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POLICY

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New Law on Special Consumption Tax Adversely Affects Alcohol Imports

Report Categories:

Beverages

Wine

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Report Highlights:

On April 6, 2016, the National Assembly of Vietnam passed Law 106/2016/QH13 (Law 106) on amending and adding a number of articles to Law on Value Added Tax, the Law on Special Consumption Tax (SCT), and the Law on Tax Management. The Law will adversely affect imports of alcoholic beverages by changing the tax basis for how the special consumption tax is collected. The new SCT calculation basis comes after the National Assembly raised the SCT rate during previous assembly sessions. Law 106 will come into force on July 1, 2016. A new implementing Decree, replacing Decree 108/2015 will be issued before the entry into force date of the Law.

Policy

On April 6, 2016, the National Assembly of Vietnam passed Law 106/2016/QH13 (Law 106) on amending and adding a number of articles to Law on Value Added Tax, the Law on Special Consumption Tax, and the Law on Tax Management. Law 106 will enter into force on July 1, 2016.

Article 2 of the Law amends and supplements some articles of the Law 27/2008/QH12 on special sales tax, changing the tax basis from which Vietnam's SCT is collected for both imported and domestically-produced spirits, wine, and beer.

Clause 1 and Clause 2 of Article 6 is amended and added, as follows:

- "1. For domestically-produced goods and imported goods, it is the price at which production establishment or importing establishment sells [product].

Where goods subject to special consumption tax are sold to commercial businesses that are establishments which have a relationship of parent company and subsidiary or subsidiaries of the same parent company with production establishments, importing establishments or commercial businesses that are establishments, which have an association relationship, the special consumption taxable price may not be less than the percentage (%) compared to the average price at which commercial business establishments directly purchase [goods] from production establishments and importing establishments selling [goods] under the provisions of the Government;

2. For imported goods at import stage, it is the taxable import price plus import duties. Where imported goods are entitled to exemption or reduction of import duties, the taxable price does not include import duties as exempted or reduced. Goods subject to special consumption tax at import stage are entitled to a deduction of the special consumption tax amount already paid at import stage when determining the special consumption tax amount payable upon those goods being sold;"

Background

Previously, the Government of Vietnam promulgated Decree 108/2015/ND-CP (Decree 108) on October 28, 2015, detailing and providing guidance to some articles of the Law on Special Consumption Tax and its Amendments (Law 27 & Law 70 which was amended by Law 106). The Decree 108 entered into force on January 1, 2016; with Circular 195/2015/TT-BTC issued on November 24, 2015, guiding the implementation of the Decree 108 and determines how the SCT is calculated at the importers selling point.

Following concerns from local and international alcoholic beverage manufacturers and importers, Vietnam held a series of listening sessions with industry which resulted in the Government postponing the changing of the tax basis from January 1, 2016 to July 1, 2016 through the promulgation and passing of Law 106.

How the New Tax Will Be Calculated

While Vietnam will need to produce a new Decree implementing the changes legislated by Law 106 clearly explaining how the SCT will be assessed and collected, Post anticipates that Decree 108's tax calculation will be the guide for the new Decree.

The taxable prices of products subject to SCT, including alcoholic beverages, are determined by the Decree 108 as follows (however, there are a number of other ways the tax base is calculated in specific cases, as outlined below):

$$\text{Taxable price} = \frac{\text{Price exclusive of VAT} - \text{Environmental protection tax (if any)}}{1 + \text{Special excise tax rate}}$$

- if an importer of goods subject to SCT sells their goods via an affiliate that does not keep independent accounts, the taxable price is the selling price imposed by the affiliate. In the case of an importer selling the goods via an agent that sells goods at fixed price to earn commission, the taxable price is the price imposed by the importer inclusive of commission.
- if the importer of goods subject to SCT sells their goods to other resellers, the taxable price is the selling price of the importer, provided it is not lower than 7 percent of the average selling price imposed by the resellers.
- in case the selling price imposed by the aforementioned importer is lower than 7 percent of the average selling price imposed by the resellers, the taxable price shall be imposed by the tax authority according to regulations on tax administration. The resellers mentioned in this Point must not have a parent company-subsidiary company relationship with the importer, and are the first link of the distribution chain.

The change in tax basis under Decree 108 drastically increased the retail selling price of alcoholic beverages in Vietnam. Based on industry experts' analysis, consumers will have to pay between 60 percent to 150 percent more for wine and spirits when the SCT is imposed on the importer's selling price. While this analysis did not include beer, beer will also be affected by sharp increases in retail prices resulting from the change in SCT calculation. It is anticipated that the new tax calculation will nullify tariff reductions and eventual liberalization negotiated under TPP and the EU-VN FTA.

Law 70 raises the SCT on Alcoholic Beverages

Law 106 follows after the Vietnamese National Assembly passed a SCT increase during the National Assembly session in November 2014. As stipulated by point 4 of Article 1, the SCT rates of all alcoholic beverages will be increased 5% every year, from 2016 to 2018, as outlined below:

- *Alcoholic beverages containing 20% alcohol by volume and above (mainly spirits):*
 - January 1, 2016: from 50% to 55% ad valorem

- January 1, 2017: from 55% to 60%
 - January 1, 2018: from 60% to 65%
- *Alcoholic beverages less than 20% alcohol by volume for wine:*
- January 1, 2016: from 25% to 30%
 - January 1, 2018: from 30% to 35%
- *Alcoholic beverages for beer:*
- January 1, 2016: from 50% to 55%
 - January 1, 2017: from 55% to 60%
 - January 1, 2018: from 60% to 65%

Taken together, the new regulations will make imported alcoholic beverages much more expensive once they enter into force. The full new Law 106/2016/QH13 in Vietnamese is available at the Ministry of Justice’s website:

http://pbgdpl.moj.gov.vn/qt/tintuc/Lists/PhoBienKienThucPhapLuat/Attachments/1368/Luat-106.2016.QH13_2.pdf

Below is un-official English translation of the Law 106/2016/QH13:

NATIONAL ASSEMBLY	SOCIALIST REPUBLIC OF VIETNAM
Law No. 106/2016/QH13	Independence – Freedom - Happiness

LAW

amending and adding to a number of articles of the Law on value added tax, the Law on special consumption tax, and the Law on tax management

Pursuant to the Constitution of the Socialist Republic of Vietnam;

The National Assembly hereby promulgates the Law amending and adding to some articles of the Law 13/2008/QH12 on value added tax, some articles of which were amended and added under Law 31/2013/QH13; Law 27/2008/QH12 on special consumption tax, some articles of which were amended and added under Law 70/2014/QH13; and Law 78/2006/QH11 on management of tax, some articles of which were amended and added under Law 21/2012/QH13 and Law 71/2014/QH13.

Article 1

To amend and add to some articles of the Law 13/2008/QH12 on value added tax, some articles of

which were amended and added under Law 31/2013/QH13, as follows:

1. Clauses 1, 9 and 23 of Article 5 is amended and added, as follows:

"1. Cultivation and husbandry products, and reared and fished aquatic products which have not yet been processed into other products or have been just preliminarily processed by producing and fishing organizations and individuals, which sell products, and products at the stage of importation

Enterprises and cooperatives, which purchase cultivation and husbandry products, and reared and fished aquatic products which have not yet been processed into other products or have been just preliminarily processed to be sold to other enterprises and cooperatives, shall not be required to declare, calculate and pay value added tax, but entitled to deduction of input value-added tax."

"9. Healthcare and animal health services, including medical examination and treatment and preventive services for humans and domestic animals; services to care elderly people and people with disabilities."

"23. Exported products which are mined resources or minerals and which have not been processed into other products; exported products are goods, which are processed from resources and minerals, in which the total value of resources and minerals plus energy cost account for 51% or more of the cost of their products"

2. Point g, Clause 1 of Article 8 is amended and added, as follows:

"g) Exported products as stipulated in Clause 23 of Article 5 of this Law.

Exported goods and services are goods and services consumed outside of Vietnam, in the duty free area; goods and services provided to foreign clients in accordance with the provisions of the Government."

3. Clause 1 and Clause 2 of Article 13 is amended and added, as follows:

"1. If business establishments paying value-added tax according to the tax deduction method have input value-added tax amount not yet fully deducted in the month or quarter, [the input value added tax] shall be deducted from the next period.

Where business establishments having registered to pay value-added tax according to the tax deduction method have a new investment project(s) currently in the investment stage, in which amount of value-added tax on purchased goods or services used for investment not yet fully deducted and the remaining tax amount is three hundred million Vietnamese dong or more, [these business establishments] may be entitled to refund of value added tax.

Business establishments are not entitled to refund of value-added tax, but entitled to carry forward investment project's tax amount, which has not been deducted, in accordance with the law on investment to the next period for the following cases:

a) Charter capital of investment project of business establishments is not contributed fully as

registered; to conduct lines of business, investment subject to conditions when [business establishment] does not have sufficient business conditions as prescribed by the Law on Investment or does not ensure to maintain enough business conditions during its operation;

- b) Investment projects on development of resources and minerals are licensed from July 1, 2016, or investment projects on manufacture of products and goods that the total value of resources and minerals plus energy cost accounts for 51% or more of the cost of their product according to the investment project.

The Government shall make detailed provisions for this Clause.

- 2. Business establishments which have export goods or services in a month or quarter, if [such business establishments] have a non-deducted input value-added tax amount of three hundred million Vietnamese dong or more, they may be entitled to refund of value added tax on a monthly or quarterly basis, except for cases that goods is imported for export, exported goods is not exported in the areas of customs operations stipulated by the Customs Law. To perform refund in advance, post inspection for taxpayers producing export goods without violation of the laws on taxes and customs during the two consecutive years; taxpayers are not subject to high risk according to the Law on tax management”

Article 2

To amend and add to some articles of the Law No. 27/2008/QH12 on special sales tax, some articles of which were amended and added under Law No. 70/2014/QH13:

- 1. Clause 1 and Clause 2 of Article 6 is amended and added, as follows:

- "1. For domestically produced goods and imported goods, it is the price at which production establishment or importing establishment sells [product].

Where goods subject to special consumption tax is sold to commercial business establishments are establishments, which have relationship of parent company and subsidiary or subsidiaries of the same parent company with production establishments, importing establishments or commercial business establishments are establishments, which have the association relationship, the special consumption taxable price may not be less than the percentage (%) compared to the average price at which commercial business establishments directly purchase [goods] from production establishments and importing establishments selling [goods] under the provisions of the Government;

- 2. For imported goods at import stage, it is import taxable price plus import duties. Where imported goods are entitled to exemption or reduction of import duties, the taxable price does not include import duties as exempted or reduced. Goods subject to special consumption tax at import stage is entitled to deduction of special sales tax amounts already paid at import stage when determining the special consumption tax amount payable upon being sold;"

- 2. Clause 4, Section I of Special Sales Tax Tariff provided for in Article 7 shall be amended and

added, as follows:

No	Goods/services	Tax rate (%)
4	Cars having less than 24 seats	
	a) Passenger cars having 9 seats or less, except for those in Points 4dd, 4e, and 4g in this Tariff as stipulated in this Article	
	- Of a cylinder capacity not exceeding 1,500 cm ³	
	+ From July 1, 2016 to the end of December 31, 2017	40
	+ From January 1, 2018	35
	- Of a cylinder capacity exceeding 1,500 cm ³ but not exceeding 2,000 cm ³	
	+ From July 1, 2016 to the end of December 31, 2017	45
	+ From January 1, 2018	40
	- Of a cylinder capacity exceeding 2,000 cm ³ but not exceeding 2,500 cm ³	50
	- Of a cylinder capacity exceeding 2,500 cm ³ but not exceeding 3,000 cm ³	
	+ From July 1, 2016 to the end of December 31, 2017	55
	+ From January 1, 2018	60
	- Of a cylinder capacity exceeding 3,000 cm ³ but not exceeding 4,000 cm ³	90
	- Of a cylinder capacity exceeding 4,000 cm ³ but not exceeding 5,000 cm ³	110
	- Of a cylinder capacity exceeding 5,000 cm ³ but not exceeding 6,000 cm ³	130
	- Of a cylinder capacity exceeding 6,000 cm ³	150
	b) Passenger cars having from 10 to less than 16 seats, except for those in Points 4dd, 4e, and	15

No	Goods/services	Tax rate (%)
	4g in this Tariff as stipulated in this Article	
	c) Passenger cars having from 16 to less than 24 seats, except for those in Points 4dd, 4e, and 4g in this Tariff as stipulated in this Article	10
	d) Cars used for both passenger and cargo transport, except for those in Points 4dd, 4e, and 4g in this Tariff as stipulated in this Article	
	- Of a cylinder capacity not exceeding 2,500 cm ³	15
	- Of a cylinder capacity exceeding 2,500 cm ³ but not exceeding 3,000 cm ³	20
	- Of a cylinder capacity exceeding 3,000 cm ³	25
	dd) Car running on both gasoline and electricity or bioenergy, the proportion of gasoline does not exceed 70% of total energy used.	70% of tax rates applied to the same types of cars in Points 4a, 4b, 4c, and 4d in this Tariff as stipulated in this Article
	e) Cars running on bioenergy	50% of tax rates applied to the same types of cars in Points 4a, 4b, 4c, and 4d in this Tariff as stipulated in this Article
	g) Cars running on electricity	
	- Passenger cars having 9 seats or fewer	15
	- Passenger cars having from 10 to less than 16 seats	10
	- Passenger cars having from 16 to less than 24 seats	5
	- Cars for transport of both people and goods	10
	h) Motorhome, irrespective of its cylinder capacity	
	- From July 1, 2016 to the end of December 31, 2017	70
	- From January 1, 2018	75

Article 3

To amend and add to some articles of the Law No. 78/2006/QH11 on tax management, some articles of which were amended and added under Law No. 21/2012/QH13 and Law No. 71/2014/QH13, as follows:

1. Article 61 is amended and added, as follows:

“Article 61. Tax exemption or tax reduction

Tax management bodies shall grant tax exemption or tax reduction for the cases eligible for tax exemption or tax reduction as stipulated in legal instruments on tax and tax exemption for family households and individuals, who have amount of annually payable non-agricultural land use tax of fifty thousand dong or less.”

2. Clause 4, Article 92 is amended and added, as follows:

“4. Tax enforcement shall be suspended if the tax management body permits the taxpayer to pay the tax debt by instalments within 12 months as from the commencing day of the tax enforcement. The payment of tax debt by instalments shall be considered based on the request of the taxpayer who is underwritten by a credit institution. The taxpayer must pay the late payment interest at the rate of 0.03% of the deferred tax amount.”

3. Clause 1 of Article 106 is amended and added, as follows:

“1. Any taxpayer making a late payment of tax in comparison with the stipulated period or extended period for tax payment, or the deadline stated in a notice or decision of the tax management body on penalty, shall be liable to pay in full the amount of tax payable plus a fine of 0.03% of the amount of tax for each day of late payment.

For tax debts incurred before July 1, 2016 but not yet paid by taxpayers to the State budget, including tax arrears collected as the results of the inspection and examination by the competent bodies, [the taxpayers] shall be imposed with charge [fine] for late payment under the provisions of this Clause from July 1, 2016.

Where a taxpayer supplying goods and services is paid by the state budget, but have not been paid therefore [the taxpayer] fails to pay taxes on time, that leads to tax debt, [the taxpayer] shall not be required to pay fine for late payment of the tax debt amount, but not exceeding the amount unpaid by the state budget during the period the state budget has not paid.”

4. To revoke Clause 3 of Article 42.

Article 4

1. This Law shall take effect from July 1, 2016, except for the provisions Clause 2 of this Article.

2. Clause 4 of Article 3 of this Law is of full force and effect from September 1, 2016.
3. The Government shall make detailed provisions for Articles, Clauses as assigned to in this Law.

This Law was passed by Legislature XIII of the National Assembly of the Socialist Republic of Vietnam at its 11th session on April 6, 2016.

CHAIRMAN OF
THE NATIONAL ASSEMBLY

(Signed)
Nguyen Thi Kim Ngan