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#### Response to Covid-19 impact

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### NEW REGULATIONS

#### Resolution No. 84/NQ-CP dated 29 May 2020 of the Government (“Resolution 84”) on solutions to tackle the difficulties for business activities, promote disbursements public investment

Some notable points of the Resolution 84 are as follows:

##### **(1) Policies under the Government’s decision**

- Reduction of annual land rental fee of 2020 by 15% for enterprises, organizations, households, individuals renting land directly from the Government and being affected by Covid-19 pandemic leading to business suspension;
- Reduction of registration fee by 50% for domestically manufactured or assembled automobiles until the end of 2020;
- Deferral of payment deadline of special consumption tax (“SCT”) for the domestically manufactured, assembled automobiles until 31 December 2020 for payable amounts from March 2020; study to amend SCT regulations to support domestic manufacture;

- Treat contributions and support for the Covid-19 pandemic as deductible expense upon Corporate Income Tax (“CIT”) calculation;
- Limit the inspection and audit during pandemic period; do not conduct unplanned audit/inspection; change from pre-audit/inspection to post-audit/inspection.

##### **(2) Other policies under the decision of Standing Committee of the National Assembly, and the National Assembly**

- Reduce the environmental protection tax rate for flight fuel until 31 December 2020;
- Reduce 30% of payable CIT of 2020 for small and micro enterprises.

It is expected that the policies and solutions mentioned above of the Government will be elaborated for implementation under legal documents in the coming time.

Specifically, the Government has recently promulgated the Decree No. 70/2020/ND-CP dated 28 June 2020 to reduce the registration fee by 50% for domestically manufactured/ assembled automobiles, until 31 December 2020. Besides, the Ministry of Finance has posted a Draft Resolution on environmental protection tax for flight fuel on website for public comments.

#### Draft Decree providing detailed guidelines for a number of articles of the Law on Tax Administration (“Draft Decree”)

The Draft Decree includes 09 chapters and 44 articles providing guidelines on: tax declaration and calculation; tax liability imposition; tax refund, exemption and reduction, responsibility to provide information, disclose information about taxpayers, tasks and right of commercial banks, etc.

It is expected that the Draft Decree takes effect from 01 July 2020 at the same effective time as the Law on Tax Administration No. 38/2019/QH14.

### GUIDANCE RULINGS

#### Enforcement of tax inspection/audit activities

In order to improve the quality of tax inspection/audit, on 27 May 2020, the General Department of Taxation officially requested local Tax authorities to focus on following immediate measures:

- Regarding the assignment of audit/inspection teams: the team leader must be a tax officer working in the tax audit/inspection unit, while the main members may be tax officers working in the audit/inspection unit;
- Strictly record the audit/inspection activities in audit/inspection diary as regulated;
- Focus on preparation of data before conducting field audit/inspection at the enterprise, and do not request to provide already available information. Focus on in-depth analysis through Tax authorities’ system to shorten the fieldwork at taxpayer’s office.

*(Official Letter No. 2195/TCT-TTKT dated 27 May 2020 issued by the General Department of Taxation)*

## Corporate Income Tax



### GUIDANCE RULINGS

#### Treatment for donations and charity expenses via Non-Governmental Organization (“NGO”)

When the company donates via NGO, which was established and operated in accordance with Decree No. 12/2012/ND-CP of the Government and granted Business Registration Certificate by the Department of Foreign Affairs – the Ministry of Foreign Affairs, for medical or educational purpose, such donation expense, if qualify conditions under Point 2.23 and Point 2.24, Clause 2, Article 6, Circular No. 78/2014/TT-BTC of the Ministry of Finance, shall be deductible for CIT purpose.

In addition, the donations for charity, humanitarian and study promotion activities of individuals to this organization shall be deducted when calculating Person Income Tax (“PIT”) taxable income.

*(Official Letter No. 43687/CT-TTHT dated 29 May 2020 issued by Hanoi Tax Department referring to Official Letter No. 2011/TCT-DNNCN dated 18 May 2020)*

#### Expenses for prevention of Covid-19 infection for employees which are deductible for CIT purpose

When a company purchases face masks, hand sanitizers, protective accessories and testing service for infectious diseases for employees to prevent Covid-19 infection, such expenses are considered as direct benefit for employees, which aims at improving and enhancing the quality of life for employees, thus, can be treated as deductible expenses for CIT purpose.

In addition, if these expenses specify the name of the beneficiary, they shall be included in the PIT taxable income. Otherwise, if there is no specific beneficiary, no addition to PIT taxable income is required.

*(Official Letter No. 44403/CT-TTHT dated 01 June 2020 issued by Hanoi Tax Department)*

#### PIT expense paid on behalf of foreign individual for global income

The payment of Vietnamese PIT for global income on behalf of expatriates shall be deductible for CIT purpose if the expense meets the conditions in Article 4 of the Circular No. 96/2015/TT-BTC and either assignment letter or agreement between the subsidiary and parent company stipulate that the subsidiary is responsible for the Vietnam PIT of foreign individual.

*(Official Letter No. 40839/CT-TTHT dated 25 May 2020 issued by Hanoi Tax Department)*

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## Transfer Pricing



### NEW REGULATIONS

#### **Decree No. 68/2020/ND-CP to amend to Clause 3, Article 8, Decree No. 20/2017/ND-CP relating to deductible interest expenses for CIT purpose**

On 24 June 2020, the Government enacted Decree No. 68/2020/ND-CP (“Decree 68”) to amend to Clause 3, Article 8, Decree No. 20/2017/ND-CP (“Decree 20”) relating to deductible interest expenses for CIT purpose.

Deloitte would like to summarise below some notable contents:

- Cap of net deductible interest expenses (after deduction of interest income from bank deposits and lending) is 30%;
- Non-deductible interest expense exceeding cap can be carried forward consecutively within the next five (05) years;
- Amendment of CIT return for incremental deductible interest expenses (and reduced CIT payable) in 2017-2018 must be filed before 01 January 2021
- The overpaid CIT liability (including the corresponding late payment interest, if any) shall be offset against the CIT liability over the maximum period of five (05) years, starting from 2020

- If the taxpayers were tax audited or inspected for 2017 - 2018, taxpayers shall request respective local tax authority for adjusting tax liability and corresponding late payment interest for offsetting purpose.

*For detailed information, please refer to our Tax Alert dated 25 June 2020*



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## Value Added Tax



### GUIDANCE RULINGS

#### Payment of Value Added Tax (“VAT”) on imported goods is not allowed to extend due to Covid-19 pandemic impact

Payments of VAT on imported goods is not eligible to VAT payment deferral under the Decree No. 41/2020/ND-CP (due to Covid-19 pandemic impact).

However, if the importer suffers physical damage (with monetary estimation) due to natural disasters, fires or unexpected accidents that directly affect its production and business, the company may request for extending VAT payment deadline pursuant to Clause 8, Article 5 of the Decree No. 12/2015/ND-CP. The eligible VAT deferral amount must arise before the incident and not exceed the value of the damage.

*(Official Letter No. 6399/BTC-CST dated 29 May 2020 issued by the Ministry of Finance)*

#### Promotion programs authorized by a company to the distributors for execution

When a company authorizes distributors to carry out promotions program for customers in the form of “buy product X, get free product Y”:

- When giving promotional goods to the customers, the distributor shall issue VAT invoices which stipulate name and quantity of the goods and clearly indicate that those are promotional goods with nil (0) VAT taxable price; and
- When the company makes payments for promotional goods to the distributors, upon receiving the money, the distributors shall issue VAT invoices at the rate of 10%.

*(Official Letter No. 40840/CT-TTHT dated 25 May 2020 issued by Hanoi Tax Department)*



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## Foreign Contractor Withholding Tax



### GUIDANCE RULINGS

#### Foreign Contractor Withholding Tax (“FCWT”) levied on the transfer of trademark use rights and technology and the Double Taxation Avoidance Agreement (“the Treaty”) application

Foreign contractor’s income from the transfer of trademark use rights and technology is taxed at deemed rate of 10% CIT and 5% VAT on taxable revenue.

The contractor might claim for CIT exemption or reduction under the Treaty if the applicant has no permanent establishment in Vietnam and is the real beneficial owner of the income subject to treaty application for tax relief (the definition of real beneficial owner is determined in accordance with Clause 3, Article 6 and Article 23 of the Circular No. 205/2013/TT-BTC). In addition, if the main purpose of the contracts or agreements between the two parties is to claim tax exemption or reduction of the treaty, the application will be refused.

*(Official Letter No. 1312/CT-TTHT dated 27 May 2020 issued by Hai Phong Tax Department)*



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## Trade & Customs



### NEW REGULATIONS

#### Amended and supplemented criteria for duty incentive schemes for imported automotive spare parts

On 25 May 2020, the Government issued Decree No. 57/2020/ND-CP effective from 10 July 2020. This Decree stipulates that enterprises manufacturing and assembling petroleum and diesel engine vehicles may register 01 (one) or more automotive models under the Duty incentive scheme.

*Kindly refer to Deloitte Tax & Customs alert issued on 04 June 2020 for detailed information.*

#### Regulation on the rules of origin under the EU-Vietnam Free Trade Agreement (“EVFTA”)

On 15 June 2020, the Ministry of Industry and Trade has just released Circular No. 11/2020/TT-BCT with effect from 01 August 2020. The Circular provides guidance on the rules of origin under the EVFTA.

Key points covered in the Circular are:

- Concept of “originating products”;
- Proofs of origin;
- Information presented on the Certificate of Origin (“C/O”);
- Transit and splitting of consignments; and
- Cumulation of origin and insufficient working or processing.

*Kindly refer to Deloitte Tax & Customs Alert issued on 26 June 2020 for detailed information.*

#### Gathering comments on the Draft Circular providing guidance on the Decree on penalties for Customs administrative violations

Some notable contents of the Draft Circular:

- Administrative violations will not be applied when there is no legal base or evidence;
- Incorrect declaration of name and the quantity will be subject to higher level of penalties if no documents are available for supplementary declaration;
- The behavior of "not export or export less than quantity declared" applies to cases where: customs export procedures have been completed; the goods are confirmed as passing through the supervision area; but the goods are not actually exported, or the actual quantity exported is less than the declared quantity;
- When preparation of the customs finalization report, if imported raw materials, supplies, and components, which had been used for production, does not match the actual usage (i.e. actual inventory balance is higher than recorded book), the cause must be clearly identified, otherwise a fine shall be imposed.

#### Deadline of submission and form of C/O for imported goods during Covid-19 pandemic

For customs import declarations registered since the Prime Minister’s Circular on the Covid-19 pandemic dated 23 January 2020 until such time as the Ministry of Finance announces the effective end of the Circular, both C/O with electronic signature/seal and the photo/scan of C/O submitted by the importers could be accepted if the exporting country officially announces the use of such forms.

Customs declarants must submit the original C/O within 180 days since the date of import declaration registration.

Guidance on the timeline for submission of C/O due to the Covid-19 pandemic has also been issued by the General Department of Customs, whereby enterprises are required to check relevant regulation in Circular No. 47/2020/TT-BTC and Official Letter No. 3480/TCHQ-GSQL dated 29 May 2020 for next actions.

*(Circular No. 47/2020/TT-BTC dated 27 May 2020 issued by the Ministry of Finance and effective from 23 January 2020, and Official Letter No. 1651/HQHCM-GSQL dated 05 June 2020 of Ho Chi Minh City Customs Department, Official Letter No. 3483/TCHQ-GSQL dated 28 May 2020)*

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## Trade & Customs



### GUIDANCE RULINGS on Certificate of Origin

#### Websites for checking C/O information of form D, E, AK, AI, AANZ and AJ

The General Department of Customs has recently guided provincial Customs authorities to access official websites to check that C/O forms for imported goods, were issued by the competent authorities in exporting countries as follows:

- C/O form D, E, AK, AI, AANZ and AJ with electronic seal and signature issued by Indonesia from 01 April 2020 at <http://e-ska.kemendag.go.id>;
- C/O form AI with electronic seal and signature issued by India from 01 April 2020 at <http://Coo.dgft.gov.in>;
- C/O form D issued by Malaysia from 13 April 2020: at <http://newepco.dagangnet.com.my>;
- C/O form E: at <http://origin.customs.gov.cn> and <http://check.ccpiteco.net>.

Checking of other C/O forms shall follow guidances in Circular No. 38/2018/TT-BTC (amended and supplemented in Circular No. 62/2019/TT-BTC) and Circulars guiding rules of origin by the Ministry of Industry and Trade.

*(Official Letter No. 3480/TCHQ-GSQL dated 29 May, 2020 issued by the General Department of Customs)*

#### Minor differences between electronic and paper versions of C/O Form D are acceptable

Customs authorities shall accept electronic C/O without verification with C/O issuing authorities in the exporting country, in the following cases:

- Electronic C/O uses the electronic unit code table (H87, B34, etc.) while the paper version uses normal one (units such as pcs, tons, etc.);
- The electronic and paper C/O have same the information although information could appear in different cells within the two formats;
- Electronic C/O having more information than paper version as electronic C/O requires more detail declarations;
- For C/O with commercial invoices issued by third parties, the electronic C/O shows both invoices in the box No. 10 (manufacturer's invoice and third parties' invoice) while the paper version only declares the third parties'.

*(Official Letter No. 3229/TCHQ-GSQL dated on 19 May 2020 issued by the General Department of Customs)*

#### on Export Processing Enterprise

#### Conditions of customs supervision for Export Processing enterprise ("EPE") qualification

For EPEs that have completed the construction of factories and ready for operation, the Customs Sub-Departments would inspect to check that the following conditions have been met:

- Hard fence surrounding, separated from the outside area;
- Surveillance camera systems clearly display images of goods entering and leaving the site. The camera system needs to be connected with customs management system and the daily supervised data (24h/day) should be archived in the company for at least 12 months.
- The data system of the EPE applicant is capable of managing imported materials used in the manufacturing of goods for export, and could generate data of materials, as well as finished products, for customs finalization reporting purpose.

*(Official Letter No. 3778/TCHQ-GSHQ dated 09 June 2020 issued by the General Department of Customs)*

#### Treatment of an EPE's imported goods, which have been destroyed by fire

To determine the appropriate treatment where an EPE's imported goods, that have enjoyed duty exemption, are destroyed in a fire, Customs authorities shall check relevant documents and conduct physical inspection of the fire to determine the actual quantity of destroyed goods. When the Customs authorities have sufficient grounds to determine that the declared information is consistent with actual destroyed goods, they shall accept the declaration and transfer inspection conclusions to the local Sub-Departments of Customs for subsequent supervision.

If Customs authorities discover that incorrect information has been provided by the EPE on the quantity and type of goods destroyed in the fire, and it is evidenced that the EPEs are taking advantage of the fire to sell goods to domestic market, or other violations, then the EPE enterprise shall be subject to penalties under current regulations on tax administration.

*(Official Letter No. 3232/TCHQ-TXNK dated 19 May 2020 issued by the General Department of Customs)*

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## Trade & Customs



### GUIDANCE RULINGS

#### *on Export Processing Enterprise (cont.)*

##### **EPE is not entitled to VAT refund**

Article 4 of the Law on VAT regulates that “VAT payers” are organizations, individuals producing, trading or importing goods or services subject to VAT.

Under Clause 1, Article 19, Circular No. 219/2013/TT-BTC, those who are subject to VAT refund must be “taxpayer”.

EPE is not VAT payer, so it shall not be subject to VAT refund.

*(Official Letter No. 1811/TCT-CS dated 08 May 2020 issued by the General Department of Taxation)*

##### **Whether Customs values could be reduced following a re-negotiation of the price**

The transaction value must be the actual price paid or will be paid directly or indirectly to the seller or a third party as designated by the seller in normal trading conditions and competition.

When goods are given discounts due to the Covid-19 pandemic and the imported goods are on the risk management list, the Customs authority should implement price consultation at the time of import. The importer must prove, and provide the necessary dossiers and documents for the goods, to evidence the re-negotiated price.

*(Official Letter No. 1548/HQHCM-TXNK dated 26 May 2020 issued by Ho Chi Minh City Customs Department)*

##### **Customs value of temporarily imported borrowed goods**

When customs declarants import machinery, equipment and spare parts from foreign business partners, either as temporary imports under long-term service contracts, or for maintenance and re-export after completion, the customs declarants shall pay import duty on the machinery, equipment and spare parts.

The values of such imported goods, on which import charges will be assessed, will be total expenses that the importer must pay to deliver goods to the first border gate of importation, supported by documents related to temporarily imported goods, as required under Clause 9, Article 1, Circular No. 60/2019/TT-BTC.

*(Official Letter No. 3143/TCHQ-TXNK dated 14 May 2020 issued by the General Department of Customs)*

### *Others*

#### **Definition of “Customs Sub-Department other than those at border gates” when determining the location of customs declaration registration**

“Customs Sub-Department other than those at border gates in the location of the enterprise’s headquarter or the place to which goods is delivered” includes: the Customs Sub-Department which is established in the mainland in the location that the enterprise’s headquarter is located or the place where goods is delivered; Sub-Department of Customs at border gates (either at the border gate of imported goods or of other goods) in the location that the enterprise’s headquarter is located or the place where goods is delivered.

*(Official Letter No. 3120/TCHQ-GSQL dated 14 May 2020 issued by the General Department of Customs)*



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## Trade & Customs



### GUIDANCE RULINGS

#### Others (cont.)

##### Use of electronic invoices for exported goods

From 01 November 2020, or when Tax authorities announce the implementation of electronic invoice, in accordance with Decree No. 119/2018/ND-CP and Circular No. 68/2019/TT-BTC, the use of electronic invoices must be in accordance with the above Decree. Accordingly, enterprises are required to use electronic VAT invoice or electronic sales invoice when exporting goods and services (including processing for exports).

*(Official Letter No. 2061/TCT-CS dated 19 May 2020 issued by the General Department of Taxation)*

##### Used molds are not covered by the application of Decision No. 18/2019/QD-TTg

Imported molds which are classified under HS code 8480.71.10 (i.e. shoes sole) and in the form of a metal block assembled from two steel components, incapable of self-operating or moving, are not covered by the scope of Decision No. 18/2019/QD-TTg – which guides on age and quality of used goods.

*(Official Letter No. 1441/BKHCN-DTG dated 20 May 2020 issued by the Ministry of Science and Technology)*

##### Exemption from Customs administrative penalties due to the impact of Covid-19 pandemic

To be considered for exemption of customs administrative penalties, the Company must prove that all necessary measures have been applied but cannot prevent the act of violation.

*(Official Letter No. 3569/TCHQ-PC dated 03 June 2020 issued by the General Department of Customs)*

##### Guidance on use of foreign codes or barcodes on export goods

Many companies when manufacturing/processing for export are required, by their foreign contracting companies, to pre-print codes and barcodes in products prior to export.

Customs authorities will not impose administrative penalties on the use of such foreign codes or barcodes for export goods, as it is the responsibility of exporters to ensure validity of such codes used on the goods exported.

Customs authorities may request exporters to prove the valid use of such foreign codes/barcodes, by providing relevant power of attorney, letter of authorization, processing contract, electronic mail or other forms of authorization internationally recognized, signed and stamped by the exporter.

If Customs authority find out that the exporters do not have such written authorizations to certify or authorize the use of foreign codes, Customs will notify the case to the General Department of Standardization, Metrology and Quality for their consideration.

*(Official Letter No. 3776/TCHQ-GSQL dated 09 June 2020 issued by the General Department of Customs)*

##### Customs procedures and customs supervision for transited goods changing transportation means

Under Point 9, Clause 19, Article 1, Decree No. 59/2018/ND-CP, for the purpose of customs control on import/export goods, location for transloading or changing of means for goods transportation is allowed at: the ports of entry, ports of exit, bonded warehouses, container freight stations, venues for handling customs procedures at the inland ports of entry or exit (depot), inspection and supervision areas for cargos shipped through postal service or express delivery services.

*(Official Letter No. 3376/TCHQ-GSQL dated 26 May 2020 issued by the General Department of Customs)*

##### Conditions for VAT exemption on imported agricultural machinery and equipment

In accordance with the prevailing regulations, machinery and equipment specialized for agricultural production are subject to “non-VAT treatment” where they satisfy the principle of being “synchronous machines, equipment, and accessories used for assembly into machinery and equipment for agriculture use and cannot be used for other purposes.”

When the imported machinery and equipment is not clearly stipulated under Clause 2, Article 1, Circular No. 26/2015/TT-BTC, then in order to apply “non-VAT treatment” the enterprise is required to have a written certification from the Ministry of Agriculture and Rural Development or at provincial level, confirming that the machine can only be used in agriculture and cannot be used for other purposes.

*(Official Letter No. 3690/TCHQ-TXNK dated 05 June 2020 issued by the General Department of Customs)*



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