

Tax & Custom Alert

Highlighting recent tax and custom developments in Vietnam

Clarifications on On-spot Imports and Exports Procedures

The General Department of Customs ("GDC") has recently received queries from various business associations as well as diplomatic agencies with regard to the customs procedures for on-spot imports and exports ("**On-spot Procedures**") stipulated in Article 35 of the Decree 08/2015/NĐ-CP ("**Decree**"). The Decree sets out the customs procedures related to the supervision and control mechanism for on-spot import and export.

On 8 August 2023, GDC issued the Official Dispatch 4146/TCHQ-GSQL that provides clarifications on two key issues relating to the On-spot Procedures.

First, GDC has re-affirmed that the On-spot Procedures are only applicable to foreign entities which do not have a legal presence in Vietnam. The affirmation could be a signal that the authorities have been listening to feedback from enterprises which have been encountering difficulties in complying with the customs procedures for years, and the authorities are going to undertake a well-rounded and comprehensive assessment of feedback on the current On-spot Procedures before proposing the relevant legislative reforms for the Government's consideration.

Secondly, GDC has shared the view that On-spot imports and exports should be regarded as domestic transactions among local entities. If this view were to be formalised by laws and/or subordinate legislation in the future, this will likely put an end to the businesses of enterprises which have been trading under the model of export processing/toll manufacturing with the final products being delivered within Vietnam territory ("**Policy-affected Enterprises**"). This is because all materials imported by these enterprises would become dutiable and there would be no refund of import duty, resulting in heavier cost for this business model. Policy-affected Enterprises are advised to start reviewing and adapting their current business model in response to this GDC's position.

Exchange Rate for Foreign Contractor Tax

Enterprises have been recently questioned by the tax authorities regarding the exchange rate to be used for the computation of foreign contractor tax ("**FCT exchange rate**"). Most tax authorities allow the taxpayers to use the exchange rate at the bank at which they maintain their accounts, while some tax authorities in major cities request the taxpayers to use the exchange rate at the bank engaged by the taxpayers to make the payments to the foreign entities. Given that every bank has its own exchange rates policy, this inevitably causes difficulties for taxpayers who make frequent payments to overseas vendors in tax declaration and exposes them to penalties and late tax payments.

To address these issues, on 23 October 2023, the General Department of Taxation (GDT) issued the Official Letter 4666/TCT-CS which prescribes the exchange rate to be used for the computation of FCT in the scenarios below:

- (a) For overseas payments by credit, the [selling currencies] exchange rate of the credit issuing bank shall be applied.
- (b) For overseas payments by cash, the [buying currencies] exchange rate of the bank at which the enterprise maintains an account shall be applied.

Restrictions on Change to Depreciation Method in Accounting Records

Sometimes enterprises may need to change their depreciation methods for assets in accounting records for internal management purposes. Any changes to the depreciation methods may have a significant impact on tax liabilities to be declared by an enterprise.

The Official Letter 23568/CTBDU-TTHT issued by Binh Duong Tax Department on 6 October 2023 provides that the depreciation methods for assets in accounting records have to be consistently applied and should not be changed within a year. Any changes to the depreciation method for assets must be justifiable. In practice, the local tax authorities have denied the taxable income declared by Enterprises in several cases due to changes to the depreciation methods of assets within the same fiscal year.

Further Information

Please feel free to reach out to our contact partner/s should you have queries on the above developments.

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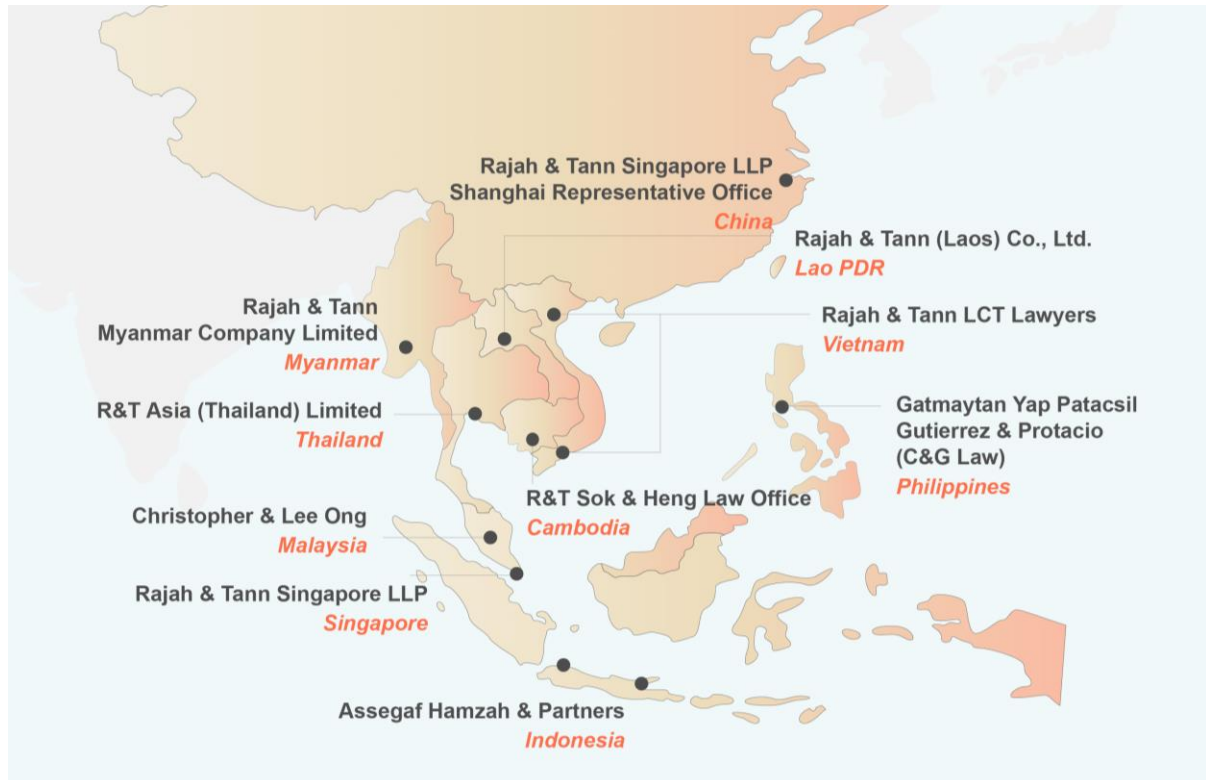
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