

Some key points of the newsletter include:

Personal Income Tax

1. Compensation for unlawful dismissal is subject to Personal Income Tax;

Corporate Income Tax

1. Official Letter No. 85106/CT-TTHT dated 22 September 2020 issued by the Hanoi Tax Department regarding Corporate Income Tax on interest income from deposits at bank by a representative office;
2. Official Letter No. 85416/CT-TTHT dated 23 September 2020 issued by the Hanoi Tax Department regarding Corporate Income Tax liabilities of a dependent accounting unit;

Value Added Tax

1. Graphic drawing services in form of PDS format performed by Photoshop software sent to overseas client via electronic mean is considered as export service and enjoy Value Added Tax rate 0%;

Foreign Contractor Withholding Tax

1. Foreign Contractor Withholding Tax levied on the imported goods under Incoterms that sellers bear risks of imported goods inside Vietnam territory;
2. Foreign Contractor Withholding Tax levied on the brokerage fee for deposit services at foreign bank;
3. Foreign Contractor Withholding Tax levied on activity of transferring the ownership right in bonded warehouses;

Trade & Customs

1. Guidance about declaring FOB price on certificate of origin form D issued from 20 September 2020;
2. Guidance on the treatment of overpaid tax when implementing the Decree No. 111/2020/ND-CP;
3. Tax refund for goods imported and then re-exported.

01

Tax Administration

02

Personal Income Tax

03

Corporate Income Tax

04

Value Added Tax

05

Foreign Contractor
Withholding Tax

06

Trade and Customs



Tax Administration



TAX PERFORMANCE

Tax authorities performance in first 09 months in 2020 with some notable points as follows:

Result in the first 09 months:

- Under the impacts of the Covid-19 pandemic, the accumulated revenue of the first 09 months was VND 803,105 billion, equal to 66.4% of the 2020 plan and equal to 93% compared to the same period in 2019.

Tax audit/inspection, refund status:

In the first 09 months of 2020, Tax authorities at all levels have carried out 48,975 tax audit and inspection at taxpayer's office; checked 436,112 cases through tax audits on desk. The total amount of tax treatment through the audits and inspections is VND 39,684 billion, equal to 114.19% compared to the same period in 2019, of which:

- Increase of tax collection: VND 13,267 billion, equal to 138.32% compared to the same period in 2019;
- Total tax amount paid to the State budget: VND 6,664 billion, equal to 104.8% compared to the same period in 2019;
- Tax refund: VND 95,749 billion, equal to 73.7% of the 2020 plan and 99.4% compared to the same period in 2019.



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Personal Income Tax



GUIDANCE RULINGS

Confirming the Personal Income Tax ("PIT") filing responsibility between the company and its branch when required to make adjustment declaration

On 29 September 2020, the General Department of Taxation issued Official Letter No. 4076/TCT-DNNCN on guidance on PIT declaration.

Accordingly, in case the company directly pays salaries to the employees working at the branch, the responsibility for withholding, declaring, paying tax and finalizing PIT belongs to the company, not the branch. If the branch has withheld, declared and paid the PIT (instead of the Company), both of them have to adjust their PIT return according to the provisions of Clause 5, Article 10, Circular No. 156/2013/TT-BTC.

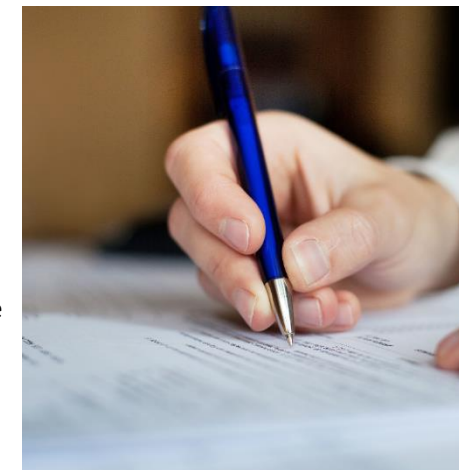
There is no new guidance on handling overpaid tax according to Law on Tax Administration No. 38/2019/QH14

According to Official Letter No. 4182/TCT-KK issued by the General Department of Taxation on 05 October 5, 2020, the Ministry of Finance has not issued legal documents to replace regulations and procedures for handling overpayment of tax, late payment interest, fines in Circular No. 156/2013/TT-BTC. Accordingly, the procedures for handling tax, late payment interest, and fines overpaid currently continue to comply with the guidance in Clause 1 and 2, Article 33, Circular No. 156/2013/TT-BTC.

Compensation for unlawful dismissal is subject to PIT

On 07 February 2020, Dong Nai Tax Department issued Official Letter No. 835/CT-TTHT guiding the PIT policy for compensation due to unlawful dismissal of employees.

Accordingly, the compensation that the company is forced to pay the employee due to unlawful dismissal is not exempt from PIT, so it must be included in the employee's personal taxable income as prescribed.



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Corporation Income Tax



GUIDANCE RULINGS

Official Letter No. 85106/CT-TTHT dated 22 September 2020 issued by Hanoi Tax Department regarding Corporate Income Tax ("CIT") on interest income from deposits at bank by a representative office

On 22 September 2020, Hanoi Tax Department issued Official Letter No. 85106/CT-TTHT related to the determination of CIT when a representative office receives interest income from deposits at bank.

Accordingly, whereby the representative office determines revenue yet could not determine expenses and income of business activities, it shall declare and pay CIT at the rate of 5% on interest income received.

Official Letter No. 85416/CT-TTHT dated 23 September 2020 issued by Hanoi Tax Department regarding CIT liabilities of a dependent accounting unit

On 23 September 2020, Hanoi Tax Department issued Official Letter No. 85416/CT-TTHT related to the determination of CIT liabilities of a dependent accounting unit.

Accordingly, when a company has a factory which is located at a province other than the province where the head office is registered, and the factory is a dependent accounting unit, CIT liabilities to be paid at the province where the factory is set up would be determined by total CIT payable multiplying (x) the ratio of expenses incurred by the factory out of total expenses of the company.



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Value Added Tax

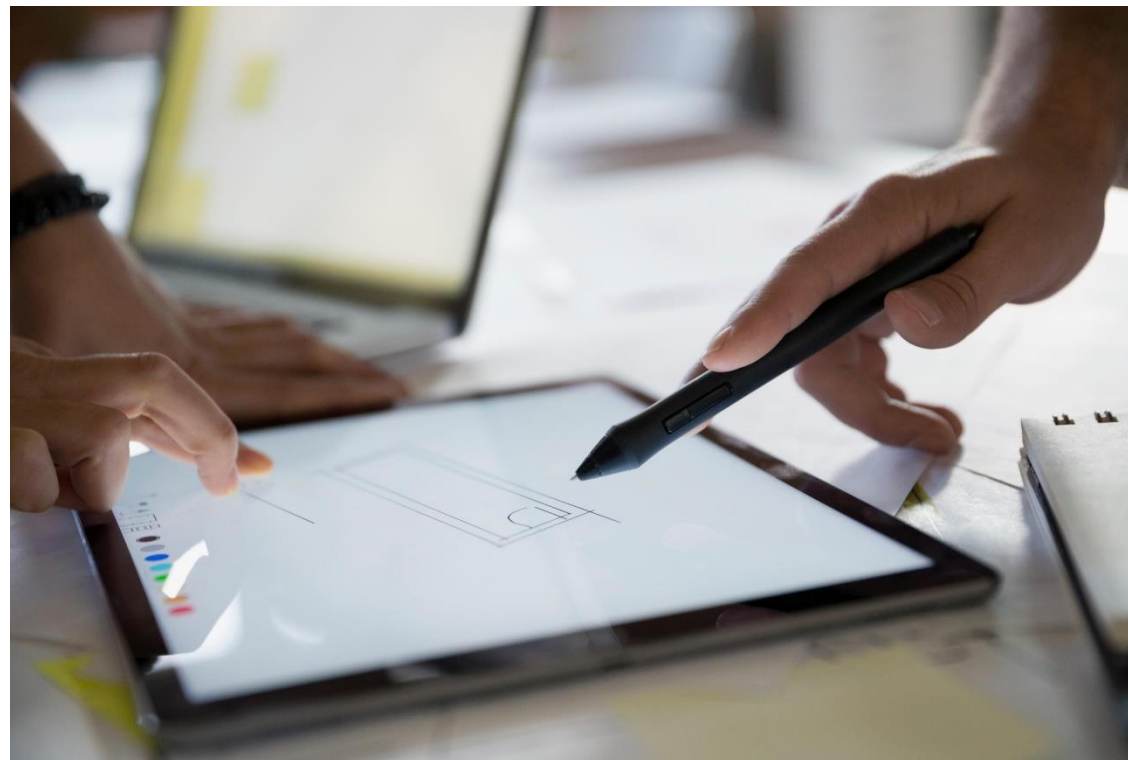


GUIDANCE RULINGS

Graphic drawing services in form of PDS format performed by Photoshop software sent to overseas client via electronic mean is considered as export service and enjoy VAT rate 0%

When a Vietnam company performs graphic drawing services in form of PDS format performed by Photoshop (based on raw penciled version provided by overseas client) and send to overseas client via electronic means, then such service is viewed as an exported service, as the product is used outside of Vietnam territory (being consumed outside of Vietnam territory), and entitled to VAT 0% treatment. The interesting point of this Official Letter is that the Tax authority do not consider the aspect of “performance in Vietnam” as required condition to assess export services.

(Official Letter No. 3705/TCT-CS 09 September 2020, issued by the General Department of Taxation)



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Foreign Contractor Withholding Tax



GUIDANCE RULINGS

Foreign Contractor Withholding Tax (“FCWT”) in terms of upgrading satellite signal system and access services to the image storage

When a foreign contractor does not have a permanent establishment in Vietnam and earns income in Vietnam under the contract to perform on upgrading the satellite signal system and provide access services to the image storage, then that foreign contractor is subject to FCWT of Vietnam.

In particular, FCWT for access services to the image storage is determined as follows:

- If the access services to the image storage is defined as income from royalty, such income would be VAT exempt and subject to 10%-CIT.
- If the access services to the image storage is not defined as income from royalty, such income would be subject to 5%-VAT and 5%-CIT.

Companies should contact the competent authorities on Intellectual Property to seek clarity on whether the provision of access services to the image storage is paid as royalty, for right-to-use or transfer of author right of intellectual property in accordance with Law on Intellectual Property, or not.

(Official Letter No. 79494/CT-TTHT dated 28 August 2020, issued by Hanoi Tax Department)

FCWT levied on the imported goods under Incoterms that sellers bear risks of imported goods inside Vietnam territory

In the event a Vietnamese company imports goods from an overseas vendor (without permanent establishment in Vietnam) under Incoterms that Sellers bear relevant risks relating to such goods inside Vietnam territory, then the foreign vendor is subject to FCWT obligations. In particular,

- VAT:
 - When value of goods portion and service portion are separable, then goods portion is subject to VAT payment at importation stage only while the services portion is subject to 5%-VAT;
 - When the contract value is not separable, then 3%-VAT is applicable to whole contract value.
- CIT: If the foreign contractor delivers goods under Incoterms Delivered Duty Unpaid (DDU) and only charges transportation services to the agreed destination without provision of other

(Official Letter No. 84844/CT-TTHT dated 21 September 2020, issued by Hanoi Tax Department)

FCWT levied on the brokerage fee for deposit services at foreign bank

If a branch of a foreign bank in Vietnam signs contract of hiring with a Korean Partner (the foreign contractor) to provide brokerage services of selling/ providing goods and services of bank in the overseas market, then such brokerage service of the foreign contractor shall not be subject to FCWT in Vietnam.

(Official Letter No. 81005/CT-TTHT dated 04 September 2020, issued by Hanoi Tax Department)

FCWT levied on activity of transferring the ownership right in bonded warehouses

When foreign organizations and individuals (foreign contractors) use bonded warehouses or inland ports (ICD) as cargo warehouses to support international transport, transit, transshipment, or storage of goods, then such foreign contractors are not subject to FCWT in Vietnam.

Additionally, foreign organizations and individuals (foreign contractors) who incur income from transfer of goods ownership right in the form of transit through the Vietnam territory in accordance with the law are not subject to FCWT in Vietnam.

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

FCWT levied on local transportation services

When a company signs a transportation services contract with the foreign contractor to transport goods from abroad to Vietnam including local route, and separates value of transportation services fares of international and inland routes, then the FCWT obligations of the foreign contractor shall be as follows:

- For the goods transportation services from abroad to Vietnam: the foreign contractor is not subject to FCWT in Vietnam.
- For the goods transportation services of local route, the foreign contractor shall pay FCWT at the following rate:
 - CIT: 2% applied on the taxable turnover;
 - VAT: 0% applied if meeting the conditions about the contract and non-cash payment vouchers specified in Clause 2, Article 9, Circular No. 219/TT-BTC dated 31/12/2013 of the Ministry of Finance;

If failing to meet the conditions for 0% VAT rate, then 3%-VAT rate will be applied on the taxable turnover.

(Official Letter No. 2220/CT-TTHT dated 30 July 2020, issued by Hai Phong Tax Department)



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Trade & Customs



GUIDANCE RULINGS

Guidance about declaring FOB price on certificate of origin (“C/O”) form D issued from 20 September 2020

Pursuant to item No. 10, Appendix II issued in accordance with Circular No. 19/2020/TT-BTC, FOB price must be provided in the proof of origin and back-to-back proof of origin only in case:

- The goods are exported from or imported to Cambodia, Indonesia or Laos; and
- The RVC criterion is used to determine the origin of the goods.

This regulation applies to C/O form D issued from 20 September 2020.

(Official Letter No. 1065/XNK-XXHH dated 24 September 2020 issued by the General Department of Customs)

Guidance on the treatment of overpaid tax when implementing Decree No. 111/2020/ND-CP

1. For territories of the European Union

Exported goods with customs declarations have been registered from 01 August 2020: Within 01 year from the date of registration of export declaration, if the customs declarant:

- Submits sufficient supporting documents proving that the goods satisfy the requirements for preferential export tariff treatment under the European Union - Vietnam Free Trade Agreement (“EVFTA”); and

- Has made supplemental declaration.

Then, Customs authority shall handle the overpaid tax according to the provisions of Sub-point c, Point 3, Article 4, Decree No 111/2020/ND-CP and Point 64, Point 65, Article 1, Circular No. 39/2018/TT-BTC dated 20 April 2018.

Imported goods:

- From the member territories of the European Union; The Principality of Andorra; Republic of San Marino or from non-tariff zones in Vietnam to the domestic market; and
- Register customs declarations from 01 August 2020 to before the effective date of the Decree; and
- Satisfy all criteria for preferential import tariff rates application under the EVFTA; but
- The taxpayer made tax payment at a higher rate.

Thus, customs declarant will make additional declarations to enjoy the special preferential import tariff rates under the EVFTA and overpaid tax will be treated according to the provisions of Point 3, Article 6, Decree No. 111/2020/ND-CP and Point 64, Point 65, Article 1, Circular No. 39/2018/TT-BTC dated 20 April 2018.

2. For the United Kingdom of Great Britain and Northern Ireland

The handling of overpaid amount only applies to import and export declarations arising in the period from 01 August 2020 to 31 December 2020.

(Official Letter No. 6283/TCHQ-TXNK dated 24 September 2020 issued by the General Department of Customs)

Regulations on procedures for importing alcohol

1. When implementing customs procedures for food-grade beverage products, the customs declarants need to specify the "alcohol content" on the customs declaration as a basis for applying import management policy.

2. Regarding customs procedures for importing alcohol

- Import dossiers, including:
 - Documents as prescribed in Article 16, Circular No. 38/2015/TT-BTC (amended and supplemented in Circular No. 39/2018/TT-BTC);
 - Alcohol distribution license issued by the Ministry of Industry and Trade for alcoholic products with alcohol by volume (ABV) exceeding 5.5%: 01 copy;

Note: Traders register for the importation and trading of “alcoholic products with ABV less than 5.5%” with district management agency where their headquarter is located. This registration document is not required to be submitted to the Customs authority when completing import procedures.

- Food safety certification.

- Imported alcoholic products must be stamped and labeled according to regulations;
- Alcoholic products can only be imported through international borders.

3. Request the customs declarant to submit sufficient supporting documents in the customs dossiers (especially specialized inspection documents, licenses, etc.) to the system before the Sub-department of Customs receives and reviews the dossiers.

(Official Letter No. 6358/TCHQ-GSQL dated 29 September 2020 issued by the General Department of Customs)



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Trade & Customs



GUIDANCE RULINGS

Tax refund for goods imported and then re-exported

Goods imported and then re-exported in their original status using customs procedure code B13 (export of imported goods) are entitled to import duty refund and not subject to export duty payment.

When imported goods are re-exported in their original status but not using customs procedure code B13, import duty will also be refunded if Customs authority has sufficient basis, relying on re-export declaration, to determine that the exported goods were previously imported, and satisfy the conditions that they have not been used or processed.

Note: When re-exporting the goods, the company must declare on the export declaration, the corresponding import declaration.

(Official Letter No. 6529/TCHQ-TXNK dated 08 October 2020 issued by the General Department of Customs)

NEW REGULATIONS

List of imported goods that are not allowed to be delivered into bonded warehouses

The Prime Minister issued Decision No. 27/2020/QĐ-TTg, to be effective from 15 November 2020, listing imported goods that are not allowed to be delivered into bonded warehouses, including:

- Cigarettes containing leaves of *nicotiana tabacum* with 555 or Esse brands and not originating in Vietnam: HS code 24.02.20;
- Whisky in containers with a capacity exceeding 50 ml and not originating in Vietnam: HS code 22.08.30.00.

With regard to goods moved into bonded warehouses before 15 November 2020, then the bonded warehouse storage period, as per applicable regulation, shall be applied. However, when the approved storage period expires, the goods have to be re-exported through the initial checkpoint of import.

(Decision No. 27/2020/QĐ-TTg dated 21 September 2020 issued by the Prime Minister)

New regulation on administrative penalties for violations in Customs sector

On 19 October 2020, Decree No. 128/2020/ND-CP ("Decree 128"), to revise the administrative penalties for violations of Customs' regulations, was issued and will officially take effect on 10 December 2020

Decree 128 widens the scope of violations that will be subject to administrative penalties and significantly increases the level of penalties that can be applied

For more details about the key contents of Decree 128 and critical changing points, kindly refer to Alert on Trade & Customs of Deloitte released on 26 October 2020.

(Decree No. 128/2020/ND-CP dated 19 October 2020 issued by the Government)



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