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## Tax Administration



### GUIDANCE RULINGS

#### Correction of some wording mistakes in Decree No. 125/2020/ND-CP issued by the Government on sanctioning of administrative violations of tax and invoice dated 19 October 2020 (“Decree 125”)

Some wording mistakes in Decree 125 are corrected as follows:

- The sentence in Clause 3, Article 19, Decree 125 being: “...*The fine level for individuals is applied according to the principles specified in Clause 5, **Article 4** of this Decree*”, is now revised as: “...*The fine level for individuals is applied according to the principles specified in Clause 5, **Article 5** of this Decree*”.
- The title of Article 29, Decree 125 is stated as: “*Article 29. Penalties for violations of regulations on making, sending **notices**, reports on invoices*”, now is revised as: “*Article 29. Penalties for violations of regulations on making, sending **notices**, reports on invoices*”.

- In the note No. [18] Form No. 01/QD; No.[9] Form No. 02/QD; No.[18] Form No. 03/QD; No.[11] Form No. 04/QD; No.[17] Form No. 06/QD; No.[10] Form No. 07/QD; No.[11] Form No. 08/QD; No.[13] Form No. 09/QD; No.[14] Form No. 10/QD; No.[14] Form No. 11/QD Appendix issued together with Decree 125 stated as: “... *write the abbreviation “**Q.**” before the title of the chief...* ”, now is revised as: “... *write the abbreviation “**KT.**” before the title of the chief ...*”.

(Official Letter No. 29/CP-KTTH dated 21 January 2021 of the Government Office and Official Letter No. 295/TCT-PC dated 28 January 2021 of the General Department of Taxation)

#### Tax declaration for business located in different province from head office

In principle, according to the Law on Tax Administration No. 38/2019/QH14, if the company conducts business in various provinces other than the province where the head office locates (under form of business location or branch), the company is required to centrally file tax at Tax authority managing head office and submit the allocation of tax payable for each province, which is entitled to State Budget collection (except cases specified in the Decree No. 126/2020/ND-CP).

The Circular guiding the Decree No. 126/2020/ND-CP of the Law on Tax Administration, which is being drafted, will provide the tax declaration and allocation of payable tax amounts.

(Official Letter No. 3620/CTHN-TTHT dated 28 January 2020 issued by Hanoi Tax Department)



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## Corporate Income Tax & Transfer Pricing



### NEW REGULATIONS

#### Corporate Income Tax (“CIT”) exemption, reduction for science and technology enterprises

On 11 January 2021, the Ministry of Finance issued the Circular No. 03/2021/TT-BTC (“Circular 03”) on CIT exemption, reduction for science and technology enterprises under regulations of Decree No. 13/2019/ND-CP of the Government.

Accordingly, science and technology enterprises which satisfy incentive criteria (specifically mentioned in the Circular) and are granted with certification of science and technology enterprise from the competent authority would be eligible to CIT incentives, in specific: tax exemption of 04 years and 50% tax reduction of 09 following years. The tax exemption, reduction period would be triggered from the date of certification. In case there is no taxable income within three years from the first year of the Certification, tax exemption, reduction would be counted from the fourth year.

The Circular also provides guidance on treatment in case of years with unqualified incentive conditions, case of first operation year below 12 months, as well as cases of incentive transition, and addition of new products into the Certification of science and technology enterprise.

Circular No. 03 takes effect from 01 March 2021.

*(Circular No. 03/2021/TT-BTC dated 11 January 2021 issued by the Ministry of Finance)*

### GUIDANCE RULINGS

#### Tuition fee for employees’ children

If a Vietnamese employee directly signs a labor contract with a foreign company and then is assigned to work in a Vietnam company, the tuition fees for such employee’s children paid by Vietnam company is not deductible expense for CIT calculation purpose of Vietnam company and not exempt for Personal Income Tax (“PIT”) purpose of the employee.

*(Official Letter No. 1981/CTHN-TTHT dated 15 January 2021 issued by Hanoi Tax Department)*

#### Contributions to the pension fund paid on the worker’s behalf

If the foreign parent company assigns employees to work in Vietnam under written agreements, which regulates that the Vietnamese party is obliged to pay for the contribution to the pension fund on behalf of those employees during their assignment in Vietnam, such payment to pension fund is deductible expense for CIT purpose.

*(Official Letter No. 3619/CTHT-TTHT dated 28 January 2021 issued by Hanoi Tax Department)*



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## Corporate Income Tax & Transfer Pricing



### GUIDANCE RULINGS (cont.)

#### Determination of 30% CIT liability reduction

In case an enterprise falls into categories under Article 1 of Decree No. 114/2020/ND-CP and have total revenue in 2020 does not exceed VND 200 billion, then the corresponding CIT payable (if any) shall be reduced by 30%.

The CIT reduction of the fiscal year 2020 shall apply to the total income of the enterprise, including the amounts specified in Clause 3, Article 18 of the Law on CIT (Income from activities of the transfer of capital, the right to capital contribution; incomes from transfer of real estate, project of investment, etc.)

*(Official Letter No. 4858/CTHN-TTHT dated 08 February 2021 issued by Hanoi Tax Department)*

#### Notable points of Decree No. 132/2020/ND-CP prescribing tax administration for enterprises engaged in related party transactions

On 27 January 2021, the General Department of Taxation issued Official Letter No. 271/TCT-TTKT (“OL 271”) to local Tax authorities providing a summary of new points introduced in Decree No. 132/2020/ND-CP prescribing tax administration for enterprises engaged in related party transactions (“Decree 132”). Those points are highlighted below:

- Related party relationships are revised and supplemented respectively for type G and L in Clause 2, Article 5;
- Clarify some new terms such as Competent Authority Agreement, International Tax Agreements, Multilateral Convention on Mutual Administrative Assistance in Tax Matter, reporting entity, etc. at Article 4. Definition of “Database of Tax authorities” is also revised in Clause 7, Article 4;

- Arm’s length range is redefined which is from the 35th to the 75th percentile at Clause 9, Article 4;
- Guidance on deductible interest expenses are entirely inherited from Decree No. 68/2020/ND-CP at Clause 3, Article 16;
- Country-by-Country Reporting (“CbCR”) Implementation Rules are introduced at Clause 5, Article 18;
- Point 6, OL 271, once again, emphasizes the purpose of CbCR will not be used for deeming profit margin without a normal Tax audit process. (refer to Article 20, Point 1c, Decree No. 132).

In addition, according to OL 271, the Ministry of Finance will not issue any Circular guiding Decree 132.

*(Official Letter No. 271/TCT-TTKT dated 27 January 2021 issued by the General Department of Taxation and our Tax Alert issued on 09 November 2020 and 27 November 2020)*



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## GUIDANCE RULINGS

### Interest from loan to employee is Value Added Tax (“VAT”) exempt, but must be invoiced upon interest collection

When company lends money to employee, which is considered as an "individual loan", thus, the transaction is not subject to VAT. Nevertheless, upon interest collection, the company is still required to issue invoice, which clearly states the loan interest amount with the tax rate and VAT amount being blank and crossed out.

*(Official Letter No. 3269/CTHN-TTHT dated 26 January 2021 issued by Hanoi Tax Department)*



## Value Added Tax



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## Foreign Contractor Withholding Tax



### GUIDANCE RULINGS

#### Foreign Contractor Withholding Tax (“FCWT”) treatment under International Treaty

Although income of the Asian Infrastructure Investment Bank (“AIIB”) (foreign contractor) is governed by the Circular No. 103/2014/TT-BTC, tax exemption clause under international treaty might be prioritized, if:

- The consent letter (from the State Bank of Vietnam to AIIB for providing explanation that the status, privilege, reduction and exemption of tax shall be activated when AIIB conducts its official operation in accordance with the banking regulation in Vietnam) is considered as international treaty; and
- This international treaty stipulate tax exemption cases, which are different from guidance in the Circular No. 103/2014/TT-BTC.

*(Official Letter No. 1071/CTHN-TTHT dated 08 January 2021 issued by Hanoi Tax Department)*

#### Finalization upon contract termination

The ruling mentions the case where the company sign master agreement with foreign contractor (seller) and additionally sign a Purchase Order for each purchase. Although there is no confirmation on when to the company is obliged to finalize FCWT, the ruling re-affirms that:

- FCWT declaration is conducted upon each transaction or on monthly basis (if there is tax liability); and
- FCWT finalization is only required upon contract termination/expiration.

According to our observation, most of companies, which sign master agreement and purchase under specific purchase order, only finalize FCWT upon the master agreement expires.

*(Official Letter No. 171/CT-TTHT dated 15 January 2021 issued by Hanoi Tax Department regarding tax policy)*

#### Membership fee of association in overseas

If the company pay membership fee to join an overseas association, which aims to facilitate the company’s purchase from overseas companies, such income of association will not be subject to FCWT under Clause 3, Article 2, Circular No. 103/2014/TT-BTC dated 06 August 2014 issued by the Ministry of Finance.

*(Official Letter No. 185/CT-TTHT dated 19 January 2021, issued by Long An Tax Department)*

#### FCWT on manufacturing and installation services

If a Vietnamese company purchases material and equipment from a foreign contractor and the contractor provides manufacturing, installation, and commissioning services in addition to providing machinery and equipment, and the contract separate the value of parts, machinery, equipment and other services, FCWT on “service related to manufacturing, installation and commissioning services performed by expats assigned to Vietnam” is calculated on the percentage of taxable turnover according to the following rate:

- CIT: 2% for installation service and 5% for other service;
- VAT: 5% for services.

*(Official Letter No. 1452/CT-TTHT dated 12 January 2021 issued by Hanoi Tax Department)*



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## Trade and Customs



### NEW REGULATIONS

#### Deadline for submission of Proof of Origin (“P/O”) to enjoy EVFTA tariff rates

Circular No. 07/2021/TT-BTC dated 25 January 2021 has been enacted by the Ministry of Finance regulating submission timeline of P/O for goods imported under the EVFTA, with effect from 11 March 2021.

Accordingly, P/O must be submitted at the time of customs declaration. In case the P/O is not available at the time of customs declaration, the declarant shall note on the customs declaration about the late submission and is permitted to declare and supplement the P/O within 02 years since the declaration date to apply EVFTA tariff rates, provided that the P/O is still valid.

For cases of P/O submission after the prescribed deadline due to force majeure circumstances, it would be under consideration of the Ministry of Finance (the General Department of Customs) for application of EVFTA tariff rates on case by case basis. For other late submission cases, the goods must be imported within the P/O validity period.

For customs declarations of goods imported from 01 August 2020 to before the effective date of this Circular, if the goods meet all requirements for enjoyment of EVFTA tariff rates and higher rates than those prescribed in EVFTA and Decree No. 111/2020/ND-CP have been paid, the declarant could submit respective P/O for the settlement of the overpaid duty as regulated.

*(Circular No. 07/2021/TT-BTC dated 25 January 2021 issued by the Ministry of Finance)*

### GUIDANCE RULINGS

#### Self-certified P/O under the EVFTA

Imported goods originating from EU and listed in Appendix II attached with Circular No. 38/2018/TT-BTC, with proof of origin self-certified by EU exporters in accordance with Circular No. 11/2020/TT-BCT are considered to apply EVFTA tariff rates.

*(Official Letter No. 236/TCHQ-GSQL dated 18 January 2021 issued by the General Department of Customs)*

Self-certified P/O for shipments with value over EUR 6,000 of an EU exporter, who already has a REX code, without the exporter’s signature, is still accepted.

*(Official Letter No. 117/TCHQ-GSQL dated 18 January 2021 issued by the Ho Chi Minh City Customs Department)*

#### Administrative penalties for violation in customs

Administrative penalties for Export Processing Enterprise upon re-declaration of HS codes are guided as follows:

- Cases that administrative penalty does not apply:
  - Re-declaration of HS codes within the time limit (specified in Clause 4, Article 29, Law of Customs 2014);
  - Overdue re-declaration of HS code of non-taxable goods.
- Cases that administrative penalty does apply:
  - Re-declaration of HS code of dutiable goods;
  - Re-declaration of HS code of duty-exempted goods already declared in finalization reports (due to wrong classification at import declaration stage), leading to an increment in the amount of exempted duty.

*(Official Letter No. 454/TCHQ-PC dated 29 January 2021 issued by the General Department of Customs)*



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## Trade and Customs



### GUIDANCE RULINGS (cont.)

#### Customs duty treatment of goods imported before receiving confirmation from Customs authority that Export Processing Enterprise (“EPE”) qualification has been satisfied as currently proposed in the Draft Decree amending and supplementing Decree No. 134/2016/ND-CP

According to the currently proposed Clause 3 and Clause 7, Article 28a of the Draft Decree amending and supplementing Decree No. 134/2016/ND-CP, upon formal issuance of such Decree and from its effective date, duty treatment for non-tariff area would be applied from the date of investment certificate issuance of EPE. In the event that an EPE has already paid import duty for goods imported before receiving confirmation from customs authority on EPE qualification of customs supervision and monitoring conditions, the overpaid import duty amount would be repaid as regulated.

*(Official Letter No. 282/TCHQ-TXNK dated 20 January 2021 and No. 348/TCHQ-TXNK dated 25 Jan 2021 issued by the General Department of Customs)*

#### Customs duty/VAT policies for molds of EPE lent to domestic enterprises

- Regarding customs procedure: the EPE and domestic enterprise shall apply the temporary export then re-import on the one side and temporary import then re-export declaration model on the other side.
- Regarding import and export duty: The domestic enterprise is not exempt from import duty. Instead, the domestic enterprise must declare and pay import duty upon the temporary import. Such import duty will not be refunded when the molds are re-exported.
- Regarding VAT: Molds which have been declared as temporary import by the domestic enterprise are not subject to VAT. In case the lease term has expired but the domestic enterprise continues to use the molds and refuses to re-export, it must declare and pay VAT. If the molds are damaged and cannot be re-exported, thus must be destroyed and have actually been destroyed in accordance with the law, VAT declaration and payment are not required.

*(Official Letter No. 475/TCHQ-TXNK dated 01 February 2021 issued by the General Department of Customs)*



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