

# Deloitte.

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## Tax & Customs Newsletter

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- Expenses related to advertising and sponsoring the organization of festival activities of enterprises are CIT deductible

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- It is strictly forbidden to issue false sick leave documents to profit from social insurance

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- Determine the nature of income shared of foreign contractor when calculating foreign contractor withholding tax

### Indirect Tax

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- VAT invoices for office leasing services

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- Income of non-resident individuals if not related to the work performed in Vietnam is exempt from tax

### Trade & Customs

- Issuance of Most Favoured Nation (“MFN”) Import Tariff Schedule, Export Tariff Schedule, Absolute Tariff, Mixed Tariff, Out-of-quota Tariff and Normal Import Tariff
- Regulations on imported and exported goods origin determination
- Customs procedures and tax policies for sales of domestic enterprises to export processing enterprises
- Duty and customs valuation applied for goods sold by an export processing enterprise to its branch
- Proposal on amendments to the policy, customs procedure on in-land import-export activities

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## Corporate Income Tax Guidance ruling

### Entities implementing socialization project will not be entitled to CIT incentive if fail other law provisions

In order to enjoy socialization CIT incentive, vocational training center must meet not only the conditions specified in Decree No. 69/2008/ND-CP, but also the provisions of the related laws. As such, if the entity fails to properly use land as regulated, it will not be entitled to CIT incentives.

*(Official Letter No. 1706/TCT-CS dated 12 May 2023 issued by the General Department of Taxation)*

### No locational CIT incentives if investment project is located in grade 1 urban area

If the company was granted the investment certificate after the date the city under the province is recognized as a grade 1 urban area, the company will be not entitled to CIT incentives on location base.

*(Official Letter No. 9516/CTBDU-TTHT dated 31 May 2023 issued by Binh Duong Tax Department)*

### Import duty refund is recorded in other income of the year it is refunded

If the company actually imported goods in 2021 but the import duty of such goods is refunded and received in 2022, then will be recorded in other income of 2022.

*(Official Letter No. 2299/CT-TTHT dated 28 April 2023 issued by Nghe An Tax Department)*

### Expenses related to advertising and sponsoring the organization of festival activities of enterprises are CIT deductible

In case the enterprise uses advertising and brand promotion services at the festival, for which the festival organizing committee authorizes the performing arts center to sign a contract with the enterprise and issue a VAT invoice, then:

- Input VAT corresponding to these invoices, that related to the enterprise's business activity subject to VAT and satisfying the conditions as prescribed, are creditable.
- Expenses for advertising and sponsoring festival activities of enterprises are deductible if the prescribed conditions are met.

*(Official Letter No. 2520/CTHPH-TTHT dated 22 May 2023 issued by Hai Phong Tax Department)*

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## Indirect Tax

### New regulation

## Guidance ruling

### The Government issued Decree No. 44/2023/ND-CP on VAT reduction from 10% to 8% to apply from 01 July 2023 to 31 December 2023

On 30 June 2023, the Government issued Decree 44/2023/ND-CP on VAT reduction of 2023, applicable to goods and services subject to 10% VAT sold during the period from 1 July to 31 December 2023.

Goods and services are not eligible for VAT reduction under this Decree include:

- a) Telecommunications, financial activities, banking, securities, insurance, real estate trading, metals and prefabricated metal products, mining products (excluding coal mining), coke, refined petroleum, chemical products. Details are in Appendix I to this Decree.
- b) Goods and services subject to excise duty. Details are in Appendix II to this Decree.
- c) Information technology under the laws on information technology. Details are in Appendix III to this Decree.

Reduction of VAT on eligible goods and services is applied consistently upon importation, production, processing and trading processes.

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

*(Decree No. 44/2023/ND-CP dated 30 June 2023 issued by the Government)*

### VAT invoices for office leasing services

Companies applying the VAT credit method when providing office leasing services must issue an invoice and deliver it to the buyer according to clause 1, Article 4, Decree No. 123/2020/ND-CP.

The VAT taxable amount for office leasing services shall include surcharges and fees in addition to the service price to which the company is entitled according to clause 22, Article 7, Circular No. 219/2013/TT-BTC.

*(Official Letter No. 35355/CTHN-TTHT dated 23 May 2023 issued by Hanoi Tax Department)*

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## Labor & Social insurance

### New decision

## Guidance ruling

### Shorten the deadline for issuing work permits in Ho Chi Minh City

People's Committee of Ho Chi Minh City recently issues a decision with instructions for three amendments in work-permit procedures, including:

1. Registering the direct labor contract (with the person going to work abroad).
2. Confirmation that foreign workers are not subject to work permits.
3. Extension of work permits for foreign workers working in Vietnam.

In which:

- Process for certifying that foreign workers are not eligible for work permits is shortened from 05 days to 03 working days.
- Procedures for the extension of work permits for foreign workers are adjusted in terms of dossier composition, application forms, and declarations, and the processing time is shortened from 05 days to 03 working days.

The Decision takes effect from the date of signing.

*(Decision No. 2273/QD-UBND dated 02 June 2023 issued by the People's Committee of Ho Chi Minh City)*

### It is strictly forbidden to issue false sick leave documents to profit from social insurance

Regarding the issuance of leave certificates to enjoy social insurance, the Social Insurance Authority of Ho Chi Minh City has advised hospitals and clinics in the area to seriously implement the Law on Medical Treatment, the Law on Health Insurance, the Medical Care Procedures of the Ministry of Health and prohibits the granting of sick leave documents to benefit from the social insurance and health insurance funds.

Social Insurance Authority will base on the data of participants who have enjoyed social insurance and health insurance benefits on the Data System of the Social Insurance Sectorial to review and compare. If there are signs of abuse or profiteering are detected, they will coordinate with competent authorities to conduct inspection, examination, and handling.

*(Official Letter No. 563/BHXH-GD2 dated 05 June 2023 issued by the Social Insurance Authority of Ho Chi Minh City)*



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## Personal Income Tax

### Guidance ruling

#### Paying prizes to gameshow players must withhold tax on prizes exceeding VND 10 million

According to Hanoi Tax Department, in case real estate companies organize a gameshow program “Hunting the million-dollar house” and the winning player is not the employee of the company, when paying the winning amount, the real estate companies are responsible for withholding tax and declaring PIT from winning prizes on behalf of winners. The tax declaration shall apply form No. 06/TNCN issued in Circular No. 92/2015/TT-BTC.

The basis for calculating PIT on income from winning prizes is made according to the provisions of Article 15, Circular No. 111/2013/TT-BTC, in which, taxable income from winning prizes is the portion of the prize more than VND 10 million that the individual receives for each winning time regardless of the number of times of receiving the prizes.

*(Official Letter No. 35708/CTHN-TTHT dated 24 May 2023 issued by Hanoi Tax Department)*

#### Income of non-resident individuals if not related to the work performed in Vietnam is exempt from tax

The calculation of PIT incurred by a foreign expert working in Vietnam shall depend on his/her residence status.

If the foreign expert meets the conditions of being resident, incomes liable to PIT are global incomes (incomes earned in Vietnam and outside Vietnam), regardless of places where the incomes are paid according to the guidelines. With regard to incomes paid outside Vietnam, this person shall declare and pay PIT directly at the Vietnamese tax authority.

In contrast, if the foreign expert fails to meet the conditions of being resident in Vietnam, he/she shall be determined a non-resident in Vietnam and shall be only liable to PIT regarding its Vietnam sourced incomes. If the paid incomes are not related to tasks performed in Vietnam, they shall not be included in incomes liable to PIT in Vietnam.

*(Official Letter No. 40818/CTHN-TTHT dated 12 June 2023 issued by Hanoi Tax Department)*



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## Foreign Contractor Withholding Tax

### Guidance ruling

#### Goods trading between foreign companies but delivered in Vietnam are subject to foreign contractor withholding tax

According to guidance from the General Department of Taxation, if goods are trading between foreign companies but are delivered in the territory of Vietnam through a Vietnamese company, these goods are subject to foreign contractor withholding tax ("FCWT").

The Vietnamese party is responsible for declaring and paying FCWT on behalf of the foreign seller according to the provisions of Circular No. 103/2014/TT-BTC.

*(Official Letter No. 1861/TCT-CS dated 17 May 2023 issued by the General Department of Taxation)*

#### Determine the nature of income shared of foreign contractor when calculating foreign contractor withholding tax

When the foreign contractor incurs income from Vietnam based on a shared revenue contract, the company needs to determine the nature of this income based on work completed and the actual situation to apply the appropriate tax rate of CIT and VAT (stipulated in Articles 12 and 13, Circular No. 103/2014/TT-BTC).

If the foreign contractor does not meet conditions to be declared directly under Article 8, Section 2, Chapter II, Circular No. 103/2014/TT-BTC, the Vietnamese company is responsible for withholding, declaring, and paying FCWT on behalf of the foreign contractor.

*(Official Letter No. 9032/CTBDU-TTHT dated 22 May 2023 issued by Binh Duong Tax Department)*



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## Trade & Customs

### New regulation

#### Issuance of Most Favoured Nation (“MFN”) Import Tariff Schedule, Export Tariff Schedule, Absolute Tariff, Mixed Tariff, Out-of-quota Tariff and Normal Import Tariff

On 31 May 2023, the Government issued Decree No. 26/2023/ND-CP (“Decree 26”) to stipulate the MFN Import Tariff Schedule, Export Tariff Schedule, Absolute Tariff, Mixed Tariff, Out-of-quota Tariff. Decree 26 shall take effect from 15 July 2023. Notable contents of Decree 26 include:

- Export tariff schedule, applied for goods in group #211 in Appendix 1 of the Decree.
- MFN import tariff schedule.
- Import tariff for specific products, e.g. mechanical processing machines, used cars, etc..
- Extension of duty incentive programs for automobile parts and its application process.
- List of goods and out-of-quota tariff.

On the same date, Decision No. 15/2023/QD-TTg of the Prime Minister has been issued, promulgating the normal import tariff applied to imported goods.

Please refer to our Alert on Decree No. 26/2023/ND-CP and Decision No. 15/2023/ND-CP stipulating the Import Tariff and Export Tariff Schedule [here](#).

*(Decree No. 26/2023/ND-CP dated 31 May 2023 issued by the Government and Decision No. 15/QD-TTg dated 31 May 2023 issued by the Prime Minister)*

#### Regulations on imported and exported goods origin determination

On 31 May 2023, Circular No. 33/2023/TT-BTC (“Circular 33”) has been issued by the Ministry of Finance (“MOF”) on imported and exported goods origin determination. Circular 33 shall take effect from 15 July 2023 and replace Circular No. 38/2018/TT-BTC and related Circulars.

Notable contents of this Circular include:

- Detailed provisions for the implementation of advanced ruling on goods origin.
- Acceptance of scan/copy version of Proof of Origin (“PO”) for customs declaration at the importation stage.
- Cases with trivial differences and HS code differences not affecting the validity of P/O.

Please refer to our Alert on Circular No. 33/2023/TT-BTC on imported and exported goods origin determination [here](#).

*(Circular No. 33/2023/TT-BTC dated 31 May 2023 issued by the Ministry of Finance)*

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## Trade & Customs Guidance ruling

### Customs procedures and tax policies for sales of domestic enterprises to export processing enterprises

Domestic enterprises that import raw materials and supplies for exports manufacturing (under mode E31) and then sell finished products to export processing enterprises (“EPE”) to export overseas using their export right, must declare for change of using purpose for duty-free imported raw materials and supplies before selling such products to EPEs.

Where domestic enterprises encounter issues regarding VAT rates on invoices issued to EPEs, domestic tax authorities should be contacted for guidance.

*(Official Letter No. 2457/TCHQ-TXNK dated 23 May 2023 issued by the General Department of Customs)*

### Duty and customs valuation applied for goods sold by an export processing enterprise to its branch

Notable points for goods sold by an EPE to its branch:

- Regarding the application of special preferential import tariff: goods sold by an EPE to its branch may enjoy the special preferential import tariff if- satisfying the conditions regulated in the Decrees promulgating special preferential import tariff schedules under Free Trade Agreement.
- Regarding the customs valuation: goods bought by a branch from the EPE are not eligible for application of the transactional value method to determine their customs value. Instead, other alternative methods under Circular No. 39/2015/TT-BTC shall be adopted.

*(Official Letter No. 2076/TCHQ-TXNK dated 28 April 2023 issued by the General Department of Customs)*



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## Trade & Customs

### Notable news

#### Proposal on amendments to the policy, customs procedure on in-land import-export activities

The General Department of Customs proposes amendments to Article 35, Decree No. 08/2015/ND-CP (“Decree 08”) regarding the in-land import-export, in detail:

1. Entirely abolish the current regulations on in-land import-export transactions in Article 35, Decree 08.
2. Propose the General Department of Taxation and its provincial tax departments to take responsibility for managing and collecting taxes in the following cases:
  - Goods processed by Vietnamese entities for foreign traders but sold by foreign traders to other organizations or individuals in Vietnam.
  - Goods manufactured by Vietnamese entity from import duty exempted materials for export to overseas organizations or individuals and designated to be delivered to another Vietnamese entity.
  - Goods traded between a domestic enterprise and foreign traders without a presence in Vietnam and designated to be delivered in Vietnam.

Please refer to our Alert on the Proposal of GDC to amend Article 35, Decree No. 08/2015/ND-CP on in-land import-export activities [here](#).

*(Official Letter No. 2587/TCHQ-GSQL and 2588/TCHQ-GSQL dated 29 May 2023 issued by the General Department of Customs)*



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