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#### Response to Covid-19 impact

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2. Wages paid to employees when work is suspended/jobs lost due to Covid-19
3. Export of medical masks and cloth masks
4. No legal basis for deferred tax payment for imported/exported goods due to Covid-19 pandemic

#### Other regulations

5. Personal Income Tax applied to income received during training period
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7. Foreign Contract Withholding Tax on collecting service fees on behalf and selling goods through bonded warehouses in Vietnam
8. Amendments of Circulars on Rules of Origins under certain trade agreements and FTAs.

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## Tax Administration



### NEW REGULATION

#### **Decree No. 41/2020/ND-CP dated 08 April 2020 issued by the Government to extend tax payment and land lease fee payment deadline ("Decree 41")**

On 08 April 2020, the Government officially issued Decree 41 extending the payment deadline for tax and land lease fee, taking effect from the signing date. Details of the Decree have been updated in our Deloitte Vietnam Tax and Customs Alert dated 13 April 2020.

On 20 April 2020, the General Department of Taxation also issued Official Letter No. 1563/TCT-KK to local Tax departments to implement this Decree.

#### **Draft Decree providing detailed guidelines for a number of articles of the Law on Tax Administration**

The Draft Decree specifies a number of articles of the Law on Tax Administration, which includes 9 chapters and 44 articles providing guidelines for the following contents: tax declaration, tax calculation; tax assessment; tax payment deadline, responsibility to fulfill tax payment obligations; tax refund, tax exemption and reduction, tax arrears, late payment interest, fines; responsibility to provide information, disclose information about taxpayers; and a number of other contents.

The Decree is in process of finalization for submission to the Government to issue, and is expected to take effect from 01 July 2020 in accordance with the provisions of the amended Law on Tax Administration in 2019.

*(The Draft Decree has been uploaded on the website of the Ministry of Justice)*

#### **Draft Decree providing regulations on invoices and documents**

In April 2020, the Ministry of Finance sent the Draft Decree on invoices and documents to replace Decree No. 119/2018/ND-CP to the Ministry of Justice seeking for appraisal opinion. The Decree is developed on the basis of the Law on Tax Administration No. 38/2019/QH14 and such law as: Law on Value Added Tax ("VAT"), Law on Fees and Charges, Law on Accounting. The Draft Decree, including 06 chapters with 53 articles, providing detailed guidelines on the content of scope and subjects of application; invoice management, electronic invoices and invoices ordered by tax authorities; regulations on receipts and vouchers; information used in invoices and electronic documents; regulations on rights, obligations and responsibilities of organizations, individuals.

Notably, the Draft proposes to take effect from 01 July 2020, and the application of electronic invoices and vouchers as prescribed in the Decree not later than 01 July 2022.

*(The Draft Decree has been uploaded on the website of the Ministry of Justice)*



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## Corporate Income Tax



### GUIDANCE RULING

#### Non-cash payment method

A company has transactions as follows:

In the previous year, the company paid in cash for purchasing goods, which should have been paid via bank transfer (such transaction has been recorded in accounting book, and there was no payables balance at the year end upon formal debt reconciliation); and

In the following year, in trying to formalize the payment of transaction via bank, the company made the same payment by bank transfer, and the seller later returns the money via bank as well.

The above payment method for formalization is not accepted as legitimate non-cash payment scheme. Accordingly, the company is not allowed to deduct for CIT purpose and credit corresponding VAT input.

*(Official Letter No. 1366/TCT-KK dated 31 March 2020 issued by the General Department of Taxation)*

#### Tax declaration for real estate business at branch

Company's branch located in another province, which is authorized to transfer properties to customers in accordance with the regulations on real estate business, shall declare tax as following:

VAT declaration:

- If the company has not yet mandated the branch a role to directly manage the properties, while still directly signed contracts and issued invoices to customers; then the company shall make provisional VAT declaration at the rate of 2% to the Tax authority at the project site.
- If the company hands over the project's business activities to the branch, including the direct signing of properties transfer contracts in accordance with the current regulations on real estate business and issuing invoices to customers then the company must calculate the arising VAT liability, the credited input VAT amount, the outstanding VAT amount of the project in order to hand over to its branch for managing and taking responsibility for the project's VAT amount declared by the project company at its head office.

Corporate Income Tax ("CIT") declaration:

The company shall make quarterly provisional tax payments to the Tax authority at the branch and summarize tax declaration for business activities arising from the project with the managing Tax authority of the head office.

*(Official Letter No. 1471/TCT-KK dated 13 April 2020 issued by the General Department of Taxation)*

#### Expense of inviting customers to visit, observe the company's operation

If the company invite customers to visit and observe services at the company site and bear the travelling and accommodation expense, (paid by the customers in advance, then, reimbursed by the company), such expenses shall be regarded as non-deductible for CIT calculation purpose as the invoices and supporting documents are not under the company's name.

*(Official Letter No. 232/CT-TTHT dated 09 January 2020 issued by Ho Chi Minh City Tax Department)*

#### Promotion expenses implemented through distributors

When a company implement promotion program to its customers through its distributor, the promotion expenses shall be deductible for CIT purpose if the promotion program complies with promotion regulations, and the promotion expenses qualify the conditions as stated in Article 4, Circular No. 96/2015/TT-BTC dated 22 June 2015.

*(Official Letter No. 749/CT-TTHT dated 31 January 2020 issued by Ho Chi Minh City Tax Department)*



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## Personal Income Tax and Labor



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## NEW REGULATION

### Administrative penalties for violation in labor aspects

Employers who pay employees wages at the rate lower than the prevailing region-based minimum wage rates will be fined up to VND75,000,000. Moreover, in the case of not publishing the wage scale at the work place, or not informing employees at least 10 days in advance when changing the form of wage payment, employers will be imposed a penalty ranging from VND2,000,000 to VND5,000,000.

A fine ranging from VND1,000,000 to VND3,000,000 shall be imposed when employers temporarily transfer an employee to work in another position not specified in the labor contract without 3 day prior notice or notification of the duration of such temporary transfer, or if the job transfer is not suitable to the employee's health and gender. When transferring an employee to work in another position not specified in the labor contract for improper reasons, in the incorrect duration, or without written consent from employees, employers have to pay a fine of VND3,000,000 to VND7,000,000.

*(Decree No. 28/2020/ND-CP dated 01 March 2020 taking effective from 15 April 2020)*

## GUIDANCE RULING

### Wage paid to employees when work is suspended/jobs lost due to Covid-19

Wage paid to employees who have to suspend work due to Covid-19 shall be the rate agreed by the two parties but it must not be less than the prevailing region-based minimum wage rates.

If the employers cannot afford to pay wages to employees for a long work suspension time, the employers and the employees may come to an agreement on suspension of the labor contract without wages or partial wage payment if the employees agree in writing.

The employers have rights to unilaterally terminate labor contracts when the employers have to downsize business, cut jobs or suspend the operation. In such case, the employers are required to pay job loss allowance to the employees. The company's Trade Union participates in preparing and implementing a labor utilization plan, and instructs the employees to apply allowances from the Unemployment Insurance (if applicable).

*(Official Letter No. 198/LDLĐ dated 30 March 2020 issued by Hanoi Labor Confederation)*

### Personal Income Tax ("PIT") applied to income during training period

If the company signs labor contract with the employees (with salary) for a duration from 03 months or more after the completion of the training contract; then the company shall withhold PIT at the progressive tax rate, including income they received during the training period.

If the labor contract is not signed, the company shall withhold PIT at the flat rate of 10% on total payment if exceed VND2,000,000 per payment during the training period.

*(Official Letter No. 14151/CT-TTHT dated 25 March 2020 issued by Hanoi Tax Department)*





## Value Added Tax



### GUIDANCE RULING

#### VAT refund may be feasible for new investment project that is behind registered schedule on the Investment Registration Certificate

Where a company's investment project is behind schedule as registered and specified in the Investment Registration Certificate, then the company should submit a dossier to amend the implementation progress of the investment project, in accordance with the Law on Investment, to its licensing authority.

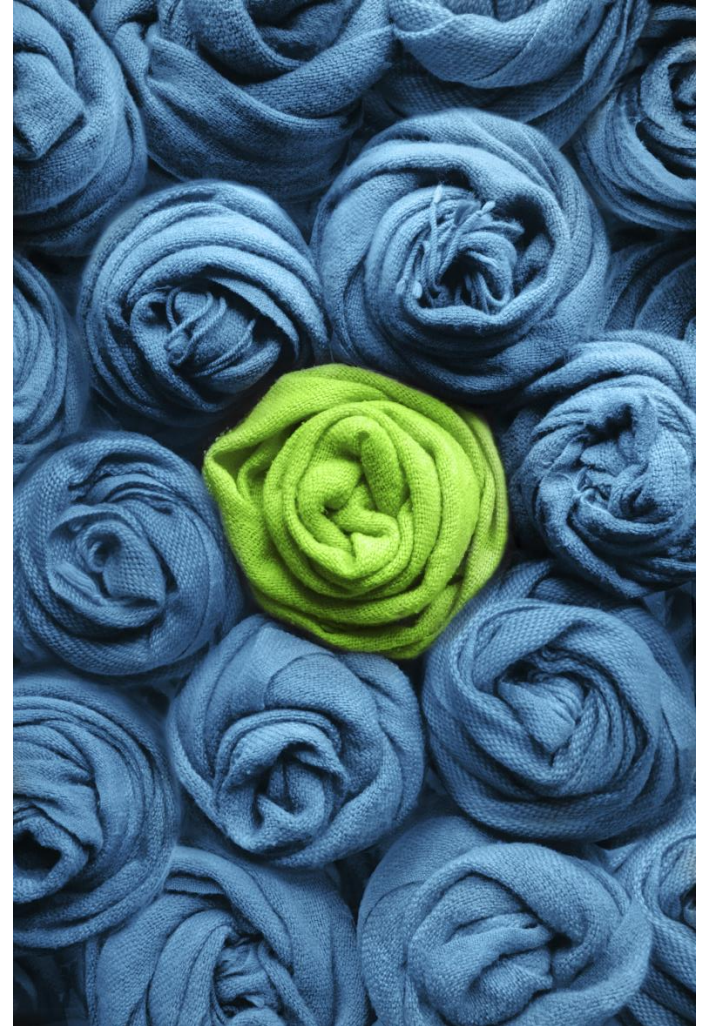
The input VAT of such investment project, which has not yet been put into operation and meets the condition per VAT regulation and investment regulation, shall still be considered for VAT refund assessment.

*(Official Letter No. 1393/TCT-KK dated 01 April 2020, issued by the General Department of Taxation)*

#### Using tariff issued by the People's Committee to determine the deductible land price for real estate transfer

For real estate originally transferred from an individual, where there was no sufficient basis to determine the land price at the time of original transfer, then the land price to be deductible for VAT calculation is the land price (tariff) prescribed by the People's Committee at the time of original transfer.

*(Official Letter No. 15991/CT-TTHT dated 30 March 2020 issued by Hanoi Tax Department)*



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## Foreign Contractor Withholding Tax



### GUIDANCE RULING

#### Collecting money from customers in Vietnam is subject to Foreign Contractor Withholding Tax ("FCWT")

In case a foreign company ("FC") earns income in Vietnam upon contracting with a Vietnamese company ("VNCo") to collect service fee from customers in Vietnam on behalf of the FC, then income of the FC is subject to FCWT. Accordingly, the VNCo, on behalf of FC, shall be responsible for withholding, filing, and paying the FCWT at the rate of 5% VAT and 5% CIT for service income.

*(Official Letter No. 1388/TCT-DNL dated 31 March 2020 issued by the General Department of Taxation)*

#### Selling goods through bonded warehouse is subject to FCWT

When the company sign contract to purchase material from overseas seller, from which goods are delivered to the company through a bonded warehouse (located within the territory of Vietnam), then the seller is subject to FCWT applicable to goods trading and distribution activities in Vietnam.

If the seller is not subject to direct tax declaration to local Tax authority, the company is liable to pay the CIT on behalf of the contractor at 1% CIT on taxable revenue.

*(Official Letter No. 677/CT-TTHT dated 27 March 2020 issued by Hai Phong Tax Department)*

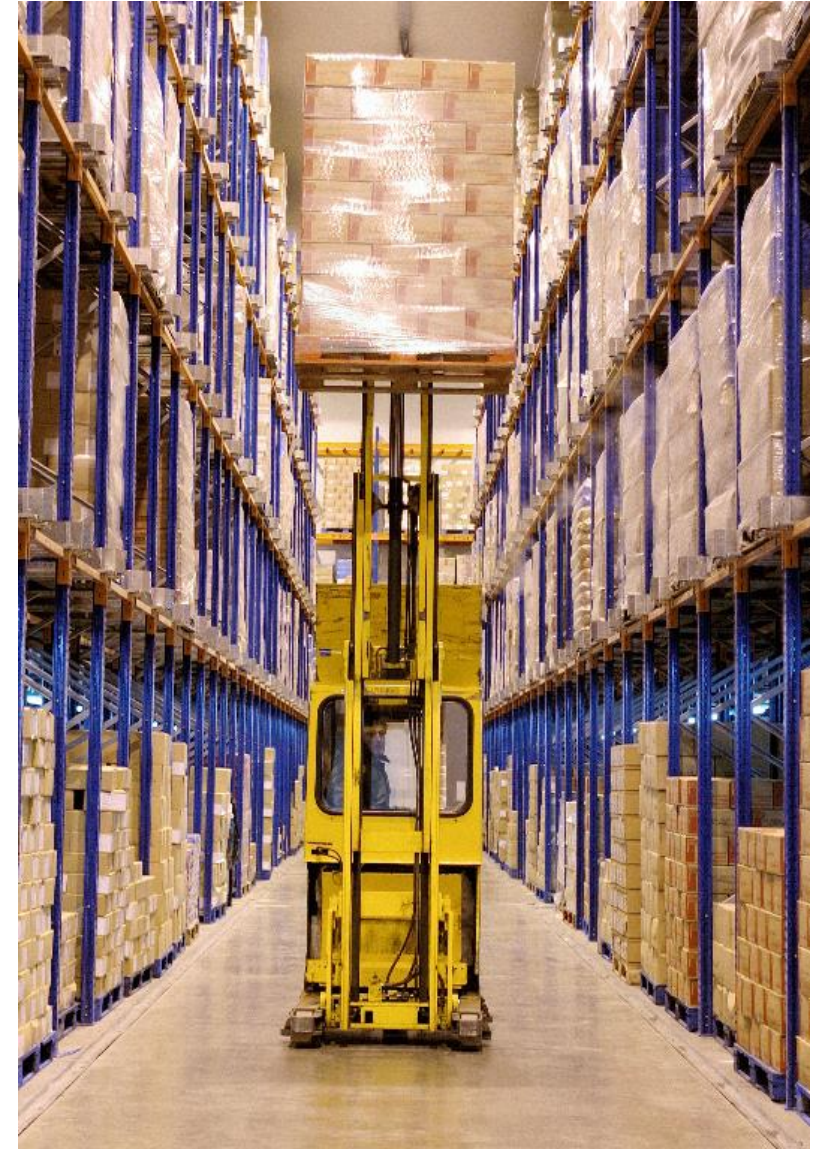


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## Trade & Customs



### NEW REGULATION

#### New enactment and amendments of Circulars on Rules of Origin ("ROO") under certain trade agreements and Free Trade Agreements ("FTAs") in which Vietnam has participated

- For CPTPP (Comprehensive and Progressive Agreement for Pacific Partnership), the Ministry of Industry and Trade ("MOIT") issued a Circular amending and supplementing ROOs for textiles and garments; Vietnam's C/O form CPTPP; the C/O form CPTPP for additional declaration; and guidance to declare C/O form CPTPP.
- For AANZ (ASEAN-Australia-New Zealand Free Trade Agreement), the MOIT issued a Circular amending and supplementing a number of articles on ROOs of the Agreement. Specifically, C/O form AANZ must be issued at the earliest, but not later than, 03 working days from the date of export. In addition, number and date of commercial invoice issued by exporters or manufacturers or third party traders for the imported consignment are required to be supplemented.
- For VN-CU (Vietnam - Cuba Trade Agreement), the MOIT issued a new Circular on ROO, which include; provisions on Product Specific Rules; C/O form VN-CU; guidance on the declaration of export C/O form VN-CU; and Vietnam's list of agencies and

organizations issuing C/O form VN-CU. (Circular No. 06/2020/TT-BCT dated 24 March 2020; Circular No. 07/2020/TT-BCT dated 30 March 2020 and Circular No. 08/2020/TT-BCT dated 08 April 2020 issued by the MOIT)

### GUIDANCE RULING

#### Import types of machinery and equipment declared on VNACCS System from 01 April 2020

Where enterprises import machinery and equipment under Chapter 84 or Chapter 85, they are required to fill in the first box out of 05 boxes used to declare types of prevailing regulations as follows:

- Declare the type "MO" for goods that have not been in use;
- Declare the type "CU" for goods used.

If the enterprise does not declare correctly, the customs declaration may be rejected by VNACCS.

(Official Letter No. 2061/TCHQ-GSQL dated 30 March 2020 issued by the General Department of Customs ("GDC"))

#### Bill of Lading for goods in transit under the CPTPP Agreement

For cargoes transiting through countries that are non-CPTPP members then, in order for the cargoes, to be entitled to claim preferential tariff under CPTPP, then the importing company should provide the following evidence:

- For ocean-freight: that the cargoes are shipped in originally sealed-containers, with containers numbers, seal numbers unchanged from the onboarding in exported country till arriving Vietnam; and align with the details recorded on e-manifest.
- For air-freight: there must be a Master Airway Bill for each route, and House Airway Bills which show that cargoes are transported from the loading point to the place of discharge of the importing country. Additionally information on the Master Airway Bill, House Airway and customs documents must be consistent.

(Official Letter No. 2019/TCHQ-GSQL dated 27 March 2020 issued by the GDC)

#### Exemption from penalties for vehicles overdue exit

Where re-export of temporarily imported means of transport is overdue because drivers are mandatorily isolated, then the temporary importation period may be extended, and not subject to administrative penalties.

(Official Letter No. 2144/TCHQ-GSQL dated 01 April 2020 issued by the GDC)

#### Export of medical masks and cloth masks

Medical masks are only allowed to be exported for humanitarian aid purposes under the Ministry of Health's export license.

However, anti-bacterial cloth masks do not fall in the category of medical equipment, and accordingly they are not subject to export licenses.

(Official Letter No. 2283/TCHQ-GSQL dated 09 April 2020 and Official Letter No. 2226/TCHQ-GSQL dated 07 April 2020 issued by the GDC;

Official Letter No. 2632/BCT-XNK dated 14 April 2020 issued by the MOIT)

#### No legal basis for deferred tax payment for imported/exported goods due to Covid-19 pandemic

With regard to GDC's views, there is currently no legal basis for approving the deferment of taxes payable for imported/exported goods, during the Covid-19 pandemic, because the prevailing Law on Tax Administration does not specifically address/guide on that situation.

(Official Letter No. 2235/TCHQ-TXNK dated 08 April 2020 and Official Letter No. 1959/TCHQ-TXNK dated 25 March 2020 issued by the GDC)



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