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Value added tax applied to trademark fees

At a glance...

The Ministry of Finance has issued Letter 15888/BTC-CST providing that VAT is applicable to trademark fees paid to foreign organisations. The Letter also sets out the VAT declaration requirements for past payments.

In the past, the general interpretation and practice was that payments to foreign organisations for the right to use trademarks were subject to foreign contractor tax (“FCT”) comprising only 10% corporate income tax (“CIT”) and that they were exempt from value added tax (“VAT”). This position was not generally challenged by the tax authorities.

In recent years, the tax authorities have changed their view and sought to apply FCT –VAT of 5% (in addition to the 10% CIT). Various rulings issued by the provincial tax authorities and now Letter 15888/BTC-CST by the Ministry of Finance confirm this position.

On 7 November, the Ministry of Finance issued letter 15888/BTC-CST to provincial tax authorities providing that payments to foreign organisations for the right to use trademarks are subject to FCT of 5% VAT and 10% CIT. This Letter reconfirms the position provided in some past rulings issued by various provincial tax authorities, as well as letter 10453/BTC-CST dated 27 July 2016 by the Ministry of Finance.

Letter 15888 also sets out the VAT declaration requirements for past payments (i.e. those made before the date of this Letter) as follows:

- (i) companies that declared and paid FCT-VAT differently from the guidance in this Letter, are not required to now revise the respective FCT returns;
- (ii) companies that have not yet declared VAT, or have declared but not yet paid VAT, are required to declare and pay VAT based on the guidance in this ruling.

We have discussed with the MoF and been verbally advised that companies which previously treated the payments as VAT exempt fall under case (ii) and thus are now required to re-declare additional FCT-VAT of 5%. It is not clear in this regard how far back such FCT-VAT need now be declared, and whether penalties and/or late payment interest would be applied.

For most companies, which make VATable supplies, this may only result in a cash flow issue, although if this VAT is collected retrospectively in a tax audit, the VAT may not be creditable. For businesses making wholly or partially exempt supplies, this will create additional tax costs.



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