



Some key points of the newsletter include:

Tax Administration

1. Directions of the Ministry of Finance for developing tax audit and inspection plan in year 2021;

Personal Income Tax

1. Trade discounts and payment discounts are subject to Personal Income Tax;
2. Quarantine expenses are subject to Personal Income Tax;

Corporate Income Tax

1. Applying 30% Corporate Income Tax reduction for tax year 2020 for enterprises having financial year which is different from calendar year;
2. Corporate Income Tax and Personal Income Tax implications for organizing a contest;
3. Tax treatment on employment cost and other expenses incurred due to Covid-19 pandemic;
4. Corporate Income Tax treatment for payments to retain employees upon contract suspension due to Covid-19 pandemic's influences;

Value Added Tax

1. Only allow to refund overpaid Value Added Tax (due to wrong payment by mistake) in case there is no Value Added Tax payable obligation in the next 6 months since such overpaid Value Added Tax amount incurs;
2. Total value of project transfer would subject to 10% Value Added Tax in case the value of project for manufacturing goods subject to Value Added Tax and those for manufacturing Value Added Tax - exempted goods cannot be separated;

Foreign Contractor Withholding Tax

1. Foreign Contractor Withholding Tax treatment for the company using bonded warehouses;
2. Foreign Contractor Withholding Tax treatment on income from providing online training course of foreign contractor;

Trade & Customs

1. Exemption from Import duty for subcontracting processing goods of export processing contract;
2. Import duty/ Value Added Tax treatment for inventory gaps;
3. Examination of EUR.1 application dossiers for goods exported before the EVFTA came into effect.

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Tax Administration



TAX PERFORMANCE

Tax performance in first 10 months in 2020, with some notable points as follows:

Result of the first 10 months:

- The accumulated revenue of the first 10 months was VND 979,724 billion, equal to 78.1% of the 2020 plan, and equal to 93.9% compared to the same period in 2019.

Tax audit/inspection status:

In the first 10 months of 2020, Tax authorities at all levels have carried out 60,748 cases at the taxpayer's site and 521,605 cases through desk-tax audits. The total amount of tax treatment through the audits and inspections is VND 51,308.7 billion, equal to 115.9% compared to the same period in 2019, of which:

- Increase of tax collection: VND 15,246.1 billion, equal to 124.96% compared to the same period in 2019;
- Total tax amount paid to the State budget: VND 8,052.7 billion, equal to 100.12% compared to the same period in 2019;
- Transfer pricing audit: audited 263 enterprises; increased taxable income: VND 4,190.71 billion; reduced losses: VND 9,042.61 billion.

Directions of the Ministry of Finance and the General Department of Taxation for the implementation of 2020 plan in the remaining months:

- Strengthen management of tax collection, combat tax loss and transfer pricing;
- Strengthen handling of tax debts and other collection (e.g. late payment and interest, fines, etc.); strictly review for cases of tax refund;
- Continue to strengthen tax audit and inspection, especially focus on enterprises who have been inspected but the process is not completed;
- Continue to develop and complete the provisions of tax law, especially the provisions on tax administration for e-commerce activities. Notably, recently, the Government has issued new Decrees No. 123/2020/ND-CP, No. 125/2020/ND-CP, No. 126/2020/ND-CP guiding Law on Tax Administration 2019 and relevant content and Decree No. 132/2020/ND-CP replacing Decree No. 20/2017/ND-CP on transfer pricing.

Directions of the Ministry of Finance for developing tax audit and inspection plan in 2021

Under the directions of the Ministry of Finance, tax audit and inspection plan in 2021 of the General Department of Taxation and the General Department of Customs shall be developed and implemented to focus on the following topics:

Tax:

- Enterprises with high tax risks;
- Audit/inspection to prevent tax loss and tax violations;
- Enterprises in the business lines with high potential for tax revenue;
- Specific industries, e.g. online business, multi-level sales, game business, businesses with transactions on capital/brand/project transfer;
- Transfer pricing: enterprises with related-party transactions accounting for a large proportion, losses for years or lower reported profits compared to peers in the same industry.

Customs:

- The compliance with the laws on Customs and Taxation;
- Specific industries, such as:
 - Enterprises with tax, customs dossiers which have passed the deadline for post-customs clearance inspection; enterprises have been audited at their sites but detected signs of violation;
 - Enterprises import raw materials for production, export and processing for foreign enterprises;
 - Enterprises in the sectors eligible for tax exemption with high risk;
 - Enterprises import components for production and assembly of automobile, components for production of auto components that are eligible for tax refund under the provisions of Clause 2, Article 1 and Clause 3, Article 2, Decree No. 57/2020/ND-CP.

(Official Letter No. 12997/BTC-TTr issued by the Ministry of Finance on 22 October 2020)



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Personal Income Tax



GUIDANCE RULINGS

Declaring Personal Income Tax ("PIT") according to the new family deduction and HTKK software

Hanoi Tax Department notes the General Department of Taxation has upgraded the new version of HTKK that meets Resolution No. 954/2020/UBTVQH14 allowing to apply new family deduction from 01 January 2020. Accordingly, the system has updated the new deduction rate for a personal relief of VND 11 million per month and a dependent deduction VND 4.4 million per month.

Hanoi Tax Department has also given specific guidance for the foreign employees who have been present in Vietnam for more than 183 days in 12 consecutive months, the first tax year would not be calendar year accordingly. The first tax year is 12 consecutive months from the date of arrival in Vietnam, and the second tax period is from 01 January to 31 December (Point a, Clause 1, Article 6, Circular No. 111/2013/TT-BTC).

(Official Letter No. 93619/CT-TTHT dated 26 October 2020 of Hanoi Tax Department on PIT declaration)

Trade discounts and payment discounts are subject to PIT

The trade discount paid by the company to an individual (being business individual or non-business individual) if it is not an agent commission or promotion bonus (as prescribed in Articles 92 and 171 of the Commercial Law), is not subject to PIT. Also, the invoices for trade discounts should be complied with the guidance as at Point 2.5, Appendix 4, Circular No. 39/2014 /TT-BTC.

Income arising from payment discount, sales bonus, rather than income from winning prizes or commissions for sale agents as Clause 2, Clause 6, Article 2, Circular No. 111/2013/TT-BTC, would be subject to PIT at the rate of 1%.

For sales agents who authorizes the company to declare and pay tax on such income, the company shall declare and pay tax on behalf of such individual with Form No. 01/CNKD, Appendix No. 01-1/BK-CNKD, Circular No. 92/2015/TT-BTC. The deadline for submission of tax declaration dossiers and tax payment complies with Clause 4 and 5, Article 7, Circular No. 92/2015/TT-BTC.

(Official Letter No. 89923/CT-TTHT dated 09 October 2020 of Hanoi Tax Department on PIT)

Quarantine expenses are subject to PIT

When a company incurs quarantine expenses during the Covid-19 pandemic for foreign experts working in Vietnam to comply with prevailing law, and when these expenses are clearly specified under the name of foreign employees, such expenses should be included in taxable income for PIT purpose as prescribed in Item dd.3.2, Clause 2, Article 2, Circular No. 111/2013/TT-BTC.

(Official Letter No. 97748/CT-TTHT dated 10 November 2020 of Hanoi Tax Department on Corporate Income Tax ("CIT") and PIT for payments to employees during the Covid-19 pandemic)



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Personal Income Tax



GUIDANCE RULINGS (cont.)

PIT for foreign employees who have no labor contract

Foreigner employees not having labor contract earning salaries, remunerations and other income payment from VND 2 million/payment and above would be subject to 10% or 20% on PIT (depending on their tax residence status at the time of income payment, regulated at Point I, Clause 1, Article 25, Circular No. 111/2013/TT-BTC).

At the year end, the foreign employees have to combine all income in the year for PIT finalization purpose as per guidance at Article 21, Circular No. 92/2015/TT-BTC.

(Official Letter No. 89926/CT-TTHT dated 09 October 2020 of the Hanoi Tax Department regarding PIT incurred by foreigners)

Income from foreign capital investment

For Vietnamese individuals who have capital investment income arising overseas, they are not required to pay PIT in Vietnam on this overseas income from capital investment if they are Vietnam tax non-resident under PIT Law.

For those who are tax resident of Vietnam, overseas income from foreign capital investment must be included in taxable income for PIT calculation purpose as prescribed in Clause 3, Article 2, Circular No. 111/2013/TT-BTC.

The determination of Vietnam tax resident or tax non-resident is specified in Clause 1, Article 1, Circular No. 111/2013/TT-BTC, Article 2, Circular No. 119/2014/TT-BTC of the Ministry of Finance.

(Official Letter No. 95846 / CT-TTHT issued by Hanoi Tax Department on 02 November 2020 on PIT policy for income from capital investment)



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Corporate Income Tax



GUIDANCE RULINGS

Enterprise with foreign investment has new investment project in Vietnam – Singapore II Industrial Park (VSIP II) is not entitled to CIT incentive

A foreign invested enterprise had a new investment project which was granted with the Investment Registration Certificate by Binh Duong Management Board of Industrial Zones on 27 April 2020 and has been into operation at VSIP II, Phu Hoa Ward, Thu Dau Mot City, Binh Duong Province. As the location was not within an incentivized area at the time of investment, such investment project is not entitled to CIT incentive by its investment location as provided under Article 6, Circular No. 151/2014/TT-BTC dated 10 October 2014 issued by the Ministry of Finance.

(Official Letter No. 24296/CT-TTHT dated 28 October 2020 issued by Binh Duong Tax Department)

Applying 30% CIT reduction for tax year 2020 for enterprises having financial year which is different from calendar year

The company is entitled to 30% CIT liability reduction for the tax year 2020 if total revenue recorded in the year does not exceed VND 200 billion. In case the company has its fiscal year from 01 July to 30 June of the following year, the tax year 2020 for CIT reduction purpose is determined from 01 July 2020 to 30 June 2021.

(Official Letter No. 24245/CT-TTHT dated 27 October 2020 issued by Binh Duong Tax Department)

Applying 30% CIT reduction for provisional CIT payment, starting from Quarter III/2020

If a company falls under the scope of Article 1, Decree No. 114/2020/ND-CP and has total revenue in 2020 of less than VND 200 billion, the company is entitled to 30% CIT reduction applied for the total CIT liability of the tax year 2020.

Based on the conditions for CIT reductions for 2020, the company self-determines the reduced tax amount for quarterly provisional CIT computation and annual CIT finalization as stipulated under Article 2 and Article 3, Decree No. 114/2020/ND-CP.

(Official Letter No. 91813/CT-TTHT dated 19 October 2020 issued by Hanoi Tax Department)

Tax treatment on allocation of expenses for building the brand-name – trademark

A company incurred expenses for building the its brand (HUG trademark) on tools, packaging, etc., which did not meet the conditions to be recognized as fixed assets. The guidance was that the relevant expenses should be allocated as the company's operating expense but not exceed 03 years.

Such expenses could be treated as deductible expenses for CIT purpose if qualifying the conditions as stipulated in Article 4, Circular No. 96/2016/TT-BTC dated 22 June 2015 issued by the Ministry of Finance.

(Official Letter No. 23987/CT-TTHT dated 26 October 2020 issued by Binh Duong Tax Department)



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Corporate Income Tax



GUIDANCE RULINGS

CIT and PIT implications for organizing a contest

A company organized a contest "Searching for credit scoring solutions in Vietnam - Kalapa Credit Scoring" and the contestants were students, not limited to territories. The guidance given was if this activity is not related to the business activities and does not satisfy the conditions as regulated under Article 4, Circular No. 96/2015/TT-BTC, then the expenses are not deductible for CIT purpose.

The company is responsible for withholding PIT as mentioned under Item g, Clause 1, Article 15, Circular No. 111/2013/TT-BTC for the prize from VND 10 million and above won by the individual.

(Official Letter No. 89928/CT-TTHT dated 09 October 2020 issued by Hanoi Tax Department)

Tax treatment on employment cost and other expenses incurred due to the Covid-19 pandemic

When a company paid salaries, wages and other benefits in nature of wages to employees (during the time of social distancing, waiting for works due to the Covid-19 pandemic impacts) and other expenses in nature of employees welfares, then such expenses are deductible if qualifying the conditions as mentioned in Article 4, Circular No. 96/2015/TT-BTC (amended, supplemented in Article 3 Circular 25/2018/TT-BTC) issued by the Ministry of Finance.

(Official Letter No. 89924/CT-TTHT dated 09 October 2020 issued by Hanoi Tax Department)

CIT treatment for payments to retain employees upon contract suspension due to Covid-19's influences

In order to determine the correct treatment for CIT purposes, in respect of expenses incurred for retaining employees during the time of contract suspension due to Covid-19 impacts, it is necessary to determine whether such expenses are in nature of employee welfare or salary for employment termination.

If the abovementioned expenses are welfare, they are deductible for CIT calculation purpose if the expenses satisfy the conditions under Article 4, Circular No. 96/2015/TT-BTC (in which total of welfares expenses do not exceed 01 month of the actual average salary made in the tax year of the company).

If the payments are in nature of salary for employment termination, they are deductible expenses for CIT purpose if qualifying the conditions under Article 9, Decree No. 218/2013/ND-CP.

(Official Letter No. 4073/TCT-CS dated 28 September 2020 issued by the General Department of Taxation)



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Value Added Tax



GUIDANCE RULINGS

Only allow to refund overpaid Value Added Tax (“VAT”) (due to wrong payment by mistake) in case there is no VAT payable obligation in the next 6 months since such overpaid VAT amount incurs

The noteworthy point of this Official Letter is that the quoted regulations (i.e. Circular No. 156/2023/TT-BTC) does not have specific guidance on considering such period term as a basis to refund overpaid VAT.

(Official Letter No. 3867/TCT-KK 16 September 2020, issued by the General Department of Taxation)

Total value of project transfer would subject to 10% VAT in case the value of project for manufacturing goods subject to VAT and those for manufacturing VAT-exempted goods can not be separated

This Official Letter adopts the principle that the highest VAT rate will apply to the lump sum amount, as there is no separation of each item’s value.

(Official Letter No. 4433/TCT-CS dated 21 October 2020, issued by the General Department of Taxation)



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Foreign Contractor Withholding Tax



GUIDANCE RULINGS

Foreign Contractor Withholding Tax (“FCWT”) treatment for the company using bonded warehouses

The fact a foreign company uses a bonded warehouse as a location to store goods in order to support the international transportation, transit, storage or processing activities conducted by another company would not be considered as being subject to Vietnamese CIT (as part of FCWT).

When a foreign company enters into a processing service contract with a company located in an export processing zone to produce goods; then the finished goods moved to a bonded warehouse for storing and then sell to another overseas customers in the bonded warehouse, the foreign company will be subject to Vietnamese CIT (as part of FCWT).

(Official Letter No. 3997/TCT-CS dated 24 September 2020 issued by the General Department of Taxation)

FCWT treatment on income from providing online training course of foreign contractor

When a company based overseas (foreign contractor) enters into a contract with Vietnamese company and earns income from providing the use right of online training program relating to design, drawings creation, etc., then the foreign contractor is subject to FCWT in accordance with Circular No. 103/2014/TT-BTC issued by the Ministry of Finance.

If granting access right to use this online training program is determined as a transfer of intellectual property rights, as regulated in Law on Intellectual Properties or technology transfer activity per guidance in Law on Technology Transfer, then such income of the foreign contractor is subject to 10% CIT on income from copyright and VAT exemption.

On the contrary, if the granting access right to use this online training program is not determined as a transfer of intellectual property rights as regulated in Law on Intellectual Properties or technology transfer activity per guidance in Law on Technology Transfer, then the foreign contractor is subject to 5% VAT and 5% CIT as a normal service.

(Official Letter No. 81424/CT-TTHT dated 07 September 2020 issued by Hanoi Tax Department)

FCWT treatment on goods in transit through Vietnam territory

Goods in transit through Vietnam territory in compliance with prevailing regulations are not subject to VAT according to Clause 20, Article 4, Circular No. 219/2013/TT-BTC.

If a foreign contractor use bonded warehouses or inland ports (ICD) as cargo warehouses in order to support international transport, transit, border-gate transfer or storage, then the foreign contractor is not subject to FCWT under the Circular No. 103/2014/TT-BTC.

A foreign contractor, earning income from the transfer of goods ownership in form of territorial transition in accordance with current regulations, is not subject to FCWT under Clause 5, Article 2, Circular No. 103/2014/TT-BTC.

(Official Letter No. 85109/CT-TTHT dated 22 September 2020 issued by Hanoi Tax Department)



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Trade and Customs



GUIDANCE RULINGS

Reduced import duty on raw materials imported for processing but are burnt

Imported raw materials being stored at the manufacturing facility are considered to be under customs supervision and if burnt in a fire, the import duty liability can be reduced.

Documents that need to be prepared to apply for import duty reduction include:

- The import declaration of the raw materials burnt;
- Minutes of authorities' certification of damage;
- An accreditation organization's certificate of assessment;
- Certification of insurance agency of non-compensation of duty;
- Other relevant documents as prescribed in Clause 2, Article 32 of Decree No. 134/2016/ND-CP.

The reduced duty amount, if already declared and paid to the Customs authorities, shall be treated as overpaid duty.

Note: If the raw materials imported for processing are burnt, but are sold domestically, then the enterprise must declare and pay import duty/VAT and CIT as per applicable regulations.

(Official Letter No. 12990/BTC-TCHQ dated 22 October 2020 issued by the General Department of Customs)

Exemption from Import duty for subcontracting processing goods of export processing contract

A Vietnamese enterprise signed a processing contract with a foreign trader ("contractor"), has the responsibility to notify any subcontracting contract to their in-charge Custom office before delivering raw materials and supplies to the subcontractor.

If case the contractor is late in sending notification to Customs of the subcontracting contract, but: the subcontractor has a processing facility, and has conducted the processing activities and returned the goods, and those goods have been exported, the contractor is exempt from import duty/VAT imposition. However the contractor may be subject to an administrative penalty, for the delay in notification of the subcontracting contract.

In case the subcontractor does not satisfy the above requirements, the contractor will subject to import duty/VAT and penalty imposition.

(Official Letter No. 6774/TCHQ-TXNK dated 21 October 2020 issued by the General Department of Customs)

Import duty/VAT treatment for inventory gaps

Regarding the positive gap: i.e. the inventory of raw materials and supplies recorded in the company's documents is more than the data reported to the Customs authorities

If the excess raw materials and supplies of the export processing enterprise ("EPE") are still kept at the warehouse and have not been used for domestic sale, then the Customs authority will not impose import duty and/or VAT on these raw materials.

In addition, for management purpose of the above positive gap:

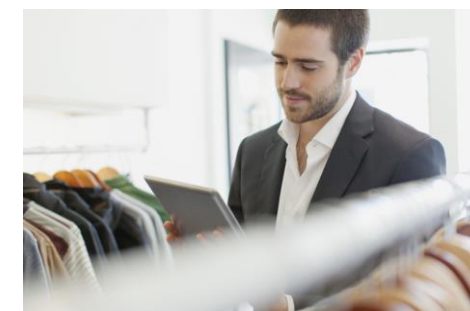
- Customs authorities shall record on the positive gap of raw materials and supplies at the time of audit; and
- EPE has to make a detailed report to the customs authority on the use of raw materials and supplies from the above positive gap into exported products.

If an enterprise is found to have sold those raw materials domestically, or has an action of tax fraud/evasion, then Customs authorities shall impose import duty and VAT according to regulations

Regarding negative gap: i.e. the inventory of raw materials and supplies recorded in the company's documents is less than the data reported to the Customs authorities, import duty/VAT shall be applied to that difference.

Since 05 December 2020, the tax treatment, for the negative or positive gap between materials and supplies imported for export processing/manufacturing compared with the data reported to the Customs authorities, would follow Article 17, Decree No. 126/2020/ND-CP dated 19 October 2020 issued by the Government.

(Official Letter No. 6943/TCHQ-TXNK dated 28 October 2020 issued by the General Department of Customs)



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Trade and Customs



GUIDANCE RULINGS (cont.)

Examination of EUR.1 application dossiers for goods exported before the EVFTA came into effect

EUR.1 applications, where the exported shipment took place within 24 months prior to the effective date of EVFTA: such applications will be closely examined by the local Import and Export Department and applicants are required to fully declare, and submit the following information:

- Name of the means of transport, vessel or flight number, and date of departure;
- Container number and seal (if any).

EUR.1 applications where the exported shipment incurred more than 24 months prior to the effective date of EVFTA: The local Import & Export Departments shall report such applications to the Import and Export Department (the Ministry of Industry and Trade) for their consideration.

(Official Letter No. 1056/2020/XNK-XXHH dated 22 October 2020, issued by the General Department of Customs)

Common customs declaration errors

The General Department of Customs have conducted a review of customs declarations and discovered a number of common errors, namely:

1. Goods have not been fully declared for their names, ingredients, properties, structures, content, etc. to satisfy the criteria for names and descriptions of goods according to the List of Vietnamese exported and imported goods to classify the HS code but still accepted for customs clearance;
2. Multiple consignments have the same description of goods, but with different HS codes have been accepted during customs clearance;
3. Description of goods are not consistent with the declared HS code but still accepted during customs clearance;
4. Official Letters have been issued by the General Department of Customs guiding on applicable HS codes but some Customs departments have not followed the instructions;

5. The declaration of HS code, application of tax rates in the normal Export and Import Tables, and FTA Tariffs are inaccurate;

6. Incorrect declaration of units on the customs declaration

In order to standardize the database of goods classification, ensure the consistent application of HS codes and overcome the above issues, the General Department of Customs requires local Customs to check information relating to the goods and where there are signs of violation to correct appropriately.

(Official Letter No. 7203/2020/TCHQ-TXNK dated 11 November 2020 issued by the General Department of Customs)



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