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**Tax & Customs
Newsletter**

January 2023



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Email: deloittevietnam@deloitte.com

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Corporate Income Tax

New regulation

New Circular on tax obligations for enterprises setting up and using science and technology development funds

When setting up and using science and technology development funds (“the Fund”), Circular No. 67/2022/TT-BTC (“Circular 67”) issued by the Ministry of Finance on 07 November 2022, which takes effect from 23 December 2022, provides some guidance:

- Annually, an enterprise may deduct a certain percentage (%) of assessable income to contribute the Fund as prescribed by CIT regulations, specifically:
 - For state-owned enterprises: 3% to 10%.
 - For other enterprises: up to 10%, subject to the enterprise’s decision.
- The contribution to the Fund shall be determined for each tax period and deducted from assessable income as prescribed by CIT regulations.

- Enterprises must pay the relevant CIT and late payment interest calculated on the income deducted into the Fund in case of:
 - Improper use of the Fund, or
 - Non-use or under-use of 70% of the annual deduction to the Fund within five (05) years.
- The enterprise is required to annually prepare and submit a report on the setting up, transfer and use of the Fund under Form No. 03-6/TNDN enclosed with Circular No. 80/2021/TT-BTC. The reporting deadline is the same as deadline for CIT finalization.

(Circular No. 67/2022/TT-BTC dated 11 November 2022 issued by the Ministry of Finance)



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Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

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Corporate Income Tax

Guidance ruling



Application of CIT incentives to compensation received from contractors

- Compensation payable to the buyer is not allowed to deduct from revenue for tax purpose.
- Compensation received from the contractor due to the contract breach is not considered as income from business activities stated in the Investment Registration Certificate, thus, it could be determined as other income and not subject to CIT incentives.

(Official Letter No. 189/CTH DU-TTHT dated 06 January 2023 issued by Hai Duong Tax Department)

Land rental allocation expenses

In case the company leases land from the State, however, this land area is not used for production and business activities, it shall be considered as a non-deductible expense for CIT purpose.

(Official Letter No. 16/CTH DU-TTHT dated 03 January 2023 issued by Hai Duong Tax Department)

Labor subleasing expenses

In order to carry out the product packaging stage, a company hires workers from a subleasing vendor which is qualified to provide seasonal workers sublease as prescribed for conditional investment and business. Based on working hours, the subleasing vendor issues monthly invoice. In this case, for CIT purpose, the subleasing expense shall be treated as deductible expense if the conditions regulated.

(Official Letter No. 4566/CTHPH-TTHT dated 20 December 2022 issued by Hai Phong Tax Department)

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Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

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Indirect Tax

Guidance ruling

Submission of Form 05/GTGT under Circular No. 80/2021/TT-BTC for construction activities

If project surveys and consultancy are classified as construction under the National Industry Classification and relevant regulations, the enterprises shall declare Form 05/GTGT, allocate and make VAT payment to the province where the respective construction is located. Otherwise, VAT declaration and payment shall be centralized at the head office.

Tax authorities are not responsible for determining whether a business activity should be classified as a construction service. Instead, the taxpayer is required to self-assess based on prevailing regulations and actual situation.

(Official Letter No. 387/CTHN-TTHT dated 04 January 2023 issued by Hanoi Tax Department)

Conditions for enjoying 8% VAT under Decree No. 15/2022/ND-CP

If service is provided and completed during 01 February 2022 to 31 December 2022 and the respective invoice is issued pursuant to clause 2 Article 9 Decree No. 123/2020/ND-CP (either service completion or service fee payment, whichever comes earlier), 8% VAT rate under Decree No. 15/2022/ND-CP will be applied.

(Official Letter No. 37/CTDAN-TTHT dated 04 January 2023 issued by Da Nang Tax Department)

VAT rate on sales to Export Processing Enterprises

In case a taxpayer supplies goods to enterprises located in the non-tariff zone (export processing zone), if the goods are consumed within the non-tariff zone other than the cases specified in clause 2 Article 1 Circular No. 130/2016/TT-BTC, and the conditions in clause 2a Article 9 Circular No. 219/2013/TT-BTC are fulfilled, they are eligible for the 0% VAT rate.

After completing the procedures for exported goods, the company will issue a VAT invoice for exported goods under clause 3c Article 13 Decree No. 123/2020/ND-CP.

(Official Letter No. 386/CTHN-TTHT dated 04 January 2023 issued by Hanoi Tax Department)

VAT for goods and services provided in 2022 whilst invoiced in 2023

In case goods and services are entitled to the tax rate of 8% under Decree No. 15/2022/ND-CP, the rate will be applied until the end of 31 December 2022. From 01 January 2023, the tax rate reduction to 8% will no longer be effective. Instead, the ordinary 10% VAT rate will apply, including to contracts, goods and services sold in 2022 whilst invoiced in 2023.

(Official Letter No. 20935/CTBDU-TTHT dated 29 December 2022 issued by Binh Duong Tax Department)

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Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

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Personal Income Tax

New regulation

Amending regulations on documents proving dependents

Circular No. 79/2022/TT-BTC, which takes effect from 01 January 2023, amends some regulations on documents proving dependents in Circular No. 111/2013/TT-BTC. In general, the amendments are mainly related to identification and other documents in accordance with the new Law on Residence, i.e., removal of the household registration book from 01 January 2023.

The most important amendment is the supplement of point g.7 (previously not included in point g clause 1 Article 9 Circular No. 111/2013/TT-BTC): “From the date tax authorities announce the completion of data connection with the National Population Database, taxpayers are not required to submit the documents proving dependents if relevant information is already available in the National Population Database”.

For proving dependents, point g clause 1 Article 9 Circular No. 111/2013/TT-BTC allows submission of citizen identification card to replace identity card and certificate of residence information or notice of personal identification number to replace the household registration book.

(Circular No. 79/2022/TT-BTC dated 30 December 2022 issued by the Ministry of Finance)



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Email: deloittevietnam@deloitte.com

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Personal Income Tax

Guidance ruling

Guidance on documents proving dependents

Employees are only allowed to register dependents as grandparents, aunts and uncles who must fully meet the conditions and have sufficient documents to prove the dependents. In particular, grandparents, aunts and uncles must be helpless individuals, if these people still have relatives such as brothers, sisters and children who can afford to take care of them, they cannot be registered as dependents.

(Official Letter No. 65356/CTHN-TTHT dated 29 December 2022 issued by Hanoi Tax Department)

Personal Income Tax (“PIT”) declaration and payment for dependent branches in other provinces

In case the company directly pays salaries to employees working at branches outside the province, the company is responsible for withholding PIT, preparing Form 05/KK-TNCN enclosed with the tax allocation for branches’ provinces and submitting to the head office’s tax authorities. At the same time, the company makes the PIT payment to each province according to the tax allocation.

(Official Letter No. 62788/CTHN-TTHT dated 19 December 2022 issued by Hanoi Tax Department)

Electronic PIT receipts

When withholding PIT, the organization must prepare and provide PIT receipts, with sufficient information as required, to individuals whose income are withheld:

- For individuals who authorize tax finalization, PIT receipts will not be issued.
- For individuals without labor contracts or with labor contracts of less than 3 months, income payers will issue PIT receipts for either each deduction or multiple deductions within a tax period.
- For individuals with labor contracts of 03 months or more, income payers will issue only one PIT receipt to each individual in a tax period.

(Official Letter No. 388/CTHN-TTHT dated 04 January 2023 issued by Hanoi Tax Department)



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Immigration

Guidance ruling

Concerns on temporary suspension of immigration

Regarding cases of temporary suspension of exit, Heads of the supervisory tax authorities of the taxpayers are competent to decide based on the actual situation and tax administration in their respective localities.

Regarding temporary suspension of exit for debt freezing cases, if tax authorities determine that the debt-frozen taxpayers can afford to pay taxes, they may coordinate with the immigration authorities in suspending the taxpayers' exit according to regulations.

Regarding suspension of exit in business-registration-revoked-enterprise cases, if an enterprise is being forced to execute administrative decisions on tax administration, the individual who is the legal representative of the enterprise must fulfill the tax obligation before exit and may be suspended from exit according to regulations on entry and exit.

Regarding the cancellation of the suspension of exit, in case the taxpayer has fulfilled the tax payment obligation, within 24 working hours, the tax authority shall issue a letter to cancel the suspension of exit and send it to the immigration authority.

(Official Letter No. 5590/TCHQ-TXNK dated 22 December 2022 issued by the General Department of Customs)

Guidance on implementing Resolution No. 105/NQ-CP

Pursuant to Resolution No. 105/NQ-CP, regulations on loosening conditions and procedures for foreigners' work permits during the Covid-19 period have expired from 01 January 2023. Therefore, from 01 January 2023, when carrying out administrative procedures related to foreign employees, enterprises must prepare sufficient documents in accordance with Decree No. 152/2020/ND-CP.

(Official Letter No. 374/SLDTBXH-VLATLD dated 01 January 2023 issued by Ho Chi Minh City Department of Labor, Invalids and Social Affairs)

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Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

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Foreign Contractor Withholding Tax

Guidance ruling

Foreign Contractor Withholding Tax (“FCWT”) levied on payments to foreign expatriates

When a Vietnamese company and its headquarter in Korea sign a contract to support human resources, in which the headquarter assigns expatriates working in Vietnam (these expatriates remain employees of the headquarter and do not sign labor contracts with Vietnamese company), payments made by the Vietnamese company during expatriates’ working in Vietnam such as airfare, accommodation, travel expenses, etc., would be subject to FCWT.

In addition, if the payments for air tickets are made to foreign service providers, income of such providers would be also subject to FCWT.

(Official Letter No. 4248/CTBNI-TTHT dated 27 December 2022 issued by Bac Ninh Tax Department)

Issuing tax code to foreign contractors in case FCWT has declared by Vietnamese parties

In case a foreign contractor having project office in Vietnam enters a construction contract in Vietnam and FCWT is declared and paid by the Vietnamese party, the foreign contractor shall be granted a 10-digit tax code to fulfill other tax obligations (except for FCWT) in Vietnam according to point d clause 3 Article 5 Circular No. 105/2020/TT-BTC. Procedures for tax code registration shall comply with the guidance in clause 4 Article 7 Circular No. 105/2020/TT-BTC.

(Official Letter No. 62543/CTHN-TTHT dated 16 December 2022 issued by Hanoi Tax Department)



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Land Rental

New regulation

Draft Decision on land and water surface rental reduction in 2023

With an aim to support enterprises and individuals to promote production and business, the Government is currently seeking comments on the draft Decision on reducing land and water surface rent in 2023, in which:

- Applicable objects include organizations, units, enterprises, households and individuals that are directly leased land or water surface with annual payment by the State.
- The proposed reduction is 30% land and water surface rental in 2023, excluding previous years' rental and late payment interest (if any). In case the tenant is being reduced and/or deducted from the compensation and ground clearance according to regulations, this 30% reduction is calculated on the amount of land and water surface rental after reduction and/or deduction (if any).
- An application for land and water surface rental reduction in 2023 includes a written request and a copy of decision on land lease, water surface lease (or lease contract or certificate of land use right, ownership of houses and other attached-to-land properties by a competent authorities). The application shall be submitted to and subject to approval of local tax authorities, Management Board of Economic Zone, Management Board of Hi-tech and other competent authorities as prescribed by law.



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Trade & Customs

New regulation

17 new Decrees promulgating import and export Tariff Schedules under bilateral and multilateral Free Trade Agreements/Trade Agreements of Vietnam in accordance with the ASEAN Harmonized Tariff Nomenclature 2022 (“AHTN 2022”)

On 30 December 2022, the Government signed and promulgated 17 Decrees on the import and export Tariff Schedules of Vietnam, which are effective on the same date, to implement the Trade/Free Trade Agreements for the 2022-2027 period, to align with the Nomenclature of Vietnam's exports and imports under AHTN 2022 prescribed in Circular No. 31/2022/TT-BTC dated 08 June 2022 of the Ministry of Finance.

The General Department of Customs has issued Official Letter No. 5731/TCHQ-TXNK dated 29 December 2022 guiding that the determination of HS codes shall be in accordance with Circular No. 31/2022/TT-BTC and referred to detailed Notes attached with Official Letter No. 4891/TCHQ-TXNK dated 17 November 2022.

Please refer to our alert on Application of MFN and FTA tariffs under AHTN 2022 [here](#).

Reviewing the application of anti-dumping measure on long-polyester yarn originating from India, Indonesia, Malaysia and China

On 30 December 2022, the Ministry of Industry and Trade issued Decision No. 2954/QD-BCT on the first review of the application of anti-dumping measure on several long-yarn products made from polyester originating from India, Indonesia, Malaysia and China, including products whose HS codes are 5402.33.00, 5402.46.00 and 5402.47.00. The current applied anti-dumping duty rates for the above products range from 3.36% to 17.45%.

The reviewing period starts from 01 October 2021 until 30 September 2022. The duration may not exceed 06 months from the review decision's issuance date, and might be extended once but not exceeding 03 months if necessary.

(Decision No. 2954/QD-BCT dated 30 December 2022 issued by the Ministry of Industry and Trade)



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Trade & Customs

New regulation

Updated regulations on import of used machinery, equipment, and technological lines

On 20 December 2022, the Prime Minister has issued Decision No. 28/2022/QĐ-TTg (“Decision 28”) amending and supplementing Decision No. 18/2019/QĐ-TTg prescribing the import of the used machinery, equipment and technological lines, effective from 01 March 2023.

Notable contents of Decision 28 include:

- High-tech enterprises or projects applying high technologies or projects eligible for special investment incentives as prescribed in the Law on Investment may import the used technological lines under either normal or simplified procedures.
- Importer may submit the inspection certificate within 12 months from the date when the first shipment of the technological lines is delivered for preservation. Extension of the inspection certificate submission shall be applied once only and shall not exceed 06 months.
- Technical inspection of the used technological line must be performed in the exporting country, while the line is in operation (except for the importation of High-tech enterprises or projects applying high technologies or projects eligible for special investment incentives as prescribed in the Law on Investment).
- Forms and templates of documents used for import procedures are updated in Appendix III of Decision 28.
- The HS codes of goods in List of used machinery or equipment’s age under Appendix I of Decision No.18/2019/QĐ-TTg are amended.

(Decision No. 28/2022/QĐ-TTg dated 20 December 2022 issued by the Prime Minister)



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Trade & Customs Guidance ruling

Acceptance of electronic Form D C/O with different format

Per guidance of the General Department of Customs, in case there are differences in format between electronic Form D C/O issued via Vietnam national single window system or via other authorities' platform with signature linked to their portal, and the new Form D under Circular No. 10/2022/TT-BCT, the validity of the C/O will not be affected.

The inspection of hard-copy C/O (with original signature and stamp) shall be implemented in accordance with Official Letter No. 1683/TCHQ-GSQL dated 12 May 2022.

(Official Letter No. 4832/TCHQ-GSQL dated 14 November 2022 issued by General Department of Customs)

Customs procedures for in-land import and export activities

In-land imported/exported goods are goods delivered and received in Vietnam, between two Vietnamese enterprises and foreign partners.

Currently, customs procedures for in-land import and export activities are performed as normal without any issue in relation to the understanding of "overseas organizations or individuals having no presence in Vietnam" specified at Point c, Clause 1, Article 35, Decree No. 08/2015/ND-CP.

(Official Letter No. 5482/TCHQ-GSQL dated 19 December 2022 issued by the General Department of Customs)

Guidance on the leasing/lending of fixed assets, machinery and equipment of Export Processing Enterprise ("EPE")

The Ministry of Planning and Investment has issued Official Letter No. 8256/BKHDT-QLKKT dated 15 November 2022 responding to Official Letter No. 3879/TCHQ-GSQL dated 20 September 2022 of the General Department of Customs on the leasing of fixed assets, machinery, and equipment of EPEs.

Accordingly, the leasing or lending of machinery, equipment, and molds of EPEs to other enterprises is not prohibited. However, tax treatment for the lent assets, machinery, and equipment, might be different depending on its nature, and these activities are independent with the concerned goods importation of the EPE.

(Official Letter No. 8256/BKHDT-QLKKT dated 15 November 2022 issued by the Ministry of Planning and Investment)

EPE is permitted to sell its finished goods to domestic market

EPE is permitted to sell its finished goods to domestic market under conditions of complying with tax policies and other conditions related to exported goods.

(Official Letter No. 145/HQHP-GSQL dated 05 January 2023 issued by Hai Phong Customs Department)

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Trade & Customs Guidance ruling

Procedures for exporting imported materials to foreign countries

Where companies liquidate previously imported materials to overseas, there is no requirement on repurposing declaration (under A42 mode). Instead, procedures for re-exporting the materials (under B13 mode) shall be carried out, subject to the condition that the goods have not been processed in Vietnam.

In case it cannot be determined that the re-exported goods were previously imported or processed in Vietnam, the case shall be reviewed during Post-Clearance Audit and respective tax policies will be applied as prescribed.

(Official Letter No. 39/TCHQ-GSQL dated 04 January 2023 issued by the General Department of Customs)

In-land imports and exports are still subject to customs valuation inspection

In-land imported and exported goods are subject to import and export duty and customs inspection, similarly to ordinary imported and exported goods.

The clearance channel allocation is also based on the compliance and risk assessment of customs authorities and is applied to all types of imported and exported goods without distinction between in-land and ordinary imports and exports.

(Official Letter No. 87/TCHQ-TXNK dated 06 January 2023 issued by the General Department of Customs)

Specialized goods imported from 30 December 2022 must be declared with updated HS code

From 30 December 2022, imported goods under specialized management of relevant Ministries must be declared with appropriate HS codes according to the Nomenclature of Vietnam's exports and imports under AHTN 2022 attached to Circular No. 31/2022/TT-BTC. Specific goods management policies are still applied according to current regulation and valid licenses.

Currently, the General Department of Customs observes that many Ministries are yet to issue the updated List of goods under special management policies with corresponding HS code under the Nomenclature of Vietnam's exports and imports under AHTN 2022 (although the nomenclature has been in effect since 30 December 2022).

(Official Letter No. 5772/TCHQ-TXNK dated 30 December 2022 issued by the General Department of Customs)

Contact us

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

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Contact Us



Thomas McClelland
National Tax Leader
+84 28 7101 4333
tmcclelland@deloitte.com



Bui Ngoc Tuan
Tax Partner
+84 24 7105 0021
tbui@deloitte.com



Bui Tuan Minh
Tax Partner
+84 24 7105 0022
mbui@deloitte.com



Phan Vu Hoang
Tax Partner
+84 28 7101 4345
hoangphan@deloitte.com



Dinh Mai Hanh
Tax Partner
+84 24 7105 0050
handinh@deloitte.com



Tat Hong Quan
Tax Partner
+84 28 7101 4341
quantat@deloitte.com

Hanoi Office

15th Floor, Vinaconex Building,
34 Lang Ha Street, Dong Da District, Hanoi, Vietnam
Tel: +84 24 7105 0000
Fax: +84 24 6288 5678



Vo Hiep Van An
Tax Partner
+84 28 7101 4444
avo@deloitte.com



Vu Thu Nga
Tax Partner
+84 24 7105 0023
ngavu@deloitte.com



Bob Fletcher
Director, Trade and Customs
+84 28 7101 4398
fletcherbob@deloitte.com

Ho Chi Minh City Office

18th Floor, Times Square Building,
57-69F Dong Khoi Street, District 1, Ho Chi Minh City, Vietnam
Tel: +84 28 7101 4555
Fax: +84 28 3910 0750

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