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Foreign Contractor Tax treatment of goods supplied to domestic market from bonded warehouse

In the recent years, the tax authorities have been seeking to impose foreign contractor tax on goods supplied to domestic market from bonded warehouses.

In June 2015, the General Department of Taxation ("GDT") issued Official Letter No. 2652/TCT-HTQT dated 30 June 2015 ("OL 2652") providing guidance on the determination of permanent establishment ("PE") and foreign contractor tax ("FCT") treatment of goods being supplied to domestic market from bonded warehouses.

OL 2652 is of the view that maintaining a stock of goods in a Vietnamese bonded warehouse for further delivery and sales to Vietnamese customers by the foreign company shall continue to fall within the scope of FCT under Circular 103/2014/TT-BTC on FCT.

In respect of PE definition under Double Tax Agreement ("DTA"), OL 2652 refers to the PE provisions in the DTA between Vietnam and Denmark and concludes that a PE is deemed to exist because:

(i) The foreign supplier maintains a warehouse in Vietnam for the purpose of delivering goods to customer - the foreign company is considered conducting commercial activity in Vietnam; and

(ii)The foreign company has a representative in Vietnam to supervise the delivery from and storage of the goods in the bonded warehouse.

OL 2652 also provides opinion on PE assessment of the representative office ("RO") of the above-mentioned foreign company in Vietnam. Accordingly, where the RO is involved in the delivery of goods from the bonded warehouse to the domestic market, the RO is regarded as a PE of the foreign company in Vietnam. The OL is, however, silent on the tax implications of the RO in this case.

In light of the above, foreign companies supplying goods from bonded warehouses to Vietnam domestic market should review its current activities, especially the contract with its warehouse lessor and PE provisions under relevant DTA to assess the potential PE risk.

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Please contact us if you need further information on this issue.

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