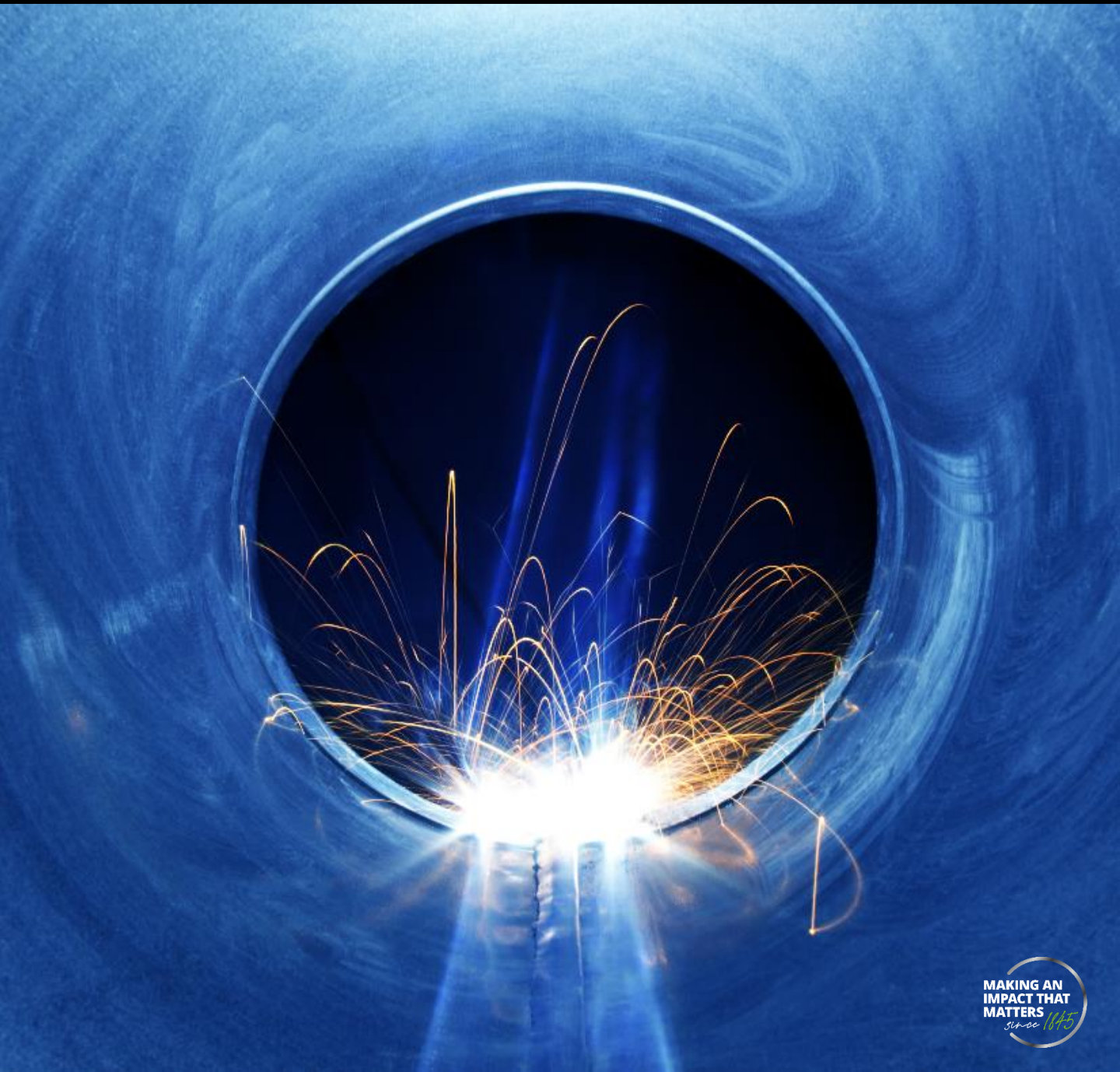


Deloitte.

**Tax & Customs
Newsletter**

April 2023



MAKING AN
IMPACT THAT
MATTERS
Since 1845

Highlights in this issue:

Tax Administration

- Criteria to identify businesses having invoice risk
- Extension of payment deadline for VAT, CIT, PIT and land lease fee in 2023

Corporate Income Tax

- Defectivities or damaged goods during production is not deductible
- Support by cash for dealers
- Guidance on applying 30% CIT reduction when changing financial reporting period
- CIT incentives for factory leasing activities
- CIT incentives for interest income from term deposit
- Income from overpayment of customers is not eligible to CIT incentives
- Income from exchange rate difference in the investment period is not entitled to CIT incentives

Trade & Customs

- Update the lists of special imported and exported goods
- Update on Post-clearance Customs Audit
- Re-importing exported goods is still subject to Special Consumption Tax
- Notable points on the application of C/O Form D
- Exported scraps originating from imported goods are still subject to export duty

Indirect Tax

- Draft Resolution on VAT reduction in 2023
- VAT on offshore construction and installation activities
- VAT declaration and payment of real estate transfer in provinces other than where the taxpayer is headquartered
- Regulations on invoices used by dependent branches
- VAT on the transfer of right to use Internet domain name
- VAT on services provided to foreign organizations
- VAT refund for investment projects divided in two phases
- VAT refund for construction services in non-tariff zones
- VAT for equipment supplied to educational institutions

Labor & Personal Income Tax

- Amendment of procedures for participation in social insurance and handling of late payment or evasion of payment of social insurance
- Draft Resolution on several policies in management of entry, exit, transit, and residence of foreigners in Vietnam
- Withhold PIT when paying employees' rewards
- PIT when hiring individuals to advertise products

Foreign Contractor Withholding Tax

- Apply Double Tax Avoidance Agreement for income of foreign investors earned in Vietnam
- Brokerage services to sell goods/services in foreign markets are not subject to foreign contractor withholding tax

Contact

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Tax Administration

New regulation

Criteria to identify businesses having invoice risk

The General Department of Taxation issued the Decision No. 78/QD-TCT dated 02 February 2023 on criteria to evaluate and invoicing risk of taxpayers, which takes effect from the signing date and is divided in 03 groups as follows:

- Group I. Criteria to determine taxpayers who must switch from using e-invoices without authentication codes to using e-invoices with authentication codes. Such as: capital, owned facility, legal representative, sales to related parties accounts for more than 50% of total revenue, having suspicious transactions...
- Group II. Criteria to determine taxpayer must be included in the review and inspection watchlist for invoicing risk, such as: fixed asset ratio/charter capital ratio, low VAT amount/revenue ratio...
- Group III. Reference criteria to select taxpayers with signs of risk that must be included in the review and inspection watchlist for invoicing risk.

(Decision No. 78/QD-TCT dated 02 February 2023 issued by the General Department of Taxation)

Extension of payment deadline for VAT, CIT, PIT and land lease fee in 2023

On 13 April 2023, the Government issued the Decree No. 12/2023/ND-CP on extension of payment deadline for VAT, CIT, PIT and land lease fee in 2023:

- Extension subject: Continue the extension for all subjects specified in Article 3, Decree No. 34/2022/ND-CP dated 28 May 2022 of the Government, except for “credit institutions, branches of Foreign banks implementing solutions to support customers who are businesses, organizations and individuals affected by the Covid-19 pandemic in accordance with the regulations of the State Bank of Vietnam”.

- Extended taxes include:

(i) VAT payable (exclude import VAT) of:

- ✓ From March 2023 to May 2023 and the 1st quarter of 2023: extend for 06 months;
- ✓ June 2023 and the 2nd quarter of 2023: extend for 05 months;
- ✓ July 2023: extend for 04 months;
- ✓ August 2023: extend for 03 months.

(ii) Temporary CIT payment for the 1st and 2nd quarter of 2023: extend for 03 months.

(iii) VAT and PIT payable in 2023 of business households and individuals: to be extended until 30 December 2023.

(iv) The incurred land rent payable in 2023: 06 months extension for 50% of the incurred amount payable in 2023 (from 31 May 2023 to 30 November 2023).

The Decree takes effect from the date of signing to 31 December 2023.

(Decree No. 12/2023/ND-CP dated 13 April 2023 issued by the Government)

Contact

Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Corporate Income Tax

Guidance ruling

Defectivities or damaged goods during production is not deductible

Company has destroyed the defective or damaged goods incurred during the production process that could not be recycled, other than the destruction cases prescribed by the Law on CIT, this destruction amount would be treated as non-deductible expenses for CIT purpose.

(Official Letter No.796/TCT-CS dated 20 March 2023 issued by the General Department of Taxation)

Support by cash for dealers

Company sells goods to consumers through channel of distributors (who directly purchase goods from the company) and dealers (who purchase goods through distributors). If the company provide supports by cash to dealers through distributors when the dealers achieved the sale target as agreement with the company and give monetary support to salesmen of dealers who are not employees of the company, there is no valid base to deem the expense as deductible in accordance with CIT regulations.

(Official Letter No.786/TCT-CS dated 20 March 2023 issued by the General Department of Taxation)

Guidance on applying 30% CIT reduction when changing financial reporting period

When a company change the tax period from the calendar year (from 01 January to 31 December) to the fiscal year (from 01 October to 30 September), the CIT amount subject to 30% reduction according to Decree No. 92/2021/ND-CP shall be the CIT incurred for the tax period from 01 January 2021 to 30 September 2021.

(Official Letter No.940/TCT-CS dated 27 March 2023 issued by the General Department of Taxation)

CIT incentives for factory leasing activities

When a company have an investment project entitled to CIT incentives thanks to location conditions (the project locate in the industrial park, which is not within the area with favorable socio-economic conditions) and lease the factory (without subleasing land), which is in line with the objectives and scale of the project on the IRC, the income from factory lease can enjoy CIT incentive.

(Official Letter No. 6120/CTBDU-TTHT dated 06 April 2023 issued by Binh Duong Tax Department)



Contact

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Corporate Income Tax

Guidance ruling



CIT incentives for interest income from term deposit

When a company enjoy CIT incentives thanks to preferential location, income eligible to CIT incentives is the entire income arising from production and business activities in the preferential location (including interest from bank term deposits arising in preferential areas).

(Official Letter No. 6738/CTBDU-TTHT dated 17 April 2023 issued by Binh Duong Tax Department)

Income from overpayment of customers is not eligible to CIT incentives

Incomes from overpayment of customers, which do not relate to incentivized main business, shall not be entitled to CIT incentive. The company must declare and calculate the CIT liability at the standard rate.

(Official Letter No. 5280/CTBDU-TTHT dated 23 March 2023 issued by Binh Duong Tax Department)

Income from exchange rate difference in the investment period is not entitled to CIT incentives

Income from exchange rate difference in the investment period before the incentivized investment project is put into production and business activities, this income is not income from business and production activities of the project and should not be entitled to CIT incentives.

(Official Letter No. 819/CTBNI-TTHT dated 22 March 2023 issued by Bac Ninh Tax Department)

Contact

Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Indirect Tax

New regulation

Guidance ruling

Draft Resolution on VAT reduction in 2023

The Government is gathering public comments on the draft Resolution of National Assembly on reducing VAT in 2023 as follows:

- Reduce VAT rate by 2% for goods and services subject to 10% VAT rate (reduce to 8%);
- Business establishments that calculate VAT according to the percentage on revenue are entitled to a 20% reduction in the percentage on revenue when calculating VAT.

The Resolution is expected to take effect from the date of signing to 31 December 2023.

(Draft Resolution of the National Assembly)

VAT on offshore construction and installation activities

Construction and installation activities conducted overseas are entitled to 0% VAT. Input VAT creditability and refund conditions are prescribed under Articles 16 and 17 of Circular No. 219/2013/ND-CP.

The Vietnamese construction contractor, who purchases goods and materials from overseas suppliers or manufactures, shall comply with the foreign tax regulations. The respective input VAT imposed under foreign tax regulations shall not be credited against the output VAT payable in Vietnam.

(Official Letter No. 793/TCT-CS dated 20 March 2023 issued by the General Department of Taxation)

VAT declaration and payment of real estate transfer in provinces other than where the taxpayer is headquartered

Real estate transfer is subject to 10% VAT as prescribed under Article 11, Circular No. 219/2013/TT-BTC. The taxable price for real estate transfer is the transfer price minus (-) the VAT deductible land price pursuant to clause 3, Article 4, Decree No. 209/2013/ND-CP (supplemented by clause 3, Article 3, Decree No. 12/2015/ND-CP).

The company shall declare, calculate, allocate and pay VAT on real estate transfers in accordance with clauses 1b, 2b, and 3b, Article 13, Circular No. 80/2021/TT- BTC.

(Official Letter No. 12765/CTHN-TTHT dated 20 March 2023 issued by Hanoi Tax Department)

Contact

Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Indirect Tax

Guidance ruling

Regulations on invoices used by dependent branches

When a company has a dependent branch directly sell goods that meets the conditions specified in clause 4, Article 13, Circular 80/2021/TT-BTC, such dependent unit shall register to use e-invoice under its branch's name address and tax code with its supervising tax authority. Otherwise, the dependent unit will issue e-invoice under the company's name to the buyers.

(Official Letter No. 12768/CTHN-TTHT dated 20 March 2023 issued by Hanoi Tax Department)

VAT on the transfer of right to use Internet domain name

An enterprise that transfers the right to use an Internet domain name in accordance with relevant regulations shall issue invoice, declare, and pay 10% VAT.

(Official Letter No. 14845/CTHN-TTHT dated 27 March 2023 issued by Hanoi Tax Department)

VAT on services provided to foreign organizations

When a company provides service directly to an overseas entity and the place of service consumption is outside of Vietnam, if the service meets the conditions specified in clause 2b, Article 9, Circular 219/2013/TT-BTC and does not fall into clause 2, Article 1, Circular 130/2016/TT-BTC, the company can apply 0% VAT.

If a company provides a service directly to an overseas company and the place of service consumption is not outside of Vietnam, the service would not be eligible for 0% VAT.

(Official Letter No. 12772/CTHN-TTHT dated 20 March 2023 issued by Hanoi Tax Department)



Contact

Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Indirect Tax

Guidance ruling

VAT refund for investment projects divided in two phases

An enterprise has a new investment project, which is divided into two phases with multiple investment items and is within the investment stage, can claim VAT refund if:

- The remaining input VAT of the investment project after crediting against the payable VAT of business activities is from more VND 300 million and above.
- The conditions for tax deduction and refund for investment projects within conditional industries are satisfied, the project will be entitled to tax refund under the regulations.

(Official Letter No. 804/TCT-CS dated 20 March 2023 issued by the General Department of Taxation)

VAT for equipment supplied to educational institutions

Company providing specialised equipment and tools for teaching, research, and scientific experiments to educational institutions under clause 12, Article 5, Circular No. 219/2013/TT-BTC, can apply 5% VAT.

(Official Letter No. 14844/CTHN-TTHT dated 27 March 2023 issued by Hanoi Tax Department)

VAT refund for construction services in non-tariff zones

When a company providing construction services in non-tariff zones, if the conditions specified in clause 2, Article 9, Circular No. 219/2013/TT-BTC are met, the transaction will be considered as exporting services and VAT rate of 0% will be applied.

If the service qualifies as an exported service and the enterprise has an outstanding input VAT amount of VND 300 million or higher in the month/quarter, the VAT can be applied for refund monthly or quarterly if satisfy conditions and procedures prescribed in Article 16, Circular No. 219/2013/TT-BTC.

(Official Letter No. 15743/CTHN-TTHT dated 30 March 2023 issued by Hanoi Tax Department)



Contact

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale

Labor & Personal Income Tax New regulation

Amendment of procedures for participation in social insurance and handling of late payment or evasion of payment of social insurance

According to the amendment in Clause 8, Article 2, Decision No. 490/QĐ-BHXH, after receiving the Form TK1-TS from the employee, the company is responsible for making a dossier, including: Form TK3-TS, Form D02-LT; enclosed with a copy of the competent authority's document related to the adjustment of the company's information and the employee's file; send a soft copy to the social insurance agency or send it online no later than 30 days from the date of signing the labor contract, the recruitment decision.

In case the enterprise is late in paying social insurance contributions for more than 2 months, the official in charge of the Collection - Book and Card Management Department/Team will send a notification letter every 10 days and if after 2 times sending notification letter, the company has not yet paid, the enterprise will be put on the Unscheduled Inspection List (clause 9, Article 2).

The Decision takes effect from 01 April 2023.

(Decision No. 490/QĐ-BHXH dated 28 March 2023 issued by Vietnam Social Insurance)



Contact

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Labor & Personal Income Tax

New regulation

Guidance ruling

Draft Resolution on several policies in management of entry, exit, transit, and residence of foreigners in Vietnam

The Government has assigned the Ministry of Public Security to assume the prime responsibility for, and coordinate with the Ministry of Justice in completing procedures to submit to the National Assembly for consideration and inclusion in the Joint Resolution at the 5th Session (May 2023) on several policies in immigration management of foreigners, including:

- Granting electronic visas to citizens of all countries and territories;
- Increase the duration of e-visa from 30 days to 03 months, valid for one time or multiple times;
- Increase the time limit for granting temporary residence certificate at border gate for people entering unilateral visa exemption from 15 days to 45 days.

(Resolution No. 46/NQ-CP dated 31 March 2023 issued by the Government)

Withhold PIT when paying employees' rewards

Rewards of employees when making excellent achievements, paid by employers in cash or in kind in any form, is a taxable income according to clause 2, Article 2, Circular No. 111/2013/TT-BTC dated 15 August 2013. The employers shall withhold PIT (according to the progressive rate if there is a labor contract of 3 months or more) before paying income to the employees and declare PIT with tax authority.

(Official Letter No. 20479/CT-TTHT dated 10 April 2023 issued by Hanoi Tax Department)

PIT when hiring individuals to advertise products

Company signs contract to hire an individual to advertise their products, responsibility for PIT is as below:

If individual does not have a business registration, the income from advertising is taxable according to regulations on wages and salaries. Company shall withhold PIT according to the progressive rate (if there is a labor contract of 3 months or more) or at 10% (there is no labor contract or the labor contract is less than 3 months) according to the provisions of Article 25, Circular No. 111/2013/TT-BTC.

If the individual has a business registration, the income from advertising is business income and is taxable according to Article 10, Appendix I, Circular No. 40/2021/TT-BTC (including: 5% VAT and 2% PIT).

(Official Letter No. 8205/CTHN-TTHT dated 28/2/2023 issued by Hanoi Tax Department)

Contact

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Foreign Contractor Withholding Tax

Guidance ruling

Apply Double Tax Avoidance Agreement (“DTA”) for income of foreign investors earned in Vietnam

Foreign contractor receives income from providing support and training services in Vietnam on the basis of agreement with the Vietnamese company, this service is subject to FCWT including VAT and CIT.

If the foreign contractor does not constitute permanent establishment in Vietnam as prescribed in the DTA between the two countries, the CIT amount will be exempted (the VAT amount is not exempted).

Foreign contractor or organizations/individuals authorized by the foreign contractor, shall prepare notification dossiers according to Clause 1, Article 62, Circular No. 80/2021/TT-BTC dated 29 September 2021 issued by the Ministry of Finance.

(Official Letter No. 6239/CTBDU-TTHT dated 07 April 2023 issued by Binh Duong Tax Department)

Brokerage services to sell goods/services in foreign markets are not subject to foreign contractor withholding tax

Vietnamese company enters into an agreement with a foreign company to hire a foreign partner to perform brokerage services, to sell the Vietnam company’s products and services in foreign markets, the brokerage services are not subject to foreign contractor withholding tax according to Article 2, Circular No. 103/2014/TT-BTC issued by the Ministry of Finance.

(Official Letter No. 6241/CTBDU-TTHT dated 07 April 2023 issued by Binh Duong Tax Department)

Contact

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Trade & Customs

New regulation

Notable news

Update the lists of special imported and exported goods

On 31 March 2023, the Ministry of Industry and Trade issued Circular No. 08/2023/TT-BCT providing update on the lists of special imported and exported goods, including:

- List and details of HS codes of consumables, medical equipment and used vehicles prohibited from importing (replacing Appendix I of Circular No. 12/2018/TT-BCT);
- List and details of HS codes of goods temporarily suspended from temporary import - re-export trading and merchanting trading (replacing Appendix II of Circular No. 12/2018/TT-BCT);
- Detailed list by HS code for exported paddy and rice (replacing Appendix I of Circular No. 41/2019/TT-BCT);
- Detailed list by HS code for tobacco ingredients and cigarette paper (replacing Appendix VI of Circular No. 41/2019/TT-BCT);
- Detailed list by HS code for machinery and equipment specialized for the tobacco industry (replacing Appendix VII of Circular No. 41/2019/TT-BCT).

The Circular shall take effect from 16 May 2023.

(Circular No. 08/2023/TT-BCT dated 31 March 2023 issued by the Ministry of Industry and Trade)

Update on Post-clearance Customs Audit

Due to the complicated and unstable situation of global economy, lots of key industries of Vietnam have been affected. In order to support the enterprises, the General Department of Customs made guidance on changes to Post-clearance Customs Audit (“PCA”) activities as follow:

- PCA for enterprises which are under PCA plan of 2023 shall not be carried out without mandatory reason.
- Training and technical capacity strengthening for customs officers that handle PCA activities, research and development of PCA plans by risks and violations topics should be prioritized;
- Development of the updated PCA process should be completed to replace Decision No. 575/QD-TCHQ dated 21 March 2019.

(Official Letter No. 1796/TCHQ-KTSTQ dated 18 April 2023 issued by the General Department of Customs)

Contact

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Trade & Customs

Guidance ruling

Re-importing exported goods is still subject to Special Consumption Tax

Goods that have been previously exported, then re-imported into Vietnam shall not be exempt from Special Consumption Tax (if being subject). Hence, enterprises still have to declare and pay Special Consumption Tax when re-importing such goods.

(Official Letter No. 1500/TCHQ-TXNK dated 04 April 2023 issued by the General Department of Customs)

Exported scraps originating from imported goods are still subject to export duty

The General Department of Customs views that in case enterprises export scraps originating from imported materials, such goods are still subject to export duty and not considered for duty exemption.

(Official Letter No. 1400/TCHQ-GSQL dated 29 March 2023 issued by the General Department of Customs)

Notable points on the application of C/O Form D

ATIGA member countries shall accept C/O (including hard-copy C/O, electronic C/O, self-certification of origin) using the 2017 HS code until the end of 31 March 2023. From 01 April 2023, the 2022 HS code should be used for declaration.

Regarding invalid retroactively issued C/O (leaving the 13th box "Issued Retroactively" unchecked):

- Electronic C/O will be accepted if the examination of validity and reconciliation with customs declaration and other import documents result in no suspicion on goods origin;
- Hard-copy C/O will not be rejected at this stage. Instead, it will be reported to the Customs Supervision and Administration Department for verification.

(Official Letter No. 1163/TCHQ-GSQL dated 15 March 2023 issued by the General Department of Customs)



Contact

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale

Contact Us



Thomas McClelland
National Tax Leader
+84 28 7101 4333
tmcclelland@deloitte.com



Bui Ngoc Tuan
Tax Partner
+84 24 7105 0021
tbui@deloitte.com



Bui Tuan Minh
Tax Partner
+84 24 7105 0022
mbui@deloitte.com



Phan Vu Hoang
Tax Partner
+84 28 7101 4345
hoangphan@deloitte.com



Dinh Mai Hanh
Tax Partner
+84 24 7105 0050
handinh@deloitte.com



Vo Hiep Van An
Tax Partner
+84 28 7101 4444
avo@deloitte.com

Hanoi Office

15th Floor, Vinaconex Building,
34 Lang Ha Street, Dong Da District, Hanoi, Vietnam
Tel: +84 24 7105 0000
Fax: +84 24 6288 5678



Vu Thu Nga
Tax Partner
+84 24 7105 0023
ngavu@deloitte.com



Tat Hong Quan
Tax Partner
+84 28 7101 4341
quantat@deloitte.com



Bob Fletcher
Director, Trade and Customs
+84 28 7101 4398
fletcherbob@deloitte.com

Ho Chi Minh City Office

18th Floor, Times Square Building,
57-69F Dong Khoi Street, District 1, Ho Chi Minh City, Vietnam
Tel: +84 28 7101 4555
Fax: +84 28 3910 0750

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Vietnam

In Vietnam, services are provided by separate and independent legal entities, each of which may be referred to or known as Deloitte Vietnam.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.