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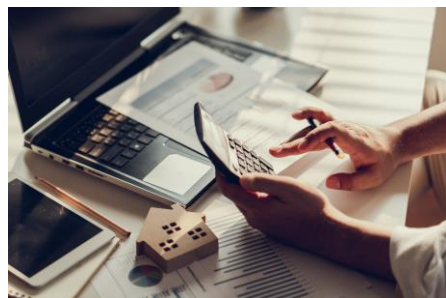
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## Tax Administration



### NEW REGULATION

#### Extension of payment deadline for Value Added Tax ("VAT"), Corporate Income Tax ("CIT"), Personal Income Tax ("PIT") and land lease fee in 2022

On 28 May 2022, the Government has officially issued the Decree No. 34/2022/ND-CP on extension of payment deadline for VAT, CIT, PIT and land lease fee in 2022.

Kindly refer to Deloitte's Tax Alert on this Decree issued on 08 June 2022 for more details.

*(Decree No. 34/2022/ND-CP dated 28 May 2022 issued by the Government)*

#### Extension of payment deadline for Special Consumption Tax ("SCT") on domestically manufactured and assembled automobiles in 2022

The Government has officially issued the Decree No. 32/2022/ND-CP dated 21 May 2022 to extend the deadline for SCT payment on domestically manufactured and assembled automobiles in 2022, with the following main contents:

- ✓ **Subjects:** Domestic automobile manufacturing and assembling enterprises;
- ✓ **Extension period:** The deadline for SCT payable of June to September 2022 of domestically manufactured or assembled automobiles will be extended to 20 November 2022.

*(Decree No. 32/2022/ND-CP dated 21 May 2022 issued by the Government)*

### GUIDANCE RULING

#### Strengthening the review and inspection to detect taxpayers having signs of risk on invoices usage and VAT refund fraud

The General Department of Taxation ("GDT") has issued the Official Letter No. 1873/TCT-TTKT dated 01 June 2022 directing Local Tax Departments to strengthen tax audit and inspection for enterprises at high risk of invoice usage, VAT refund fraud, tax evasion to strictly handle cases of trading invoices to get illegal benefit.

Some solutions are requested to implement as follows:

- Review and categorize enterprises having risks of invoice usage via suspicious signals. (Some suspicious signals are listed in the attachment)
- In case the tax authority has detected the signal of purchasing and selling invoices for the purpose of VAT deduction and refund but there is not yet any official conclusion of competent authorities, the tax authority must notify taxpayers to re-declare the VAT.
- Coordination between tax authorities to verify suspicious invoices, and origin of goods and return the verification result within 10 working days.

*(Official Letter No. 1873/TCT-TTKT dated 01 June 2022 issued by the General Department of Taxation)*



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## Corporate Income Tax



### GUIDANCE RULING

#### In-kind donation for Covid-19 prevention activities

Expenses of goods and services purchased domestically or imported for donation shall be included in deductible expenses for CIT purpose on the value of in-kind donation for Covid-19 prevention and control activities in Vietnam through units receiving donations as regulated by Decree No. 44/2021/ND-CP.

The Law on CIT does not have regulations to treat as a deductible expense for uncollected VAT amounts on invoices for in-kind donations.

*(Official Letter No. 1585/TCT-CS dated 16 May 2022 issued by the General Department of Taxation)*

#### Expenses for resigned foreign employees returning to home country, expenses for employees' parties

In case a foreign employee with an expired assignment period terminates the labor contract in Vietnam and returns to the home country, the company pays related expenses including air tickets, transportation of personal belongings (according to the previously signed labor contract, the Collective Labor Agreement or the company's financial policies),

if there are sufficient legitimate invoices, supporting documents, and payment vouchers in accordance with the Laws, these expenses shall be treated as deductible expenses for CIT purposes and must be included in the taxable income for PIT purposes.

In case the company incurs expenses to organize parties to welcome new employees or to show gratitude to employees for their dedication and commitment as regulated in the company's policies, these expenses shall be considered as direct welfare to employees and deductible for CIT purposes if having sufficient legitimate invoices, supporting documents and payment vouchers in accordance with regulations and not exceeding one month's actual average salary in the year.

*(Official Letter No. 1717/CTBNI-TTHT dated 01 June 2022 issued by Bac Ninh Tax Department)*

#### Advertising expenses on Facebook, Google

An expense incurred for product promotion on the social networks of Facebook/Google will be deductible if the following conditions are met:

- the company authorizes an employee to use an individual credit card to pay for the service fee;
- after the payment, the company reimburses the individual via bank transfers from the company's account to the individual's account (the individual's credit card opened by the company);
- such payment method is specified in the Financial Regulations or the Decision on the authorization of the company to the individual; and
- the company has sufficient documents proving the business purpose.

The company is responsible for withholding, declaring and paying FCWT for the payments to Facebook/Google according to Article 11, Article 12, Article 13, Circular No. 103/2014/TT-BTC.

*(Official Letter No. 1548/CTLAN-TTHT dated 16 May 2022 issued by Long An Tax Department)*



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## Corporate Income Tax & Foreign Contractor Withholding Tax



### **GUIDANCE RULING** (cont.)

#### **Salary expenses for employees taking alternate leave due to reduction of orders, overtime salary expenses**

During the production and business, due to a sudden decrease in orders, the enterprise must arrange for employees to take leave rotationally and pay 100% or 70% of the salary, if this expense is not related to business activities and does not satisfy the conditions specified in Clause 2, Article 3, Circular No. 25/2018/TT-BTC and Article 4, Circular No. 96/2015/TT-BTC, then shall be treated as non-deductible expenses for CIT purpose.

If the enterprise is an export processing enterprise (“EPE”), for objective reasons, the employees must work overtime within the limits prescribed by the Labor Code, if the enterprise has already notified in writing to the provincial labor authority, the overtime expenses actually paid to employees and supported by sufficient documents as prescribed in CIT regulations shall be deductible for CIT purpose.

In case of overtime exceeding the cap prescribed by the Labor Code, such overtime expenses shall be treated as non-deductible for CIT purpose.

*(Official Letter No. 2518/CTTNG-TTHT dated 24 May 2022 issued by Thai Nguyen Tax Department)*

#### **Withdrawal of capital by assets**

In case individuals contribute capital to establish a company, then withdraw capital by assets, the company shall issue VAT invoices with the corresponding VAT rate of each asset. The company declares and pays VAT and CIT according to regulations.

*(Official Letter No. 25536/CTHN-TTHT dated 03 June 2022 issued by Hanoi Tax Department)*

#### **Application of Double Taxation Agreement on income from royalty**

Royalties Incomes of foreign contractors in Vietnam would be subject to CIT rate of 10% (as part of FCWT). If foreign contractors residing in Korea fall into the case of tax exemption or reduction under the DTA between Korea and Vietnam, CIT rate of 5% may be applied.

Regulations on the dossier for application of tax exemption/reduction under the DTA is detailed in Article 62, Circular No. 80/2021/TT-BTC.

*(Official Letter No. 3512/CTNDI-TTHT dated 03 June 2022 issued by Nam Dinh Tax Department)*

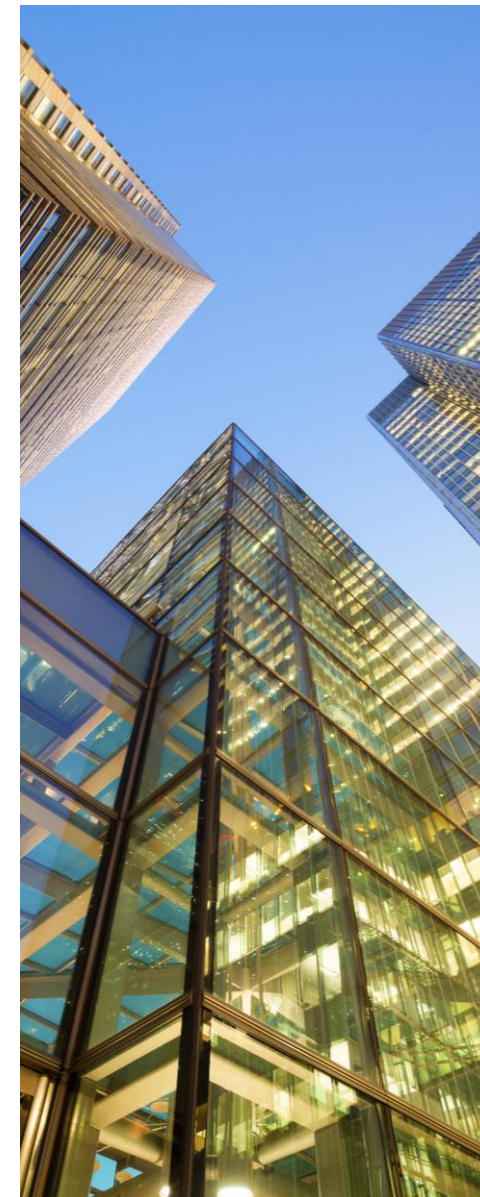


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## Indirect Tax



### NEW REGULATION

#### Separate invoices for goods subject to 2% VAT reduction are no longer required from 20 June 2022

On 20 June 2022, the Government has officially issued Decree No. 41/2022/ND-CP with the content to amend Clause 4, Article 1, Decree No. 15/2022/ND-CP to abolish the requirement to issue separate invoices for goods and services subject to 2% VAT reduction. Specifically:

- ✓ When selling goods or providing services with different tax rates, the VAT invoice shall clearly state the respective tax rate of each item.
- ✓ Particularly for enterprises that calculate VAT using the direct method (as a percentage of revenue), when selling goods and services subject to VAT reduction, the invoices must clearly state the reduced amounts.
- ✓ In case from 01 February 2022 to the effective date of this Decree (20 June 2022), an enterprise did not issue separate invoices for goods and services subject to VAT reduction and for goods and services of other tax rates, it will still be subject to VAT reduction. In addition, invoice adjustments are not required and no administrative penalties for tax and invoice violations will be imposed.

*(Decree No. 41/2022/ND-CP dated 20 June 2022 issued by the Government)*

### GUIDANCE RULING

#### VAT refund for goods imported for production and trading

VAT paid for goods imported under the production and trading mode is not considered overpaid VAT at the import stage.

Upon exporting under the production and trading mode, where conditions for tax deduction/refund for exported goods are satisfied, enterprise can request VAT refund for the amount paid upon importation from local tax authorities.

*(Official Letter No. 1815/TCT-CS dated 27 May 2022 issued by the General Department of Taxation)*

#### Tax declaration and payment obligations for business cooperation between an individual and an organization

In case an enterprise signs a business cooperation contract with an individual, the enterprise is responsible for:

- declaring VAT on the entire revenue of that business cooperation contract according to tax and tax administration regulations applying for enterprises, regardless of the form of revenue distribution, and
- withholding PIT for payment on behalf of the individual.

Nevertheless, if the business individual fall into Clause 5, Article 51, Law on Tax administration, has the same business as the business of the contract, tax declaration will be separately performed based on the actual business cooperation results.

*(Official Letter No. 1805/TCT-DNL dated 27 May 2022 issued by the General Department of Taxation)*

#### Handling paper invoices with errors after converting to e-voices

If an invoice has been issued (according to Decree No. 51/2010/ND-CP, Decree No. 04/2014/ND-CP) under provisional selling price at the time of signing the contract, then an adjustment in selling price incurred, seller and buyer shall:

- ✓ Make an agreement stating the errors;
- ✓ Seller sends a notice to tax authority using Form No. 04/SS-HDDT attached together with Decree No. 123/2020/ND-CP;
- ✓ Issue a new e-invoice to replace the erroneous invoice. The newly issued e-invoice must have the "Replace Invoice No. ... Symbol... dated... month... year"

In case of detecting errors in the submitted tax declaration dossier, adjustment declaration shall be made according to the provisions of Article 47, Law on Tax administration No. 38/2019/QH14 and Clause 4, Article 7, Decree No. 126/2020/ND-CP.

*(Official Letter No. 25024/CTHN-TTHT dated 01 June 2022 issued by Hanoi Tax Department)*

#### Warehouse rental is not entitled to 2% VAT reduction

In case warehouse rental service belongs to the house and land use right rental service not for the residing purpose specified in Appendix I, Decree No. 15/2020/ND-CP, then warehouse rental service is not subject to 2% VAT reduction.

*(Official Letter No. 25532/CTHN-TTHT dated 03 June 2022 issued by Hanoi Tax Department)*



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## Labor and Social Insurance



### NEW REGULATION

#### New regulation on the minimum wage for employees working under labor contracts

From 01 July 2022, according to the Decree No. 38/2022/ND-CP, the minimum wage will be increased by region as follows:

- Region I: VND 4,680,000 per month (increased by VND 260,000 per month);
- Region II: VND 4,160,000 per month (increased by VND 240,000 per month);
- Region III: VND 3,640,000 per month (increased by VND 210,000 per month);
- Region IV: VND 3,250,000 per month (increased by VND 180,000 per month).

The Decree also regulates on the hourly minimum wage tax, specifically as follows:

- Region I: VND 22,500 per hour;
- Region II: VND 20,000 per hour;
- Region III: VND 17,500 per hour;
- Region IV: VND 15,600 per hour.

Besides, in comparison with the previous Decree No. 90/2019/ND-CP, Decree No. 38/2022/ND-CP has removed the provision regulating that the minimum salary for employees who have undergone vocational training must be at least 7% higher than the minimum regional wage.

*(Decree No. 38/2022/ND-CP dated 12 June 2022 of the Government)*

### GUIDANCE RULING

#### Declaration of citizen identification, personal identification code when submitting related documents for social insurance, health insurance

The following cases are required to declare personal identification number or citizen identification number when submitting the insurance dossiers:

- ✓ New registration or extension of the health insurance card;
- ✓ Adjustment of social insurance and health insurance information; settlement of social insurance benefits, re-issuance of social insurance books, adjustment information on social insurance books, etc. for current participants;
- ✓ Request for settlement of social insurance benefits, re-issuance of social insurance books, adjustment of information on social insurance books, etc. for participants during insurance reservation.

*(Notice No. 2659/TB-BHXH dated 20 May 2022 issued by Ho Chi Minh City Social Insurance)*

#### Employees borrowing other's dossiers to enter into labor contracts

In case the employees borrow others' dossiers to enter into labor contracts and participate in social insurance, this is considered as a violation of the principle of "honesty" as well as the obligation to provide information upon the conclusion of a labor contract. Pursuant to the prevailing Labor Law, the labor contracts can be wholly invalidated in this case. The competence to invalidate labor contracts and settlement upon invalidation of labor contracts would be processed in accordance with the Labor Code.

*(Official Letter No. 1767/LDTBXH-BHXH dated 31 May 2022 issued by the Ministry of Labor, War Invalids and Social Affairs)*

#### Individuals entitled to housing rental support according to Decision No. 08/2022/QĐ-TTg

Employees working in representative offices, law firms, law offices, educational companies, etc. under Law on Enterprises, Law on Cooperatives are also eligible for housing rental support.

For employees who are on maternity leave or sick leave for 14 days and above, although they do not have to pay social insurance, they are still on the list of social insurance participants and are still eligible for housing rental support.

The policy on house rental support per Decision No. 08/2022/QĐ-TTg does not discriminate between local or foreign workers, so foreigners working in Vietnam, will also be eligible for the support provided that the conditions are met.

*(Official Letter No. 410/CVL-TTLD dated 08 June 2022 issued by the Ministry of Labor, War Invalids and Social Affairs)*



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## Labor and Social Insurance & Personal Income Tax and Immigration



### **GUIDANCE RULING (cont.)**

#### **Guidance on implementation of Decree 38/2020/ND-CP about minimum wage rate**

Regarding the contents which have already been agreed and committed with the employees, in case such contents are more beneficial to the employees than those specified in Decree 38/2020/ND-CP, the employer must continue to implement, unless otherwise agreed with the employees in another agreement.

Specifically, the provision regulating that the minimum wage of employees who have undergone vocational training must be at least 7% higher than the minimum regional wage: although this is no longer regulated under Decree 38/2020/ND-CP, in case this provision is already mentioned in an agreement or commitment (for example: commitment in the labor contract, collective labor agreement, other legal agreements) with the employees, the company must continue to implement.

*(Official Letter No. 2086/BLDTBXH-TLDDVN dated 17 June 2022 issued by the Ministry of Labor, War Invalids and Social Affairs)*

#### **Supports for Covid-19 prevention from the reduction of unemployment insurance contribution are not subject to PIT**

In case the company uses the entire amount of unemployment insurance reduction to support employees for Covid-19 prevention in accordance with Decision No. 23/2021/QĐ-TTg, such expenses are not subject to PIT.

*(Official Letter No. 22148/CTHN-TTHT dated 16 May 2022 issued by Hanoi Tax Department)*

#### **Continued implementation of Covid-19 prevention and control work for immigrants**

The Ministry of Health noted that provincial Health Departments must properly implement policies to facilitate the entry of immigrants into the new normal period, including:

- (i) Suspending the requirement for testing for SARS-CoV-2 before entry;
- (ii) Suspending the requirement for medical declaration at the border gate;
- (iii) Suspending the requirement for domestic medical declaration.

*(Official Letter No. 2860/BYT-DP dated 02 June 2022 issued by the Ministry of Health)*



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## Trade & Customs



### NEW REGULATION

#### Update policies on issuance and inspection of C/O form D

On 01 June 2022, the Ministry of Industry and Trade issued Circular No. 10/2022/TT-BCT updating the procedures for certification, check and verification of C/O form D issued under the guidance of Circular No. 22/2016/TT-BCT (amended by Circular No. 19/2020/TT-BCT), including:

- Procedures for certification, check and verification of C/O;
- Template of C/O form D; and
- Instruction for C/O declaration.

The Circular takes effect from 16 July 2022.

*(Circular No. 10/2022/TT-BCT dated 01 June 2022 issued by the Ministry of Industry and Trade)*

#### Anti-dumping duty is temporarily applied to welding materials from 22 April 2022

Products subject to anti-dumping duty include: coated 308 stainless steel welding rods and non-cored solid steel welding wire, originating from Malaysia, Thailand, and China. These products fall under the following HS codes: 7217.10.10, 7217.30.19, 7229.20.00, 7229.90.20, 7229.90.99, 8311.10.10, 8311.10.90, 8311.30.91, 8311.30.99, 8311.90.00.

The anti-dumping duty rates range from 11.43% to 36.11% (for welding rods) and from 15.30% to 36.56% (for steel welding wire).

The application period is 120 days from 22 April 2022.

*(Decision No. 706/QĐ-BCT dated 15 April 2022 issued by the Ministry of Industry and Trade)*

#### Updates on Product Specific Rules (PSR) in the Vietnam – Korea Free Trade Agreement (VKFTA)

On 01 June 2022, the Ministry of Industry and Trade issued Circular No. 09/2022/TT-BCT to amend and supplement Circular No. 40/2015/TT-BCT, with updates on the PSR for C/O form VK.

Procedures for issuance and inspection of C/O form VK will still be governed under Circular No. 40/2015/TT-BCT, Decree No. 31/2018/ND-CP and Circular No. 05/2018/TT-BCT.

Circular 09 takes effect from 01 August 2022.

*(Circular No. 09/2022/TT-BCT dated 01 June 2022 issued by the Ministry of Industry and Trade)*

#### New regulations on the establishment of industrial parks and economic zones and export processing enterprises (“EPEs”)

On 28 May 2022, the Government issued Decree No. 35/2022/ND-CP replacing Decree No. 82/2018/ND-CP on conditions and procedures for establishing industrial parks, export processing zones and economic zones. Key points include:

- Conditions for infrastructure investment and establishment of an industrial zone;
- Establishment, expansion, and size adjustment of economic zone boundaries;
- Development policies on industrial zones and economic zones;
- Specific regulations and policies for certain types of industrial zones and Industry – Urban – Service complexes.

Notable regulations on EPEs:

- In industrial parks, there may be sub-zones designated for EPES. These sub-zones must be separated from the outside by hard-fence systems, gates, and entrance and exit doors, and fulfill requirements for customs inspection and supervision of the customs authorities.
- EPEs might conduct other business activities if the following conditions are satisfied:

- (i) The products used for pure export manufacturing and processing are stored and managed separately from those used for other business purposes;
  - (ii) Maintain separate accounting books to record revenue and cost of export processing and other business activities;
  - (iii) Machinery and equipment imported under duty incentive for EPEs can not be used for the production of non-EPE activities. If these machinery and equipment are used for other business activities, the previously-enjoyed duty incentive shall be clawed-back according to the tax regulations.
- EPEs can rent areas outside industrial parks or economic zones for storage purposes if lacking storage space, provided that the customs inspection and supervision conditions are fulfilled.
  - EPEs are allowed to sell goods to the domestic market. The imported goods from EPEs, Export Processing Zone to domestic market shall be subject to a duty under the regulations on export and import duty.

The Decree takes effect from 15 July 2022 and replaces Decree No. 82/2018/ND-CP dated 22 May 2018.

*(Decree No. 35/2022/ND-CP dated 28 May 2022 issued by The Government)*



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## Trade & Customs



### GUIDANCE RULING

#### Transition time for implementation of new C/O form D

For C/O issued in the transition period from 01 May 2022 to 31 October 2022, Customs authorities will accept both C/O form D under the old form (issued under the guidance of Circular No. 19/2020/TT-BCT) and the new form as guided in Official Letter No. 1568/TCHQ-GSQL dated 04 May 2022.

From 01 November 2022 onwards, Customs authorities will only accept C/O form D issued under the new form.

The above regulations cover both paper and electronic C/O.

*(Official Letter No. 1683/TCHQ-GSQL dated 12 May 2022 issued by the General Department of Customs)*

#### All production facilities of EPEs must satisfy the customs inspection and supervision conditions applied to EPE

The General Department of Customs noted that EPEs are only considered to fully meet the conditions for customs inspection and supervision in Clause 10, Article 1 of Decree No. 18/2021/ND-CP when all of their production facilities fulfill the requirements.

In addition, for EPEs that had been operating before the effective date of Decree No. 18/2021/ND-CP (25 April 2021), if after 01 year the conditions for inspection and supervision are still not fully satisfied, they shall not be entitled

to tax treatment for non-tariff zones. At a later stage, if the EPE notify of the satisfaction and is inspected and certified by the managing Customs Sub-department accordingly, it would be able to continue applying tax treatments for the non-tariff zone.

*(Official Letter No. 1939/TCHQ-GSQL dated 30 May 2022 issued by the General Department of Customs)*

#### Handling in-land export declarations without corresponding import declarations

For in-land exports without corresponding import declaration registered before 25 April 2021:

- If the Customs Sub-department checks and concludes that the transaction between the parties actually occurred and the delivery has been completed, but the goods have not yet been put into production or consumption, then the enterprise is allowed to make in-land import declarations and might be subject to administrative penalties.
- On the contrary, if the goods have been put into production or consumption, the in-land import late declaration would not be allowed. The customs sub-departments managing the in-land export declaration and in-land import declaration shall cooperate to impose tax and administrative penalties on the violators.

For in-land export declarations that do not have corresponding import declarations registered after 25 April 2021: Provincial Customs Departments shall monitor, classify and handle according to Articles 10 and 12, Decree No. 134/2016/ND-CP and Official Letter No. 2687/TCHQ-TXNK dated 01 June 2021.

*(Official Letter No. 2011/TCHQ-GSQL dated 01 June 2022 issued by the General Department of Customs)*

#### Use of Value Added Tax ("VAT") e-invoices for exports

Regarding the use of VAT e-invoices for exported goods, the General Department of Customs has the following comments:

- Enterprises shall use commercial invoices to carry out customs procedures and export goods according to international practices. There is no requirement to issue additional VAT e-invoices for export procedures;
- E-invoices for exported goods shall be issued after the completion of export customs procedures. Therefore, VAT invoice cannot be issued and submitted within the customs dossier at export customs clearance stage.

Accordingly, the commercial invoice shall be issued prior to customs clearance, while the VAT e-invoice is issued afterward. The General Department of Customs do not require customs declarants to include electronic VAT invoices within the export dossiers.

*(Official Letter No. 2054/TCHQ-GSQL dated 03 June 2022 issued by the General Department of Customs)*

### DRAFT NEW REGULATION

#### Draft Decrees on import/expot tariff schedules for implementation of Free Trade Agreement (FTA) during the 2022-2027 period

The Ministry of Finance has drafted and in process to collect public comments on a few draft Decrees promulgating import/export tariff schedules to implement Trade Agreements and FTAs between Vietnam and other countries/regions in the 2022-2027 period on the basis of HS 2022 and AHTN 2022 application, including:

- Vietnam - European Union FTA (EVFTA);
- Vietnam - Eurasian Economic Union FTA (VNEAEUFTA);
- Vietnam - Japan Economic Partnership Agreement (VJEPA);
- ASEAN - Hong Kong, China FTA (AHKFTA);
- ASEAN - Korea FTA (AKFTA);
- ASEAN - India FTA (AIFTA);
- ASEAN - Australia - New Zealand FTA (AANZFTA).

The coming new Decrees shall provide detailed preferential import and export tariffs with specific requirements for applicants.

The above-mentioned new Decrees are expected to be finalized then issued in Quarter III of 2022. Deloitte shall keep our Valued clients updated on the progress of these Decrees.

*(The Draft Decrees promulgating import and export tariffs schedules to implement the FTAs to which Vietnam is a signatory, drafted by the Ministry of Finance for submission to the Government for enactment in 2022)*

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