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Newsletter
Tax & Customs

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**Tax Firm
of the Year**



Tax Administration

Guidance ruling

Guidelines for supplementary declaration of missing VAT invoices in the inspected tax period

If a company identified missed VAT invoices, for goods or services purchased in the period after the Tax Authority has issued their conclusion of the pre-refund tax inspection the company is allowed to file a supplementary tax declaration, and:

- Where that supplementary declaration increases the tax payable or reduces the creditable tax or tax exempted amount the company could be sanctioned for violating tax administration regulations.
- Conversely, where that supplementary declaration reduces the tax payable or increase the creditable tax or increases the tax exempted amount, the company should follow the provisions for tax appeal settlement.

(Official Letter No. 4955/TCT-KK dated 06 November 2023 issued by the General Department of Taxation)

Forgiveness of tax debts that have been overdue for over 10 years

Tax debts that have been overdue for more than 10 years from the statutory deadline and have been subject to coercive measures by the Tax Authority but are unable to be recovered, may be considered for cancellation of the debt.

To apply for cancellation of tax debts over 10 years, the enterprise must submit the following documents:

- A written request in Form No. 01/XOANO, which must be accompanied by Annex I, Circular No. 80/2021/TT-BTC dated 29 September 2021, issued by the Ministry of Finance.
- A written request from the direct managing Tax Authority to the business registration agency or a competent state agency to revoke the enterprise registration certificate, the business registration or investment registration certificate.
- A copy of decision to revoke the enterprise registration certificate, business registration or investment registration certificate.
- A copy of the notice of tax owed at the time of application for debt forgiveness.
- Copies of enforcement decisions on administrative decisions on tax administration or records proving the implementation of enforcement measures against taxpayers.
- A document certified by the commune-level People's Committee stating that the taxpayer no longer has assets or business activities in the area.

(Official Letter No. 4517/TCT-QLN dated 12 October 2023 of the General Department of Taxation)

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Corporate Income Tax

Guidance ruling

Deductible interest expenses for CIT calculation

Loan interest expenses incurred by an enterprise that are related to its production and business activities, that are: supported by legitimate invoices and documents; are paid through non-cash methods as prescribed by regulations; and do not fall under the list of non-deductible expenses specified by prevailing regulations, shall be treated as deductible expenses for CIT calculation purposes.

For interest expenses from 01 May 2017 onwards, General Department of Taxation has requested local Tax Authorities to investigate related-party relationships and transactions (if any) to determine deductible interest expenses appropriately at each specific time.

Deductible PIT expenses paid on behalf of employees for CIT calculation

If an enterprise signs a labor contract that specifies that the salary paid to employees is excluding the PIT, then the PIT expenses incurred by the company and paid to the state treasury shall be considered deductible expenses for CIT calculation purpose.

(Official Letter No. 4619/TCT-CS dated 18 October 2023 issued by the General Department of Taxation)

Cases where businesses' income are not eligible for CIT incentives

There are several cases where businesses' income is not eligible for CIT incentives. These cases are as follows:

- Businesses that earn income from implementing investment projects in industrial parks and industrial clusters are not eligible for CIT incentives scheme applicable to socio-economically difficult areas if it is not qualified for incentivized location.
- Income from deposit interest, lending interest and foreign exchange gains which are not related to incentivized business activities should not be applied CIT incentives.
- Businesses that earn income from investment projects in the trading and services sector outside the tax-incentivized locations are not eligible for CIT incentives applicable to those locations.

(Official Letter No. 4626/TCT-CS dated 19 October 2023 issued by the General Department of Taxation)



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Corporate Income Tax

Guidance ruling

Tax incentive for outsourcing activities outside incentivized location

If a company implementing an investment project in an incentivized industrial park engages another enterprise to conduct outsourcing activities outside the incentivized location, then the income arising from such outsourcing activities is not eligible for the tax incentives applicable to the incentivized location.

(Official Letter No. 4083/TCT-CS 2023 date 15 September 2023 issued by the General Department of Taxation)

CIT allocation for companies with plants in other provinces

Companies, with manufacturing plants in a province other than the location of their headquarters, that perform centralized accounting at their headquarters must submit tax dossiers to the managing Tax Authority of the headquarter.

Accordingly, these companies fall under the scope of CIT allocation and must:

- Declare CIT finalization for the entire production and business activities in a form No. 03/TNDN, submit the appendix on the allocation of CIT to the localities benefiting from the collection for production activities according to the form No. 03-8/TNDN and 03-8B/TNDN attached to Circular No. 80/2021/TT-BTC to the direct managing Tax Authority.
- Pay taxes based on the amount of tax payable to each province benefiting from the allocated revenue where the plant is located.

(Official Letter No. 65973/CTHN-TTHT dated 12 September 2023 issued by the Hanoi Tax Department)

CIT exemption for income from scientific research cooperation agreements

Income earned from executing a scientific research and technological development contract **is exempted from CIT** according to scientific and technological regulations **during the contract execution, but for a maximum period of 3 years. The period for enjoying CIT incentives is counted from the date of generating revenue** from the execution of the scientific research and technological development contract if the entity meets the following conditions:

- It is established and performs registered scientific research activities as regulated; and
- It executes scientific and technological contracts to carry out scientific and technological development in accordance with the Law of Scientific and Technology.

(Official Letter No. 71493/CTHN-TTHT dated 05 October 2023 issued by the Hanoi Tax Department)

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Indirect Tax

Guidance ruling

Guidance on issuing a replacement invoice for the invoice issued under the previous regulation

If a company identifies an error on an invoice issued in accordance with the Decree No. 51/2010/ND-CP or Decree No. 04/2014/ND-CP, it must prepare an agreement stating the error with the buyer.

The seller then submits form No. 04/SS-HDĐT attached to the Decree No. 123/2020/ND-CP and issues a new invoice to replace the original one.

(Official letter No. 77225/CTHN-TTHT dated 30 October 2023 issued by Hanoi Tax Department)

VAT declaration for adjusted and replaced e-invoices

Companies can amend VAT returns for each period in which input VAT invoices were if they identify that these input VAT invoices have not been declared yet.

If the amendment results in an increase or decrease in the amount of creditable VAT (item 43 of VAT returns) for the period in which the error occurred, the company must declare the difference in the "Decrease adjustment" (item 37) or "Increase adjustment" (item 38) section of the original VAT return for the current period

(Official letter No. 7445/CTQNA-KK dated 04 October 2023 issued by Quang Nam Tax Department)

VAT rate of the business real estate service

Business real estate service activity (code 6810) which is included in the list of goods and services in Appendix I of Decree No. 44/2023/NĐ-CP dated 10 June 2023 of Government, are not eligible to 8% VAT rate.

(Official letter No. 76782/CTHN-TTHT dated 27 October 2023 issued by General Department of Taxation)

Time of VAT invoice issuance for exported goods

Companies are required to issue VAT e-invoices when exporting goods and services to foreign entities. The VAT e-invoices must be issued after the export goods clearance procedure is completed.

Note: previously, companies could use the goods delivery note as the document to circulate goods in a market. However, this is no longer the case, and the VAT e-invoice must be issued after the goods have been cleared for export.

(Official letter No. 4890/TCT-KK dated 02 November 2023 issued by General Department of Taxation)

Input VAT for exported goods and services incurred before Export Processing Enterprise conversion

Input VAT incurred for exported goods, services incurred before a company converts into an Export Processing Enterprise ("EPE") is eligible for credit and refund.

The company must submit VAT declaration dossiers for the last period before applying EPE tax policies by the same deadline as for monthly or quarterly tax declaration.

(Official letter No. 4627/TCT-CS dated 19 October 2023 issued by General Department of Taxation)

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Indirect Tax

Guidance ruling

VAT on the transfer of assets when a company is split and between units within the same company

Scenario 1 – Circulation of assets between dependent units within the same company or when the company is split up

- The company must prepare a decision on the transfer of assets, which must be attached to the documents proving the origin of the assets.
- No invoice is required.

Scenario 2 – Circulation of depreciated assets between independent units or units/ member units wholly owned by the same company

- If the units receiving the assets have the activities of trading in goods or services that are subject to VAT, they are not required to issue a VAT invoice, or declare and pay VAT.
- If the units receiving the assets have the activities of trading in goods or services that are not subject to VAT, they are required to issue VAT invoice, declare, and pay VAT accordingly.

(Official letter No. 76785/CTHN-TTHT dated 27 October 2023 issued by Hanoi Tax Department)



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Personal Income Tax

Guidance ruling

Tax penalties for failing to file quarterly PIT declarations

Taxpayers who are tax resident and earn employment income paid by a foreign organization have legal obligations to declare and pay PIT directly to the Tax Authority on a quarterly basis and submit an annual PIT finalization return.

If a taxpayer fails to submit quarterly PIT declaration dossiers for any quarter in the previous tax year, they will be considered to have engaged in tax evasion.

In such cases, the tax department will review Decision No. 792/QD-XPFC dated 27 July 2022, if necessary, and investigate the case in accordance with the regulations at Article 59 of Law on handling administrative violations 2012 (amended in 2020).

If the taxpayer's violation falls under point a, clause 1, Article 200 of Criminal Code 2015 (amended, supplemented in 2017), the Tax Authority may escalate the case to a competent authority to initiate criminal proceedings as prescribed by law.

(Official Letter No. 560/TCT-PC dated 27 February 2023 issued by the General Department of Taxation)

Guidance on the dependent allowance

A taxpayer who has claimed dependent deduction for grandchildren (who still have parents of working age and are still able to work and care for them), will not be entitled to dependent deduction.

(Official Letter No. 4758/TCT-DNNCN dated 26 October 2023 issued by General Department of Taxation)

PIT on remuneration from the trade union fund

Payments made to employees (for Mid-Autumn Festival, International Women's Day, etc.) that are drawn from the trade union fund and meet the specified tasks outlined in Article 27 of Laws on Trade Union dated 20 June 2012, are not subject to PIT on the employment income.

Payments that do not meet the abovementioned conditions are subject to PIT on employment income.

(Official Letter No. 3010/CTHNA-TTHT dated 16 October 2023 issued by Ha Nam province Tax Department)

PIT of foreign experts

Foreign experts who are present in Vietnam for less than 183 days in a year and are determined to be non-tax resident, are subject to PIT at a flat rate of 20%. They are not required to file an annual PIT finalization return upon leaving Vietnam.

If a change in tax residency status results in a difference between the tax paid and the actual tax liabilities, the company must file an amendment of monthly/quarterly PIT declarations as prescribed under Article 7, Decree No. 126/2020/ND-CP dated 19 October 2020 issued by the Government.

If the foreign experts wish to claim a refund for the overpaid tax amount, they must submit a tax refund application according to Article 42 Circular No. 80/2020/TT-BTC issued by the Ministry of Finance.

(Official Letter No. 24509/CTBDU-TTHT dated 19 October 2023 issued by Binh Duong Tax Department)

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Foreign Contractor Withholding Tax

Guidance ruling

Determining the exchange rate for FCWT calculation purpose

The company should determine the appropriate exchange rate based on the terms of the contract, as follows:

- **For FCWT payable in Vietnam:** use the buying rate of the commercial bank where the company directs the customer to make the payment at the time of transaction.
- **For FCWT included in the value of assets or expenses purchased from a foreign contractor but not yet paid for:** using the selling rate of the commercial bank where the company plans to make payment at the time of the transaction.
- **For FCWT included in the value of assets or expenses purchased from a foreign contractor and paid for immediately in foreign currency:** use the buying rate of the commercial bank where the company makes the payment.

(Official Letter No. 4666/TCT-CS dated 23 October 2023 issued by the General Department of Taxation)

FCWT on Shipping surcharges

Foreign organizations that earn income from surcharges (being charges other than sea freight costs) on services that are supplied and consumed outside Vietnam, then that income is not subject to FCWT.

However, if the surcharges are related to services performed or rendered within Vietnam, they are subject to FCWT.

(Official Letter No. 71228/CTHN-TTHT dated 04 October 2023 issued by Hanoi Department of Taxation)

Failure to submit foreign contractor withholding tax returns can lead to administrative penalties or criminal prosecution

Taxpayers, who fail to submit foreign contractor withholding tax returns, and so determined to be an act of tax evasion according to the provisions of point a, clause 1, Article 17, Decree No. 125/2020/ND-CP, cannot reclassify their actions as wrongful declarations.

This means they will be considered for tax evasion penalties or criminal prosecution as regulated.

(Official Letter No. 2865/TCT-PC dated 11 July 2023 issued by the General Department of Taxation)

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Trade & Customs

New regulation

Importing Remanufactured Goods under the CPTPP

On 02 November 2023, the Vietnamese Government issued Decree No. 77/2023/ND-CP outlining the list of remanufactured goods (with HS codes) eligible for importation and the conditions for importing remanufactured goods into Vietnam under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”). Here’s a summary of the key points:

- Remanufactured goods eligible to import into Vietnam under the CPTPP must meet the following criteria:
 - ✓ They must be listed in Appendix I, II, III, IV, V of this Decree, corresponding to the management power of the respective ministry: Ministry of Information and Communications, Ministry of Health, Ministry of Transport, Ministry of Industry and Trade and Ministry of Agriculture and Rural Development;
 - ✓ They must be wholly or partially composed of recovered materials;
 - ✓ They must have a similar lifespan to new goods of the same type;
 - ✓ They must perform the same functions as new goods of the same type, with similar quality and performance.; and
 - ✓ They must have a factory warranty similar to that applicable to new goods of the same type.

- To import remanufactured goods into Vietnam, importers must fulfill the following requirements:
 - ✓ Obtain an import licenses in accordance to the provisions of Chapter IV of this Decree;
 - ✓ satisfying rules of origin under the CPTPP; and
 - ✓ comply with all relevant regulations of Vietnamese laws and specialized laws applicable to new goods of the same type (e.g.: product labeling, product quality, product standards, energy efficiency, environmental protection.);
 - ✓ The remanufacturing enterprise (overseas) or the trademark owner, must obtain a remanufacturing code from the Ministry of Industry and Trade according to the provisions of Chapter III of this Decree. This code serves as proof of the company’s remanufacturing capacity, warranty policy, and trademark usage rights. The remanufacturing code remains valid for 5 years from the date of issuance.

(Decree No. 77/2023/ND-CP dated 02 November 2023 issued by the Government)



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Trade & Customs Guidance ruling

Issuance of C/O Form EAV using HS code 2022

Based on the outcome of the meeting of the Subcommittee on Rules of Origin, and the Coordination Committee for the Implementation of the EVFTA, on 01 November 2023, the General Department of Customs issued Official Letter No. 5641/TCHQ-GSQL providing guidance on the issuance of C/O Form EAV using HS code 2022, in particular as follows:

- For the period from 01 October 2023 to 31 December 2023:
- ✓ EU competent authorities will issue C/O Form EAV using HS code 2022;
- ✓ Vietnamese competent authorities will continue to issue C/O Form EAV using HS code 2017.
- From 01 January 2024, Member States of the Agreement will only issue C/O Form EAV using HS code 2022.
- The C/O Form EAV issued in accordance with the above agreed contents will be considered valid and accepted by Customs.

(Official Letter No. 5641/TCHQ-GSQL dated 01 November 2023 issued by the General Department of Customs)

Guidance on C/O Form D submission for goods imported

Regarding the information of C/O e-Form D not available in Vietnam's electronic system, even the C/O issuing authority in exporting country has updated information in its system, the Customs Control and Supervision Department provides the following guidance:

- According to the provisions of clause 12, Article 1, Appendix I of Circular No. 10/2022/TT-BCT, both paper C/O and C/O e-Form D are accepted by Customs authorities. Therefore, if the Customs Authorities cannot find the C/O e-Form D on the national single-window system, companies may submit a paper C/O signed and stamped manually, or electrically in accordance with the provisions of clause 4, Article 7, Appendix I of Circular No. 10/2022/TT-BCT.
- Regarding the procedure for declaring and submitting the C/O, companies shall comply with the provisions of Article 11 and Article 12 Circular No. 33/2023/TT-BTC.

(Official Letter No. 1617/GSQL-GQ4 dated 12 October 2023 issued by the Customs Control and Supervision Department – the General Department of Customs)



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Trade & Customs

Guidance ruling

Guidance on the procedures to export used goods

On 02 November 2023, the Ho Chi Minh City Customs issued an official letter No. 3119/HQTPHCM-GSQL providing guidance on the procedure for exporting used goods. Specifically:

- Companies must determine the nature of the product as a basis for determining relevant management policies, which are based on:
 - ✓ Foreign trade contracts, and documents (to determine export purposes, such as: for repair, restoration, or destruction abroad);
 - ✓ Physical goods;
 - ✓ The provisions of the Basel Convention, and
 - ✓ Law on Environmental Protection, and related legal documents.
- If the exported goods are classified as hazardous waste, the companies must comply with the provisions of Circular No. 02/2022/TT-BTNMT. Accordingly, when exporting, the companies must obtain a written permit from the Ministry of Natural Resources and Environment.
- If the exported goods are not hazardous waste (example: exported goods are waste or used goods, etc. which are not subject to export prohibition under the Law on Environmental Protection and Law on Foreign Trade Management), the companies need to comply with the export procedures regulated on Law on Environmental Protection, Law on Management Foreign Trade, and other guidelines issued by relevant ministries.

(Official Letter No. 3119/HQTPHCM-GSQL dated 02 November 2023 issued by Ho Chi Minh City Customs Department)

Payment Document Requirements for Import Duty Refund

On 16 October 2023, the General Department of Customs issued Official Letter No. 5334/TCHQ-TXNK to the Ba Ria – Vung Tau Customs Department on the requirement of payment documents in import duty refund application. In details:

- According to Clause 5, Article 36 of Decree. 134/2016/ND-CP, amended by point d, clause 20, Article 1 of Decree No. 18/2021/ND-CP dated 11 March 2023, when applying for a refund of import duties of the goods that were imported for domestic sales but eventually used for export manufacturing, applicants must include 01 photocopy of the payment document for the imports (if paid).
- In accordance with the provisions of point e, clause 2, Article 73 of the Law on Tax Administration No. 38/2019/QH14, if the payments of imported goods are not settled through banks, the import duty refund application shall be subjected to 'audit first, refund later' procedure. The definition of "payments settled through banks" is specified in point 4.1 of Appendix VII of Circular No. 38/2015/TT-BTC.

(Official Letter No. 5334/TCHQ-TXNK dated 16 October 2023 issued by the General Department of Customs)

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Trade & Customs

Guidance ruling

Guidance on entrusted import of goods that requiring import license

On 27 October 2023, the General Department of Customs issued Official Letter No. 5548/TCHQ-TXNK which provide guidance on the entrusted import of goods that subject to import license, as follows:

- Companies importing goods listed in the “List of civil cryptography products subject to export-import licenses” must obtain an import license issued by the Government Cipher Committee (of Ministry of National Defense).
- For entrust imports of the goods subject to import licenses, both trustors or trustees must obtain the necessary licenses before signing the entrusted import agreement, as per clause 2, Article 50 of Law on Foreign Trade Management 2017.
- When importing goods subject to import licenses under an entrusted import arrangement, the trustees must use the trustors’ import license to complete customs declaration. Additionally, the trustee must provide a copy of the entrusted import agreement to the Custom Authorities.

(Official Letter No. 5548/TCHQ-TXNK dated 27 October 2023 issued by the General Department of Customs)



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