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Tax Administration



GUIDANCE RULINGS

Personal Income Tax (“PIT”) declaration for dependent branch

Where a company has a dependent accounting unit, which is a factory located not in the same province as it’s headquarters, the company should declare PIT at its headquarters.

Until such that the Ministry of Finance (“MOF”) promulgates Circulars guiding on the implementation of some articles of Law on Tax Administration (2019) and Decree No. 126/NĐ-CP, the company should continue to declare PIT of tax periods in 2021 in compliance with guidance in documents stipulated in the Official Letter No. 1938/BTC-TCT dated 26 February 2021.

(The Official Letter No. 2034/CTBNI-KK dated 19 July 2021, issued by Bac Ninh Tax Department)



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Personal Income Tax



GUIDANCE RULINGS

PIT on expenses provided to employees due to Covid-19

To ensure a safe operation in the implementation of measures to prevent the Covid-19 epidemic, when a company is requested by Provincial People's Committee, Management Board of Industrial Park, to pay some expenses such as: meal and accommodate expenses for employees working at the company; Covid-testing expenses for employees periodically, before they come to work in the company, and before they go back to their hometown; allowances for employees who have to stay at the company; the PIT treatments shall be as follows:

- If the above expenses clearly specify the names of the beneficiary employees, such expenses shall be included in the taxable income of the employees;
- If those expenses do not specify the name of the beneficiary employees but on a collective basis, it shall not be included in taxable income for PIT purposes.

(Official Letter No. 1883/CTBNI-TTHT dated 29 June 2021 issued by Bac Ninh Province Tax Department)

PIT treatment on SARS-CoV-2 testing expense

When a company pays the SARS-CoV-2 testing expense for its employees, this shall be treated as a benefit-in-kind provided directly to employees and be considered as the employees' benefit. Therefore, such expenses shall be included in the taxable employment income of the employees for PIT purposes.

(Official Letter No. 1609/CTHPH-TTHT dated 05 July 2021 issued by Hai Phong City Tax Department)

PIT on employment costs during Covid-19 epidemic (replacement of Official Letter No. 44403/CT-TTHT dated 01 June 2020)

During Covid-19 epidemic, if a company incurs some expenses to buy masks, hand sanitizers, protective accessories, and infectious disease tests for collective employees to prevent Covid-19 virus infection, such expenses are not included in the employees' taxable income for PIT purposes.

(Official Letter No. 66297/CT-TTHT dated 16 July 2020 issued by Hanoi City Tax Department)

PIT policy

When a company pays employment income in Vietnam Dong to its employees, the company has the obligation to withhold, declare and remit personal income tax on the income paid in Vietnam Dong mentioned above.

(Official Letter No. 2654/TCT-DNNCN dated 19th July 2021 issued by the General Department of Taxation)



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Corporate Income Tax



GUIDANCE RULINGS

Tax incentives for project implemented before 2015 to manufacture Supporting Industry ("SI") products

A company who has investment projects set up before 01 January 2015, with the following conditions:

- Manufacturing SI products
- Satisfying the conditions as prescribed in Law No. 71/2014/QH13
- Enjoying CIT incentives under other conditions (other than SI incentive)

After being granted with the Certificate of SI incentives, the Company is allowed to apply the Corporate Income Tax ("CIT") incentives for income generated from projects manufacturing SI products for the remaining period from the tax period pursuant to Decree No. 57/2021/ND-CP dated 04 June 2021 of the Government.

(The Official Letter No. 27052/CTHN-TTHT dated 13 July 2021 issued by the Hanoi Tax Department)

Compensation expenses when liquidating the contract

When a company signs apartment sale and purchase contracts with their customer, and liquidates these contracts before handing over the apartment due to objective reasons, the company shall issue payment voucher for compensation arising from the breach of contract as regulated. These expenses would be deductible for CIT purposes if they meet the conditions specified in Article 4 of Circular No. 96/2015/TT-BTC dated 22 June 2015 of the Ministry of Finance.

(The Official Letter No. 21927/CTHN-TTHT dated 18 June 2021 issued by the Hanoi Tax Department)

Housing costs for workers in industrial park

Costs related to construction, operation, and initial furnishing for worker's housing in the industrial park, which are eligible for fixed assets recognition, would be depreciated according to regulations and included in deductible expenses for CIT calculation purposes (if such expenses meet the conditions as prescribed in Article 4 of Circular No. 96/2015/TT-BTC).

(The Official Letter No. 11308/CTHN-TTHT dated 08 July 2021 issued by the Binh Duong Tax Department)

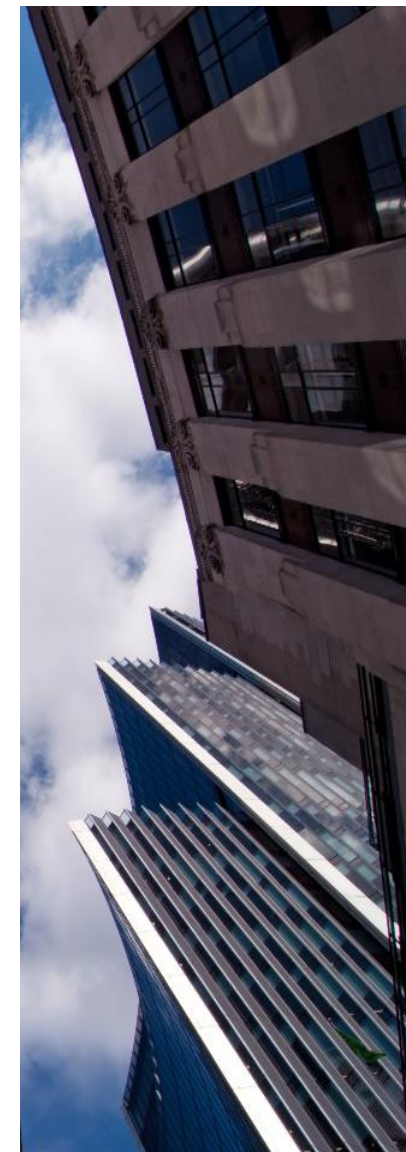


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Value Added Tax & Special Consumption Tax



GUIDANCE RULINGS

Draft Circular guiding on invoices and documents

On 28 July 2021, the MOF issued a draft Circular guiding on contents of invoices, documents according to the provisions of the Law on Tax Administration dated 13 June 2019, Decree no. 123/2020/ND-CP dated 19 October 2020 of the government, including:

- E-invoice: regulations on authorization of e-invoice issuance; e-invoice form, and symbol; high-risk tax cases; e-invoices with the tax authority's code generated from the POS cash registers with network connection for transfer of electronic data to tax authorities; criteria for selection of e-invoice service providers; etc.;
- Paper invoice: regulations on names, types, symbols, names of copies of an invoice;
- Usage of Tax authorities' receipts for tax, fee, and charge collection for individuals;
- Effective date: 01 July 2022.

Value Added Tax refund for investment projects not located in the same province as their headquarters

From the tax period December 2020 or Quarter 4/2020 and earlier: the Tax authority managing the headquarter receives the Value Added Tax ("VAT") declaration and refund dossiers for investment project of the company;

From the tax period January 2021 or Quarter 1/2021 onwards, enterprise declares and claims VAT refund of investment project at the Tax authority where the project is located.

(The Official Letter No. 11926/CTBDU-TTHT dated 23 July 2021 issued by Binh Duong Tax Department)

Invoices for debt trading activities

Trading of receivables from customers is not subject to VAT. When a company declares VAT using credit method, the VAT invoices only need to complete the selling price row with the payment amount. The tax rate row does not need to be inputted, and the VAT amount row can be crossed out.

(The Official Letter No. 28463/CTHN-TTHT dated 22 July 2021 issued by Hanoi Tax Department)

Special Consumption Tax ("SCT") for automobiles used for transporting people and goods

The SCT Law does not use the term "car" for SCT-able or non-SCT-able objects. Accordingly, when a company imports automobiles, used for transporting people and goods under the provisions of the SCT Law No. 27/2008/QH12, then the qualifying the criteria for automobiles designed for transporting people and goods as prescribed by the Ministry of Science and Technology, the applicable SCT rates shall be as follows:

- Automobiles with cylinder capacity of less than or equal to 2,500 cm³: 15%;
- Automobiles with cylinder capacity over 2,500 cm³ to 3,000 cm³: 20%;
- Automobiles with cylinder capacity above 3,000 cm³: 25%

(The Official Letter No. 3335/TCHQ-TXNK dated 02 July 2021 issued by the General Department of Customs)



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Foreign Contractor Withholding Tax



GUIDANCE RULINGS

Foreign Contractor Withholding Tax levied on income paid to foreign experts coming to Vietnam to perform service

When a Vietnamese company enters into an agreement with a foreign contractor, to assign foreign experts to Vietnam performing examination and handling services on pest-free agricultural products prior to being imported into the United States market, the foreign contractor would be subject to Vietnamese Foreign Contractor Withholding Tax ("FCWT").

The Vietnamese company shall withhold, declare, and pay taxes on behalf of the foreign contractor with VAT rate of 5% and CIT rate of 5%.

(The Official Letter No. 656/CT-TTHT dated 05 March 2021, issued by Long An Tax Department)

FCWT levied on training activity in Vietnam

In the situation where a foreign contractor A transfers rights to use logo, trademark, materials and teaching methods to a Vietnamese company for opening of training courses in Vietnam, and the foreign contractor A authorizes the foreign contractor B to provide a Vietnamese company with certain services such as provision of teaching guidance materials; translation of materials, promotion and marketing documents; management of plans and training results, etc. to support the Vietnamese company in opening, operating of training courses in Vietnam, then the Vietnamese company would be responsible for withholding, declaring, paying taxes on behalf of the foreign contractor A and the foreign contractor B, specifically:

- Income of the foreign contractor A derived from transfer the rights to use logo, trademark, materials and teaching

methods and income of the foreign contractor B derived from provision of teaching guidance materials which are considered as either technology transfer in compliance with Law on Technology transfer or intellectual property transfer in compliance with Law on Intellectual property transfer would not be subject to VAT and with CIT rate of 10% for royalty income.

Otherwise, VAT rate of 5% and CIT rate of 10% would be applied on such income.

- Income of the foreign contractor B from providing remaining services would be subject to VAT rate of 5% and CIT rate of 5%.

(The Official Letter No. 1992/CTBNI-TTHT dated 14 July 2021, issued by Bac Ninh Tax Department)



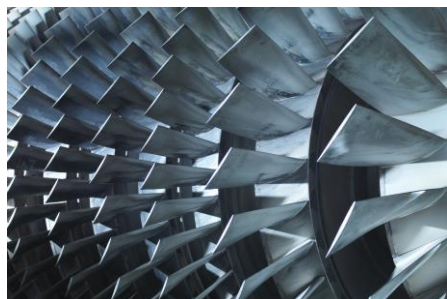
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Immigration



GUIDANCE RULINGS

Reduction of centralized quarantine period for entrants that have been fully vaccinated against Covid-19

The Ministry of Health instructs some contents in relation to medical quarantine with regards to allow individuals to enter Vietnam who have been fully vaccinated against COVID-19 or recovered from the disease:

1. To spend 07 days of centralized quarantine and another 07 days of medical observation (except for those who enter Vietnam for work less than 14 days and other cases of entry subject to quarantine under other regulations of the National Steering Committee for Covid-19 Prevention and Control and the Ministry of Health) entrants need to fully meet the following conditions :

- Having been tested negative for SARS-CoV-2 (using RT-PCR/RT-LAMP method) within 72 hours prior to departure and obtain certificates granted by the competent authorities in the country where the tests are conducted;

- Having been fully vaccinated against Covid-19 (the latest dose has been given at least 14 days but no more than 12 months before the entry time) and have vaccination certificates;
- For those individuals who have been infected with SARS-CoV-2 (with documents proving positive for SARS-CoV-2 by using single-sample RT-PCR method no more than 06 months prior to the entry date) and have proofs showing they have recovered from Covid-19 or equivalent documents issued by competent authorities in the country of treatment.

2. Having to be tested for SARS-CoV-2 on the 1st and the 7th day, counting from the entry date (the first day could use either rapid antigen tests or RT-PCR method, but the 7th day would have to be single-sample RT-PCR methods). If tested with positive result must be handled subsequently in accordance with regulations.

(Official Letter No.6288/BYT-MT dated 04 August 2021 issued by Ministry of Health



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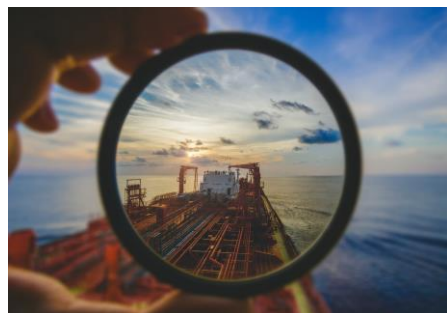
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Trade and Custom



GUIDANCE RULINGS

Whether on-spot imported raw materials for export manufacturing are subject to tax exemption

The General Department of Customs has given guidance that, depending on the case, on-spot imported goods for export manufacturing will either be exempted from, or must pay, import duties.

On-spot imported goods, that are purchased by domestic enterprises through a contract with Export Processing Enterprises (“EPEs”), or that are delivered from EPEs as instructed by foreign traders, are subject to registration of import declarations with mode E31 (import for export manufacturing), and are exempted from Import Tax, and Import VAT.

Where a domestic enterprise receives goods from another domestic enterprise, as instructed by a foreign trader, the enterprise must register on-spot import declaration with mode import for domestic consumption (A11), or import for business and manufacturing operations (A12), and must make payment of import duties first, apply for refund later (when goods have put into export manufacturing, and been exported).

(The Official Letter No. 3487/TCHQ-TXNK dated 12 July 2021 issued by the General Department of Customs)

Re-classification of customs declaration for inspection

In Official Letter No. 2687/TCHQ-TXNK dated 01 June 2021, the General Department of Customs give guidance that “in case of exceeding 15 days, the on-spot exporter does not notify information of import declaration for corresponding on-spot imported goods, which have completed import procedures at customs authorities, the on-spot exporters have to register a new customs declaration (mode A42) to declare, and make payment of tax for the imported raw materials, and supplies, that had been used to manufacture the on-spot export goods”.

As at the registration time of customs declaration to change usage purpose with mode A42 of the above cases, the goods that are imported raw materials and supplies, had been constituted into export goods, and the enterprises have already registered the on-spot export declaration and may have delivered the goods to the on-spot importer. Consequently, there could be circumstances where the enterprises no longer keep the goods to present to the Customs Authorities for physical inspection, while the customs declaration for purpose changing are classified into red stream.

To solve the above-mentioned problems, the General Department of Customs guides as follows:

The Customs Departments of the provinces and cities will direct the Customs Sub-departments based on the actual situation. In the situation where the customs declaration is classified in red lane, but the enterprises no longer have the goods to present to the Customs Authority for physical inspection, then the Customs Sub-departments will reverse the classification (from red to yellow lane) for the document inspection.

(The Official Letter No. 3509/TCHQ-QLRR dated 12 July 2021 issued by the General Department of Customs)

Destruction of goods that were imported for export manufacturing

The General Department of Customs has the following comments:

“Legal documents are applied from the time of entry into force. Legal documents are applied to acts occurring at the time that those documents are effective. In case provisions of legal documents take effect retroactively, such provisions shall be applied.”

Regarding the above regulations, enterprises that have imported raw materials for export manufacturing before 25 April 2021, that are allowed to destroy them, and have destroyed them after 25 April 2021, are exempted from import duties.

(The Official Letter No. 3542/TCHQ-TXNK dated 14 July 2021 issued by the General Department of Customs)



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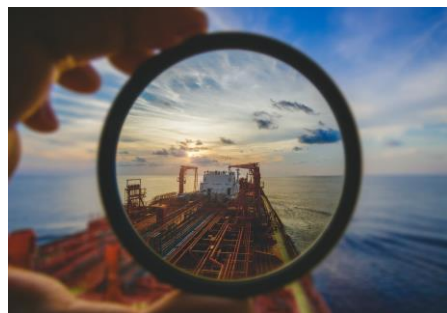
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Trade and Custom



GUIDANCE RULINGS

Regarding C/O Form D

1. Where goods description on the commercial invoice are different from information registered at the AWSC database, but the basic description of the goods are the same (Example: On the commercial invoice showing BJ7-E4741-00 CATALYST.1; on the self-certification of origin database shows CATALYST.1; On the commercial invoice showing H BEAM I BEAM; on the basis of the self-certification of origin H-beam I-beam, etc.), then the difference is considered as minor discrepancies, and are not a basis for rejection of self-certification document of origin.

2. Regarding statement of FOB value on C/O and back-to-back C/O:

Declaration of FOB value on the C/O when applying the RVC criteria guided at Point 1 of Official Letter No. 7886/TCHQ-GSQL dated 15 December 2020, and back-to-back C/O (i.e. back-to-back C/O, and back-to-back self-certification of origin), specifically: Goods, imported from other ASEAN countries (i.e. Brunei, Singapore, Thailand, the Philippines, Malaysia, Myanmar, Vietnam), are not required to display the FOB value on the back-to-back certificate of origin when the RVC criterion is applied.

(The Official Letter No. 3622/TCHQ-GSQL dated 16 July 2021 issued by the General Department of Customs)

Customs value of goods outsourced to EPEs for processing, then importing into domestic market

When a domestic enterprise imports goods for manufacturing, or processing of exported goods, and then delivers the imported goods, or semi-finished goods manufactured from all imported goods to outsource to an EPE for manufacturing or processing, then the domestic enterprises must declare, and pay import duties as prescribed for processed products, when the goods are imported into the domestic market as prescribed in Clause 2, Article 22, Decree No. 134/2016/ND-CP.

The customs value includes the outsourcing fee, the value of raw materials used in the processing provided by the EPE, and the adjustments (if any) as prescribed in Clause 3, Article 18 of the Circular No. 39/2015/TT-BTC. The customs value does not include values of supplies, and raw materials, that domestic enterprises sent to EPEs for processing.

(The Official Letter No. 3634/TCHQ-TXNK dated 19 July 2021 issued by the General Department of Customs)



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Trade and Customs



GUIDANCE RULINGS

Re-import of exported goods will be considered for tax exemption after physical inspection

According to the provisions at Point b, Clause 1, Clause 2, Article 19 of Law on Import – Export Duties No. 107/2016/QH13, goods that had been exported, and then re-imported with their original condition (i.e., unused, unprocessed, or not yet handled abroad) will be eligible to export duties refund and import duties exemption.

However, goods re-imported under this arrangement are subject to physical inspection, in order to determine that the re-imported goods had been exported (as Point a, Clause 6, Article 27 of the Decision No. 1919/QĐ-TCHQ dated 28 May 2018).

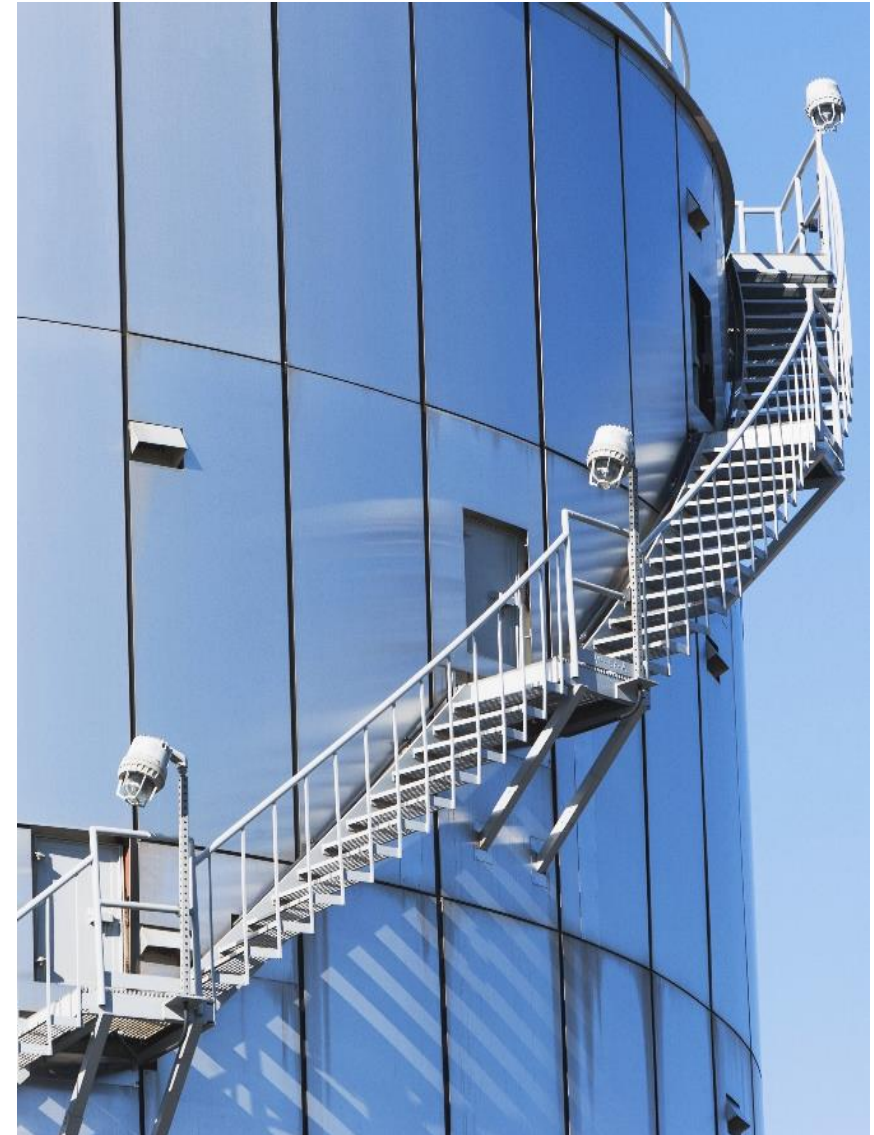
(The Official Letter No. 3822/TCHQ-TXNK dated 30 July 2021 issued by the General Department of Customs)

On-spot exported- imported goods can be carried out import-export procedures at the same customs department

According to the provisions of Clause 2, Article 86 of Circular No. 38/2015/TT-BTC, on-spot export and import customs procedures can be carried out at convenient Customs Sub-Departments selected by customs declarants.

Accordingly, enterprises can carry out on-spot import procedures at the Customs Sub-Department where on-spot export procedures have been carried out.

(The Official Letter No. 2021/HQTPHCM-GSQL dated 04 August 2021 issued by Customs Department of Ho Chi Minh City)



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