTC), goods which could not be domestically produced, and which were imported to form the fixed assets of the importer, were exempt from import VAT. This exemption was removed under the new VAT regulations effective from 2009 (Circular 129/2008/TT-BTC).

However, according to the subsequently issued Circular 205/2009/TT-BTC ("Circular 205") which applies to newly established entities and certain investment projects which are in pre operation stage, import VAT incurred on such goods is refundable provided that certain conditions are met as follows:

- (i) The entities are VAT registered; and
- (ii) The import VAT in relation to the imported fixed assets is VND200 million or above; and
- (iii) The investment projects are an important national project approved by the National Assembly, or a project under Group A as stipulated in Decree 12/2009/ND-CP (e.g. construction projects for industrial zone infrastructure, electricity, mineral exploitation and processing, transportation, etc.); and
- (iv) The investment projects make VATable supplies.

On 17 June 2010, the Ministry of Finance issued Circular 92/2010/TT-BTC ("Circular 92") to replace Circular 205, with effect from the signing date. Key changes under Circular 92 include:

- Circular 92 relaxes the conditions for VAT refund claims by removing condition (iii) above;
- In respect of condition (ii), Circular 92 applies a minimum value of VND200 billion to the imported asset, instead of VND200 million to the import VAT payable amount;
- Circular 92 shall be applied to any VAT refund claims under the old Circular 205 which were submitted to the tax authorities prior to the effective date of Circular 92 but which have not yet been approved.
- Notably, enterprises that meet the conditions for a VAT refund under Circular 92 are also entitled to a 60-day deferral of payment of the import VAT with respect to the same assets. The VAT deferral and refund under Circular 92 shall also be available to enterprises having customs declarations registered prior to the effective date of Circular 92, provided that the deadline for the import VAT payment has not yet passed.

This publication is intended for general guidance only and should not form the basis of specific decisions. Please contact us for further information and details of our services. In Ho Chi Minh City: contact David Fitzgerald or Richard Irwin (Tax), Phan Thi Thuy Duong (Legal), Masako Tsunoi (Japanese Business), Seong Ryong Cho (Korean Business), Ian Lydall (Audit), Steve Gaskill (Advisory) at phone (84-8) 38230796, fax (84-8) 38251947. In Ha Noi: contact Dinh Thi Quynh Van (Tax), Le Anh Tuan (Legal), Eisuke Kofugata (Japanese Business), Nguyen Phi Lan (Audit) at phone (84-4) 39462246, fax (84-4) 39460705.