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Response to Covid-19 impact

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2. New direction of General Department of Taxation on the implementation of the inspection and examination plan in 2020

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NEW REGULATION

Draft Decree to extend tax payment and land lease fee payment deadline

1. Applicable entities include:

(i) Enterprises, individuals and households deemed to be impacted, and doing business in the following economic sectors:

- Agriculture, forestry and fishery;
- Manufacturing and processing food; Weaving; Producing costumes, shoes; Producing rubber products; Producing electronic products, computers; Manufacturing and assembling cars (except for cars with 09 seats or less);
- Transportation (rail, road, water and air transport); Warehousing and support activities for transportation;
- Hospitality and catering services;
- Travel agents, tour operators and support services related to tourism promotion and organization;
- Education and training; health and social assistance activities;
- Creative arts and entertainment activities; sports activities; botanical and zoological gardens and nature reserves activities; activities of amusement parks and theme parks; motion picture projection activities.

(ii) Small and micro sized enterprises under the Law on supporting small and medium sized enterprises ("SMEs") No. 04/2017/QH14 and Decree No. 39/2018/NĐ-CP.

2. Extension of tax payment and land lease fee payment deadline:

- i. (For qualified enterprises and organizations: extend the payment of Value Added Tax ("VAT") up to 05 months, apply for the declaration period from March to June (for monthly declaration) and from Quarter I to Quarter II (for quarterly declaration); extend the remaining payable Corporate Income Tax ("CIT") of 2019 finalization (in case taxpayer already paid, this amount is allowed to be offset with other tax types) and quarterly payable CIT for Quarter I and Quarter II.
- ii. (For qualified individual, group of individuals and household doing business: Extend the payment deadline of payable VAT, Personal Income Tax ("PIT") incurred in 2020 until before 15 December 2020.
- iii. Extend the payment deadline of land lease fee up to 05 months but no later than 31 October 2020 for payable amounts in the first period of 2020.

3. Procedure to application of payment deadline extension

- Those businesses subject to the extension must send the written request for extension of tax payment or land rent payment using the form attached (electronic or other mode selected by taxpayers) to Tax authority at the same time of submission of VAT return but no later than 30 July 2020.

- Tax authorities will not notify the taxpayer who meets the extension requirements of accepting the extension. During the extended period, in case the Tax authority has basis to determine that the taxpayer is not eligible for extension, a written notice must be issued to the taxpayer and the taxpayer must pay the full tax amount and a late payment interest in the extended period.
- During the extension, no late payment of taxes or land rent is charged for the extended amounts (based on the taxpayer's written request for extension).

On 26 March 2020, the Ministry of Finance has submitted this Draft Decree to the Government, which is expected to be effective from April 2020. The Decree will take effects from the signing date.

GUIDANCE RULING

New direction of the General Department of Taxation ("GDT") on the implementation of inspection and examination plan in 2020

In March 2020, the GDT issued an Official Letter to provincial tax departments requesting enforcement of tax audit and inspection in the context that the economy is facing big challenges due to the Covid-19 outbreak with some notable points as follows:

- i. Focus on pre-tax audit/inspection review before conducting field audit/inspection at taxpayer's office, i.e.: request taxpayer to provide necessary documents via email (except that of being submitted to tax authority) in order to shorten tax audit/inspection at taxpayer's office; carry out in-depth analysis to clarify focused content to be audited/inspected;
- ii. Focus on most high-risk enterprises for tax audit and inspection. For enterprises affected by the Covid-19 outbreak, do not conduct audit and inspection yet, and conduct risk analysis to report to superior tax authorities for adjustment of the tax audit and inspection plan;
- iii. No unplanned tax audit and inspection is accepted, except for special cases assigned by superior tax authorities;
- iv. Enforce tax officials to strictly abide by the process of tax inspection and examination, performing completely electronic tax inspection/audit diary according to regulations.



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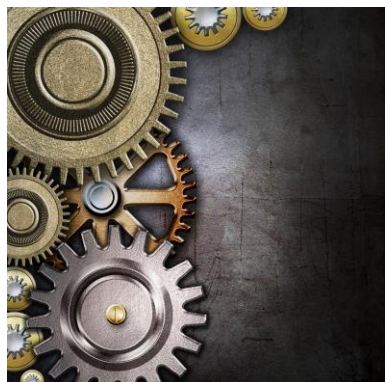
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Corporate Income Tax



GUIDANCE RULING

Tax policy on capital transfer

When a foreign ultimate parent company transfers the capital of another foreign parent company of a Vietnamese enterprise:

- Income of the foreign ultimate parent company could be considered indirect capital transfer activity in Vietnam, and shall be subject to CIT from capital gain on the value of transferred shares generated in Vietnam.
- When the organization receiving capital is also foreign, the Vietnamese entity where the foreign entities invest in shall be responsible for CIT declaration and submission on their behalf.

(Official Letter No. 866/TCT-CS dated 02 March 2020 issued by the GDT)

PIT on Overtime salary and CIT risk

Based on the opinions of the Ministry of Labor, War Invalids and Social Affairs in Official Letter No. 4038/LDTBXH-PC dated 16 September 2019: When computing overtime wages, the number of overtime hours must be calculated according to provisions of the Labor Code (Article 106), which is: maximum of 200 hours for regular case; and not more than 300 hours for special cases. Overtime exceeding the above-mentioned permissible level is considered law violation.

Consequently, the proportion of income from salaries and wages paid for night shift and overtime working which is higher than the salary during normal working days and does not exceed the above level shall be exempted from PIT.

(Official Letter No. 4641/TCT-DNNCN dated 12 November 2019 issued by the GDT)

From CIT perspective, though the Official Letter does not mention about CIT treatment, we are aware that, in case of being viewed as illegal activities, conservatively the corresponding overtime expenses might be at risk of non-deductible expenses.

Tax policy on compensation for damaged, wasted or lost goods

Where the company signs a contract on leasing construction equipment from suppliers for production and business activities; during the process of preservation, using, there is damage or loss of equipment due to the fault of the company, and it must be compensated in cash to the supplier (specified in the contract), then:

- When damaged construction equipment is returned to the supplier, the compensation amount for this damage is not subjected to VAT. When receiving the amount the supplier issues the receipt voucher (no invoice), the company issues the payment voucher. The payment voucher and the minutes prepared by the two parties (the minutes determine the value of damaged goods subject to compensation) are the basis for the company to calculate the deductible expenses when determine taxable income.
- When the construction equipment is stolen and unable to be returned, the supplier must issue invoice to the company. Expenses related to lost or stolen equipment are excluded from deductible expenses when determine taxable income.

(Official Letter No. 13316/CT-TTHT dated 11 November 2019 by the Ho Chi Minh city Tax Department)



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Personal Income Tax and Labour



GUIDANCE RULING

Employees' benefit by joining a tour with the clients are subject to PIT?

When employees join a tour together with the company's clients, then depending on whether the nature of the trip is for a business purpose, or for a personal benefit, it will be treated as non-taxable or taxable respectively.

When the trip is considered by the company as being for a business purpose, and in order for the benefit to be treated as a non-taxable item, the company should retain sufficient supporting documents, to include, but not limited to: decision of the business trip, travel paper, business trip report, etc..

(Official Letter No. 872/TCT-CS dated 02 March 2020 by the GDT)

No regulations on the penalties toward late submission of application dossiers for PIT exemption for the foreign experts working under ODA projects

Under the prevailing tax regulations, there is no specific clause regulating the penalties on late submission of application dossiers for PIT exemption for foreign experts working under ODA projects.

However, where foreign experts have taxable income; wish to enjoy PIT exemption; but have not yet submitted the exemption dossiers, then the project owner or the contractor (the company) is responsible for notifying their local Tax authorities regarding PIT exemption cases of such experts working under ODA projects.

In addition, the project owner or the contractor (the company) should lodge the PIT exemption dossiers as soon as possible in order to avoid refusal by the Tax authorities. In case the exemption dossiers are unapproved by the Tax authorities, but the exemption has been made already, the late submission penalties and late payment interests will be imposed when declaring PIT back date.

(Official Letter No.10268/CT-TTHT dated 09 March 2020 by the Hanoi Tax Department).



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Value Added Tax

GUIDANCE RULING

VAT input of project having output not subject to VAT

A company which has an investment project which produces product/service not subjected to VAT, then input VAT of such project shall not be creditable or refundable, but instead should be accounted as expenses or included in the historical cost of fixed assets for CIT calculation.

(Official Letter No. 986/TCK-KK dated 10 March 2020 issued by the GDT)

Company temporarily suspends operation, but has not closed Tax ID, is not allowed to purchase invoice from the Tax authority

A company which temporarily suspends its operation but has not closed its Tax ID is not allowed to purchase invoices from the Tax authority. If the company, after being dissolved, bankrupted, has finalized its tax obligation, or closed its Tax ID and need invoices to deliver to the buyer when liquidating its assets, the company can purchase sale invoices from the Tax authorities.

(Official Letter No. 923/TCT-CS dated 05 March 2020 issued by the GDT)

Using invoice when exporting (before and after receiving notification of transfer to electronic invoice)

When a company exports goods and services, but the Tax authority has not notified the company to use electronic invoice in accordance with Decree No. 119/2018/ND-CP, the company shall issue only commercial invoices for its export activities.

(Official Letter No. 9092/CT-TTHT dated 02 March 2020 issued by the Hanoi Tax Department)

When a company has been notified by the Tax authority to use electronic invoices, in accordance with Decree No. 119/2018/ND-CP, the company is allowed to use both commercial invoices and electronic VAT invoices when exporting goods and services.

(Official Letter No. 6281/CT-TTHT dated 19 March 2020 issued by the Binh Duong Tax Department)



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Foreign Contractor Withholding Tax



GUIDANCE RULING

VAT policy for domestic subcontractors implementing ODA projects and concessional loans:

- Vietnamese subcontractors providing goods and services to the main contractor of ODA projects and concessional loans are required to pay VAT, CIT and other taxes, charges and fees in according with tax laws, charges, fees; and not entitled to input VAT refund which has been paid for purchased goods and services to supply to such projects.
- Vietnamese subcontractors may deduct input VAT of goods and services used for production and business activities subject to VAT in case it meets the conditions stated in Clause 10, Article 1, Circular No. 26/2015/TT- BTC by the Ministry of Finance.

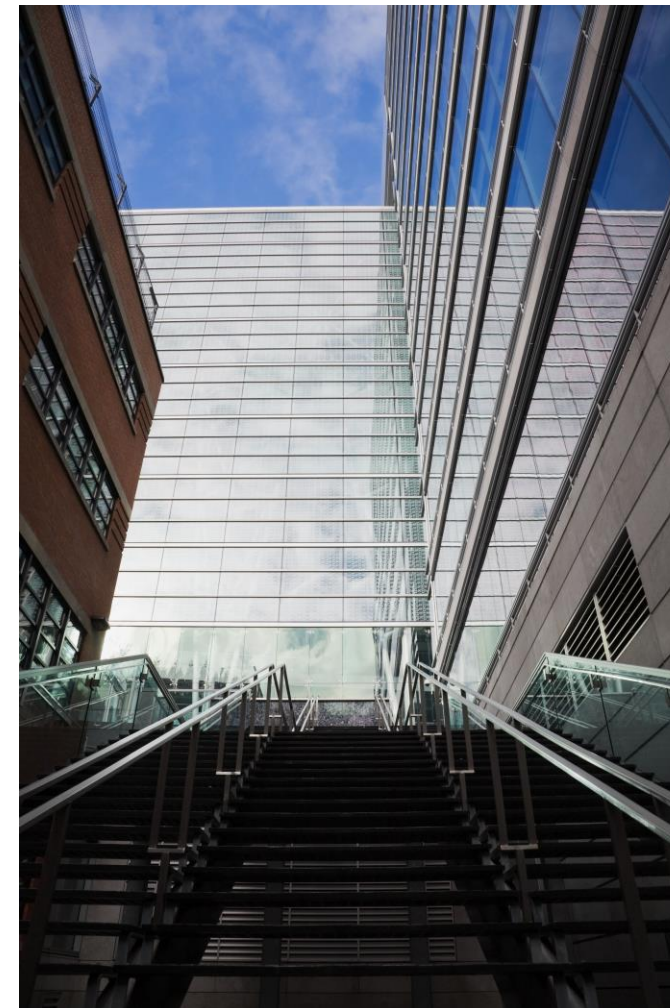
(Official Letter No. 9936/CT-TTHT dated 06 March 2020 by the Hanoi Tax Department)

Withholding tax policy for foreign enterprises earning income from guarantee activities for Vietnamese enterprises borrowing capital

If a foreign enterprise fails to meet any of the requirements mentioned in Article 8, Section 2, Chapter II, Circular No. 103/2014/TT-BTC, the Vietnamese enterprise shall pay VAT and CIT at deemed rate on taxable revenue on their behalf (i.e. 5% VAT and 5% CIT on taxable revenue).

When the income from the guarantee fee of foreign enterprises is eligible for tax exemption or reduction under the Agreement on avoidance of double taxation between the two countries, the Vietnamese enterprise shall send the dossier according to the instructions stated in Point b.2, Clause 3, Article 20, Circular No. 156/2013/TT-BTC to the local Tax department for further consideration.

(Official Letter No. 10266/CT-TTHT dated 09 March 2020 by the Hanoi Tax Department)



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Trade and Customs



GUIDANCE RULING

Apply CPTPP preferential tariff rates on goods purchased and sold through different parties

Regarding information on customs declaration form in the last import country (Japan in this case), the below points should be considered:

- i. the provision on the format and information indicators on Vietnam's customs declarations do not apply to Japanese import declarations. Therefore, the declaration of importing goods into Japan without showing the reference of commercial invoices is not a rationale for refusing the validity of the declaration.
- ii. in case that Vietnamese goods are sold to Japan through intermediaries, there might be a number of commercial invoices issued by the seller(s). Therefore, the fact that the commercial invoice number on the import declaration into Japan is different from the invoice number on the export declaration from Vietnam is not a rationale for refusing the enjoyment of CPTPP tariff rates.

Regarding the sale of goods through intermediaries: the sale of goods through different parties does not affect the application of CPTPP, if the goods traded by the parties have proof of being imported into member countries of the CPTPP, then they are eligible to apply CPTPP tariff rates.

(Official Letter No. 1570/TCHQ-TXNK dated 13 March 2020 of the GDC)

Administrative penalty will not be imposed where the label on imported goods does not contain sufficient mandatory information

Administrative penalty shall not be imposed where in cases the original label of the imported goods does not contain sufficient mandatory information as specified in Decree No. 43/2017/ND-CP.

This Official Letter replaces the guidance at Point d.2.6, Clause 1.1, Part III.1, Official Letter No. 5189/TCHQ-GSQL dated 13 August 2019; the second bullet point of Official Letter No. 763/TCHQ-PC dated 11 February 2020.

(Official Letter No. 1512/TCHQ-PC dated 11 March 2020 of the GDC)

Strengthening the review of imported petroleum products with fraudulent HS codes and tariff rates

The General Department of Customs ("GDC") has issued an Official Letter requiring all Customs departments to review all cases of incorrect declaration in HS codes and tariff rates for gasoline, solvents, Ron stimulants and colorants based on the centralized management database, in order to detect fraudulent cases in their declarations, impose and collect taxes.

(Official Letter No. 1313/GSQL-GQ2 dated 04 March 2020 of the GDC)

The ATIGA tariff rate would not be applied to on-spot imported goods under designation of foreign partners

Pursuant to Clause 1, Article 35 of Decree No. 08/2015/ND-CP, on-spot import including: (i) processed goods for foreign countries delivering goods as designated in Vietnam, (ii) goods import goods from the free-trade zone ("FTZ") into the domestic and (iii) goods traded with foreign traders but designated for delivery in Vietnam.

Nevertheless, under Article 4 of Decree No. 129/2016/ND-CP, for on-spot imported goods, only goods imported from the FTZ into the domestic are eligible for ATIGA. Accordingly, on-spot import and export goods as designated by foreign traders and not from the FTZ are not entitled to ATIGA tariff rates.

(Official Letter No. 1569/TCHQ-TXNK dated 13 March 2020 of the GDC)

Customs procedures for goods subject to specialized inspection

Where goods are subject to pre-clearance specialized inspection, the goods would be allowed for clearance if the company finished the customs procedures and one of the conditions under Point a, b or c, Clause 1, Article 23, and Point a, b or c, Clause 1, Article 24, Decree No. 85/2019/ND-CP is satisfied.

For goods requiring an application of quality control under Point b, Clause 2a, and Point b, Clause 2b, Article 7, Decree No. 132/2008/ND-CP (amended at Clause 3, Article 1, Decree No. 74/2018/ND-CP), the company is not required to submit the hard copy. Customs authority shall check and reconcile by themselves in the Single Window for customs clearance.

If the actual import quantity is in excess of the amount declared in the customs declaration but such imports are identical goods from the same importer, of the same origin and manufacturer and transported by the same vehicle with the same bill of lading and the inspection result is qualified, the declarant may make additional declaration based on the actual quantity.

(Official Letter No. 1438/TCHQ-GSQL dated 10 March 2020 of the GDC)



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