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Newsletter
Tax & Customs

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Highlights in this issue:

Corporate Income Tax

- The investment project established prior to 2014, yet to commence operation or generate revenue are eligible to apply CIT incentive as stipulated by Decree No. 218/2013/ND-CP
- CIT incentive for investment project in the Extended Area of Que Vo Industrial Zone with a part of the land area belonging to the urban area of Bac Ninh City
- Import duty and Environmental protection tax collected in arrears are CIT-deductible expense
- Insufficient quarterly tax provisional payment may be subject to late payment interest
- Lending to branches which file CIT separately, without interest or at below-market interest rates subject to tax imposition

Indirect Tax

- Continue granting VAT reduction from 10% to 8% until 30 June 2024
- E-invoice should be issued to replace former invoice upon termination of real estate transfer contract

Personal Income Tax

- How to calculate Vietnamese PIT if expatriates contribute to compulsory insurances in overseas
- Guidance for job posting to recruit Vietnamese labors for positions expected to use foreign labors (new process when applying work permit for foreign labors) from 01 January 2024
- Penalties for individuals who files PIT finalization after the regulated deadlines

Foreign Contractor Withholding Tax

- FCWT on sales of goods within the bonded warehouse within Vietnam's territory
- FCWT on income of legal consulting company in South Korea to provide bidding-related service

Trade & Customs

- Amendments on waiver of trade remedies application
- Updates on the in-land import and export transactions
- Issuance of Certificate of Origin ("C/O") for goods exported to bonded warehouses
- Online verification of C/O form D is now permitted on certain ASEAN members' websites
- Timeline for origin self-certification under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership
- Customs procedures for goods from domestic market brought to export processing enterprises for construction activities
- Guideline for labeling goods of which origin can not be determined
- List of administrative procedures amended, supplemented and abolished regarding import and export under management of the Ministry of Industry and Trade

Transfer Pricing

- Strengthening tax audit and inspection on transfer pricing in 2024 of enterprises having potential TP risk is a recent direction by the General Department of Taxation

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**Transfer Pricing
Firm of the Year**

**Tax Firm
of the Year**



Corporate Income Tax

Guidance ruling

The investment project established prior to 2014, yet to commence operation or generate revenue are eligible to apply CIT incentive as stipulated by Decree No. 218/2013/ND-CP

A company, which was established from investment provided under Investment Certificate (“IC”) in 2007, has not yet started operation or generated revenue, and subsequently received amendment of IC after 01 January 2014, the said project can enjoy CIT incentive in accordance with the Articles 15 and 16 of Decree No. 218/2013/ND-CP.

In addition, the General Department of Taxation has affirmed that no CIT incentive will be applied for income derived from warehouse rental and the trading of steels and raw materials due to their nature of commercial activity, which are not associated with investment activities of the investment project.

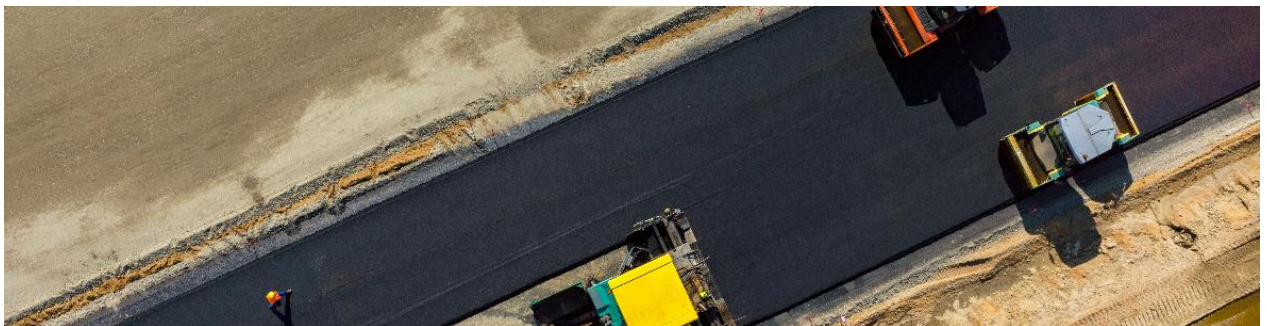
(Official Letter No. 116/TCT-CS dated 10 January 2024 issued by the General Department of Taxation)

CIT incentive for investment project in the Extended Area of Que Vo Industrial Zone (“IZ”) with a part of the land area belonging to the urban area of Bac Ninh City

If the investment project is granted an Investment Registration Certificate (“IRC”) to implement the project in the Extended Area of Que Vo Industrial Zone with a part of the land area belonging to Bac Ninh City, which is classified as a class-1 provincial urban area, CIT incentive is determined as follows:

- For income generated by the investment project within the investment capital and capacity registered under the initial IRC (prior to Bac Ninh is recognized as a class-1 provincial urban area): continues to enjoy CIT incentive applicable to the new investment project in the IZ (provided that the Extended Area of Que Vo IZ adheres to the legal requirements for the establishment of IZ) for the remaining period as long as the regulated incentive conditions are still met.
- For income generated from trading activity, service provision, and production of additional products added to the IRC amendments subsequent to the date Bac Ninh being recognized as a class-1 provincial urban area: not entitled to CIT incentive applicable to the new investment project in the IZ.

(Official Letter No. 5790/TCT-CS dated 19 December 2023 issued by the General Department of Taxation)



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Corporate Income Tax

Guidance ruling

Import duty and Environmental protection tax collected in arrears are CIT-deductible expense

The import duty and environmental protection tax collected in arrears according to the customs authority's decision (not subject to penalties for fraud or tax evasion) are not considered as non-deductible expenses when determining CIT taxable income.

(Official Letter No. 5824/TCT-CS dated 20 December 2023 issued by the General Department of Taxation)

Lending to branches which file CIT separately, without interest or at below-market interest rates subject to tax imposition

For enterprises that are not operated under the Law on Credit Institutions and engage in irregular lending activities to other organizations (including lending to branches that file CIT separately from parent entity), not charging interest or charging interest lower than the market rate for the same term and scale, these enterprises will subject to tax imposition as stipulated by tax administrative regulations.

(Official Letter No. 3782/TCT-CS dated 25 August 2023 issued by the General Department of Taxation)

Insufficient quarterly tax provisional payment may be subject to late payment interest

General Department of Taxation responds to the local tax department regarding the determination of late payment interest for insufficient provisional CIT payment, as noted in the administrative violation penalty decision:

- Taxpayers are not obligated to declare and submit quarterly CIT return, hence not subject to administrative penalties for tax under-declaration, as specified in Article 6 of Decree No. 125/2020/ND-CP;
- Local tax authority is requested to follow the regulations on inspection, examination, and guiding documents to determine the amount of tax arrears and late payment interest thereon.

(Official Letter No. 230/TCT-KK dated 17 January 2024 issued by the General Department of Taxation)



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Indirect Tax

Guidance ruling

Continue granting VAT reduction from 10% to 8% until 30 June 2024

On 28 December 2023, the Government issued the Decree No. 94/2023/ND-CP on VAT reduction of 2024, applicable to goods and services subject to 10% VAT sold during the period from 01 January 2024 to 30 June 2024.

Goods and services which are not eligible for VAT reduction under this Decree include those listed in Appendix I-III of this Decree.

Enterprises must declare VAT-reduced goods and services under the Form No. 01 in Appendix IV to this Decree together with the VAT return.

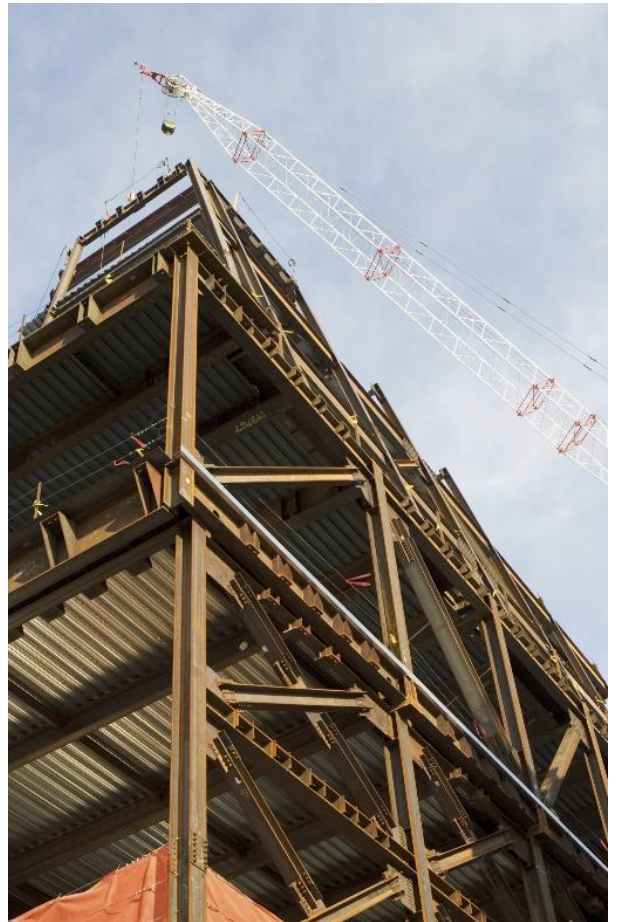
(Decree No. 94/2023/ND-CP dated 28 December 2023 issued by the Government)

E-invoice should be issued to replace former invoice upon termination of real estate transfer contract

If the company has previously issued an invoice for the sale of an apartment following the Article 16, Circular No. 39/2014/TT-BTC, then both the company and the buyer have mutually agreed to liquidate and terminate the implementation of the real estate transfer contract, then:

- A written agreement must be entered into clearly stating the reason for termination.
- To notify the tax authority using Form No. 04/SS-HDDT as enclosed with Decree No. 123/2020/ND-CP.
- Issue and digitally sign on new e-invoice to replace the existing one.

(Official Letter No. 25/CTVPH-TTHT dated 04 January 2024 issued by the Vinh Phuc Province Tax Department)



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Personal Income Tax

Guidance ruling

How to calculate Vietnamese PIT if expatriates contribute to compulsory insurances in overseas

When a foreign employee is assigned to work in Vietnam by an overseas company in the form of internal transfer; if he receives employment income paid by the Vietnamese company and overseas companies, in which the portion paid by the overseas company (including compulsory insurances contribution in overseas) is fully reimbursed by the Vietnamese company, then such overseas insurance contributions will not be allowed to be deducted when calculating PIT in Vietnam.

(Official Letter No. 6002/TCT-DNNCN dated 29/12/2023 issued by the General Department of Taxation)

Guidance for job posting to recruit Vietnamese labors for positions expected to use foreign labors (new process when applying work permit for foreign labors) from 01 January 2024

The Employment Service Center of Ho Chi Minh city ("the Center") provides guidance for organizations on job posting to recruit Vietnamese labors for positions expected to use foreign labors from 01 January 2024 as below:

- Employers shall post notice of recruitment on websites <https://vieclamhcm.com.vn> and <https://vieclamhcm.net> attached with signed and stamped official letter regarding recruitment.
- The Center will receive and approve the enterprises' recruitment notification dossier on the same day (working days from Monday to Friday during office hours).
- The Center will screen, advise and introduce job positions for candidates wishing to find jobs that meet the requirements of the business within 15 days from the date of receipt of the recruitment notice.
- The Center will coordinate with employers to consult and introduce suitable candidates for the required positions. Employers are requested to respond and send interview results of such introduced candidates to the Center.

(Official Letter No. 6932/TTDVVL-GTVL dated 25/12/2023 issued by the Department of Labor, War Invalids and Social Affairs of Ho Chi Minh City)

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Personal Income Tax

Guidance ruling

Penalties for individuals who files PIT finalization after the regulated deadlines

Taxpayers being individuals whose income from brokerage commissions, which has been withheld 10% PIT by the income payer but are still subject to direct PIT finalization, then they are responsible for submitting PIT finalization dossiers and paying the full amount of PIT liabilities. For individuals who fail to file PIT finalization within deadline, the penalties shall be imposed as follows:

- In case taxpayer has submitted PIT finalization dossier and fully paid tax liabilities and late payment (if any) before the tax authority makes an administrative violation minute of the act of submitting an overdue tax return for more than 90 days, the taxpayer shall be imposed administrative penalties for violating the time limit for filing tax returns as prescribed in clause 5, Article 13, Decree No. 125/2020/ND-CP;
- In case the tax authority has issued a minute of violation recording the act of failing to submit the tax finalization dossier or submitting PIT finalization dossier more than 90 days overdue, such tax return incurs the payable tax amount, the taxpayer will be considered for penalties for tax evasion according to point a, clause 1 of the Article 17 Decree No. 125/2020/ND-CP; or in case the administrative violation shows signs of tax evasion as prescribed in Article 200 of the Criminal Code (2015), the tax authority is responsible for transferring the violation case to the competent authority in charge of criminal proceedings.

(Official Letter No. 5852/TCT-PC dated 21/12/2023 issued by the General Department of Taxation)



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Foreign Contractor Withholding Tax

Guidance ruling

FCWT on sales of goods within the bonded warehouse within Vietnam's territory

Foreign enterprises (without a permanent establishment in Vietnam) engaging in the purchase or subcontract of goods with Vietnamese local enterprises and subsequently sell these goods to another enterprise within the bonded warehouse within Vietnam's territory are not considered ancillary activities related to international transportation, transit, border-gate transfer, storage, or processing by other enterprises. Accordingly, such foreign enterprises are subject to FCWT in Vietnam.

(Official Letter No. 23679/CTBDU-TTHT dated 10 October 2023 issued by the Binh Duong Tax Department)

FCWT on income of legal consulting company in South Korea to provide bidding-related service

When a company engages legal consulting firm in South Korea to prepare bidding documents and conduct legal procedures in South Korea, those services are considered to be provided and consumed offshore, thus not subject to Vietnam FCWT.

(Official Letter No. 4436/CTLAN-TTHT dated 10 November 2023 issued by the Long An Tax Department)



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Trade & Customs

Guidance ruling

Amendments on waiver of trade remedies application

On 28 December 2023, the Ministry of Industry and Trade promulgated Circular No. 42/2023/TT-BCT amending and supplementing regulations on trade remedies, including:

- Restrict the timeframe for the approval or disapproval on organizations or individuals being the “stakeholder” of the case within 07 days from the date of receipt of application.
- Supplement the cases where goods are considered, granted, and revoked waiver in application of trade remedies;
- Amend and supplement regulations on the duration of waiver of trade remedies application and the deadline for waiver application;
- Stipulate the reporting obligation on the import and usage of goods with waiver applied, and compliance conditions and waiver of organizations and individuals from trade remedy application;
- Abolish certain cases within the scope of the waiver of trade remedy application.

Circular No. 42/2023/TT-BCT shall come into effect on 16 February 2024.

(Circular No. 42/2023/TT-BCT dated 28 December 2023 issued by the Ministry of Industry and Trade)

Updates on the in-land import and export transactions

According to the Ministry of Planning and Investment, the proposal to abolish point c, clause 1, Article 35 of Decree No. 08/2015/NĐ-CP of the Ministry of Finance might impact the cash flow of foreign enterprises, manufacturing costs increase, the competitiveness and investment plans as well as causing the legal space during implementation. The Ministry of Planning and Investment recommends Ministry of Finance to uniformly amend the related regulations and reassess the pros and cons of alternative solutions.

(Official Letter No. 10107/BKHĐT-TCTT dated 04 December 2023 issued by the Ministry of Planning and Investment)

In response to the Official Letter No. 4698/TCHQ-GSQL of the General Department of Customs, the Ministry of Industry and Trade gave the opinion that the trade in goods activities of foreign enterprises without presence in Vietnam shall only be implemented **under the scope of import and export rights with registered certification.**

(Official Letter No. 8739/BCT-XNK dated 07 December 2023 issued by the Ministry of Industry and Trade)



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Trade & Customs

Guidance ruling

Issuance of Certificate of Origin (“C/O”) for goods exported to bonded warehouses

The issuance of C/O for goods exported to bonded warehouses is guided by the Agency of Foreign Trade as follows:

- **For goods produced domestically then exported into bonded warehouses:** C/O issuance shall be considered **if the consignee is a foreign trader** and the goods well meet the conditions under Free Trade Agreements (“FTA”) that Vietnam has signed and participated in.
- **For goods originating from an FTA member that are imported into a bonded warehouse before being re-exported to other countries that have origin from an FTA member:** Foreign trader might authorize a representative in Vietnam to apply for a back-to-back C/O. Accordingly, the exporter noted in Box 1 of the back-to-back C/O issued by Vietnam and the importer noted in Box 2 of the C/O issued by the first exporting country’s competent authority must be a legal entity headquartered in an FTA member country.

(Official Letter No. 1000/XNK-XXHH dated 28 November 2023 issued by the Agency of Foreign Trade of the Ministry of Industry and Trade)

Online verification of C/O form D is now permitted on certain ASEAN members’ websites

Several ASEAN members, including Cambodia, Indonesia, Malaysia, Singapore and Thailand, have updated the websites of their competent authorities who are responsible for C/O form D issuance for verification purpose. In particular, importers can now use the QR code printed on the C/O issued by competent authorities of Indonesia and Vietnam to verify information.

Additionally, until 01 August 2023, the above countries have fully implemented the List of Product Specific Rules (“PSR”), the List of Textiles and garments, and the List of Information Technology goods based on HS Nomenclature 2022.

(Official Letter No. 6359/TCHQ-GSQL dated 11 December 2023 issued by the General Department of Customs)

Timeline for origin self-certification under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”)

Under the CPTPP commitment, the implementation of original self-certification scheme in Vietnam shall be no later than 5 years from the date CPTPP took effect (from 14 January 2024).

The Ministry of Finance has issued Official Letter No. 9130/BTC-TCHQ to the Ministry of Industry and Trade proposing the development of the legal document to implement such commitment.

(Official Letter No. 6712/TCHQ-GSQL dated 28 December 2023 issued by the General Department of Customs)

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Trade & Customs

Guidance ruling

Customs procedures for goods from domestic market brought to export processing enterprises (“EPE”) for construction activities

Procedures for goods transfer from domestic market to EPE for construction are guided by the General Department of Customs as follows:

- **Regarding the implementation of customs procedures:** Goods brought from domestic market to EPEs, if classified as **equipment or supplies**, are **not eligible** for choosing whether to perform customs procedures or not. Accordingly, enterprises must carry out corresponding customs procedures when transferring equipment and supplies from domestic market to EPE.
- **Regarding conditions to apply 0% tax rate, deductions, and refund of VAT:** the conditions for applying the 0% tax rate, deduction, and refund of VAT for goods transferred from domestic market to free trade zone for EPE factories and office construction and equipment installation are not clear enough. Therefore, General Department of Customs proposes that the General Department of Taxation provide written guidance on the conditions for applying the 0% tax rate in the mentioned cases.

(Official Letter No. 6529/TCHQ-GSQL dated 18 December 2023 issued by the General Department of Customs)

Guideline for labeling goods of which origin can not be determined

In case the origin of goods can not be determined, the goods’ label might show the place where the final good manufacturing stage was performed using one of the following phrases or a combination of phrases indicating the final manufacturing stage: “*assembled at*”; “*bottled at*”; “*mixed at*”; “*completed at*”; “*packaged at*”; “*labeled at*” along with the name of the country or territory where the final stage is performed.

(Official Letter No. 51/HQTPHCM-GSQL dated 09 January 2024 issued by the Ho Chi Minh Customs Department)

List of administrative procedures amended, supplemented and abolished regarding import and export under management of the Ministry of Industry and Trade

Decision No. 3302/QD-BCT promulgates the List of administrative procedures which are amended, supplemented and abolished in the field of import and export. In this Decision, many updates are promulgated on procedures for Certificate of origin issuance (For example: Form D, Form EUR.1, Form A, Form B, etc.).

(Decision No. 3302/QD-BCT dated 22 December 2023 issued by the Ministry of Industry and Trade)

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Transfer Pricing

Guidance ruling

Strengthening tax audit and inspection on transfer pricing in 2024 of enterprises having potential TP risk is a recent direction by the General Department of Taxation

On 13 December 2023, the General Department of Taxation issued the Official Letter No. 5654/TCT-TTKT directing Provincial Tax departments, Central-city Tax departments and the Tax Departments for large enterprises to strengthen tax audit and inspection of enterprises having potential transfer pricing risks. In particular:

- Tax departments are requested to carefully assess and review enterprises' tax declaration records, analyse business activities of enterprises having related party transactions; review and reconcile information from different sources based on industries, types of business, investment status, tax declaration status, adjustment in related party transactions' pricing to identify high TP risk taxpayers.
- Accordingly, enterprises considered to have high TP risks would include, but not limited to those that have significant sales and purchase amounts or significant transaction proportion with related parties; having been incurring significant losses over several years but continued to expand their scale; or have their revenue increased but incur low tax contribution to the State's budget, etc.

- Tax departments are requested to add those high TP-risk taxpayer to the tax inspection plan for 2024 and clearly categorize them under TP inspection plan.
- Tax departments are requested to also coordinate with other relevant provincial departments to enhance the exchange and collection of information regarding enterprises having related party transactions, especially for foreign direct investment enterprises for purpose of tax administration.

(Official Letter No. 5654/TCT-TTKT dated 13 December 2023 issued by the General Department of Taxation)

Deloitte's recommendation

In light of this trend, the companies are advised to ensure the timeliness and quality of the transfer pricing documentation package; as well as proactively self-review of transfer pricing documentation report, and prepare explanations and supporting documents to enhance the compliance status prior to tax audit and inspections.

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