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Tax Administration



Summary of tax collection, tax audit and inspection in 2020 by the Tax authorities:

Tax collection:

Total tax collection in 2020 is VND 1,278,649 billion, equals to 101.9% of the 2020 plan.

Tax audit and inspection, and tax refund:

Tax audit and inspection: In 2020, Tax authorities carried out 83,979 cases of tax audit and inspection at taxpayer's office. Accordingly:

- Increased tax collection through tax audit and inspection by VND 19,867 billion, reduced tax deductibility by VND 2,248 billion, reduced loss by VND 49,761 billion;
- Conducted tax audit and inspection at 339 enterprises having related parties transactions; resulting to the increase of tax collection of VND 681 billion and reduce losses by VND 10,046 billion. Of which, Tax authorities made transfer pricing adjustment to increase tax collection by VND 361 billion and reduce loss by VND 3,874 billion.

VAT refund: Up to 31 December 2020, the Tax authorities have made VAT refund to enterprises with total amount of VND 137,090 billion, equal to 105.45% of the 2020 plan.

(Summary from the General Department of Taxation's 2020 Report)

New Circular guiding tax registration

On 03 December 2020, the Ministry of Finance issued the Circular No. 105/2020/TT-BTC providing guidelines for tax registration in accordance with the Law on Tax Administration No. 38/2019/QH14 dated 13 June 2019 and its guiding Decree No. 126/2020/NĐ-CP dated 19 October 2020.

This Circular details regulations on the subjects, who shall directly conduct tax registration at tax offices; the elements of tax code; the dossiers, procedures and forms for tax registration (including initial registration, tax registration certificate, notification of tax code, notification of change on tax registration information; notification of business suspension; invalidation of tax identification numbers; restoration of tax identification numbers; tax registration in case of reorganization of enterprises or organizations).

The General Department of Taxation has issued the Official Letter No. 54/TCT-KK dated 08 January 2021 to introduce new notable points of this Circular.

The Circular takes effect from 17 January 2021.

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Corporate Income Tax



GUIDANCE RULINGS

Some notable points on 2020 Corporate Income Tax (“CIT”) finalization

- Deadline for submission of CIT finalization return is 31 March 2021 (for calendar fiscal year) or the last day of the third month from the end of the fiscal year (if fiscal year is other than calendar year-end).
- Enterprise should declare information in the CIT finalization return (form 03/TNDN) sufficiently, including: [04] – Business with the highest revenue percentage and [05] – Ratio (%) of the such business over total revenue in the taxable period.

- Enterprise should identify and declare related party transactions, determine deductible interest expense (within 30% cap) according to the Decree No. 132/2020/ND-CP dated 05 November 2020.
- If total revenue in 2020 does not exceed VND 200 billion, enterprise is entitled to 30% CIT reduction for 2020, pursuant to the Decree No. 114/2020/ND-CP.

(Publication on website of the Hanoi Tax Department on notable points of 2020 Personal Income Tax (“PIT”) and CIT finalization)

CIT treatment for compensation goods

When compensating customers by goods, enterprises must issue an invoice, declare and pay VAT similarly to normal goods sales. For goods, which is not subject to VAT, the enterprise shall issue VAT invoice, where the sales price is selling price, with tax rate and VAT amount being crossed.

The expense for purchasing compensation goods would be deductible for CIT purpose if it meets the requirement under Article 4 of the Circular No. 96/2015/TT-BTC.

(Official Letter No. 141/CTHN-TTHT dated 04 January 2021 issued by the Hanoi Tax Department on compensation goods)

Deductible expenses and tax reduction for enterprises employing female employees

In case enterprises employing female employees incur additional expenses for female employees, if the expenses meet the conditions in Article 4, Circular No. 96/2015/TT-BTC, then the expenses would be deductible for CIT purpose.

The company is entitled to CIT reduction corresponding to the additional amount actually paid for female employees according to the regulation in Clause 1, Article 21, Circular No. 78/2014/TT-BTC.

(Official Letter No. 104146/CTHN-TTHT dated 03 December 2020 issued by the Hanoi Tax Department)



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Indirect Tax



GUIDANCE RULINGS

Conversion of electronic invoices into paper invoices is still allowed for e-invoice issued under Circular No. 32/2011/TT-BTC

During the period from the issuing date of Decree No. 123/2020/ND-CP, which is 19 October 2020 to 30 June 2022, if the Tax authority has not yet notified the company to use electronic invoices, then company is still allowed to continue applying the regulations on invoice as specified in Decree No. 51/2010/ND-CP, Decree No. 04/2014/ND-CP and other guiding documents.

Accordingly, in case the company is still using old electronic invoices, the conversion to paper invoice shall be in accordance with Article 12 of Circular No. 32/2011/TT-BTC. The seller's stamp is required for converted paper invoices used to certify the goods' origin, while not required for accounting record purpose.

(Official Letter No. 110285/CTHN-TTHT dated 28 December 2020 issued by the Hanoi Department of Taxation)

VAT rate when the Company provides different types of goods and services with different VAT rates

If an enterprise provides different types of goods and services subject to various VAT rates, it must separate VAT rate prescribed for each type of goods or service. If the enterprise is unable to determine the tax rate for each type of goods and service, it must calculate and pay tax at the highest VAT rate on the goods and services as prescribed in Article 11, Circular No. 219/2013/TT-BTC.

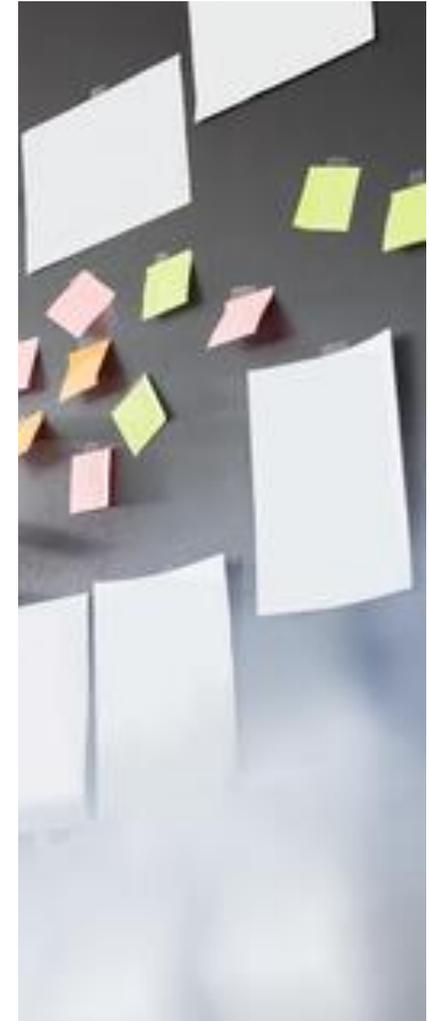
(Official Letter No. 282/CTHN-TTHT dated 05 January 2021 issued by the Hanoi Tax Department)

Conditions for goods imported for educational projects to enjoy 5% VAT rate

Goods, which imported for educational projects under Clause 12, Article 10, of Circular No. 219/2013/TT-BTC, will be subject to 5% VAT.

It should be noted that, for imported goods used exclusively for education, the importer must submit the sales contract or the contract to provide goods/services to schools and research institutes to apply 5% VAT. (Clause 5, Article 16 of Circular No. 38/2015/TT-BTC).

(Official Letter No. 85/TCHQ-TXNK dated 08 January 2021 issued by the General Department of Customs)



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Foreign Contractor Withholding Tax



GUIDANCE RULINGS

Services performed outside Vietnam but consumed inside Vietnam

A Vietnamese company hires a Korea based company to prepare dossier, supporting documents as required by the overseas lending bank, as well as advise on legal issues that may incur from lending transaction between the company and such overseas bank.

Such services are performed outside Vietnam but are deemed to consume inside Vietnam. Therefore, income earned from this service by the foreign company will be subject to Foreign Contractor Withholding Tax ("FCWT") with tax rate of 5% CIT and 5% VAT. The Vietnamese company is responsible for deducting, declaring and paying tax liability on behalf of the foreign contractor.

(Official Letter No. 11846/CT-TTHT dated 20 November 2020, issued by the Dong Nai Tax Department)

Insurance premium paid to foreign company for Vietnamese employees

If foreign parent company pays liability insurance premium to foreign insurer for director of the subsidiary in Vietnam then request reimbursement from the subsidiary in Vietnam, such income of parent company will be subject to FCWT. The subsidiary in Vietnam is responsible for withholding, declaring, and paying FCWT on behalf of the foreign parent company.

(Official Letter No. 3204/CT-TTHT dated 05 November 2020, issued by the Hanoi Tax Department)

FCWT levied on the manpower service through third party

A company in Vietnam engages a foreign company (the contractor) to hire employees working for the company. If the contractor directly signs labor contract with these individuals and pays salary to them, which will be re-charged to the company, then such reimbursement will be income of the foreign company and be subject to FCWT under Clause 4, Article 1, Circular No. 103/2014/TT-BTC dated 06 August 2014.

(Official Letter No. 29533/CT-TTHT dated 28 December 2020, issued by the Binh Duong Tax Department)

FCWT levied on advertising and marketing services

If a foreign company provides advertising and marketing services to a Vietnamese company, and those services were performed overseas (not conducted on the Internet), then service fee would not be subject to FCWT under Clause 4, Article 2 of Circular No. 103/2014/TT-BTC.

Vietnamese company, in order to prove that service was performed overseas, should maintain the supporting document, including: Service contract signed with foreign company, Report on results of searching for customers, advertising and marketing the company's products in foreign markets in line with the contract and other relevant documents.

(Official Letter No. 12492/CT-TTHT dated 13 December 2020, issued by the Dong Nai Tax Department)



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Foreign Contractor Withholding Tax



GUIDANCE RULINGS (cont.)

FCWT levied on interests payable

When a company signs a loan contract with the foreign economic organization (not credit institution) which has no permanent establishment, branch or office in Vietnam, then any interest paid would be subject of FCWT. The Vietnamese company is responsible to withhold and pay FCWT on behalf of the foreign economic organization with CIT rate of 5% (interest is not subject to VAT) under Point a, Clause 2, Article 13, Circular No. 103/2014/TT BTC.

(Official Letter No. 12981/CT-TTHT dated 22 December 2020, issued by the Dong Nai Tax Department regarding FCWT)

Reimbursement of employee cost would not be subject to FCWT

If a foreign company assigns their expatriates coming to Vietnam under agreement on sharing and reimbursement of employee cost, income arisen from this agreement would be subject to FCWT.

Notwithstanding that, if this is only employment cost reimbursement, FCWT would not be imposed.

(Official Letter No. 5333/TCT-CS dated 16 December 2020, issued by the General Department of Taxation, Official Letter No. 17862/BTC-TCT dated 09 December 2014, issued by the Ministry of Finance)

Imported machinery and equipment with attached software

When a foreign company signs a contract with a Vietnamese company to supply machinery and equipment with attached software, income of the foreign company will be subject to FCWT as follow (provided that the contract separates the value of each portion):

- CIT: 1% on machinery and equipment and 10% on software license;
- VAT: goods portion is subject to VAT payment at importation stage only, while the software license is not subject to VAT.

(Official Letter No. 110283/CT-TTHT dated 28 December 2020, issued by the Hanoi Tax Department)



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Trade and Customs



GUIDANCE RULINGS

Anti-dumping duty is officially imposed on Chinese cold-rolled steel from 28 December 2020

Anti-dumping duty is officially imposed on cold-rolled steel from China from 28 December 2020, for a period of 5 years. However, the following products are excluded: cold-rolled stainless steel; silicon electrogalvanized steel (electrogalvanized steel); black steel sheets (black corrugated iron) for tin rolling; wind steel; corrugated steel; coated cold-rolled steel.

The anti-dumping duty rates range from 4.43% to 25.22%, depending on the exporting manufacturer.

(Decision No. 3390/QC-BCT dated 21 December 2020 issued by the Ministry of Industry and Trade)

Late payment interest on import VAT amount under tax imposition decision shall not be deductible

Under current regulations, the amount of VAT paid under tax imposition decision of the Customs authority is fully deductible, except for the case of imposition on tax fraud and evasion.

However, there is currently no provision on the deduction of late payment interest penalty on the VAT amount under the tax imposition decision.

(Official Letter No. 7974/TCHQ-TXNK dated 21 December 2020 issued by the General Department of Customs)

Proposal to amend the list of used goods prohibited from import

The General Department of Customs has proposed to the Ministry of Industry and Trade that they amend the list of used consumer goods, medical equipment, and vehicles which are prohibited from import pursuant to Appendix I, Circular No. 12/2018/TT-BCT as well as to provide comments for customs authorities' implementation while waiting for the amendment of Circular No. 12/2018/TT-BCT.

One of the principles of the list is "*In case a 4-digit heading is listed, all 8-digit codes under this 4-digit heading are prohibited from import*". This principle also prohibits some goods from import, even when they are industrial products, not consumer goods, medical equipment or vehicles.

(Official Letter No. 53/TCHQ-GSQL dated 07 January 2021 issued by the General Department of Customs)

Guidance on declaration of quantity and unit on the export declaration

The information of quantity (1) and quantity (2) on the export declaration attached to Circular No. 39/2018/TT-BTC shall be declared as follows:

- Quantity (1):
 - Box 1: the actual quantity of exported goods for each item of the transaction.
 - Box 2: the actual unit code of the transaction.
- Quantity (2):
 - Box 1: the quantity of exported goods for each item per the unit specified in the List of Import-Export goods of Vietnam.
 - Box 2: the unit code as specified in the List of Import-Export goods of Vietnam

(Official Letter No. 54/TCHQ-GSQL dated 07 January 2021 issued by the General Department of Customs)



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Trade and Customs



GUIDANCE RULINGS (cont.)

Conditions for tax exemption of imported materials sent out for outsourced processing of the whole production

As prescribed in Clause 6, Article 16 of Law No. 107/2016/QH13, entities outsourcing the processing (including the outsourcing of whole production) are still exempt from import duty on materials and supplies imported for processing if the following conditions are satisfied:

- The outsourcing party has notified Customs authorities of the processing facilities, the outsourced party facilities, the processing contract, and the outsourced processing contract.
- The notification takes place before the import of the first shipment of materials and supplies and before the delivery of materials or supplies to the outsourced party.
- The inspection (by Customs) on the outsourced party facilities concludes its qualified processing capacity.

(Official Letter No. 8050/TCHQ-GSQL dated 23 December 2020 issued by the General Department of Customs)

Notable points of the guidance of the Ministry of Industry and Trade on imported, exported goods

On 22 December 2020, the Ministry of Industry and Trade issued a written response, to several concerns raised by the General Department of Customs, related to imports and exports as follows:

Regarding quality inspection: responding to concerns about the overlap in quality inspection on boilers, pressure vessels, LED light and fire prevention light.

Regarding the test of minimum energy efficiency: to be undertaken at post-clearance stage.

Regarding certificate of origin (“C/O”): under the procedures for issuing C/O, there is no requirement for submission of sales contract with original signature.

Regarding the import right pursuant to Decree No. 09/2018/ND-CP: the Ministry of Industry and Trade acknowledged the comments of the General Department of Customs to review, study, evaluate and synthesize in the report for submission to the Government for consideration of amending, supplementing or replacing Decree No. 09/2018/ND-CP.

(Official Letter No. 9866/BCT-XNK dated 22 December 2020 issued by the Ministry of Industry and Trade)

Self-certification of origin will not be rejected due to lack of REX code

As guided by the General Department of Customs, self-certification of origin issued by EU exporters will not be rejected if the website of the EU authority does not show information on the goods or the REX code expiration date.

The examination of EU exporters’ REX codes is guided by Official Letter No. 6464/TCHQ-GSQL dated 05 October 2020 and Official Letter No. 7735/TCHQ-GSQL dated 08 December 2020.

EU exporters are not required to provide detailed information about the goods and the REX code expiration date to the EU authority. Thus, such information shall not be available on the EU website if refused by the exporter to provide.

(Official Letter No. 8064/TCHQ-GSQL dated 24 December 2020 issued by the General Department of Customs)

The Vietnam United Kingdom Free Trade Agreement (“UKVFTA”) has been signed and come to effect

UKVFTA was signed on 29 December 2020 in London, inheriting commitments of the Vietnam European Union Free Trade Agreement (“EVFTA”). Pursuant to Resolution No. 190/NQ-CP dated 31 December 2020 of the Vietnamese Government (“Resolution 190”), the UKFTA shall be temporarily applied from 01 January 2021.

Resolution 190 also assigns Ministries and agencies, including the Ministry of Industry and Trade and the Ministry of Finance to issue guidance on the temporary application of the UKVFTA from 01 January 2021.

For goods imported into the UK from Vietnam, exporters should also note that the UK Government still (currently) provides preferential customs duty rates under the Generalized System of Preferences (“GSP”). The GSP rate could be enjoyed providing an eligible C/O form A is presented.

(Resolution 190 dated 31 December 2020 issued by the Government; UKFTA Agreement)

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