

**Deloitte.**

**Newsletter**  
**Tax & Customs**

October 2023



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Firm of the Year**

**Tax Firm  
of the Year**



## Tax Administration

### Guidance ruling

#### Offsetting the overpaid tax amount

On receipt of the company's dossiers relating to the handling of the overpaid tax amounts, overpaid late payment interest and penalties, it is the responsibility of the Tax Department to process requests for offsetting the overpaid amount in accordance with regulations.

*(Official Letter No. 4347/TCT-KK dated 29 September 2023 issued by the General Department of Taxation)*

## Corporate Income Tax

### Guidance ruling

#### CIT incentives for projects producing supporting industry products

If an investment project, manufacturing supportive industry products, meets the tax incentive conditions for both the incentivized area and the incentivized sector, the company can choose the most favorable tax incentive scheme.

If an investment project, manufacturing supportive industry products has already received tax incentives under the incentivized area, the company can still receive tax incentives under the incentivized sector of manufacturing supportive industry products for the remaining period.

*(Official Letter No. 4857/CTTNG-TTHT dated 06 September 2023 issued by Thai Nguyen Province Tax Department)*



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## Corporate Income Tax

### Guidance ruling

#### CIT incentives for merged and expansion investment projects

##### 1. Merged projects:

Companies operating merged or consolidated projects can inherit the CIT incentives of the merged projects for the remaining period, if they continue to meet the tax incentive conditions.

If the merged project meets different incentivized conditions, the company can enjoy CIT incentives for each respective condition for the remaining incentivized period.

##### 2. Expansion investment projects:

Companies carrying out the development and expansion of their existing investment projects can apply the following CIT incentives:

- The existing project for the remaining period (including the preferential tax rate and any exemption/reduction, if applicable); or
- The tax exemption and tax reduction for the additional income generated from the expansion project (preferential tax rates not allowed) equivalent to the time of exemption and reduction applicable to new investment projects in the same incentivized area.

*(Official Letter No. 23075/CTBDU-TTHT dated 27 September 2023 issued by Binh Duong Province Tax Department)*

#### CIT incentives for processing activities

Companies carrying out new investment projects in the field of processing activities, may be entitled to CIT incentives if the following conditions are met:

- The processing activity involve **investing in machinery, equipment, workforce, etc., and receiving all raw materials (or main materials) from a client under a signed processing contract** to produce finished products that are delivered to clients (except for commercial processing activities as specified in the Commercial Law); and
- The new investment project is located in the industrial park (except for industrial parks located in areas with favorable socio-economic conditions),

The following CIT incentives may be available:

- CIT-exemption for 02 years from the year taxable income is generated; and
- 50% CIT reduction for the subsequent 04 years

*(Official Letter No. 22005/CTBDU-TTHT dated 18 September 2023 issued by Binh Duong Province Tax Department)*

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## Corporate Income Tax

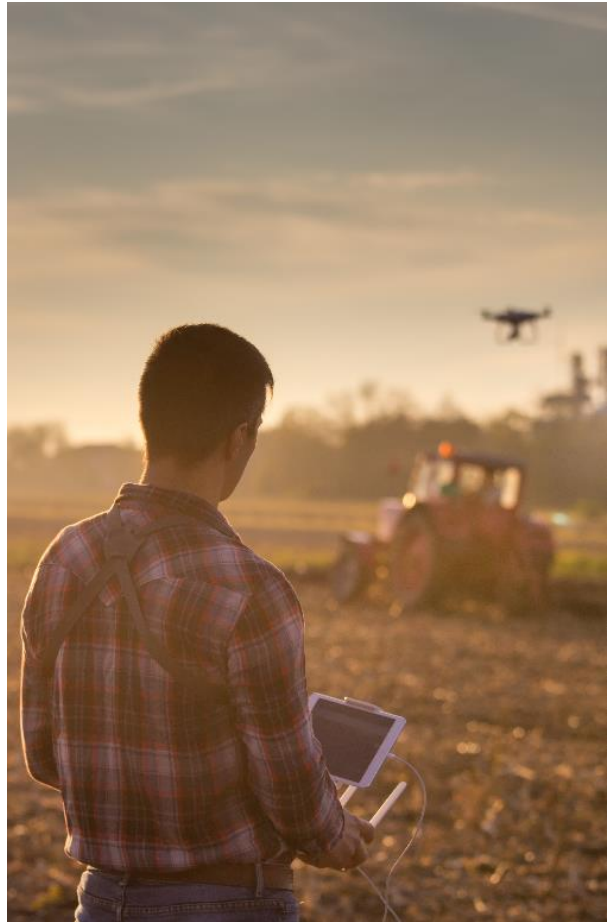
### Guidance ruling

#### Service fees for PIT declaration and calculation on behalf of employees

Service fees, for submitting and calculating employee PIT on their behalf, and purchasing health care membership cards for the foreign employees, that are considered as employment income may be deductible for CIT purposes if the following conditions are met:

- Specifically mentioned in any of the following documents: Labor contract, Collective Labor Agreement or Finance Policy;
- Not listed as non-deductible expenses for CIT calculation;
- Do not exceed one month's average salary and ensure proper payment vouchers are provided as per regulations if these expenses are deemed to be employee benefits.

*(Official Letter No. 51950/CTHN-TTHT dated 18 July 2023 issued by Hanoi Tax Department)*



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## Indirect Tax

### Guidance ruling

#### Input VAT of goods and services used for production and business of goods and services not subject to VAT

Companies with investment projects to produce agricultural products that are not subject to VAT cannot credit the input VAT of goods and services used for production and business of those products.

*(Official Letter No. 3899/TCT-CS dated 31 August 2023 issued by the General Department of Taxation)*

#### VAT on scientific and technological activity

Where companies, providing scientific and technological services (inspection, calibration and measurement of machinery and equipment):

- Have registered and been granted a scientific and technological activities registration certificate by the competent authority; and
- The services are performed on account of scientific and technological service contracts in accordance with the Law on Science and Technology and in line with the fields listed in the scientific and technological activities registration certificate

then the revenue generated from such scientific and technological services is subject to 5% VAT.

*(Official Letter No. 4981/CTHPH-TTHT dated 13 September 2023 issued by Hai Phong Tax Department)*

#### Invoices for payment discounts

If the company's sales contract with a foreign customer stipulates that early payment is eligible for a 2% discount, this discount is considered a payment discount. There is no requirement for the company to issue an invoice for this payment discount.

*(Official Letter No. 4701/CTBNI-TTHT dated 29 September 2023 issued by the Bac Ninh Province Tax Department)*

#### VAT declaration when exporting liquidated machinery and equipment

Companies that have imported machinery and equipment for investment projects and wish to liquidate them abroad must notify the Customs authorities to change the purpose of using imported machinery and equipment and pay any outstanding taxes from the importation stage (if any).

If the company satisfies the relevant regulations, it is entitled to 0% VAT rate applicable to exported machinery and equipment.

*(Official Letter No. 23300/CTBDU-TTHT dated 29 September 2023 issued by Bac Ninh Province Tax Department)*

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## Indirect Tax

### Guidance ruling

#### VAT declaration for the adjusted and replacement e-invoices

If the company issued an e – invoice and identified errors, it must handle the erroneous invoices in accordance with Article 19 of Decree No. 123/2020/ND-CP and Article 7 of the Circular. No. 78/2021/TT-BTC.

The company shall declare the adjusted or replacement invoices in the period when the errors occurred as prescribed.

*(Official Letter No. 70311/CTHN-TTHT dated 29 September 2023 issued by the Hanoi Province Tax Department)*

#### The seller issues an adjustment or replacement invoice when the buyer returns the goods

The seller who receives a part or all of the goods returned by the buyer shall issue an adjustment or replacement invoice for the original invoice, as prescribed in clause 1, Article 4 and point b, clause 2, Article 19 of Decree No. 123/2020/ND-CP dated 19 October 2020 of the Government.

*(Official Letter No. 4511/TCT-CS dated 11 October 2023 issued by the General Department of Taxation)*



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## Personal Income Tax

### Guidance ruling

#### PIT declaration on employees' income from winning prizes

The income received by an employee in cash or in kind as a result of participating in a prize-winning contest organized by the company is assessed as prize-winning income.

If the value of the prize exceeds VND 10 million, the company shall withhold PIT before paying the prize.

*(Official Letter No. 61175/CTHN-TTHT dated 21 August 2023 issued by Hanoi Tax Department)*

#### Guidance on where to submit PIT refund applications and direction of the General Department of Taxation on expediting the processing of PIT refund applications

The place to submit the PIT finalization dossier will generally be as follows:

- For resident individuals with employment income subject to deduction at source by two or more places:
  - ✓ Individuals who claimed personal deductions at the organization or individual paying income must submit a tax finalization declaration dossier to the tax authority managing that organization or individual;
  - ✓ Individuals who changed their workplace and claimed the personal deductions at the organization or individual paying the final income must submit a tax finalization declaration dossier to the tax authority managing that organization or individual.

- For all other cases, individuals must submit tax finalization documents to the tax authority where they reside, including:
  - ✓ Individuals who changed their workplaces and did not claim personal deductions at the organization or individual paying the final income;
  - ✓ Individuals who have not yet applied personal deductions at any income-paying organization or individual;
  - ✓ Resident individuals who do not have a labor contract or have a labor contract of less than 03 months or have a service provision contract and earn income at one or more places where PIT already been withheld at 10%;
  - ✓ Resident individuals who earned employment income at one or more places during the year but are not employed by any organization or individual paying income at the time of finalization.

The General Department of Taxation requires the tax authority that receive a request for income verification from another tax authority to expedite the content verification and clarification process and the to issue a written response to the requestor to avoid delaying the PIT refund process.

*(Official Letter No. 4172/TCT-DNNCN dated 20 September 2023 issued by General Tax Department)*

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## Personal Income Tax

### Guidance ruling

#### **PIT declaration for income from healthcare, entertainment, beauty and promotional programs**

##### Income from healthcare, entertainment, and beauty programs received from the company

Any expenses paid for employees for healthcare, entertainment and beauty activities, if the payment details state the name of the individual beneficiary, will be included in the employee's taxable personal income.

##### Income from promotional programs

Income received by individual customers from promotional programs organized by the company in accordance with the Commercial Law in the form of a free trip (not in cash) is considered as income from receiving gifts.

*(Official Letter No. 6462/CTBRV-TTHT dated 25 September 2023 issued by Ba Ria Vung Tau Tax Department)*

#### **Guidance on registering dependents**

If an employee registers a parent as a dependent, that is, directly taken care of by the employee and meets the conditions for the parent to be considered as a dependent with sufficient documents proving the dependency as required, then the employee is entitled to apply the family deduction system for their parents when determining the taxable income for the purpose of PIT declaration.

*(Official Letter No. 69624/CTHN-TTHT dated 27 September 2023 issued by Hanoi Tax Department)*

#### **Registration on the dependent deductions**

Employees can apply for family deduction regime if their children are studying at a university, college, professional secondary school, vocational training and have no income, or an average monthly income in a year from all income sources not exceeding VND 1,000,000.

*(Official Letter No. 69625/CTHN-TTHT dated 27 September 2023 issued by Hanoi Tax Department)*

#### **PIT policy applied to non-resident individual**

Executive employees who are assigned by their foreign head office to visit the branch in Vietnam for 02 days are considered as non-resident taxpayers in Vietnam during their stay.

The PIT taxable income in Vietnam of non-resident individuals is the income that arises in Vietnam, regardless of where the income is paid or charged.

Housing and other benefits paid in cash or in kind by the branch in Vietnam to non-resident individuals are considered employment incomes and are subject to PIT in Vietnam. The Vietnam branch is responsible for withholding PIT at a flat rate of 20% before paying income to individuals.

*(Official Letter No. 70784/CTHN-TTHT dated 02 October 2023 issued by Hanoi Tax Department)*

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## Foreign Contractor Withholding Tax

### Guidance ruling

#### FCWT for brokerage and customer search services

If the company hires a foreign organization to provide brokerage and customer search services to sell its products in Vietnam, then this foreign contractor's brokerage service fees are subject to Vietnamese tax.

VAT rate on revenue is 5%, CIT rate on revenue is 5%.

*(Official Letter No. 21673/CTBDU-TTHT dated 11 September 2023 issued by Binh Duong Tax Department)*

#### FCWT for income from the transfer of film content distribution right and image of film characters usage right

Income from the transfer of film content distribution rights and image of film characters usage rights is subject to VAT at 5% and CIT at 10% in Vietnam.

*(Official Letter No. 4344/TCT-CS dated 29 September 2023 issued by General Department of Taxation)*

#### FCWT declaration submission and supplementary registration on tax information of new contracts

Companies granted a tax code by the tax authority to declare and pay tax obligations on behalf of foreign contractors will use this tax code to declare and pay FCWT on behalf of all foreign contractors and subcontractors.

If the company signs new contracts with foreign contractors and subcontractors, it is responsible for registering the contractors' tax information using Form No. 04.1-DK-TCT-BTC issued along with the Circular No. 105/2020/TT-BTC.

*(Official Letter No. 9973/CTDAN-TTHT dated 11 September 2023 issued by Da Nang Tax Department)*



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## Trade & Customs

### New regulation

#### Malaysia, Chile and Brunei to benefit from the tariff rates of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

On 07 September 2023, the Government issued Decree No. 68/2023/ND-CP, to amend and supplement the Decree No. 115/2022/ND-CP dated 30 December 2022, issued by the Government, on Vietnam's preferential export tariff, and special preferential import tariff under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("**CPTPP**"), for the period from 2022 to 2027. In which, the main supplemented items include:

- Additional of 03 countries including Malaysia, Chile and Brunei, to be entitled to enjoy the preferential import-export tariff under the CPTPP:
  - ✓ Malaysia is entitled to CPTPP tariff rates from 29 November 2022 to 31 December 2027;
  - ✓ Chile is entitled to CPTPP tariff rates from 21 February 2023 to 31 December 2027; and
  - ✓ Brunei is entitled to CPTPP tariff rates from 12 July 2023 to 31 December 2027.

- For the imported/exported goods that registered customs declarations from 29 November 2022 (for Malaysia), from 21 February 2023 (for Chile), and from 12 July 2023 (for Brunei), being before the effective date of this Decree (07 September 2023), then provided:

- ✓ all the conditions to benefits from the CPTPP tariff rates are fulfilled; and
- ✓ duty has already been paid a higher tariff rate;

then the overpaid amount of duty would be handled by the Customs authority as regulated.

- The Decree is effective from 7 September 2023.

*(Decree No. 68/2023/ND-CP dated 07 September 2023 issued by the Government)*

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## Trade & Customs

### Guidance ruling

#### Guidance on the application of Comprehensive and Progressive Trans-Pacific Partnership tariff rates for goods imported from Malaysia, Chile and Brunei

On 27 September 2023, the General Department of Customs issued the official letter No. 5021/TCHQ-TXNK providing guidance on the declaration, and application of special preferential duty rates under the CPTPP for the 03 countries, including Malaysia, Chile and Brunei, which have been added, to enjoy CPTPP duty rates, according to Decree No. 68/2023/ND-CP. Specifically:

- If goods imported into Vietnam from the 03 countries mentioned above, meet the conditions for applying CPTPP preferential tariff rates according to clause 7, Article 5 of Decree No. 115/2022/ND-CP, and clause 3, clause 4, Article 1 of Decree No. 68/2023/ND-CP, the importer of record is allowed to declare the tariff code B21 on the import declaration;

- Goods exported from Vietnam to the 03 countries mentioned above, are allowed to declare HS code and apply export duty rates as prescribed in Appendix I of Export Tariffs issued under Decree No. 57/2020/ND-CP (effective from 10 July 2020 to 14 July 2023), Decree No. 101/2021/ND-CP (effective from 30 December 2021 to 14 July 2023), and Decree No. 26/2023/ND-CP (effective from 15 July 2023).
- The handling of overpaid duties on customs declarations of goods exported from Vietnam to Malaysia, Chile, Brunei, or imported into Vietnam from these countries, is carried out in accordance with the provisions of clause 2, clause 3, clause 4, Article 2, Decree No. 68/2023/ND-CP.

*(Official Letter No. 5021/TCHQ-TXNK dated 27 September 2023 issued by the General Department of Customs)*



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## Trade & Customs

### Guidance ruling

#### Guidance on the Bill of Materials in the origin declaration table

On 25 August 2023, the Ministry of Industry and Trade, issued Official Letter No. 708/XNK-XXHH providing guidance on the declaration of Bill of Materials (“BOMs”), including the loss rate, in the origin declaration table, as follows:

- If, at the time of applying for the issuance of the Certificate of Origin (“C/O”) the enterprise cannot determine the actual BOMs and the loss rate, the enterprise may use the standard BOMs:
  - ✓ may use the BOMs standard, and estimated loss rate;
  - ✓ must certify the accuracy of the declared data, in accordance with the supporting documents;
  - ✓ ensures that the exported goods comply with the applied rules of origin, and takes legal responsibility for the declared information, and data.
- At the time of inspection and verification of the C/O issued for the exported goods, upon request of a competent authority, the company shall provide evidence of the actual BOMs, and loss rate, and that these do not change the nature of origin of the exported goods for which C/O has already been issued.

*(Official Letter No. 708/XNK-XXHH dated 25 August 2023, issued by the Ministry of Industry and Trade)*

#### Issuance of electronic C/O form AJ, and form JV from Japan

The Japan Chamber of Commerce and Industry (JCCI) will start issuing electronic C/O form AJ (under AJCEP) and C/O form JV (under VJEPA) on 19 September 2023.

This announcement was made by the Export-Import Department of the Vietnamese Ministry of Industry and Trade in Official Letter No. 777/XNK-XXHH on 21 September 2023.

*(Official Letter No. 777/XNK-XXHH, dated 21 September 2023 issued by the Export-Import Department – The Ministry of Industry and Trade)*

#### Guidance on Environmental Protection Tax for imported plastic bags

On 18 September 2023, the General Department of Customs issued Official Letter No. 4831/TCHQ-TXNK which provides guidance on the determination of goods subject to Environmental Protection Tax (“EPT”), and EPT refunds for imported plastic bags, as follows:

- If the company imports packaging materials used to package goods and plastic bags, that meet the environmentally friendly conditions specified in clause 4, Article 1, Circular No. 159/2012/TT-BTC, the goods are not subject to EPT;
- However, it is noted that once the imported packages have been cleared by Customs, enterprises are not allowed to re-declare that the imported packages are not subject to EPT, as prescribed in Article 1, Circular No. 159/2012/TT-BTC.

*(Official Letter No. 4831/TCHQ-TXNK dated 18 September 2023, issued by the General Department of Customs)*

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## Trade & Customs

### Guidance ruling

#### Guidance on Import Duty Refund for on-spot import declarations with import duty paid

On 15 September 2023, the General Department of Customs issued Official Letter No. 4795/TCHQ-TXNK providing guidance on the refund of import duties for on-spot import declarations, as follows:

- Regarding on-spot export-import procedures: Transactions with foreign enterprises with a presence in Vietnam, as provided for in clause 5, Article 3, of Law on Foreign Trade Management, are not considered to be on-spot export-import under point c, clause 1, Article 35, Decree No. 08/2015/ND-CP. Therefore, the enterprises are not allowed to register on-spot import declarations.
- Regarding customs procedures for goods stored in bonded warehouses:
  - ✓ Bonded warehouse tenants' goods that are allowed to enter and stored in bonded warehouses include:
    - ❖ Vietnamese goods that have completed export procedures;
    - ❖ goods from overseas awaiting import into Vietnam, or awaiting export to third countries
  - ✓ Goods moving-in, and moving-out of bonded warehouses, must fulfill customs procedures in accordance with the provisions of the law.

- Regarding import duty refunds for on-spot import declarations: import duty refunds are granted in accordance with the provisions of Article 36, Decree No. 134/2016/ND-CP for:
  - ✓ Goods imported under the on-spot arrangement for which import duty has been paid and which are used to manufacture finished goods (“FGs”); and
  - ✓ Where the FGs were exported overseas, or to the Free-trade-zone.

*(Official Letter No. 4795/TCHQ-TXNK dated 15 September 2023, issued by the General Department of Customs)*

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## Trade & Customs

### Guidance ruling

#### VAT refund for on-spot export transactions

On 26 September 2023, the General Department of Taxation issued Official Letter No. 4271/TCT-CS responding to the Binh Duong Tax Department, on VAT policy, as follows:

- Based on the opinion of the General Department of Customs in Official Letter No. 3622/TCHQ-GSQL dated 12 July 2023, in case the Customs Authority determines that on-spot export declarations do not comply with the provision under point c, clause 1, Article 35, Decree No. 08/2015/ND-CP, the Tax Authority will not process the VAT refund, because the transaction does not meet the legal requirements for customs declaration;
- The General Department of Customs requests the Binh Duong Tax Department to provide guidance to the enterprises based on:
  - ✓ coordination with Binh Duong Customs Department;
  - ✓ the VAT regulations, and relevant legal provisions regarding on-spot exported-imported goods; and
  - ✓ the actual situation of the enterprises.

*(Official Letter No. 4271/TCT-CS dated 26 September 2023 issued by the General Department of Taxation)*



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## Trade & Customs

### Guidance ruling

#### Regarding the reduction of VAT for some types of goods, specified in Decree No. 44/2023/ND-CP dated 30 June 2023, issued by the Government

In September and October 2023, the General Department of Custom issued several Official Letters, to provide guidance on the VAT reduction for some types of goods as specified in Decree No. 44/2023/ND-CP (“Decree 44”). Specifically:

- According to the General Department of Customs, the goods regulated under the Appendices, of Decree 44, are not subject to VAT reduction. In particular:
  - ✓ Household electronic equipment, as listed in Section III, Part B, Appendix III;
  - ✓ Specialized electronic equipment, as listed in Section IV, Part B, Appendix III;
  - ✓ Parts, and spare parts, of hardware, and electronic product groups, under the groups, from Section I to Section V, Part B, Appendix III;
  - ✓ Hardware, and electronic spare parts, components in the list of Section VI, Part B, Appendix III;
  - ✓ Chemical products, under Appendix I.

- In addition, according to the guidance in Official Letter No. 3431/TCHQ-TXNK dated 30 June 2023, the HS codes specified in Decree 44 are only for reference purposes only, including:

- ✓ column (10), of Appendix I;
- ✓ column (10), Part A, of Appendix III; and
- ✓ column (4), Part B, of Appendix III.

The determination of the HS code, for the imported goods shall be in accordance with the provisions on the classification of goods as laid down in the Customs regulations.

*(Official Letters No. 4991/TCHQ-TXNK, 5003/TCHQ-TXNK, 5004/TCHQ-TXNK, 5005/TCHQ-TXNK, 5042/TCHQ-TXNK, 5100/TCHQ-TXNK, 5101/TCHQ-TXNK, 5159/TCHQ-TXNK, 5160/TCHQ-TXNK, and 5161/TCHQ-TXNK, issued by the General Department of Customs, in September and October 2023)*



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