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**Tax & Customs  
Newsletter**

March 2023



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## Tax Administration Others

### Reinforcement of tax audit and inspection in 2023

General Department of Taxation issued the Official Letter No. 586/TCT-TTKT dated 01 March 2023 (“The Official Letter No. 586/TCT-TTKT”) guiding local Tax Departments on reinforcement tax audit and inspection in 2023. Accordingly, the General Department of Taxation requires local Tax Departments to perform several main tasks as follows:

- Complete the tax audit and inspection plan of 2022 by 29 April 2023 and promptly implement the tax audit and inspection plan of 2023.
- **Applying risk management in tax audit and inspection:** combining the use of information and data of both tax authority and other third parties to analyze tax risks and determine risky areas to focus on.
- **Applying measures to improve the efficiency of tax audit and inspection:** strengthening exchange of information via electronic means with taxpayers; Record electronic diaries in accordance with regulations; Strengthen the supervision of activities of tax inspection delegations; Timely collect taxes and fines through tax audit and inspection.
- **Strengthening tax audit and inspection for:** e-commerce, digital business, and invoice fields.
- **Strengthen tax audit inspection of VAT refund:** perform post - refund inspection within 01 year for high-risk dossiers; conduct post - refund tax audit for cases eligible for refund before audit in the year and review the refunded dossiers of previous years.
- **Strengthening TP audit and inspection:** focus on FDIs incur losses or have lower business results than other enterprises in the same industry; enterprises with high portion of related transactions and enjoy tax incentives; enterprises with simple functions (processing, contract manufacturing, assembling of electronic components, textiles, footwear, etc.) but with low profit level; enterprises incur huge expenses for internal services, royalty, etc.,
- **Strengthening cooperation** with competent authorities in tax audit and inspection to deal with tax evasion, tax fraud and tax crimes.

*(Official Letter No. 586/TCT-TTKT dated 01 March 2023 by General Department of Taxation)*



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## Corporate Income Tax

### Guidance ruling

#### Include interest income into CIT taxable income of the period which the interest actually incurs

According to CIT regulations, there is no requirement to accrue income in CIT taxable income. Therefore, if the company actually incurs interest income from bank deposits, this income shall be included into taxable income of the period which the interest actually incurs according to Article 7, Circular No. 78/2014/TT-BTC dated 18 June 2014 issued by the Ministry of Finance.

*(The Official Letter No. 6096/CTHN-TTHT dated 16 February 2023 issued by Hanoi Tax Department)*

#### Supplement business line but not increase capital, not allowed to enjoy CIT incentives

In case the company has been operating and enjoying CIT incentives (thanks to locational condition), registers to supplement business activities but does not increase its capital nor increase assets, then income from supplemented business activity is not entitled to CIT incentive.

*(The Official Letter No. 4229/CTBDU-TTHT dated 03 March 2023 issued by Binh Duong Tax Department)*

#### Export revenue is recognized at the time of customs procedures completion

When the company export of goods in November 2022 but the customs clearance procedures were not completed until February 2023, the time for VAT declaration and recognition of export revenue for tax declaration purpose is the completion date of customs procedures (i.e., customs clearance date).

If taxable revenue is recognized in 2023, the corresponding selling expenses should be recorded in 2023. Expenses which do not correspond with the taxable revenue will be considered as non-deductible expenses for CIT purpose as prescribed at point 2.30, clause 2, Article 4, Circular No. 96/2015/TT-BTC.

*(The Official Letter No. 912/CTTNG-TTHT dated 08 March 2023 issued by Thai Nguyen Tax Department)*



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## Corporate Income Tax

### Guidance ruling



#### Notification to tax authority in case of changing in useful life of fixed asset

A company is allowed to change the fixed asset's useful life one time, if it is still under the time frame as prescribed in Appendix I attached with Circular No. 45/2013/TT-BTC. Notification in written must be submitted to managing tax authority for monitoring.

If the contemplated fixed asset's useful life exceeding the time frame as prescribed in Appendix I attached with Circular No. 45/2013/TT-BTC, the company must prepare explanation to change the fixed asset's useful life and obtain approval as prescribed at point a, clause 3, Article 10, Circular No. 45/2013/TT-BTC. Within 20 days from the date of the approval, the company must notify in written to managing tax authority.

*(The Official Letter No. 156/CCTKV-NV dated 01 March 2023 issued by Phu Yen Tax Department)*

#### Raw materials and goods used in excess of the norm is non-deductible expense for CIT purpose

With regards to raw materials, fuel, energy and goods subject the norm stipulated by the State, consumption exceeding the norm will be treated as non-deductible expense for CIT purpose.

In case after post customs clearance audit at the company, the customs authority decides to deem import duty and import VAT because there are differences between material value in import/ export documents, payment documents and accounting books and actual inventory count, the value of raw materials exceeding the norm will be treated as non-deductible expense for CIT purpose as prescribed.

*(The Official Letter No. 4228/CTBDU-TTHT dated 03 March 2023 issued by Binh Duong Tax Department)*

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## Corporate Income Tax

### Guidance ruling

#### Cancelled goods paid by customer and disposal expense are deductible for CIT purpose

The value of export goods, which is cancelled by customer and relevant disposal expense is deductible for CIT purpose and VAT input creditable if:

- The contract or contract appendix mention the agreement which request the company to destruct the export goods as the export goods are no longer suitable for foreign markets and the customer agrees to make full payment for the goods; and
- All the conditions, dossiers as guided in Article 4, Circular No. 96/2015/TT-BTC and clause 1, Article 14, Circular No. 219/2013/TT-BTC; clause 10, Article 1, Circular No. 26/2015/TT-BTC are met.

The company must issue VAT invoices, declare VAT and recognize revenue similar to cases which the goods are sold to customers.

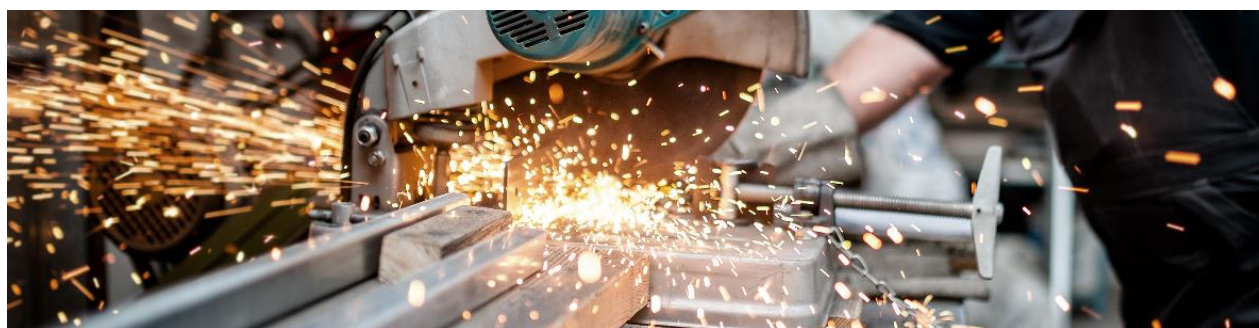
*(The Official Letter No. 4220/CTBDU-TTHT dated 03 March 2023 issued by Binh Duong Tax Department)*

#### Responsibility to declare tax for capital transfer between two foreign companies having no legal presence in Vietnam

According to point c, clause 2, Article 14, Circular No. 78/2014/TT-BTC, in case the transferor and transferee are both foreign companies, the Vietnamese company owned by foreign company will be responsible to declare, pay CIT on behalf of the foreign contractor.

Accordingly, the foreign companies are not eligible to be provided a tax code to declare and pay tax in accordance with Circular No. 105/2020/TT-BTC with regards to capital transfer transaction.

*(Official Letter No. 32/TCT-KK dated 06 January 2023 issued by General Department of Taxation)*



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## Indirect Tax

### New regulations

#### Circular guiding Decree No. 49/2022/NĐ-CP on VAT

The Ministry of Finance issued Circular No. 13/2023/TT-BTC dated 28 February 2023 (“Circular 13”) guiding the implementation of Decree No. 49/2022/ND-CP dated 29 July 2022 of the Government on VAT.

Circular 13, with 03 articles, re-introduce the changes of Decree No. 49/2022/NĐ-CP into Circular No. 219/2013/TT-BTC (on taxable price of electricity production activities of the Vietnam Electricity Group, real estate transfer or VAT refund of investment project).

Although Circular 13 takes effect from 14 April 2023, changes to VAT refund for investment project in conditional business will be applied retrospective from 01 July 2016. Accordingly, the adjustment of VAT, late payment interest and fines (if any) are as follows:

- In case a decision on recollection of VAT refund, calculation of late payment interest and penalties (if any) has been issued, the tax authority shall issue an adjustment decision of such decision. In case the taxpayer has additionally declared the recollected VAT amount, taxpayer and tax authority shall adjust the recollected VAT amount and late payment interest.
- The recollected VAT amount (including the case where it has not been or has been cleared against the payable VAT amount arising from production and business activities), late payment interest and fines (if any) shall be processed and refunded according to regulations on overpaid refund.

*(Circular No. 13/2023/TT-BTC dated 28 February 2023 by Ministry of Finance)*

### Guidance ruling

#### Declare VAT for real estate transfer of infrastructure investment projects located in other provinces and cities different with province and city of the Headquarter

When carrying out investment projects on infrastructure construction in other provinces or cities, a company should declare VAT for infrastructure investment projects to provincial tax authority where the real estate transfer locates, using Form No. 01/GTGT of Appendix II, Circular 80/2021/TT-BTC.

For normal production and business activities carried out at the head office, VAT return form No. 01/GTGT is also used, however, exclude the afore-mentioned real estate transfer in other provinces.

*(The Official Letter No. 7969/CTHN-TTHT dated 27 February 2023 issued by Hanoi Tax Department)*

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## Indirect Tax

### Guidance ruling

#### VAT rates for different categories of goods and service on the invoice

In case an enterprise in the construction and installation sector carries out work items subject to varied VAT rates, the invoice shall present each item separately with its corresponding VAT rate as prescribed under Article 2, Decree No. 41/2022/ND-CP.

*(Official Letter No. 9298/CTHN-TTHT dated 06 March 2023 issued by Hanoi Tax Department)*

#### Issuing VAT invoices in case of trade discount, purchase return, receipt of subsidy

If a company execute trade discount program based on sales volume and sales amount, the discount on goods sold is reflected on the final invoice, or invoice in the following period. Where the discount is determined at the end of the trade discount program/ period, the seller shall issue an adjustment invoice as prescribed under Article 19, Decree No. 123/2020/ND-CP.

If a company applying the credit method for VAT payment makes a purchase return prescribed by law, an invoice upon the return must be issued pursuant to Article 4, Decree 123/2020/ND-CP with the VAT rate corresponding to that of the purchase VAT invoice.

If a company receives a subsidy to provide certain services such as product display support to other organization, VAT must be declared and paid according to Article 5, Circular No. 219/2013/TT-BTC.

*(Official Letter No. 8202/CTHN-TTHT dated 6 March 2023 issued by Hanoi Tax Department)*



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## Labor

### Guidance ruling

#### Application for one-time social insurance benefits for fatal diseases

Dossier of application for one-time social insurance benefits for cases of fatal diseases specified at point c, clause 1, Article 60 of the Law on Social Insurance must submit the following documents:

- For cases of one of the life-threatening diseases such as cancer, polio, cirrhosis of the liver ascites, leprosy, severe tuberculosis, HIV infection that has progressed to AIDS. The application is the original or a valid copy. discharge rate or summary of medical records showing the above illness.
- -For cases of other diseases: the record is a medical assessment record that clearly concludes the contents of the disease with a decrease in working capacity of 81% or more and is not self-controlled or not be able to carry out activities to serve personal needs without assistance and care.

*(Official Letter No. 791/BHXH-CD dated 06 March 2023 issued Ho Chi Minh City Social Security)*



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## Personal Income Tax

### Guidance ruling

#### Withhold PIT for bonus paid for collaborators

In case a company pay bonus to its collaborators, if this bonus acts on a salary or wage nature and the collaborator does not have labor contract or have a labor contract of which duration is less than 3 months, PIT must be withheld at the rate of 10% as prescribed.

In case an enterprise gives a cash as gift to a collaborator, the income from the gift in cash is not subject to PIT as prescribed.

Expenses of wages, salaries, gifts in cash to collaborators, which meet the conditions specified in Article 4, Circular 96/2015/TT-BTC, will be accepted for accounting purpose, but enterprises will not be accounting for taxes paid on behalf of collaborators.

*(Official Letter No. 4985/CTHN-TTHT dated 13 February 2023 issued by Hanoi Tax Department)*

#### Declare and distribute PIT for provinces having branches and business locations

If a company have branches or business locations in many provinces and cities and conducts centralized accounting at the headquarter, PIT must be declared, calculated, and allocated to the provinces where branches and business locations located at.

The PIT amount allocated to each province is determined according to the actual tax withheld from each individual. If the employee is transferred or rotated, based on the time of income payment which province the employee is working at, the withheld PIT incurred shall be calculated for that province.

*(Official Letter No. 4418/CTHN-TTHT dated 09 February 2023 issued by Hanoi Tax Department)*

#### Guidance on PIT finalization from Hanoi Tax Department

Hanoi Tax Department issued Official Letter No. 6097/CTHN-TTHT dated 16 February 2023 guiding PIT finalization, with some notable points:

- When a company pay wages and salaries to employees working at branches located in other provinces and declare the withheld PIT to such provincial tax authority, there will be no requirement to determine the PIT payables at each province at finalization stage.
- In case of direct PIT finalization, PIT finalization return will be submitted to local tax authority managing the income-paying organization, where the family circumstance deduction is applied.
- If the resident individual earns overseas salaries or wages, such individual shall submit PIT return to the tax authority managing the locality where the individual works in Vietnam or where the individual resides (if the place of work is not in Vietnam).

*(Official Letter No. 6097/CTHN-TTHT dated 16 February 2023 issued Hanoi Tax Department)*

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## Foreign Contractor Withholding Tax

### Guidance ruling

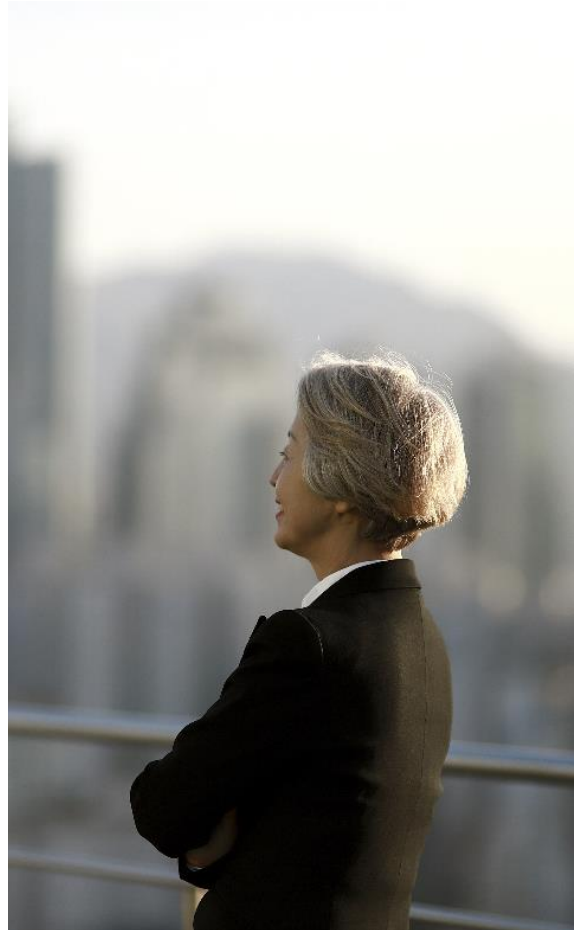
#### Foreign Contract Tax on income from securities transfer

In case foreign organization without permanent establishment in Vietnam (Foreign contractor) earn income from securities transfer on the Stock Exchange in accordance with the Law on securities, such income would be subject to Foreign Contract Tax according to Circular No. 103/2014/TT-BTC specifically as follows:

- VAT: Securities transfer activities are not subject to VAT.
- CIT: Income from securities transfer subject to 0.1% CIT.

If the foreign contractor fails one of conditions to directly file taxes in Vietnam in accordance with Article 8, Circular No. 103/2014/TT-BTC, the Vietnamese party (the securities company, the securities issuer or company where foreign company opens securities accounts) would be responsible to withhold taxes on behalf of the foreign contractor according to the regulation at Circular No. 103/2014/TT-BTC.

*(The Official Letter No. 9302/CTHN-TTHT dated 06 March 2023, issued by Hanoi Tax Department)*



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## Trade & Customs

### New regulation

#### Revised regulations on rules of origin in the ASEAN Trade in Goods Agreement (ATIGA)

On 14 February 2023, Circular No. 03/2023/TT-BCT has been issued by the Ministry of Industry and Trade amending and supplementing Circular No. 22/2016/TT-BCT on rules of origin in the ATIGA, including the following notable revisions:

- Update on Product-specific rules.
- Basic conversion criteria for textile products.
- List of information technology agreement products (ITA).

The above-mentioned revisions have been built in accordance with the Harmonized Commodity Description and Coding System version 2022 (HS 2022).

(Circular No. 03/2023/TT-BCT dated 14 February 2023 issued by the Ministry of Industry and Trade)

#### Anti-dumping duty is officially applied on table and chair products originating from China

On 13 February 2023, the Ministry of Industry and Trade has issued Decision No. 235/QD-BCT on officially imposing anti-dumping duties on certain table and chair products from China and ceasing anti-dumping investigations on specific tables and chairs from Malaysia.

Accordingly, the table and chair products from China are applied anti-dumping duty rates including tables under HS code 9403.30.00 and chairs under HS codes 9401.31.00, 9401.39.00, 9401.41.00, 9401.49.00, 9401.61.00, 9401.69.90, 9401.71.00, 9401.79.90, and 9401.80.00. The anti-dumping duty rates will be applied at 35,20% for table products and 21,40% for chair products.

The application of anti-dumping duty for table and chair products from China will be valid for 5 years from 13 February 2023.

*(The Decision No. 235/QD-BCT dated 13 February 2023 issued by the Ministry of Industry and Trade)*



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## Trade & Customs

### New regulation

#### Vietnam Chamber of Commerce and Industry (“VCCI”) will handle the registration of REX code from 01 January 2023

VCCI will be authorized to handle the registration and withdrawal of REX code under the Generalized Scheme of Preferences (“GSP”) of Norway and Switzerland.

VCCI is required to report to the Ministry of Industry and Trade on the implementation of the GSP-based certification of origin mechanism (periodically or irregularly) and actively monitor, supervise, urge, and inspect the implementation of origin certification process under GSP of traders, organizations, and individuals.

(The Decision No. 2795/QĐ-BCT dated 16 December 2022 issued by the Ministry of Industry and Trade)

#### C/O form B is still issued under HS version 2017

The change on Product-Specific Rules when shifting from HS codes version 2017 to version 2022 in accordance with Vietnam’s List of exports and imports promulgated in Circular No. 31/2022/TT-BTC are under review of the Ministry of Industry and Trade.

Before the issuance of official guidance, C/O Form B (for goods originating in Vietnam exported to other countries) is still issued in accordance with Circular No. 05/2018/TT-BCT, and HS code version 2017 is still used in C/O form B application.

In case there are differences between HS codes of 2 versions and upon requests from importer, HS codes version 2022 might be added to C/O form B. However, it will not be used as a basis for C/O issuance and companies must take responsibility for the appropriateness of declared HS codes.

*(The Official Letter No. 48/XNK-XXHH dated 10 February 2023 issued by the Ministry of Industry and Trade)*

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## Trade & Customs

### Guidance ruling

#### Leased cars are not subject to duty exemption when temporary export and re-import

Automobiles which are temporarily exported and re-imported under a leasing contract are not subject to export and import duty exemption.

Accordingly, enterprises are still required to declare for export duty (if any) when perform temporary export and import duty when re-import goods under a leasing contract.

*(The Official Letter No. 938/TCHQ-TXNK dated 06 March 2023 issued by the General Department of Customs)*

#### Update on application of C/O for imported goods from Chile

The Ministry of Industry and Trade has announced that Chile has completed its internal procedures for implementation of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”) and CPTPP officially comes into force for Chile on 21 February 2023.

According to the General Department of Customs’ guidance, CPTPP Agreement officially took effect for Chile on 21 February 2023, however, as the Decree on Vietnam’s Preferential Import Tariff Schedule for imports from Chile under CPTPP has not yet been issued, the inspection of proofs of origin will be implemented temporarily in accordance with Circular No. 62/2019/TT-BTC and Circular No. 03/2019/TT-BCT.

Regarding the proofs of origin, Chile has announced that the hard-copy C/O form under clause 5, appendix 3A of CPTPP Agreement shall not be used, instead, the self-certification mode by the exporter shall be applied.

*(The Official Letter No. 76/XNK-XXHH dated 17 February 2023 issued by the Ministry of Industry and Trade and The Official Letter No. 897/TCHQ-GSQL dated 02 March 2023 issued by the General Department of Customs)*



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## Trade & Customs

### Guidance ruling

#### Imports for replacement of NG goods are not subject to duty exemption

Goods that are temporarily exported for repair but not re-imported, would be considered as having a change in the using purpose of duty exempted goods, and new customs declaration should be registered in accordance with clause 12, Article 1, Decree No. 59/2018/ND-CP. Duty treatment and related policies for the exported goods are implemented at registration of new customs declaration, unless they have already been applied at initial declaration.

If the goods are imported for replacement of the previously exported goods that cannot be repaired, enterprises must carry out normal import procedures (not re-import) under Section 5 of Decree No. 08/2015/ND-CP (amended in Decree No. 59/2018/ND-CP).

Regarding duty treatment, in case goods are temporarily exported to the supplier to be repaired but cannot be repaired and a replacement is provided for warranty, it would not be considered as re-import of the previously exported goods. Hence, they are not subject to duty exemption according to point c, clause 9, Article 16 of Law on Export and Import duties No. 107/2016/QH13.

*(The Official Letter No. 795/TCHQ-TXNK dated 24 February 2023 issued by the General Department of Customs)*



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