

Executive summary

- From now on, a tax invoice for a particular delivery of taxable goods or taxable service must be issued at the date of delivery.
- Settlement of VAT underpayment and VAT reporting for a particular month can be done by the end of the following month.
- One month's VAT overpayment must generally be carried over to year end and only by then can a VAT refund be applied for.
- However, more parties in addition to golden taxpayers are entitled to obtain pre-audit refunds on a monthly basis. The facility is more favourable than the similar one applicable under the old law as the 100% administrative penalty for any excessive refunds is replaced by an interest penalty at 2% per month.

2010 VAT law comes into force

1 April 2010 is an important day for tax as Law No. 42/2009 regarding the third amendment of the 1984 VAT law came into force. While a lot of regulations are yet to be issued, companies need to pay attention on a number of changes that may affect significantly their business.

The current edition of ITNH will highlight some of those changes about which relevant implementing regulations have been issued.

Tax invoice

From now on, a tax invoice must generally be issued at the same time you deliver taxable services or taxable goods to your customer. There is no longer one-month tolerable delay applicable under the old law. However, if a payment takes place before the delivery of taxable

goods or services, a tax invoice must be issued at the payment date.

A combined tax invoice which cover one month's deliveries to a single customer can be used instead a series of tax invoices each dealing with a single delivery to the same customer. In this case, a combined tax invoice must be issued no later than the end of the month concerned.

The new VAT law no longer recognize the so-called simple tax invoices in addition to standard tax invoices. There is only one type of tax invoice now which must be prepared in a prescribed format and contain the minimum information required by the law. Missing any part of the information would render the tax invoice defective resulting in the issuer bearing an administrative penalty and the recipient not being able to claim the VAT as an input tax.

There is a list of documents designated as having the status as tax invoice provided they contain the prescribed minimum information. All documents having this status under the old law, such as electricity bills, telecommunication bills, etc., still remain in the list. Another document is added, i.e., *export declaration form* (PEB) for the export of taxable services and

taxable intangible goods. The addition pertains to the extension of export definition to include services and intangible goods.

VAT on exports of goods and services is zero rated. So far a PEB is required only for an export of tangible goods. Extending the applicability of the document to exports of services and intangible goods may need some changes of the relevant regulations.

The Finance Minister must also issue an implementing regulation to elaborate on the meaning of export of services and specify the types of service the export of which is eligible for zero-rated VAT. The elucidation of Art. 4(1)(h) states the qualifying services should include toll manufacturing services.

Apparently at this stage the zero-rated VAT will only be applied to the toll manufacturing services. This has been indicated by several officials in a number of socialization of the new VAT law.

Tax settlement and reporting

If there is a tax underpayment for a particular month, it must be settled by the end of the following month. The new law gives two-week time longer than the time provided by the old law. Tax reporting could also be done by then just after the settlement of tax underpayment if any.

Under the old law, a tax underpayment for a particular month must be settled no later than the 15th of the following month and tax reporting must have been done by the 20th.

Tax refunds

If a VAT return for a particular month contains a tax overpayment, the new law requires that the overpaid tax be carried over to year end and only by then can a VAT refund be applied for. This is different from the old law which allows VAT refunds on a monthly basis.

However, the new VAT law allows more parties to obtain pre-audit refunds on a monthly basis, a facility which was only available for golden taxpayers under the old law. The newly designated parties include exporters, vendors or service providers serving VAT collectors, and companies engaged in deliveries of taxable goods with a non-tax collection facility.

The DGT is bound to release a pre-audit refund within a month of the application submission date after a verification of the applicant's tax return. An audit can be conducted any time afterwards and if the DGT finds that too much refund has been granted, a penalty at 2% per month will apply on the refund amount in excess. This is more reasonable than the 100% penalty applicable under the old law.

Subject to the issue of further implementing regulations, other types of company may also enjoy the pre-audit refund facility on the basis of turnover volume and the the overpaid tax amount.

Urgent things to do

In response to the recent development in VAT, you may need to take some actions. Firstly, consider revisiting your contract agreements with your customers. Amendments may be required for clauses dealing with billing arrangement as tax invoices are normally issued at the same time as the billing.

While billing schedules may not need to be changed, adjustments may be required in some other parts of the contracts to ascertain that tax invoices be issued on the delivery date. However potential complication may arise if a tax invoice is issued on a different date from the corresponding commercial invoice.

If your companies are entitled to to obtain pre-audit refunds, you may consider to use this facility. In this case, you will need to ensure that your VAT returns are prepared correctly. Though the DGT by law should issue a pre-audit refund decision within a month of the application submission date, incorrect preparation of VAT returns could prolong the process. We also suggest compiling all VAT-related documents in a proper manner in anticipation of a tax audit which may take place at any time after the issue of the pre-audit refund decision.

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