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Newsletter Tax & Customs

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Tax Administration

New regulation

Circular No. 08/2023/TT-NHNN: noteworthy changes in non-government guaranteed foreign loans

On June 30, 2023, the State Bank of Vietnam introduced Circular No. 08/2023/TT-NHNN ("Circular 08"), governing conditions for non-government guaranteed foreign loans. Effective from 15 August 2023, this circular replaces Circular No. 12/2014/TT-NHNN, except for the short-term foreign loan limit which takes effect on 01 January 2024. Notable revisions include:

1. Short-Term Loan Usage:

The limit for short-term loans now covers **(i) restructuring foreign debt and (ii) facilitating cash repayment of short-term liabilities (excluding domestic loan principals)**. Borrowers must document approved purposes.

2. "Other Project" Inclusion:

Borrowers may use foreign loans for lawful and justifiable "Other Projects," distinct from officially regulated investment projects.

3. Loan Account Usage:

Borrowers can temporarily **deposit withdrawn, unused loan account funds** with credit institutions or foreign bank branches **for up to one month**, without specifying single or multiple deposits.

4. Enhanced Foreign Loan Capital Plans:

Clearer rules on plans for foreign loan capital usage, encompassing concepts, content, and list of capital use demands.

5. Foreign Currency Borrowing:

Foreign loans typically use foreign currency, with exceptions for specific cases in Vietnamese Dong, such as microfinance institutions, certain foreign direct investment scenarios, and capital withdrawal with foreign debt settled in Dong.

6. Added Foreign Loan Limits:

6.1. For Credit Institutions: Short-term foreign loans' limit relates to total short-term outstanding principal against standalone equity (30% for commercial banks, 150% for foreign bank branches and other credit institutions).

6.2. For Non-Credit Institution Borrowers:

- i. Investment Project Loans:** limited to the difference between total investment project capital and investor-contributed capital per official investment documents;
- ii. Business or Other Project Loans:** outstanding debt sums for medium/long-term domestic and foreign loans tied to the borrower's plans shouldn't exceed approved total loan demand;
- iii. Debt Restructuring Loans:** conditions apply to restructuring existing foreign debt, including limits on loan amounts and repayment timelines of the existing foreign loans if the new foreign loans are mid/ long term.

6.3. Loan Limit Exchange Rates:

Borrowers must use Ministry of Finance (State Treasury) exchange rates applicable when signing loan agreements or preparing loan use/refinancing plans.

(Circular No. 08/2023/TT-NHNN, dated 30 June 2023, issued by the State Bank of Vietnam)

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Corporate Income Tax

Guidance ruling

CIT incentives for new investment projects located in industrial zones

New investment and expansion projects carried out in industrial zones whose legal status is incomplete (or which are still in the process of applying for approval), would not be eligible for CIT incentives by location.

(Official Letter No. 2876/CTBNI-TTHT dated 27 July 2023 issued by Bac Ninh Tax Department)

CIT incentives for financial and other income for supporting industry projects

If a company has an investment project that qualifies for CIT incentives by meeting the conditions of the eligible sector (i.e. supporting industry project), then incomes from the sale of scrap and waste of supporting industry products, exchange differences directly related to the revenue and expenses of the eligible sector, interest on demand deposits, and other incomes directly related to the eligible sector would also qualify for CIT incentives.

(Official Letter No. 2848/CTBNI-TTHT dated 25 July 2023 issued by Bac Ninh Tax Department)



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Indirect Tax

Guidance ruling

Sellers issue invoices for goods returned by buyers due to improper specifications and qualities

In relation to goods purchased before 01 January 2023 which are entitled to the reduced VAT rate of 8% and returned by the buyer after 31 December 2022 due to improper specifications and qualities, the seller would issue the invoice for such goods at the VAT rate of 8%.

Trade discount invoices under Decree No. 15/2022/ND-CP

If a trade discount was applied to goods sold in 2022 with a VAT rate of 8%, but the invoice for the trade discount was issued after 01 January 2023:

- If the discount is applied to the last purchase or the next period after 31 December 2022, the amount of the discount on the sold goods must be adjusted to reflect the taxable price and applicable VAT rate at the time of invoicing;
- If the discount is applied at the end of the discount program (period) after 31 December 2022, the seller must issue a new invoice to adjust the amount of the discount and apply the VAT rate of 8% at the time of sale.

(Official Letter No. 8999/CTTPHCM-TTH dated 19 July 2023 issued by Ho Chi Minh City Tax Department)

Receipts paid by contractors for the delayed progress

If the situation where contractors delay the progress and the investors agree to extend the deadline:

- If the contract specifies the related costs incurred would be taken into account in the contract value, the above-mentioned costs for delayed the progress are subject to VAT;
- If the contract specifies that the related costs incurred would be considered as a compensation, the company will issue the receipt voucher in accordance with the regulations when collecting such compensation.

(Official Letter No. 53492/CTHN-TTHT dated 19 July 2023 issued by the Hanoi Tax Department)

Software services provided to overseas entities and individuals and consumed outside Vietnam

Software services which are provided directly to overseas entities and individuals and consumed outside the territory of Vietnam are subject to 0% VAT if supported by the following documents:

- The service contract with the overseas entity or individual or located in the non-tariff zone;
- Proof of payment for export services through banks and other documents as required.

(Official Letter No. 8999/CTTPHCM-TTH dated 19 July 2023 issued by Hanoi Tax Department)

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Indirect Tax

Guidance ruling

VAT treatment for the sale of discount vouchers

A company that runs a promotional program for customers (selling discounted vouchers) in accordance with commercial regulations is not required to issue VAT invoices and declare tax, but to issue receipts/payment vouchers.

If customers use vouchers to purchase goods and services, the vendors must issue VAT invoices and declare VAT on the goods sold in accordance with the regulations.

(Official Letter No. 54963/CTHN-TTHT dated 31 July 2023 issued by the Hanoi Tax Department)

VAT Invoices for trade discounts

If a company offers trade discount to its customers the selling price after the discount is applied is used to calculate the VAT.

- If the trade discount is based on the quantity or sales of goods and/or services, the amount of the discount should be adjusted on the invoice for the last purchase or the next;
- If the trade discount is applied at the end of the sales program (period), a VAT adjustment invoice should be issued, along with a list of invoice numbers to be adjusted, the adjusted amounts and the relevant tax amounts.

(Official Letter No. 3292/TCT-CS dated 02 August 2023 issued by General Tax Department)

VAT declaration for factory leasing activities in a province other than the head office's location

VAT from factory leasing activities carried out in a province other than the head office's location must be declared together with other business activities of the company. The VAT declaration return must be submitted to the managing tax authority of the province where the head office is located.

The company is not required to separately declare and allocate VAT payable to the tax department of the province where these activities are carried out.

(Official Letter No. 47362/CTHN-TTHT dated 05 July 2023 issued by the Hanoi Tax Department)

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Immigration

New regulations

The Resolution No. 127 and No. 128: new regulations on E-visa, stay permit and visa exemptions

The Vietnam Government recently issued certain regulations regarding the stay permission for foreigners entering Vietnam by using Vietnam e-Visa or Visa waiver/Visa exemption, with effective from 15 August 2023.

Accordingly, the stay permission for E-visa (with multiple entries, valid for up to 90 days) is applicable to immigrants from **ALL countries and territories** (previously 30 days with single entry).

The above Resolution is accompanied with Resolution No. 128/NQ-CP (issued on 14 August) about visa exemption/visa waiver for citizens of a number of countries and territories, including Federal Republic of Germany, Republic of France, Republic of Italy, Kingdom of Spain, United Kingdom of Great Britain and Northern Ireland, Russian Federation, Japan, Republic of South Korea, Kingdom of Denmark, Kingdom of Sweden, Kingdom of Norway, Republic of Finland and the Republic of Belarus which extends the stay permission **up to 45 days** as compared to the current 15-days regulation.



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Personal Income Tax

Guidance ruling

PIT declaration on overseas sourced income of an individual

If an individual does not have a business registration but has a service contract to perform consulting services, the remuneration received from this contract shall be considered as employment income.

A Vietnam tax resident who has employment income received from overseas is required to declare PIT directly to the tax authority.

(Official Letter No. 56955/CTHN-TTHT dated 04 August 2023 issued by Hanoi Tax Department)

PIT on expenses for company trip and incentive payments to employees

Expenses incurred for a company trip involving a group of employees, as outlined in the collective labor agreement, where the payment details are general and not attributed to any individual, will be exempt from taxable income under PIT.

However, incentive payments provided to specific employees within the company, where the recipient's name is explicitly stated, will be considered taxable income and subject to PIT.

(Official Letter No. 15904/CTHN-TTHT dated 20 July 2023 issued by Binh Duong Tax Department)



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Foreign Contractor Withholding Tax

Guidance ruling

Foreign Contractor Withholding Tax for Handling Foreign Shipping Lines Collections and Payments

If a company functions as an agency, managing collection and payment activities on behalf of foreign shipping lines:

- For international freight of foreign shipping lines:
- ✓ FCWT – VAT portion: It is not subject to VAT declaration, calculation and payment;
- ✓ FCWT – Freight charges for routes from foreign nations to Vietnam are exempt from CIT declaration, calculation, and payment. However, freight charges for routes from Vietnam to foreign countries are subject to CIT declaration, calculation, and payment at a rate of 2% on earnings.
- The company's commission received from foreign shipping lines is liable for CIT declaration and payment, but VAT does not have to be declared or paid;
- Payments conducted on behalf foreign shipping lines, carried out through collection vouchers, are exempt from VAT declaration and payment when the company receives on-behalf payments from foreign shipping lines;
- The VAT portion of FCWT declared and paid by the company on behalf of foreign shipping lines cannot be claimed as creditable input VAT.

(Official Letter No. 3794 dated 18 July 2023 issued by Hai Phong Tax Department)



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Trade & Customs

New regulation

List of exported, and imported goods under management of the Ministry of Culture, Sports and Tourism

On 09 August 2023, the Ministry of Culture, Sports and Tourism has issued Circular No. 09/2023/TT-BVHTTDL (“Circular 09”) regulating the list of exported and imported goods (under its management) with HS codes.

The lists attached to Circular 09, include:

- List of exported/ imported goods subject to licenses;
- List of exported/ imported goods subject to conditions; and
- List of goods prohibited from export/ import.

Circular 09 officially takes effect and replaces Circular No. 24/2018/TT-BVHTTDL from 06 October 2023.

(Circular No. 09/2023/TT-BVHTTDL dated 09 August 2023 issued by the Ministry of Culture, Sports and Tourism)

Guidance ruling

Guidance on customs procedures and duties for the goods imported from the bonded warehouse to the domestic market for export manufacturing

According to the General Department of Customs, where goods are imported from a bonded warehouse to the domestic market for export manufacturing (and these goods originated from the goods previously imported for processing and manufacturing purposes), then local Customs must implement the customs procedures and duty policies as guided under the Official Letter No. 4826/TCHQ-GSQL dated 14 November 2022.

Specifically:

- Customs procedures will be the same as those adopted for the goods imported from overseas to domestic market, using the relevant customs modes; and
- Import duties and VAT are exempted for the goods imported from bonded warehouses to the domestic market for export manufacturing, provided regulated conditions are met.

(Official Letter 3735/TCHQ-TXNK dated 18 July 2023 issued by the General Department of Customs)

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Trade & Customs Guidance ruling

Guidance on the declaration, and checking of Certificate of origin form AK/ KV/ VK through National Single Window system

On 20 July 2023, the General Department of Customs issued Official Letter No. 3790/TCHQ-GSQL requesting local customs authorities to:

- Guide the declarants to declare the information of Certificate of Origin (“C/O”) Form AK/ KV/ VK in electronic and paper import customs declarations, where C/O is either available, or not, at the time of import clearance; and
- Follow the step-by-step procedures for receiving, verifying, and handling the declared information of C/O form AK/ KV/ VK through National Single Window system.

(Official Letter No. 3790/TCHQ-GSQL dated 20 July 2023 issued by the General Department of Customs)

Supplementary Explanatory Notes 2022 of the ASEAN Harmonized Tariff Nomenclature

On 24 July 2023, the General Department of Customs has issued Official Letter No. 3866/TCHQ-TXNK to notify the issuance of Supplementary Explanatory Notes (“SEN”) of the ASEAN Harmonized Tariff Nomenclature (“AHTN”).

SEN 2022 has been developed for use as a reference guide for the classification of exported and imported goods under Vietnam’s Exports and Imports Nomenclature 2022 - enclosed with Circular No. 31/2022/TT-BTC dated 08 June 2022.

(Official Letter No. 3866/TCHQ-TXNK dated 24 July 2023 issued by the General Department of Customs)

Guidance on the on-spot export/ import customs procedures

On 08 August 2023, General Department of Customs issued Official Letter No. 4146/TCHQ-GSQL to address enquiries and recommendations from Business Associations regarding on-spot export and import procedures.

In summary:

- To engage in on-spot export and import procedures stipulated at point c, clause 1, Article 35, Decree No. 08/2015/ND-CP, a foreign trader (involved in purchase or sales transactions with one Vietnam company and designating good delivery to another Vietnam entity) must fulfill the condition of “non-presence in Vietnam”;
- Recognizing the need for comprehensive evaluation of on-spot export and import procedures, the GDC aims to propose appropriate amendments and supplements to regulations, aligning with the nature of business transactions (conducted without goods physically leaving Vietnam territory);
- Business Associations’ proposals that the regulations at point c, clause 1, Article 35 of the Decree No. 08/2015/ND-CP remain unchanged, are considered by the GDC as being not consistent with legal basis governing commerce, foreign trade management and the nature of business transactions.

(Official Letter No. 4146/TCHQ-GSQL dated 08 August 2023 issued by the General Department of Customs)

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