

LEGAL UPDATES (September 8th, 2020)

In these legal updates, we would like to send clients the legal updates on some following issues:

- The General Department of Custom has issued the new guidance on import tax for solar energy projects.
- Updating some internal opinions changes of Intellectual Property Department on handling trademark registration dossiers.

1. **The General Department of Custom has issued new guidance on import tax for solar energy projects**

On August 20th, 2020, The General Department of Vietnam Customs has issued Official Dispatch No.5533/TCHQ-TXNK on import tax of solar energy projects.

Through the process of reviewing import tax administration for renewable energy (solar energy) projects, the General Department of Customs has the following comments:

- (i) Pursuant to Article 16 of the Law on Import and Export Taxes and Article 14 of Decree 134/2016/ND-CP, imported goods to create fixed assets of the beneficiaries of investment incentives include:
 - Devices; components, details, detachable parts, spare parts for synchronous assembly or synchronous use with machinery or equipment; raw materials and supplies used to manufacture machinery and equipment.
 - Specialized means of transport in the technological line used directly for the project's production activities. Criteria for determination comply with the regulations of the Ministry of Science and Technology.
 - Construction materials cannot be produced domestically. The bases for determination comply with the regulations of the Ministry of Planning and Investment in Circular 01/2018/TT-BKHDT; the criteria for determining special-use means of transport in technological lines which are directly used for production activities of projects shall comply with the Ministry of Science and Technology's regulations.
- (ii) The development of power plants belongs to sectors and trades subject to investment incentives according to Point 3, Section III, Part A, Appendix I, issued together with the Government's Decree No.118/2015/ND-CP, therefore, shall enjoy the incentives accordingly.
- (iii) The item "Photovoltaic panels", "Photovoltaic panel racking system" and "Photovoltaic panel mounting bracket" are domestically produced products pursuant to Circular No.01/2018/TT-BKHDT dated March 30th, 2018 of the Ministry of Planning and Investment promulgating the list of machinery, equipment, spare parts, specialized means of transport, domestically

produced use, raw materials, supplies and semi-finished products, and based on the opinion of the Ministry of Planning and Investment in Official Dispatch No. 2119/BKHDT-KTCN dated April 3rd, 2019 and Official Dispatch No.4456/BKHDT-KTCN dated July 1st, 2019.

From the above facilities, the General Department of Customs requires the Customs Departments of provinces and cities to apply tax policies on goods imported for renewable energy projects (solar power) during the implementation process of import tax exemption.

2. Updating some changes of Intellectual Property Department on handling trademark registration dossiers

At this moment, the National Office of Intellectual Property of Vietnam has some notable changes in the procedure of handling trademark application as follows:

- (i) Before the transfer, the owner of a Protection Title (PT) changed the name/address, but there is no request to record the change on PT.

Previously, during the appraisal, the NOIP did not require the owner of the PT to submit a request for name/address amendment, but only needed the applicant to submit complete legal documents proving that the owner of the trafficking changed the name/address.

However, according to the new decision of the NOIP's leaders, amending the PT is a procedure specified in Circular 01/2007/TT-BKHHCN. The lack of request an applicant to submit a request for PT amendment when the owner has changed the name/address is a shortcut, ignoring an administrative procedure prescribed by law, resulting in a loss of fees/charges submitted to the State. Therefore, when the owner of the PT has a change the name/address, it is imperative to file a request for the PT amendment. The transfer application will be further processed when the request for the PT amendment is recorded.

- (ii) The transferor assigns to the recipient more than a PT and in the List of PT transferred, the name/address of the owners of the PT are inconsistent (due to many changes).

According to the old method, during the appraisal, the NOIP requires the owner of the PT to carry out the procedure to change the name/address to consist on the PT or separate the PT with the same name/address into a new application. In the case of separation an application, the separated application only has to pay the fee for publication of the Transfer Decision, while other fees will be transferred from the original application. A photocopy of the original assignment form should be made to show the fees/charges paid has been transferred.

According to the new decision, the NOIP requested the owner of the PT to proceed with the procedure for PT amendment in order to the name/address on the PT are consist, before performing the transfer procedures.

- (iii) In case of change the PT's owner from the establishment, a business household, a private enterprise to an individual who is the representative of the establishment, business household, or owner of a private enterprise, it is required to carry out the transfer procedures of PT because these are two independent actors that cannot perform the PT amendment. If the transferor is the establishment or the business household, there must be additional documents of the members of the establishment or business household agreeing to the representative to sign the transfer contract.

We hope this short Letter of legal updates would bring you useful information.

Best regards.



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