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Newsletter
Tax & Customs

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Tax administration

New regulation

Procedures for applying risk management in selection of tax declaration dossiers for tax desk-examination

The General Department of Taxation has issued the Decision No. 98/QD-TCT to guide tax authority (i.e. General Department of Taxation, Tax Department, Tax Sub-Department) about procedures for applying risk management in **selection of VAT, CIT, and Special Consumption Tax (“SCT”) declaration dossiers for purpose of tax desk-examination**. The procedure contains the following steps:

- Collect and process information;
- Develop and use a set of criteria to select tax declaration dossiers having tax risks;
- Evaluate, classify, and process the results of classifying the risk level of tax declaration dossiers;
- Process the list of taxpayers with high risk in their tax declaration dossiers;
- Evaluate the effectiveness of the set of risk management criteria in the selection of tax declarations dossiers and propose solutions to improve efficiency accordingly.

Below are Deloitte’s observations regarding this regulation:

- Decision No. 98/QD-TCT reinforces the viewpoint and trend of strengthening the modernization in the selection of tax declaration dossiers for tax examination at the tax office in recent years, improving the ability to detect, prevent and promptly handle taxpayers who conduct false declarations and tax evasion, contributing to improving the efficiency of tax management.
- The procedures also demonstrate consistency in the tax authorities’ system in collecting, analyzing, and evaluating information on selecting VAT, CIT, and SCT declaration dossiers with notable risks for tax examination at the tax office.
- The improvement in both the quantity and quality of tax desk-examination will increase the probability of switching to tax inspection at taxpayers' premises or will serve as a basis for building tax inspection and tax audit plans following risk management principles for taxpayers who (i) do not explain or provide information and documents as notified by the tax authorities or (ii) explain or make amendments of tax declarations but unable to prove that the declared tax amount is correct.

(Decision No. 98/QD-TCT dated 26 January 2024 issued by the General Department of Taxation)



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Corporate Income Tax

Guidance ruling

Supporting documents for CIT deduction of house rental paid to business households or individuals

In case the company signs a house lease contract with a business household or individual, the business household or individual is not eligible to use electronic invoices when leasing property.

Supporting documents to determine CIT deductible expenses are the house rental contract and rent payment voucher according to point 2.5, clause 2, Article 4, Circular No. 96/2015/TT-BTC.

(The Official letter No. 4852/CTHN-TTHT dated 24 January 2024 issued by Ha Noi Tax Department)

Outstanding tax liability due to late payment by the State budget will be exempted from late payment interest

When the taxpayer provides goods or services which is financed but still owed by the State budget source:

- The outstanding tax liability of the taxpayer is not subject to late payment interest, to the extent that it does not exceed the amount owed by the State budget source;
- The late payment period is counted from the payment deadline to the date the payment is actually settled;
- The company is required to lodge a requesting dossier to the directly managing tax authority for exemption of late payment interest in accordance with regulations.

(The Official letter No. 269/TCT-QLN dated 22 January 2024 issued by the General Department of Taxation)

Income from real estate transfer is not eligible for CIT incentive except for income from leasing houses, infrastructure, and architectural works on land

If the investment projects of the company with business objectives relevant to the real estate business, land use rights belong to the owner, user or tenant, income derived from real estate transfer activities is not eligible for CIT incentive, except for income from leases houses, infrastructure, and architectural works on land.

(The Official letter No. 261/TCT-CS dated 19 January 2024 issued by the General Department of Taxation)

Expense accrual is allowed in corresponding to the recorded revenue from apartment management activity

In case the company has performing activities that require a continuance of fulfilling contractual obligations, has recorded taxable revenue but not incurred sufficient expenses, it is allowed for the company to accrue expenses in corresponding to the recorded revenue in accordance with the regulation in point 2.20, clause 2, Article 4, Circular No. 96/2015/TT-BTC.

(The Official letter No. 3703/CTHN-TTHT dated 18 January 2024 issued by Hanoi Tax Department)

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Indirect Tax

Guidance ruling

Supplement of VAT amounts for refund request is not allowed once the tax declaration of subsequent period has been submitted

If the company submitted VAT return for investment project under form No. 02/GTGT for the 3rd quarter of 2022, amendment of the VAT amount requested for refund of the 2nd quarter of 2022 would not be allowed.

The company can carry the input VAT of investment project, which is not refundable but eligible for deduction, to the VAT return of production and business activities under form No. 01/GTGT pursuant in accordance with provision under the Official Letter No. 4394/TCT-KK dated 24 November 2022 issued by the General Department of Taxation.

(The Official Letter No. 501/TCT-KK dated 06 February 2024 issued by the General Department of Taxation)

Handling error e-invoices by using the adjustment or replacement method

In case the company issues e-invoice following Decree No. 123/2020/ND-CP and Circular No. 78/2021/TT-BTC which contains errors (invoice F0), and subsequently issues an adjusted or replacement invoice (F1 invoice) for the F0 invoice, but errors persist in the F1 invoice then:

- Following the adjustment method: the company issues invoice F2 adjusting invoice F0 (which has already been adjusted by invoice F1), invoice F1 is still valid.
- Following the replacement method: the company issues invoice F2 replacing invoice F1 (invoice F0 has already been replaced by invoice F1), the invoices with errors are no longer valid.

(The Official Letter No. 1907/CTBDU-TTHT dated 26 January 2024 issued by the Binh Duong Province Tax Department)

Issue downward adjusted or replaced invoice for sales return due to inadequate specifications and quality

In case the seller issued an invoice, the buyer has received goods but discovered that the goods do not comply with specifications or quality and must return in part or all of the goods, then:

- The seller issues an invoice for sales return for downward adjustment or replacement of the original invoice.
- The seller and the buyer prepare agreement for sales return following clause 1, Article 4, Decree No. 123/2020/ND-CP.
- The seller amend tax declaration following Article 47, Law on Tax Administration No. 38/2019/QH14 and Clause 4, Article 7, Decree No. 126/2020/ND-CP.

(The Official Letter No. 1909/CTBDU-TTHT dated 26 January 2024 issued by the Binh Duong Province Tax Department)

VAT refund upon a merger

In case the merged company declares VAT under credit method and has incurred an outstanding input VAT amount, such company might claim a VAT refund for such amount upon implementing the merger following Article 1, Circular No. 130/2016/TT-BTC.

(The Official Letter No. 4267/CTHN-TTHT dated 22 January 2024 issued by the Hanoi Tax Department)

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Personal Income Tax

Guidance ruling

Instructions for 2023 PIT finalization

Binh Duong Tax Department remarks notable points of 2023 PIT finalization, which is consistent with provisions previously issued by the tax authorities:

- **Deadline for submitting finalization dossier:** the last day of the 3rd month from the end of the calendar year (i.e. 01 April 2024) for enterprises; the last day of the 4th month from the end of the calendar year (i.e. 02 May 2024) for individuals who perform PIT finalization with the Tax authority directly.
- Salaries and wages paying organization when summarizing dependents on Appendix No. 05-3/BK-PIT should check the implementation of registration with the tax authorities for dependents that employees have authorized the companies to register including checking the quantity of dependents and entitled period for deduction.
- Income-paying organization, which adopt e-tax declarations, shall send electronic tax declaration on the e-tax service system; using HTKK software for declaration and do not have to send hard copies of documents to the tax authorities.
- Individuals, who are subject to direct tax finalization (under form 02/QTT-PIT) on the E-tax service system <http://thuedientu.gdt.gov.vn>, shall have to sign and send hard copies to the tax authorities where the above dossiers are received for tax finalization and tax refund (if any). In case individuals who have been granted electronic tax transaction accounts, it is not required to submit hard copies of tax finalization dossiers to the tax authorities.

(The Official Letter No. 1017/CTBDU-TTHT dated 12 January 2024 issued by Binh Duong Tax Department)

Income paid to foreigners after terminating the working contract in Vietnam is subject to 20% PIT withholding

Foreign individual must carry out PIT finalization upon termination of Vietnamese assignments before leaving Vietnam.

If the company pay taxable income to such individual, after the working contract termination and the individual's finalization of PIT liabilities and departure from Vietnam, flat rate of 20% for Vietnamese tax non-residents will be applied on such income accordingly.

(The Official Letter No. 885/CTQNA-TTHT dated 29 January 2024 issued by Quang Nam Provincial Tax Department)

Income of individual brokers having no labor contract is subject to 10% PIT withholding

In case the company pays brokerage commissions to non-business individuals who do not sign labor contracts or sign labor contracts for less than three (03) months, the income received by the individuals is subject to PIT from salary and wages. The company is responsible for withholding PIT at the rate of 10% for income from 02 million VND each time before paying to individuals.

(The Official Letter No. 4850/CTHN-TTHT dated 24/01/2024 issued by Hanoi Department of Taxation)

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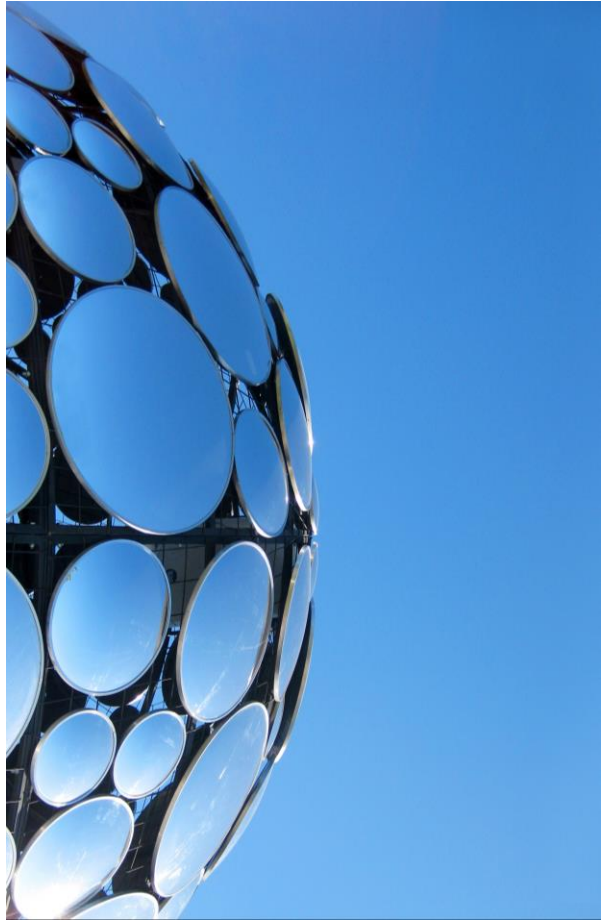
Personal Income Tax

Guidance ruling

Foreigners are required to notify their PIT exemption under the Double Taxation Avoidance Agreement at the same time with the first tax filing

If a non-resident foreigner is entitled to tax exemption/reduction under the Double Taxation Avoidance Agreement (“DTA”), he/she is required to submit a dossier of notice of tax exemption/reduction under the DTA (under form No. 01/HTQT and supporting documents) at the same time with the tax return dossier (under form No. 02/KK-TNCN) of the first tax filing.

(The Official Letter No. 17/TCT-DNNCN dated 03 January 2024 issued by the General Department of Taxation)



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Foreign Contractor Withholding Tax

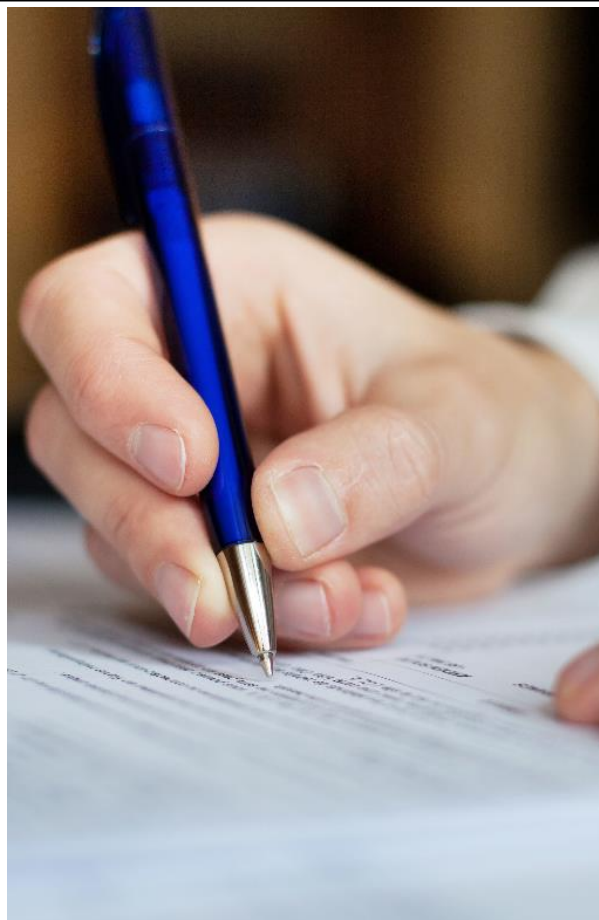
Guidance ruling

Tax invoice declaration of Vietnamese party for advertisement activities in Google

In case a Vietnamese party incurs tax invoices for advertising activities from foreign suppliers:

- Regarding VAT: the invoice issued by Google Asia Pacific Pte. Ltd. (Google) to the company do not qualify as VAT invoices for an organization declaring VAT under the credit method, hence do not meet the conditions for VAT creditability in accordance with regulation.
- Regarding CIT: referring to Official Letter No. 3149/TCT-CS dated 15 August 2018, advertisement expenses paid for in Facebook, Google are deductible if qualifying the conditions including being related to business activities, having legitimate invoices and documents with the company's name, address, and tax code (if the seller does not provide invoices, FCWT declaration and proof of FCWT payment will be required), and having payment voucher following VAT regulations.
- Regarding list of foreign suppliers with e-commerce activities and businesses on digital platforms who have registered for tax in Vietnam: the company can access the Electronic Information Portal for foreign suppliers (<https://etaxvn.gdt.gov.vn/>) to look up the tax registration status of the foreign suppliers.

(The Official Letter No. 296/TCT-CS dated 24 January 2024 issued by the General Department of Taxation)



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Trade & Customs

New regulation

Amendments on Product Specific Rules under The Vietnam – Eurasian Economic Union Free Trade Agreement (“VNEAEUFTA”) and ASEAN – Australia-New Zealand Free Trade Area (AANZFTA)

On 15 January 2024, the Ministry of Industry and Trade issued Circular No. 01/2024/TT-BCT (“Circular 01”) and Circular No. 02/2024/TT-BCT (“Circular 02”) amending and supplementing several provisions on rules of origin for goods traded in the VNEAEUFTA and the AANZFTA, including:

- New Product Specific Rules (“PSR”) applying the HS 2022 version;
- The process of certifying and inspecting the Certificate of Origin (“C/O”);
- The issuance of retrospective C/O form EAV under the PSR applying HS 2022 version for shipments that were exported, delivered from 01 October 2023;
- The acceptance of C/O form EAV issued from 01 October 2023, under the PSR applying HS 2022 version.

The Circular 01 and Circular 02 shall come into effect from 01 March 2024.

(The Circular No. 01/2024/TT-BCT and Circular No.02/2024/TT-BCT dated 15 January 2024 issued by the Ministry of Industry and Trade)

Amendments on risk management regulations in customs operation

On 29 January 2024, the Ministry of Finance issued Circular No. 06/2024/TT-BTC (“Circular 06”) amending and supplementing Circular No. 81/2019/TT-BTC (“Circular 81”) on risk management in customs operation, with some notable points as follow:

- **Providing on the assessment period of customs compliance level of organizations/individuals:** the compliance level of customs declarants shall be assessed on performing import, export and immigration activities within 365 consecutive days before the date of assessment.
- **Re-name of the five (05) customs compliance levels:** Level 1 – Authorized Economic Operator (AEO); Level 2 – Extra high compliance; Level 3 – High compliance; Level 4 – Average compliance; Level 5 – Non-compliance.
- **Update the criteria for classifying compliance levels.**
- **Supplement of provisions on the destruction of scrap and waste monitoring methods based on the risk level, especially for tax-free/non-taxable goods:** direct supervision or using technical equipment.
- Amendment, supplement, and abolishment of several phrases, clauses, and appendices of the Circular 81.

Circular 06 shall come into effect from 15 March 2024. Regulations related to the updated customs compliance levels shall take effect from 15 July 2025.

(The Circular No. 06/2024/TT-BTC dated 29 January 2024 issued by the Ministry of Finance)

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Trade & Customs

Guidance ruling

Continued application of hard-copy C/O form AI under the ASEAN – India Trade in Goods Agreement (“AITIGA”)

The issuance of C/O form AI under the AITIGA for Vietnam's exported goods is guided as follows:

- C/O issuing agencies continue to issue the hard copy of C/O form AI for goods exported to AITIGA members as requested by the Indian customs authorities;
- For shipments that have been granted an electronic C/O form AI since 01 January 2024, C/O issuing agencies shall re-issue a hard copy C/O with signature and stamp;
- The issuance of electronic C/O form AI shall be further notified by the Agency of Foreign Trade (under the Ministry of Industry and Trade) after the AITIGA implementation committee meeting.

(Announcement No. 14/TB-XNK dated 09 January 2024 issued by the Agency of Foreign Trade (under the Ministry of Industry and Trade))

List of Administrative Procedures managing the importation of remanufactured goods under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”)

The Decision No. 3185/QD-BCT summarized the administrative procedures that are newly promulgated regarding import and export under the management of the Ministry of Industry and Trade, including 04 administrative procedures on the management of imported remanufactured goods under CPTPP:

- Issuance of remanufacturing code;
- Validity extension of the remanufacturing code;
- Amendment and supplement on information of enterprise whose remanufacturing codes are granted;
- Issuance of Import license for remanufactured goods.

(The Decision No. 3185/QD-BCT dated 11 December 2023 issued by the Ministry of Industry and Trade)



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Trade & Customs

Guidance ruling

Tax policies applied to enterprises converting from Export Processing Enterprises ("EPE") to non-EPE

On 18 January 2024, the General Department of Customs issued the Official Letter No. 296/GDC-TXNK guiding on tax policies for tax declaration and payment purposes of an enterprise converting from EPE to non-EPE as follows:

- **For construction and installation services within the non-tariff zone:** the Customs authority shall only be responsible for VAT collection for imported goods (without taking responsibility for collection of VAT applied for services).
- **For goods that are construction materials purchased domestically for the construction of EPE:** enterprises might choose to perform customs procedures or not.
- **For goods that are not construction materials but purchased domestically for the construction of EPE:** enterprises must perform customs procedures to apply the 0% VAT rate.
- **For imported assets and goods with tax yet paid and still in inventory:** tax policies and customs procedures shall be applied as prevailing regulations.

(The Official Letter No. 296/TCHQ-TXNK dated 18 January 2024 issued by the General Department of Customs)

Guidance on customs procedures and import duty refund for goods sent out to EPE by domestic enterprise under outsourced processing contract

Regarding customs procedures when a domestic enterprise outsources an EPE for processing: the domestic enterprise performs customs procedures following regulations on outsourced processing contracts overseas and declares the "*internal management number of the enterprise*" on the customs declaration as **#&GCPTQ**. The EPE is not required to perform customs procedures when receiving goods for processing and returning the processed goods to the domestic enterprise.

Regarding the customs declaration modes:

- Temporary export of machinery, equipment, and professional tools within a certain period or to serve the outsourced processing activities overseas: G61;
- Vietnamese enterprises export raw materials and supplies to overseas entities or EPE for processing: E82;
- Vietnamese enterprises (including EPE) re-import processed goods from overseas entities or EPE: E41;
- Enterprises export goods overseas, into non-tariff zones, EPE or in-land export: B11.

Regarding import duty refund: Current regulations **do not stipulate any import duty refund scheme** for cases in which the processed goods received from an EPE under an outsourced processing contract for a domestic enterprise, imported into the domestic market with import duty paid by the domestic enterprise, then subsequently exported to overseas or into non-tariff zones.

(The Official Letter No. 467/TCHQ-TXNK dated 29 January 2024 issued by the General Department of Customs)

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