



### Some key points of the newsletter include:

1. Extension of tax payment deadline under Decree No. 41/2020/NĐ-CP for foreign contractors;
2. Foreign taxpayers, who are not infected by Covid, are required to submit annual Personal Income Tax finalization dossiers on time;
3. Pension salary is not subject to Personal Income Tax;
4. GRAB discount codes - issuance of invoices and determination of deductible expenses;
5. Resolution No. 116/2020/QH14 dated 19 June 2020 of the National Assembly on FY20 Corporate Income Tax payable reduction;
6. VAT levied on online game services provided via Google and Apple;
7. Foreign Contractor Withholding Tax levied on consultant fee of fixed assets purchasing overseas;
8. Foreign Contractor Withholding Tax for incomes rendered from providing online English courses;
9. Import duties of Export Processing Enterprise's manufactured products sold to the domestic market;
10. On-spot import/export of foreign direct investment enterprises.

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## Tax Administration



### TAX PERFORMANCE

**Tax performance in the first 06 months in 2020 – the General Department of Taxation's report with some notable points as follows:**

#### i. Result of the first 06 months:

Negative result of tax collection and low result of tax audit and inspection due to the impacts of the Covid-19 pandemic. Specifically:

- Total tax collection: **VND 574,237 billion** - equals **45.8%** of the plan (**most negative result** compared to recent years), a decrease of **3.9%** compared to the same period of 2019;
- Tax audit and inspection: **29,280** enterprises, **31.67%** of the target - considered low, a decrease of **17.16%** compared to the same period of 2019, increased collection by VND 28,940.55 billion; conducted transfer pricing inspection in 72 enterprises, increased collection, reduced refunds, fined by VND 212.55 billion.

#### ii. Plan for the next 06 months:

- Tax collection: the target is as high as possible to complete the task of the State budget collection (about 55% of 2020 plan);
- Tax audit and inspection: Focus on tax audit at desk with high target to complete the **remainder of plan (about 68% of 2020 plan)**;
- Tax policy: Focus on developing guiding documents of the new Law on Tax administration (Law No. 38/2019/QH14 has been in effect from 01 July 2020) and guiding documents on administration and collection of tax debts.

*(The General Department of Taxation's report on tax performance in the first 06 months of 2020 and plan for the next 06 months)*

### GUIDANCE RULINGS

#### Extension of tax payment deadline under Decree No. 41/2020/ND-CP for foreign contractors

Regarding extension of tax payment deadline under Decree No. 41/2020/ND-CP for foreign contractors, the General Department of Taxation has issued a guiding document with the following content:

When organizations, individuals doing business in Vietnam are the buyers of goods, services and implementing tax deduction or payment on behalf of foreign contractors, the tax amount paid on behalf of foreign contractors is not subject to extension of tax payment deadline under the provisions of the Decree No. 41/2020/ ND-CP dated 08 April 2020 of the Government on extension of payment deadline for taxes and land rent.

*(Official Letter No. 2491/TCT-CS dated 18 June 2020 issued by the General Department of Taxation)*

### NEW REGULATIONS

#### Resolution No. 116/2020/QH14 and draft Decree on 30% reduction of Corporate Income Tax ("CIT") payable in 2020 for small-scale businesses

With the objective of formulating a timely support policy for small-scale enterprises with additional financial resources (to maintain and restore production and business activities, and overcome difficulties due to the impact of the Covid-19 pandemic), on 19 June 2020, the National Assembly adopted the resolution of 2020 CIT payable reduction for enterprises, cooperatives, non-business units and other organizations.

In early July 2020, the Ministry of Finance also issued a draft Decree of the Government detailing the enforcement of the National Assembly's resolutions. The draft Decree specifies the determination of income to be tax-reduced, temporary tax payment and tax finalization declaration, and tax reduction procedure, briefly as follows:

- Reduction of 30% of CIT payable in the tax year 2020 for business cases with a total 2020 turnover not exceeding VND 200 billion;
- Enterprises themselves identify the tax reduced amount when paying CIT quarterly and finalization for the tax year 2020;
- Tax authorities are not required to notify their acceptance of tax reductions.

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## Personal Income Tax



### GUIDANCE RULINGS

#### Personal Income Tax (“PIT”) exemption for Official Development Assistance (“ODA”) experts is not applied for those who having Vietnamese nationality

On 10 June 2020, the General Department of Taxation issued Official Letter No. 2352/TCT-DNNCN regarding PIT policy.

Accordingly, experts having Vietnamese nationality that work for ODA projects in Vietnam shall not be exempted from PIT. The exemption of PIT arising from employment income, only applies to foreigners who work for ODA projects.

#### Foreign taxpayers, who are not infected by Covid, are required to submit annual PIT finalization dossiers on time

On 12 June 2020, the General Department of Taxation issued Official Letter No. 2396/TCT-DNNCN in regards to annual PIT finalization matter to Vinh Long Province Tax Department.

Accordingly, foreign taxpayers, who live within the affected area of the Covid-19 pandemic but are not infected by such disease, would not be eligible to defer the submission of annual PIT finalization dossiers according to Clause 4, Article 10, Circular No. 156/2013/TT-BTC dated 06 November 2013 of the Ministry of Finance, and Clause 5, Article 2, Circular No. 26/2015/TT-BTC dated 27 February 2015 of the Ministry of Finance.

#### Maternity benefit for employees who are foreigners participating in compulsory social insurance in Vietnam

On 16 June 2020, the Ministry of Labor, War Invalids and Social Affairs issued Guidance No. 2161/LDTBXH-BHXH providing guidelines on maternity benefits.

When the wife of a male employee who is a foreigner participating in social insurance in Vietnam, gives birth to a child, she does not contribute to social insurance in Vietnam. As such, he is entitled to a one-off maternity allowance under Article 38 of the Law on Social Insurance. According to Article 38, it is stipulated that when the mother gives birth to a child but only the father is covered by social insurance, the father is entitled to a lump-sum allowance equaling 02 times of the basic salary for each child in the month of childbirth.

#### Pension salary is not subject to PIT

On 05 May 2020, the General Department of Taxation issued the Official Letter No. 4375/CT-TTHT in terms of tax policy.

Accordingly, as the company signs a labor contract with an individual who already retired in accordance with the Labor Code, the pension salary, which is paid by the Social Insurance Fund to such employee under the Law on Social Insurance, is exempted from PIT. For employment income paid by the company, the company is responsible for withholding the outstanding PIT arisen in accordance with Clause 1, Article 25, Circular No. 111/2013/TT-BTC.

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## Corporation Income Tax



### GUIDANCE RULINGS

#### **The Official Letter No. 55967/CT-TTHT dated 23 June 2020 issued by the Hanoi Tax Department regarding issuance of invoices and determination of deductible expenses when buying GRAB discount codes for using service**

On 23 June 2020, Hanoi Tax Department issued Official Letter No. 55967/CT-TTHT related to the issuance of invoices and determination of deductible expenses when purchasing GRAB's discount codes applied for services.

Accordingly, when GRAB Co., Ltd. signs contracts to provide the discount codes to be used in transportation services, postal services, delivery services, etc. to its partners, GRAB has to issue legitimate invoice as prescribed.

Simultaneously, the expenses used to purchase GRAB's discount codes and expenses for those services without sufficient legitimate invoices and documents are not deductible for CIT purpose.

#### **The Official Letter No. 2621/TCT-KK dated 26 June 2020 issued by General Department of Taxation regarding tax declaration during temporary suspension**

If the taxpayer, during the temporary suspension period, incurs obligations for the activities specified in Clause 3, Article 200 of the Law on Enterprises 2014, the tax declaration for the suspension period must be submitted in accordance with current regulations.

If the taxpayer, during the temporary suspension period, incurs tax obligations for activities not specified in Clause 3, Article 200 of the Law on Enterprises 2014, the taxpayer must notify the local authorities where the temporary suspension is registered on the early resumption of operations and business, and the tax payer must fully comply with the provisions on tax declarations and payments as prescribed.

From 01 July 2020, tax administrations for taxpayers during the period of temporary suspension of operations and business complies with Article 37 of the Law on Tax Administration No. 38/2019/QH14, dated 13 June 2019.

#### **The Official Letter No. 62439/CT-TTHT dated 07 July 2020 issued by the Hanoi Tax Department regarding CIT policy for the investment fund**

Hanoi Tax Department issued Official Letter No. 62439/CT-TTHT dated 07 July 2020 on CIT policies for investment funds. In which:

- Regarding the exemption of CIT from share dividends: If a member fund receives dividend in shares with total par value equaling to the dividend value after CIT as prescribed, it will be exempted from CIT in accordance with Clause 6, Article 8, Circular No. 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance.
- Regarding tax obligations in case of fund dissolution: In principle, in case of dissolution of a member fund, proceeds from the liquidation of the Fund's assets and the remaining assets upon dissolution shall comply with Article 87 of the Law on Securities and its implementing documents.

The dividend of domestic and foreign investors from capital contribution to member fund after fulfilling of CIT's obligation shall comply Clause 6, Article 8 of Circular No. 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance.

### RESOLUTION

#### **Resolution No. 116/2020/QH14 dated 19 June 2020 of the National Assembly on FY20 CIT payable reduction**

National Assembly has issued Resolution No. 116/2020/QH14 with the decision to reduce 30% of CIT payable for enterprises with FY20 revenue not exceeding VND 200 billion.

The taxpayers have to self-assess the reduction amount for quarterly calculation and annual CIT finalization of tax year 2020.

The resolution is effective from 03 August 2020, as such, CIT reduction will apply from Quarter 03/2020 onwards. Accordingly, Quarter 02/2020 would not be applicable under this Resolution (i.e. Q2/2020 CIT payable would still need to be remitted in full).

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## Value Added Tax



### GUIDANCE RULINGS

#### Value Added Tax (“VAT”) levied on online game services provided via Google and Apple

When a Vietnamese company provides online game services (the context is understood as services provision to foreigners, overseas companies) via Google and Apple, such services are being viewed as performing in Vietnam and not entitled to VAT rate of 0% for export services. Instead, VAT rate of 10% is to apply.

*(Official Letter No. 2270/TCT-CS dated 03 June 2020, issued by the General Department of Taxation)*



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## Foreign Contractor Withholding Tax



### GUIDANCE RULINGS

#### Foreign Contractor Withholding Tax (“FCWT”) levied on consultant fee of fixed assets purchasing overseas

Pursuant to Circular No. 103/2014/TT-BTC, if a Vietnamese company hires a foreign company (foreign contractor) to search for suppliers, consult and support on the legal aspect overseas and other related works to assist the company in signing the fixed asset purchasing agreements with foreign suppliers, the expenses which is paid to the foreign contractor by the company will subject to FCWT (including VAT and CIT).

The expenses paid to the foreign contractor to directly serve the purpose of purchasing fixed assets would be recorded as historical cost of the fixed assets under the regulations of Circular No. 45/2013/TT-BTC.

(Official Letter No. 2072/CT-TTHT dated 22 June 2020, issued by the Bac Ninh Tax Department)

#### FCWT levied on advertising and marketing services rendered outside of Vietnam

Pursuant to Circular No. 103/2014/TT-BTC, in the situation where a company received advertising and marketing services rendered by foreign organizations/individual under the service contract, and those services were provided overseas, they would not be subject to FCWT if the above services were not conducted on the Internet.

(Official Letter No. 3841/CT-TTHT dated 26 June 2020, issued by the Bac Giang Tax Department)

#### Foreign organizations are still subject to FCWT if they purchase services in Vietnam to provide to and collect the corresponding revenue from their third party customers

Provided that an overseas company purchases a service in Vietnam and provide to the customers as an additional utility to their membership benefits, the Tax authority will decide whether the corresponding revenue is subject to FCWT or not, depending on the benefit principles of such service.

Pursuant to prevailing regulations and principles, FCWT is only levied on the revenue of foreign company (normally acts as the seller of goods/ services) generated in Vietnam. Nonetheless, in this specific case, while the foreign company acts as the buyer, there still exists a chance at which they will be subject to FCWT if they could generate the revenue from the services purchased in Vietnam via providing such services to the third party customers.

(Official Letter No. 2750/TCT-CS dated 23 June 2020, issued by the General Department of Taxation)

#### FCWT for incomes rendered from providing online English courses

Provided that a Vietnamese company enters into a contract with foreign contractor to provide online English courses in Vietnam, income rendered from this service proportional to foreign company is subject to FCWT.

- In case such service is determined as software service under Decree No. 71/2007/NĐ-CP, such service is subject to VAT exemption.
- CIT rate is 10% if income received by the foreign contractor is income from royalties.

(Official Letter No. 51237/CT-TTHT dated 12 June 2020, issued by Hanoi Tax Department)

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### NEW REGULATIONS

#### Action plan of Customs authority to support enterprises after the Covid-19 pandemic

The General Department of Customs has issued the Action plan to accelerate administrative reforms, support enterprises in the export and import activities during and after the Covid-19 pandemic. Some notable contents are:

- Temporarily postpone inspection and assessing the compliance of the customs declarants in 2020, especially specialized inspection and post-clearance audit will only be conducted based on signs of violations and clearly stating signs of violations.
- If the enterprise has a proposal/explanation requesting to postpone the inspection/audit due to difficulties in production and business, which is impacted by the Covid-19 pandemic, the leader of Customs authority in charge will consider and make a decision for each specific case.
- The regulation about submission time of Certificate of Origin ("C/O") within 180 days pursuant to Circular No. 47/2020/TT-BTC applied backward for registered declarations from 23 January 2020 is strongly highlighted.

The Decision takes effect from 19 June 2020.

(Decision No. 1616/QD-TCHQ dated 19 June 2020 issued by the General Department of Customs)

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### GUIDANCE RULINGS

#### Import duties of Export Processing Enterprise ("EPE") manufactured products sold to the domestic market

Under Clause 2, Article 22, Decree No. 134/2016/NĐ-CP, products, which are manufactured, processed, reprocessed or assembled in the non-tariff area using imported materials and components, importing into the domestic market are subjected to import duties for the finished product (applied to both import tariff and customs valuation).

(Official Letter No. 3458/TCHQ-KTSTQ dated 28 May 2020 issued by the General Department of Customs)

#### Treatment of input VAT upon the conversion of EPE to non-EPE

In case an investment project is converted from an EPE to a non-EPE as prescribed, the amount of input VAT will be treated as follows:

- For imported assets and materials that continue to manufacturing goods subject to VAT after being converted, if the input VAT amount can be determined (having valid VAT receipts as prescribed), the input VAT corresponding with the remaining value of the assets might be deducted.
- For a project in the investment phase and has yet to operate; the company has completed customs procedures, paid all input VAT on fixed assets, machinery, equipment, raw materials and supplies purchased from foreign and domestic suppliers to serve the investment project. A tax refund/deduction of input VAT amount if satisfying the principle and conditions in Circular No. 219/2013/TT-BTC dated 31 December 2013 issued by the Ministry of Finance and other amending and supplementing documents are satisfied.

(Official Letter No. 2215/TCT-KK dated 29 May 2020 issued by the General Department of Customs)

#### On-spot import/export of Foreign Direct Investment ("FDI") enterprises

The on-spot import and export activity of FDI enterprises is carrying according to Circular No. 04/2007/TT-BTM dated 04 April 2007, with the following conditions:

- Regarding the on-spot export of goods produced in Vietnam by such FDI enterprises:
- The export contract must specify the delivery of goods to a place in Vietnam assigned by a foreign entity;
- The Vietnam importers, other than the aforementioned foreign traders, must have import contract with the foreign trader that has previously signed the contract of goods purchase with the on-spot exporting enterprise.
- Regarding the on-spot import of machinery, equipment, tools or supplies for the formation of fixed assets or production materials:
- The export contract must specify the delivery of goods to a place in Vietnam assigned by a foreign entity;
- The FDI enterprise conducting the on-spot import must sign import contract with the foreign traders that have signed contract to buy goods of the aforementioned on-spot exporters.

(Official Letter No. 1758/HQHCM-GSQL dated 15 June 2020 issued by the Customs Department of Ho Chi Minh City)

## Trade & Customs



### GUIDANCE RULINGS (cont.)

#### Enterprises shall determine the remaining value of re-exporting borrowed machinery

Pursuant to Clause 1, Article 35 of Decree No. 134/2016/NĐ-CP, taxpayer shall determine, declare and take responsibility in determining the remaining customs valuation of goods under accounting laws when applying for duty refund at re-exportation stage. In case enterprises cannot determine the customs valuation of goods, the Customs authority shall impose customs valuation as per regulations.

*(Official Letter No. 4170/TCHQ-TXNK dated 19 June 2020 issued by the General Department of Customs)*

#### Duty exemption for re-exported goods keeping original state as imported

For the goods imported under trading type, at the re-exportation stage, the state of goods has remained as imported, the company should use Customs mode of B13 in the declaration.

Accordingly, after Customs authorities determine that the re-exported goods are those imported and unused, unprocessed in Vietnam, a decision for not collecting export duty would be issued.

*(Official Letter No. 4557/TCHQ-TXNK dated 07 July 2020 issued by the General Department of Customs)*

### OTHER GUIDANCE RULINGS

1. Decision on trade remedies exemption;
2. Cases that are not allowed to make additional declaration after customs clearance;
3. No extension of the deadline paying tax for imported goods;
4. Border checkpoints for import and export in case of trading goods for temporary import to re-export, merchanting trade or storage in bonded warehouses;
5. Supporting documents of direct consignment;
6. Declare code B24 to apply the special preferential import tariff rates under the VNCUFTA;
7. Customs authority shall notify the reasons for rejecting C/O;
8. Declare information of C/O form CPTPP;
9. Commercial invoice can still be used for VAT refund of export goods;
10. Labelling of packaged materials;
11. Preferential import duty rates applied to imported automobile components are effective from early 2020;
12. Services provided to enterprises in non-tariff areas are subjected to VAT rate 0%;
13. Conditions for import duty exemption for railway development projects;
14. Present hard documents for electronic customs declaration;
15. Temporary export to re-import of components containing rotation goods;
16. Application of legal documents according to Law on Tax Administration.

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