TAX & CUSTOMS NEWSLETTER

April 2022



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Tax Administration



DRAFT LEGAL DOCUMENT

Proposal to extend payment of Value Added Tax ("VAT"), Corporate Income Tax ("CIT") and Personal Income Tax ("PIT") in 2022

The Ministry of Finance has drafted a Decree to extend the deadline for payment of VAT, CIT, PIT, land and water surface rental in 2022, with main contents as following:

- Subjects: the Ministry of Finance has proposed an extension for all subjects specified in Article 2 Decree No.
 52/2021/ND-CP on extending the deadline for payment of VAT, CIT, PIT and land rental in 2021.
- Taxes for extension of payment deadline:

(i) VAT:

- ✓ VAT payable from March 2022 to May 2022 and the first quarter of 2022: extension for 6 months
- ✓ VAT payable for June 2022 and second quarter 2022: extension for 5 months
- ✓ VAT payable for July 2022: extension for 4 months
- ✓ VAT payable for August 2022: extension for 3 months

- (ii) Provisional payment for CIT in the first and second quarters of 2022: 03 months extension
- (iii) VAT and PIT payable by business households and individuals in 2022: extended until 30 December 2022
- (iv) Land and water surface rental payable in 2022: 06 months of extension for 50% payable amount (from 31 May 2022 to 30 November 2022)

The Draft Decree has been submitted to the Government and expected to take effect from the date of signing.

(News dated 14 April 2022 at the Ministry of Finance e-portal)

Proposal to extend payment of Special Consumption Tax ("SCT") for domestically manufactured and assembled automobiles

The Ministry of Finance has submitted to the Government a Draft Decree to extend the deadline for SCT payment of domestically manufactured and assembled automobiles in 2022, with main content as following:

- 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.

The Draft Decree has been submitted according to the shortened procedures and expected to take effect from the date of signing.

(News dated 30 March 2022 at the website of the General Department of Taxation)



Contact us

Website: deloitte.com/vn Email: deloittevietnam@deloitte.com

Corporation Income Tax



NEW REGULATION

Provision for loss of securities investments

On 07 April 2022, the Ministry of Finance has issued Circular No. 24/2022/TT-BTC amending Circular No. 48/2019/TT-BTC on making and settlement of provisions at enterprises.

According to the Circular, the object of making provision for loss of securities investments does not include Government bonds, Government-guaranteed bonds, and local government bonds.

The Circular takes effect from 25 May 2022.

Provision balances for investments in Government bonds, Government-guaranteed bonds and local government bonds that enterprises made before the effective date of this Circular (if any) would be reverted and recorded as a decrease in expenses at the time of preparing the financial statements of 2022.

(Circular No. 24/2022/TT-BTC dated 07 April 2022 issued by the Ministry of Finance)

GUIDANCE RULING

CIT incentives for additional business

If the company is entitled to CIT incentives for income from the new investment project in the economic zone and, during operation, registers additional leasing activity of redundant factory, income from such factory leasing is not considered as income from the first investment project nor qualified expansion investment project, therefore, is not eligible to CIT incentives.

Besides, if in the amendments of Investment registration Certificate, the company registers additional activities without investment project and without increase in investment capital, the company's income from these additional activities shall not be entitled to CIT incentives.

(Official Letter No. 764/CTHPH-TTHT dated 28 March 2022 issued by Hai Phong Tax Department)

CIT incentive for interest income from bank deposit

If the company enjoying CIT incentives has saving account at a credit institution (regardless of whether the credit institution is inside or outside of the preferential location) and incurs interest income paid by the credit institution, this income is not entitled to CIT incentives.

For CIT declaration and payment, the company must separately determine income from production and business activities entitled to CIT incentives and income from business activities not entitled to tax incentives. Accordingly, the interest income (not entitled to tax incentives) shall only be offset against interest expenses of non-incentive activities as per principles specified in Clause 7, Article 7, Circular No. 78/2014/TT-BTC.

(Official Letter No. 709/CTHPH-TTHT dated 21 March 2022 issued by Hai Phong Tax Department)



Website: deloitte.com/vn Email: deloittevietnam@deloitte.com

© Corporation Income Tax



GUIDANCE RULING (cont.)

Date of invoicing and determining export revenue

For goods exported by sea, air, railway, inland waterways, transshipment port, transshipment area; goods supplied for outbound vessels or airplanes; exports transported together with the carrier through air checkpoint; exports stored in CFSs or ICDs, date of invoicing and revenue recognition is the export declaration date that has been granted customs clearance and certified that goods have passed the monitoring area on the system when they are loaded onto the outbound vehicle. For exports stored in bonded warehouses, it is the export declaration date that has been granted customs clearance and certified that goods have been moved into the bonded warehouse on the e-customs system.

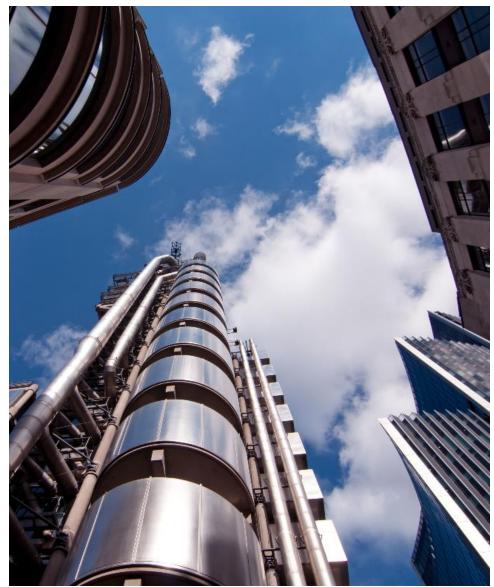
(Official Letter No. 1118/CTBNI-TTHT and 1119/CTBNI-TTHT dated 08 April 2022 issued by Bac Ninh Tax Department)

Expenses of exceeding overtime hours and expenses for expatriates without work permits

If, due to objective and reasonable reasons, employee's overtime exceeds the cap prescribed in the Labor Code (the company must notify the Department of Labor, Invalids and Social Affairs in writing and be approved for working overtime), payment for the exceeding overtime hours with sufficient document will be treated as deductible expenses.

Salaries for expatriates who have not been granted work permits when entering Vietnam to work during the quarantine period as prescribed by Resolution No. 28/NQ-CP of the Government will be deductible, if qualify the conditions in Article 4, Circular No. 96/2015/TT-BTC.

(Official Letter No. 5612/CTBDU-TTHT dated 13 April 2022 issued by Binh Duong Tax Department)





Website: deloitte.com/vn Email: deloittevietnam@deloitte.com

Indirect Tax



GUIDANCE RULING

Guidance on VAT reduction under Decree No. 15/2022/ND-CP ("Decree 15")

1. For export processing enterprises ("EPEs") selling goods and services to the domestic market

According to Clause 7, Article 30, Decree No. 82/2018/ND-CP, if EPEs are permitted to sell goods and provide services to domestic enterprises, they must open their own accounting books, register and declare VAT for this activity.

When EPEs declare VAT under credit method and provide goods and services subject to 10% VAT and the goods and services are not mentioned in the appendices of Decree 15, the 8% VAT rate shall be applied from 01 February 2022.

(Official Letter No. 12660/CTHN-TTHT dated 04 April 2022 issued by Hanoi Tax Department)

2. For construction and installation work

VAT declaration for construction and installation activities are triggered on the date of acceptance minutes, construction work or work items handover minutes, construction volumes, installation acceptance minutes, regardless payments received or not.

Accordingly, construction work, work items or volumes handed over in the period from 01 February 2022 to 31 December 2022 shall be eligible for VAT reduction according to Decree 15 (VAT rate 8% shall be applied). If the acceptance and handover are carried out beyond the above period, VAT reduction shall not be applicable (even if invoices are issued in February 2022).

(Official Letter No. 9275/CTHN-TTHT dated 21 March 2022 issued by Hanoi Tax Department)

(Official Letter No. 8000/CTHN-TTHT dated 11 March 2022 issued by Hanoi Tax Department)

3. Adjustment of listed price applying 8% VAT

For services eligible for VAT reduction under Decree 15, if the listed prices are inclusive of VAT at the tax rate of 10%, enterprises are required to determine the VAT-exclusive price and apply the 8% tax rate.

(Official Letter No. 9264/CTHN-TTHT dated 21 March 2022 issued by Hanoi Tax Department)

4. Invoicing date

- If service fees are paid in advance and invoices are issued before 01 February 2022 while the services are completed in the period from 01 February 2022 to 31 December 2022, the amounts paid before 01 February 2022 are not eligible for VAT reduction. The remaining amount paid and invoiced from 01 February 2022 to 31 December 2022 shall be eligible for VAT reduction.
- If goods and services have been provided at the 10% tax rate in January 2022 but not invoiced until February 2022, it shall be regarded as late invoice issuance and thus, tax reduction is not applicable.

- For invoices issued before 01 February 2022 at the 10% tax rate, and adjustments due to errors are made after 01 February 2022, the 10% tax rate shall apply to the adjustment invoices (including goods returns).
- The provision of goods and services of unique nature (such as electricity) shall be eligible for VAT reduction if invoices are issued from 01 February 2022 to 31 December 2022.

(Official Letter No. 2688/BTC-TCT dated 23 March 2022 issued by the Ministry of Finance)

Tax obligations of individuals when providing services online

Individual, who earns total income from VND 100 million/year and above in a calendar year from providing services online, is required to conduct tax declaration and payment in accordance with Clause 2, Article 6, Circular No. 40/2021/TT-BTC. At tax rate of 2% PIT and 5% VAT.

(Official Letter No. 8210/CTHN-TTHT dated 14 March 2022 issued by Hanoi Tax Department)

Personal Income Tax



NEW REGULATION

E-tax application for mobiles (eTax Mobile 1.0)

The General Department of Taxation has implemented E-tax application on mobile devices (eTax Mobile) for individual taxpayers using iOS or Android operating systems and officially released it since 15 December 2021. The functions of the application include:

- Account management: Registering etax account with tax authorities; Changing registered information.
- Online tax payment: Paying taxes through banks associated with the General Department of Taxation.
- Lookup: The tax payable (PIT, financial obligations on land, vehicle registration fees); Vouchers/tax dossiers: tax declaration, tax finalization dossiers, tax registration, registration fee for automobiles and motorbikes; Dossier process notification; Registration fee for automobiles and motorbikes; Dependents' information; Taxpayer's information; Authorized banks; Banks; Tax authorities' addresses.
- Other functions for taxpayers such as: PIT calculation, Price list for registration of automobiles and motorbikes; News; Personal settings and support.

(Official Letter No. 4899/TCT-CNTT dated 14 December 2021 issued by the General Department of Taxation)

GUIDANCE RULING

PIT treatment for employees when terminating labor contracts

When terminating the labor contract, in case the company make final payment for the unpaid monthly salary, bonuses and benefits that are subject to PIT, the withholding will be based on the payment date:

- If the payment date is before the termination date of labor contract, those income shall be treated as taxable income for PIT declaration with progressive tax rate.
- If the payment date is after the termination date of labor contract and the employee has stopped working at the company, for each payment of VND 02 million/payment or more, the company shall withhold PIT at the rate of 10% and issue the PIT withholding receipt to the employee.

(Official Letter No. 2211/CTTPHCM-TTHT dated 21 March 2022 issued by Ho Chi Minh City Tax Department)

Declaration and payment of PIT for trading on e-commerce platform

In case individuals trading on e-commerce platform, the organizations including e-commerce platform owners carry out tax declaration and payment on behalf of individuals on the authorization basis according to civil regulations.

The tax base shall be taxable revenue and the ratio on revenue as prescribed in Article 10, Circular No. 40/2021/TT-BTC. For business households and individuals, taxable revenue for VAT and PIT is the tax-inclusive revenue (in case of being subject to taxes), including entire sales and other revenue entitled to, regardless payments received or not.

The tax ratio on revenue for VAT and PIT is specified by business line according to Appendix I, Circular No. 40/2021/TT-BTC.

(Official Letter No. 9431/CTHN-TTHT dated 21 March 2022 issued by Hanoi Tax Department)



Sontact us

Website: deloitte.com/vn Email: deloittevietnam@deloitte.com

Labor



NEW REGULATION

Online registration for voluntary Social Insurance in 2022

According to Decision 422/QD-TTg, the Prime Minister has approved the List of online public services integrated and provided on the National Public Service Portal in 2022, including:

- Registration for voluntary Social Insurance (new contribution, change from compulsory Social Insurance to voluntary Social Insurance);
- Registration for online payment and issuance of Health Insurance cards (individuals contributing Health Insurance only);
- Process for one-time Social insurance allowance (not applying for subjects managed by the Ministry of National Defense).

The Decision takes effect from 04 April 2022.

(Decision No. 422/QD-TTg dated 04 April 2022 issued by the Prime Minister)

Housing support for employees

On 28 March 2022, the Prime Minister has issued Decision No. 08/2022/QD-TTg on the implementation of housing support policy for employees with the following main contents:

- Subjects and conditions: Employees working in enterprises in industrial zones, export processing zones or key economic areas shall be supported if meeting the following conditions:
- (i) Renting, lodging in the period from 01 February 2022 to 30 June 2022.
- (ii) Having an indefinite-term labor contract or a definite-term labor contract of 01 month or more signed and commenced before 01 April 2022.
- (iii) Contributing compulsory Social Insurance (named on the list of participating in compulsory Social Insurance at the Social Insurance authorities) in the month preceding the month that in which the enterprise submits the proposed list of employees for housing support.

- Level, support period and payment term
- (i) Support level: VND 500,000/person/month.
- (ii) Support period: Up to 3 months.
- (iii) Payment term: Monthly.

The Decision takes effect from 28 March 2022.

(Decision No. 08/2022/QD-TTg dated 28 March 2022 issued by the Prime Minister)



(Immigration



NEW REGULATION

Restoring Vietnam's entry policy as applied before the Covid-19 pandemic

On 15 March 2022, the Consular Department of the Ministry of Foreign Affairs has officially announced the restoration of Vietnam's entry policy as before application of the restrictions to prevent and control the Covid-19 pandemic, including:

- Restoration of the process and procedures for granting all types of visas and visa exemption certificates according to the current Law on entry, exit, transit, and residence of foreigners and its guiding documents as before the pandemic.
- Restoration of visa exemption for foreigners under international treaties to which Vietnam is a contracting party or visa exemption on a reciprocal basis.

 Restoration of unilateral visa exemption for citizens of 13 countries, with a maximum stay of 15 days, applied until the end of 14 March 2025.

(Official letter No. 302-CH-LS-PL dated 15 March 2022 issued by the Consular Department of the Ministry of Foreign Affairs)



Website: deloitte.com/vn Email: deloittevietnam@deloitte.com



Foreign Contractor Withholding Tax



GUIDANCE RULING

Foreign Contractor Withholding Tax ("FCWT") levied on foreign loans

If the Vietnamese company received loan from the parent company based in the Federal Republic of Germany under the loan contract ("the contract"), the parent company is subject to CIT payment (FCWT) in Vietnam with the CIT rate of 5% on loan interest income. The Vietnamese company shall be liable to declare, deduct, and pay CIT on behalf of the parent company.

During the contract implementation process, if the parent company does not have a permanent establishment in Vietnam (pursuant to Double Taxation Avoidance agreement between Vietnam and the Federal Republic of Germany and guidance at Circular No. 205/2013/TT-BTC), the income from loan interest received by the parent company under the contract will not be subject to CIT in Vietnam.

- The amount of FCWT that the Vietnamese company has deducted, declared, and paid on behalf of the parent company is entitled to refund as stipulated in Article 27, Article 30, Circular No. 80/2021/TT-BTC.
- If the parent company or Vietnamese company conduct procedures for tax exemption, tax reduction under the Double Taxation Avoidance agreement according to the Article 62, Circular No. 80/2021/TT-BTC, the Vietnamese company is not required to withhold pay on behalf of contractor for the above income.

(Official Letter No. 679/CTHPH-TTHT dated 18 March 2022 issued by Hai Phong Tax Department)

FCWT for in-land import and export activities

The foreign contractor generates income in Vietnam based on contracts, agreements, or commitments between the foreign contractors and the company in Vietnam, will be subject to FCWT according to Circular No. 103/2014/TT-BTC.

Before making the payment to a foreign contractor, the Vietnamese company is responsible for declaring, withholding, and paying CIT on behalf of the foreign contractor to the State Budget. The export processing enterprises are not subject to VAT withholding.

(Official Letter No. 5429/CTBDU-TTHT dated 07 April 2022 issued by Binh Duong Tax Department)





Trade & Customs



NEW REGULATION & GUIDANCE RULING

Guidance on the application of trade remedies and Origin for goods subject to trade remedies

1. Implementation of trade remedies under the Regional Comprehensive Economic Partnership Agreement ("RCEP")

On 23 March 2022, the Ministry of Industry and Trade issued Circular No. 07/2022/TT-BCT providing guidance on the implementation of trade remedies under RCEP. Notable contents include:

- Application of anti-dumping and countervailing measures, including: notification procedures, calculation methods for dumping margin, information disclosure and processing, etc.;
- Application of transitional safeguard measures under RCEP, including: application principles, guidance on requesting dossiers and procedures, investigation and application processes, etc.

The Circular will take effect from 08 May 2022.

(Circular No. 07/2022/TT-BCT dated 23 March 2022 issued by the Ministry of Industry and Trade)

2. Self-certification of origin for imports subject to trade remedies

In order to prevent trade fraud and comply with the provisions of Free Trade Agreements, it is required by the Ministry of Industry and Trade that for all goods subject to trade remedies, upon importation, the valid C/O, or Selfcertification of origin shall be submitted in accordance with one of the following Agreements:

- The ASEAN Trade in Goods Agreement (ATIGA);
- The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP);
- The European Union Vietnam Free Trade Agreement (EVFTA);
- The United Kingdom Vietnam Free Trade Agreement (UKVFTA);
- The Regional Comprehensive Economic Partnership Agreement (RCEP).

(Official Letter No. 118/PVTM-P1 dated 02 March 2022 issued by the Ministry of Industry and Trade)

3. In-land imported goods are subject to anti-dumping duty

For in-land imported goods subject to anti-dumping duty, customs authorities will examine the proof of origin for application of anti-dumping duty. In case the customs declarant fails to submit the proof of origin, the anti-dumping duty shall be imposed as regulated.

(Official Letter No. 944/TCHQ-TXNK dated 22 March 2022 issued by General Department of Customs)

4. Proof of origin of certain goods must be submitted at customs clearance stage to determine the application of antidumping duty application or not

For certain types of goods, enterprises must declare the proof of origin on the electronic customs declaration and submit the original version at customs clearance stage to determine whether their goods are free of the applicable antidumping duty.

(Official Letter No. 619/TCHQ-GSQL dated 25 February 2022 issued by General Department of Customs)

Website: deloitte.com/vn Email: deloittevietnam@deloitte.com



Trade & Customs



NEW REGULATION

Amendment of regulations on noncommercial import of cultural products

On 25 March 2022, the Government issued Decree No. 22/2022/ND-CP amending regulations on non-commercial import/export of cultural products.

Notable contents include:

- The definition of cultural products is supplemented;
- The list of goods subject to the management and licensing of the Department of Culture, Sports and Tourism and the authority to revoke permits in case of violation is supplemented;
- The application documents for import license, timeline for the grant of import license for films are supplemented;
- The phrase "Department of Culture, Sports and Tourism" is replaced with "Department of Culture, Sports and Tourism/Department of Culture and Sports".

The Decree will take effect from 10 May 2022.

(Decree No. 22/2022/ND-CP dated 25 March 2022 issued by the Government)

GUIDANCE RULING

Guidance on declaration of certificate of origin (C/O) form RCEP

The Ministry of Industry and Trade has guided the detailed declaration of C/O form RCEP (issued in Circular No. 05/2022/TT-BCT, effective from 04 April 2022) with key contents as below:

- Detailed guidance on declaration of C/O form RCEP;
- The list of member countries implementing RCEP and corresponding effective date;
- The issuance of C/O form RCEP for shipments from Vietnam to RCEP member countries prior to the effective date of Circular No. 05/2022/TT-BCT.

(Official Letter No. 372/XXHH dated 31 March 2022 issued by the Ministry of Industry and Trade)

Risks when importing materials from Russia for exports manufacturing

Recently, a number of countries have issued policies to prohibit and suspend imports, exports, even revoke the most-favored nation (MFN) trade status for Russia due to the military conflicts between Russia and Ukraine.

The Ministry of Industry and Trade recommends that Vietnamese enterprises should closely follow up with the policies of relevant countries, thoroughly assess and prepare countermeasures to avoid risks when importing raw materials from Russia to manufacture exports to nations that have sanctional policies against Russia.

Particularly, the Ministry also requests companies not to commit origin frauds or assist third parties in transporting goods to avoid these sanctional policies.

(Official Letter No. 151/PVTM-P3 dated 21 March 2022 issued by Trade Remedies Authority of Vietnam, Ministry of Industry and Trade)



Website: deloitte.com/vn Email: deloittevietnam@deloitte.com

S Contact us



Thomas McClelland
National Tax Leader
+84 28 7101 4333
tmcclelland@deloitte.com



Bui Ngoc Tuan
Tax Partner
+84 24 7105 0021
tbui@deloitte.com



Bui Tuan Minh Tax Partner +84 24 7105 0022 mbui@deloitte.com



Phan Vu Hoang
Tax Partner
+84 28 7101 4345
hoangphan@deloitte.com



Dinh Mai Hanh
Tax Partner
+84 24 7105 0050
handinh@deloitte.com



Vo Hiep Van An Tax Partner +84 28 7101 4444 avo@deloitte.com



Vu Thu Nga Tax Partner +84 24 7105 0023 ngavu@deloitte.com

Hanoi Office

15th Floor, Vinaconex Building, 34 Lang Ha Street, Dong Da District, Hanoi, Vietnam.

Tel: +84 24 7105 0000 Fax: +84 24 6288 5678 www.deloitte.com/vn

Ho Chi Minh City Office

18th Floor, Times Square Building, 57-69F Dong Khoi Street, District 1, Ho Chi Minh City, Vietnam.

Tel: +84 28 7101 4555 Fax: +84 28 3910 0750

deloittevietnam@deloitte.com

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