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TAX & CUSTOMS NEWSLETTER

September 2022

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Tax Administration

NEW REGULATION

Decision on publication of new, amended, replaced or abolished administrative procedures in tax and customs administration by the Ministry of Finance

On 22 July 2022, the Ministry of Finance issued Decision No. 1462/QD-BTC which included 31 new articles; amended and replaced, 114 articles; and abolished 75 administrative procedures in the field of taxation. The Decision also announced 01 new administrative procedure in the field of Customs, under the scope of management of the Ministry of Finance.

Additionally, on 24 August 2022, the Ministry of Finance published Decision No. 1710/QD-BTC together with 01 amended and replaced administrative procedure in the field of taxation under the scope of management of the Ministry of Finance in relation to the tax payment extension procedure.

(Decision No. 1462/QD-BTC dated 22 July 2022 and No. 1710/QD-BTC dated 24 August 2022 issued by the Ministry of Finance)

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Corporate Income Tax

GUIDANCE RULING

Corporate Income Tax incentive scheme for companies granted certificates of scientific and technological enterprises.

If a company is licensed as a scientific and technological enterprise by the Department of Science and Technology, it would be entitled to enjoy the Corporate Income tax ("CIT") incentive scheme applicable for scientific and technological enterprises, provided qualifying conditions as regulated in Article 2, Circular No. 03/2021/TT-BTC issued by the Ministry of Finance, are satisfied, specifically:

- Annual revenue from production and trading of products technological achievements reaches at least 30% of the company's total annual revenue;
- Revenue generated from services of application of scientific and technological achievements in the information technology section must be the revenue from new services excluding available ones on the market. The criteria and basis for determining that a service of application of scientific and technological achievements in the information technology section as new service shall comply with the regulations of the Ministry of Science and Technology; and
- Scientific and technological enterprises must separately account their income from production and trading of products formed from scientific and technological achievements in the tax period, to enjoy CIT incentives. If enterprises are unable to separately account for the incomes from production and trading of products formed from scientific and technological achievement activities, to enjoy CIT incentives the income shall be allocated as regulated.

The tax incentives and timeline for CIT exemption, reduction are guided in clause 1, clause 2, Article 3 of Circular No. 03/2021/TT-BTC of the Ministry of Finance, specifically:

- Scientific and technological enterprises are exempt from CIT for 04 years and a reduction of 50% of CIT payable amount for the subsequent 9 years.
- Tax exemption and reduction period for scientific and technological enterprises shall be counted continuously from the issuance date of the certificate of scientific and technological enterprise. If there is no taxable income in the first three years counting from the first year of being granted the certificate of scientific and technological enterprise, the first year of calculating the tax exemption or reduction period is counted from the fourth year onwards.
- If during the period of being eligible for CIT exemption and reduction, there is a year which the scientific and technological enterprise fails to satisfy the conditions of revenues of products formed from scientific and technological achievements reach at least 30% of the total revenue, the scientific and technological enterprise shall not be entitled to enjoy the incentives in that year and shall be deducted from the period of enjoying the CIT incentives of the scientific and technological enterprise.

If the scientific and technological enterprise has been or is currently enjoying CIT incentives following other preferential conditions (other than conditions for scientific and technological enterprise incentives) and is granted a certificate of scientific and technological enterprise, the period of CIT exemption and reduction under the conditions of scientific and technological enterprises shall be determined by the period of CIT exemption and reduction applicable to scientific and technological enterprises minus the period of CIT exemption and reduction enjoyed under other preferential conditions.

(Official Letter No. 42225/CTHN-TTHT dated 26 August 2022 issued by Hanoi Tax Department)

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Corporate Income Tax

GUIDANCE RULING

Corporate Income Tax for destruction expenses of over–imported raw materials during the production of exported goods

If a company imports raw materials to produce exported goods, and the company has excess raw materials, the costs of destroying those excess materials would be not considered deductible expenses for CIT calculation purpose.

(Official Letter No. 13986/CTBDU-TTHT dated 06 September 2022 issued by Binh Duong Tax Department)

Corporate Income Tax for salary expenses paid for unused annual leave days

If a company pays the salary for the employee's unused annual leave days following the provisions of the Labor Code and its guiding regulations, the company shall be allowed to include the above expenses in the deductible expenses when determining CIT taxable income, if meeting the conditions as prescribed.

As per Article 113, Labor Code No. 45/2019/QH14 dated 20 November 2019 providing guidance on annual leave, an employee who works for 12 months for an employer can be paid in cash for the unused annual leave days in case of job-loss or employment termination if they have not fully enjoyed the annual leave days.

(Official Letter No. 39064/CTHN-TTHT dated 09 August 2022 issued by Hanoi Tax Department)

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Indirect Tax

GUIDANCE RULING

Additional filing of input Value Added Tax invoices

If a company files an additional declaration of Value Added Tax ("VAT") invoices of purchased goods and services (incurred from January 2021 to September 2021) during the tax period of October and November 2021, and before the tax authorities, competent agencies announce the decision on tax inspection at the taxpayer's office, then the supplementary filing must comply with point b, clause 4, Article 7, Decree No. 126/2020/ND-CP dated 19 October 2020 issued by the Government, specifically:

- If the amended return leads to an increase in the VAT payable amount or a decrease in the tax refunded by the state budget, the taxpayer must fully pay the additional tax amount or over–refunded tax amount together with the associated late payment interest to the state budget (if any); or
- If the amended return only leads to an increase or a decrease of the creditable VAT amount to be carried forward to the next period, the taxpayer is allowed to declare in the current tax period. The taxpayer is only permitted to make the supplementary declaration for the requested VAT amount to be refunded when they have not submitted the declaration of the next tax period and the application dossier for requesting VAT refund yet.

(Official Letter No. 3059/TCT-KK dated 18 August 2022 issued by General Department of Taxation)

Value Added Tax refund on exported goods and services for VAT incurred during investment stage

If a company incurs input VAT amount on the expenditure of building factories, purchasing machineries and equipment for the investment project already put into operation, the company declares the creditable VAT amount of this investment project together with the creditable VAT of production and business activities under the form No. 01/GTGT, the company would be entitled to a VAT refund on exported goods and services if satisfying the conditions as prescribed in Article 2, Circular No. 25/2018/TT-BTC.

The company must satisfy the conditions regulated on the creditable VAT amount in accordance with clause 10, Article 1, Circular No. 26/2015/TT-BTC dated 27 February 2015 and Circular No. 173/2016/TT-BTC dated 28 October 2016 issued by Ministry of Finance.

(Official Letter No. 2861/CTLAN-TTHT dated 22 August 2022 issued by Long An Tax Department)

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Indirect Tax

GUIDANCE RULING

Value Added Tax refund on investment projects located in another province other than the province of the head office

If a company is subject to declare VAT liability under the creditable method and has a new investment project located in another province other than the province of the head office ("the new investment project") they should declare and make VAT refund as follows:

- If the company established a branch located in another province but did not assign the branch to directly manage the project in that province, the branch carries out dependent accounting and does not maintain the bank account, the accounting books, invoices and other documents of the project, then the company shall prepare the separate tax declaration and VAT refund dossiers for the new investment project and submit to the managing tax authority in that province.
- Simultaneously, the input VAT amount of the new investment project must be transferred to offset against the VAT declaration of the production and business activities currently being carried out. The transferred VAT amount of the investment project is at most equal to the payable tax amount of production and business activities in the period of the business establishment. After offsetting, if the input VAT amount of the new project that has not yet been fully creditable is VND 300 million or more, this VAT amount will be refunded to the investment project.
- If the company decided to hand over the new investment project to the branch located in another province other than the province of the head office to directly manage the project in that province on behalf of the company, the branch having its legitimate seal, the accounting books and documents in accordance with the accounting laws and the bank deposit account, the branch must prepare the separate tax declaration and the application for VAT refund dossiers to the managing tax authority in that province.
- After the new investment project completed the procedures for business registration and tax payment are completed, the company must summarize the incurred VAT amount, refunded VAT amount, the VAT amount that has not yet refunded of the project for handing over to the newly established branch for tax filling and payment according to point b, clause 3, Article 1, Circular No. 130/2016/TT-BTC of Ministry of Finance.

(Official Letter No. 2697/CTBNI-TTHT dated 07 September 2022 issued by Bac Ninh Tax Department)

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Indirect Tax

GUIDANCE RULING

Issuing an adjustment invoice to correct multiple invoices with errors is not allowed

If a company is applying e-invoices following the Decree No. 123/2020/ND-CP dated 19 October 2020 of the Government and Circular No. 78/2021/TT-BTC dated 17 September 2021 of Ministry of Finance, and upon selling goods and services, the company (seller) and its customer (buyer) agree an estimated price for invoicing and payment purposes, and subsequently the seller and the buyer make the reconciliation on the selling price through an adjustment invoice, the adjustment would be arranged as follows:

The seller and the buyer prepare the agreement specifying the errors, then the company issues the electronic adjustment invoice to correct the incorrect one. The electronical adjustment invoice must contain the phrase "Adjustment for the invoice form… serial… number… date…". Adjustment invoices for the increase (positive) and decrease (negative) must be consistent with the actual adjustment and 01 (one) e-invoice is only used to correct for 01 (one) e-invoice with errors (do not issue an adjustment invoice to correct multiple invoices with errors).

The seller and the buyer should use the adjustment invoice to make the amendment returns as prescribed.

(Official Letter No. 2704/CTBNI-TTHT dated 08 September 2022 issued by Bac Ninh Tax Department)

Declaration of creditable Value Added Tax on imported goods through the post-customs clearance inspection

If, following a post customs clearance inspection, the company is required by Decision, to pay additional VAT, the imposed VAT amount paid is entitled to be fully creditable when determining the payable tax amount of the tax period. The conditions of Article 14, Circular No. 219/2013/TT-BTC of Ministry of Finance, and Article 47, Law on Tax Administration No. 38/2019/QH14 dated 13 June 2019 of National Assembly and clause 4, Article 7, Decree No. 126/2020/ND-CP dated 19 October 2020 of the Government need to be satisfied.

Note: Penalties for fraud or tax evasion are not creditable for VAT purposes or deductible for CIT purposes.

(Official Letter No. 40071/CTHN-TTHT dated 15 August 2022 issued by Hanoi Tax Department)

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Indirect Tax

GUIDANCE RULING

Deciding the Value Added Tax taxable price for transferring real estate activities

If a company receives the transferred land use right from organizations and individuals, the taxable price would be the transferring price minus (-) the deductible land value for VAT calculation purposes. The deductible land value should be determined in accordance with clause 3, Article 4, Decree No. 209/2013/ND-CP, point a.4, clause 10, Article 7, Circular No. 219/2013/TT-BTC. In particular, it would be the land price at the time of the land use right being transferred, including the value of infrastructure (if any); business establishments are not allowed to declare and credit the input VAT of the infrastructure included in the deductible land use right value which not subject to VAT. If the deductible land price does not include the value of infrastructure, business establishments are allowed to declare and credit the input VAT of the infrastructure.

From 12 September 2022, if the company receives the transferred land use right from organizations and individual, the deductible land value for VAT declaration purposes should be determined in accordance with clause 1, Article 1 of Decree No. 49/2022/ND-CP amending clause 3, Article 4 of Decree No. 209/2013/ND-CP as mentioned above.

It would be the land price at the time of the land use right being transferred excluding the value of infrastructure, and business establishments are allowed to declare and credit input VAT of the infrastructure (if any). If the land price is unable to be determined at the time of receiving the transfer, the deductible land price for VAT calculation will the land price set by the People's Committee of the provinces or municipalities at the time of signing the transfer contract.

(Official Letter No. 43725/CTHN-TTHT dated 06 September 2022 issued by Hanoi Tax Department)

Adjusted invoices not made following regulations

If a company is using e-invoices following the Circular No. 78/2021/TT-BTC dated 17 September 2021 of Ministry of Finance, when detecting error in e-invoice issued under the Circular No. 32/2011/TT-BTC dated 14 March 2011 of the Ministry of Finance, the company issues a new e-invoice to replace the mistaken invoice.

If a company does not issue a new e-invoice to replace the one with errors made according to Circular No. 32/2011/TT-BTC, but instead issues a new invoice to adjust for the incorrect invoice, this action would be not in accordance with the guidance in clause 6, Article 12, Circular No. 78/2021/TT-BTC dated 17 September 2021 of Ministry of Finance.

(Official Letter No. 2685/CTBNI-TTHT dated 06 September 2022 issued by Bac Ninh Tax Department)

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Personal Income Tax

GUIDANCE RULING

Personal Income Tax for the expatriate who is assigned to work in Vietnam

If a foreign individual is assigned to work in Vietnam, the tax rate to be used for withholding Personal Income Tax ("PIT") should be based on the taxpayer's working duration in Vietnam specifying in the labor contract or the assignment letter. Accordingly, the company temporarily withhold the tax payment according to the progressive tax rates method (for individuals working in Vietnam from 183 days or more in the tax year) or flat tax rate method (for individuals working in Vietnam less than 183 days in the tax year) in accordance with the guidance of point b.3, clause 1, Article 25, Circular No. 111/2013/TT-BTC dated 15 August 2013 of the Ministry of Finance.

If the foreign individual satisfies the conditions to be a Vietnam tax resident within the calendar year in line with the Article 1, Circular No. 111/2013/TT-BTC, the first finalization tax year of this individual is the calendar year calculated from 01 January to 31 December of that tax year as regulated in clause 11, Article 3 and point b, clause 2, Article 44 of the Law on Tax Administration No. 38/2019/QH14.

(Official Letter No. 35195/CTHN-TTHT dated 19 July 2022 issued by Hanoi Tax Department)

Personal Income Tax levied on cases of gifting the real estate on behalf of the owner

If the real estate individual owner has the authorization agreement in accordance with the law to permit another individual (in which the authorization agreement specifies that this authorized individual does not receive any income or benefit from this authorization) to conduct all procedures relevant to gifting the real estate to the owner sibling, the income from receiving the real estate of the owner sibling in this case is exempt of PIT obligation in accordance with the guidance at point d, clause 1, Article 3, Circular No. 111/2013/TT-BTC of the Ministry of Finance.

(Official Letter No. 39281/CTHN-TTHT dated 10 August 2022 issued by Hanoi Tax Department)

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Foreign Contractor Withholding Tax

GUIDANCE RULING

Foreign Contractor Withholding Tax levied on income derived from assets liquidation activities

If a foreign contractor declaring and paying taxes by the hybrid method derives income from its asset liquidation activities in Vietnam, this income will be subject to the CIT according to clause 3, Article 7, Circular No. 103/2014/TT-BTC.

Taxable revenue and the applicable CIT rate (%) on the taxable revenue levied from its asset liquidation activities shall follow with the provisions of Article 13, Circular No. 103/2014/TT-BTC.

(Official Letter No. 40743/CTHN-TTHT dated 18 August 2022 issued by Hanoi Tax Department)

Foreign Contractor Withholding Tax levied on income from providing the right to use digital utilities on available technological platforms

If a foreign contractor generates income in Vietnam based on a contract, agreement or commitment between a foreign contractor and a Vietnamese company, this income would be subject to Foreign Contractor Withholding Tax ("FCWT") as prescribed in the Circular No. 103/2014/TT-BTC.

If a foreign contractor without a permanent establishment in Vietnam does not register, declare and pay taxes in Vietnam as prescribed in Article 76, Article 77, Article 78, Article 79 of Circular No. 80/2021/TT-BTC, the company in Vietnam is obliged to declare, withhold and pay taxes on behalf of the foreign contractor as prescribed in Circular No. 103/2014/TT-BTC as follows:

- For CIT: Income received by the foreign contractor from providing the right to use digital utilities on available technological platforms shall be regarded as royalty income as prescribed in clause 3, Article 7, Circular No. 103/2014/TT-BTC dated 06 August 2014 of the Ministry of Finance, the ratio (%) of CIT on taxable revenue is 10%.
- For VAT: If the income received by the foreign contractor from providing the right to use digital utilities on available technological platforms is neither the software service as prescribed in Decree No. 71/2007/ND-CP dated 03 May 2007 of the Government nor the technology transfer as prescribed in the Law on Technology Transfer, it shall be subject to VAT with the VAT rate of 5% as services.

(Official Letter No. 42786/CTHN-TTHT dated 30 August 2022 issued by Hanoi Tax Department)

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Trade & Customs

GUIDANCE RULING

Tax policies for Exporting Processing Enterprises converting their business model from Exporting Processing Enterprises to non-Exporting Processing Enterprises

For goods purchased domestically: Exporting Processing Enterprises ("EPE") must declare new customs declaration, fulfill tax obligations before converting into non-EPE and shall not be considered for refund of the overpaid import duty.

For goods imported from overseas to form of fixed assets:

- If an enterprise, after the conversion, still satisfy incentivized conditions according to the investment laws and import and export duty laws, enterprises will continue to inherit the tax exemption incentives for imported goods to form fixed assets of the investment project prior to the conversion.
- In this case, EPE shall carry out the procedures for declaring the change of usage purposes for duty-exempted imported goods to form fixed assets similar to the case of change of usage purpose via transferring to other entities who is also eligible to enjoy tax exemption incentives as regulated. The enterprise after the conversion is not required to re-declare the Master list of duty-exempted goods to form fixed assets that imported under the duty-exempted scope before. After completion of conversion procedures, the enterprise prepares the annual report on the usage of duty-exempted imported goods as regulated.
- Particularly, for imported goods to form fixed assets after the time of conversion, the enterprise is only entitled to enjoy duty exemption if it notified the Master list of duty-exempted goods before the importation.

(Official letter No. 3292/TCHQ-TXNK dated 09 August 2022 issued by the General Department of Customs)

Value Added Tax invoices for on-spot imported and exported goods

If a domestic enterprise declaring, and paying VAT under the creditable method, sells goods to exporting processing enterprises, enterprises located in the free-trade zone (including the processing facility of exported goods), then:

- **At the time of carrying out on-spot export procedure:** the declarant submits copy of delivery and internal transfer note, instead of VAT invoices, to customs via the customs system; and
- **At the time of carrying out on-spot import procedure:** the declarant submits the copy of VAT invoice and other customs dossiers via the customs e-data processing system to the customs authorities.

(Official Letter No. 8042/BTC-TCHQ dated 12 August 2022 issued by the Ministry of Finance)

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Trade & Customs

GUIDANCE RULING

Re-exporting raw materials imported for export production and processing activities following change of usage purpose

- Goods, being raw materials, supplies and components imported for exported goods production or self-imported for export processing agreements, are exempt from import duty and not subject to VAT. Upon changing the usage purpose by re-exporting to overseas or to the free-trade zone, the taxpayer must declare a new customs declaration (mode A42), fully pay import taxes, late payment interest and penalties as regulated (if any). After completion of the customs clearance for the new declaration, the taxpayer declares the export declaration according to the guidance of the Official Letter No. 4032/TCHQ-GSQL dated 16 August 2021 of the General Department of Customs.
- If the exporter is the original importer, or an entity authorized and entrusted export by the original importer, and goods satisfy conditions for exemption of export or refund of import duties, then customs mode B13 shall be declared on the export customs declaration at the item "Notes" of the electronic declaration or "Other notes" of the paper declaration.- Additionally, following the instructions of the Official Letter No. 4032/TCHQ-GSQL dated 16 August 2021 of the General Department of Customs, the export declaration for goods under customs mode B13 must state the number of import declaration of the previous goods imported before (E31 or E21) and the declaration using for the change of the usage purpose A42 clearly contains “Imported unused or unprocessed goods”.

(Official Letter No. 1220/HQBH-NV dated 11 August 2022 issued by the Bien Hoa Sub-department of Customs)

Liquidation of raw materials imported by foreign direct investment enterprises

Imported raw materials and supplies owned by foreign direct investment enterprises (“FDI enterprises”) can be liquidated in the form of export, provided those materials have been processed.

The customs modes in the export declaration are applied based on the nature of export activities and provisions in the Decision No. 1357/QD-TCHQ dated 18 May 2021 and official letters guiding on the customs mode issued by the General Department of Customs.

Nevertheless, if a FDI enterprise imports goods and then exports such goods (in original form), this arrangement will be considered as the temporary import for re-export business that according to provisions in clause 2, Article 13, Decree No. 69/2018/ND-CP dated 15 May 2018 of the Government, FDI enterprises are not allowed to conduct temporary import for re-export activities.

(Official Letter No. 1214/GSQL-GQ2 dated 22 August 2022 issued by the General Department of Customs)

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Trade & Customs

GUIDANCE RULING

Supplementary declaration of royalty fees for imported goods

In cases where a royalty fee relates to imported goods, but the amount to be included in the customs value, cannot be determined as at the time of registering the customs declarations because this fee to be included depends on sales of goods after the importation, or other reasons specified in the sales contract, or a separate agreement governing the payment of royalties, then the importer must:

- Clearly state the reasons for not declaring the royalty fee on the customs declaration;
- Declare, calculate the payable tax amount for the royalty fee determined on the supplementary declaration after customs clearance and fully pay taxes as regulated. The statutory deadline for the tax payment is 05 working days from determining the royalty fee to be declared.

The importer shall base on relevant dossiers, documents to decide and take responsibility on the time figuring out the adjusted royalty fee. This adjusted royalty fee would be plus into the customs value declared as at the time of initial registering the declaration to declare and make tax payment to customs authorities.

If the royalty fee is paid into several times (quarterly payment) depending on the quantity of imported goods sold in the Vietnamese market, the company must allocate, declare and pay the additional tax until all royalty fees related to imported gods is fully allocated.

(Official Letter No. 3489/TCHQ-TXNK dated 23 August 2022 issued by the General Department of Customs)

Imposition of taxes and late payment interests due to changing the usage purpose of imported raw materials but failure to declare and pay tax as prescribed

If the customs department or other competent authorities inspects and discovers that the taxpayer arbitrarily changed the usage purpose of imported raw materials for the export production to the domestic consumption without tax declaration and payment as prescribed, the taxpayer will:

- be imposed a tax liability based on the first customs declarations; and
- pay the late payment interests. The time of calculation of late payment interests starts from the tax payment deadline of the original customs declaration.

(Official Letter No. 3674/TCHQ-TXNK dated 06 September 2022 issued by the General Department of Customs)

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