

**Deloitte.**

**Newsletter**  
**Tax & Customs**

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Firm of the Year**

**Tax Firm  
of the Year**



## Tax Administration

### New regulation

#### Guide to electronic transactions in taxation

On 09 July 2024, the Ministry of Finance issued Circular No. 46/2024/TT-BTC to guide electronic transactions in the field of taxation. This Circular is effective from 28 August 2024. Here are the key points:

**Registering electronic tax accounts:** Individuals with a level 2 electronic identification account can use it instead of a personal ID card or passport to register and obtain an electronic tax account. Activation requests will be sent to the registered phone number or email.

**Initial tax registration:** The General Department of Taxation's online portal will verify tax registration information and notify the taxpayer within 15 minutes after they submit their documents.

#### Handling administrative violations:

- If a taxpayer misses tax registration deadlines or fails to update their information, the Tax authority will determine the delay based on when the documents were submitted and issue a penalty accordingly.
- The decision on penalties will be made after the taxpayer's explanation period. If the explanation is rejected, the Tax authority will notify the taxpayer and issue the official penalty decision.

*(Circular No. 46/2024/TT-BTC dated 09 July 2024 issued by the Ministry of Finance)*



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## Tax Administration

### Guidance ruling

#### No land rental discounts for petroleum businesses

As per Official Letter No. 3308/TCT-CS issued by the General Department of Taxation on 30 July 2024, companies and individuals who lease land from the Government for petroleum businesses, which are subject to Special Consumption Tax, will not receive any exemptions or reductions on land rental fees. This applies if their business is not eligible for investment incentives under the Law on Investment.

*(Official Letter No. 3308/TCT-CS dated 30 July 2024 issued by the General Department of Taxation)*



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## Corporate Income Tax

### Guidance ruling

#### Deductible compensation expenses for contract cancellations

As per Official Letter No. 20507/CTBDU-TTHT issued by the Binh Duong Tax Department on 25 July 2024, compensation expenses resulting from contract cancellations, as outlined in sales contracts, can be considered deductible expenses for Corporate Income Tax (“CIT”) purposes. To qualify, these expenses must be fully supported by payment vouchers from the company and receipt vouchers from the customer.

*(Official Letter No. 20507/CTBDU-TTHT dated 25 July 2024 issued by Binh Duong Tax Department)*

#### CIT on interest income for representative offices

According to Official Letter No. 3227/TCT-CS issued by the General Department of Taxation on 26 July 2024, representative offices that earn interest income from deposits are required to declare and pay CIT in accordance with Article 11 of Decree No. 218/2013/ND-CP dated 26 December 2013.

*(Official Letter No. 3227/TCT-CS dated 26 July 2024 issued by the General Department of Taxation)*

#### Tax declaration for real estate transfers in different provinces

As per Official Letter No. 43610/CTHN-TTHT issued by the Hanoi Tax Department on 30 July 2024, even if a company is not required to file quarterly tax returns, it must still calculate and make provisional tax payments for income from real estate transfers.

The final tax declaration for these real estate transfer activities should be submitted using Form 03/TNDN. Additionally, an allocation table for CIT payable to the provinces where the real estate income was generated must be included. This table should be prepared using Form 03-8A/TNDN, as outlined in Appendix II of Circular No. 80/2021/TT-BTC and submitted to the managing Tax authority.

*(Official Letter No. 43610/CTHN-TTHT dated 30 July 2024 issued by the Hanoi Tax Department)*



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## Indirect Tax

### Guidance ruling

#### Credit and refund of input Value Added Tax (“VAT”) for Export Processing Enterprises (“EPE”) prior to satisfactory completion of customs requirements

According to Official Letter No. 3391/TCT-CS issued by the General Department of Taxation on 01 August 2024, if a company:

- is certified as an EPE under the Investment Registration Certificate before Decree No. 18/2021/ND-CP took effect, but
- has not been subject to a customs inspection to confirm that the EPE conditions are satisfied; and
- has not yet applied the tax policy for the non-tariff zone according to Decree No. 82/2018/ND-CP

Then the VAT paid on imported goods or input VAT on domestically sourced goods and services can be lawfully credited or refunded according to applicable VAT regulations.

*(Official Letter No. 3391/TCT-CS dated 01 August 2024 issued by the General Department of Taxation)*

#### VAT for on-spot exported goods

When a company manufactures goods for overseas organizations or individuals without a presence in Vietnam and is instructed to deliver these goods to other enterprises within Vietnam, this is considered an on-spot export activity.

The company performing the manufacturing activity can apply a 0% VAT rate to these on-spot exported goods provided the following conditions are satisfied:

- The company has all the necessary supporting documents (sales or exported goods processing contracts, export consignment contracts, bank payment vouchers for exported goods, customs declaration and other documents as regulated); and
- The business model adopted does not fall under the cases specified in Clause 2, Article 1, Circular No. 130/2016/TT-BTC.

In determining whether an overseas organization does not have a presence in Vietnam the manufacturer should follow Clause 5, Article 3 of Law No. 05/2017/QH14 and Clause 2, Article 3 of Decree No. 90/2007/ND-CP.

*(Official Letter No. 21117/CTBDU-TTHT dated 26 July 2024 issued by the Binh Duong Tax Department)*



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## Personal Income Tax

### Guidance ruling

#### Personal Income Tax (“PIT”) policy on golf fees

According to Official Letter No. 39488/CTHN-TTHT issued by the Hanoi Tax Department on 04 July 2024 the treatment of golf expenses for employees interacting with customers is as follows:

- **Company-Named Expenses:** If the invoices and supporting documents for golf expenses are issued under the company's name, these expenses are not considered income for the employee and are not subject to PIT.
- **Individual-Named Golf Card:** If the golf card is issued in the name of a specific individual, the expense must be included in that individual's taxable income for PIT purposes.

*(Official Letter No. 39488/CTHN-TTHT dated 04 July 2024 issued by Ha Noi Tax Department)*

#### PIT policy for accommodation expenses for foreign flight crew members

According to Official Letter No. 2887/TCT-DNNCN issued by the General Department of Taxation on 05 July 2024, regarding accommodation expenses for foreign flight crew members:

- If an airline's booking office pays for the accommodation expenses, including transportation services between the airport and the place of residence for flight crew members when they are in Vietnam, and these expenses are deductible for CIT purposes, they are not included in the crew members' taxable income for PIT purposes.
- However, if the expenses exceed the allowed limit, the amount that exceeds this cap will be subject to PIT.

*(Official Letter No. 2887/TCT-DNNCN date 05 July 2024 issued by the General Department of Taxation)*



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## Personal Income Tax

### Guidance ruling

#### PIT during an employee's probation period

According to Official Letter No. 21458/CTBDU-TTHT issued by the Binh Duong Tax Department on 01 August 2024, the PIT obligations during an employee's probation period are as follows:

**Post-Probation with a Labor Contract:** If the company signs a labor contract with the employee after the probation period, with a term of three months or more, the company must withhold PIT at the progressive tax rates on the employee's total income, including the income earned during the probation period, before paying out the net take-home income.

**No Labor Contract After Probation:** If the company and the employee do not sign a labor contract after the probation period, the company must withhold PIT at a flat tax rate of 10% on any income paid to the employee of VND 2 million or more per payment during the probation period.

**Flat Tax Rate with Low Income:** If an employee's total taxable income for the year, after deducting the family circumstances, is below the taxable threshold and they have only been subject to the 10% flat tax rate, the employee can submit a commitment letter (Form No. 02/CK-TNCN) to the company. This allows the company to temporarily not withhold the 10% PIT on their income. The employee must have a tax code number at the time of commitment and is responsible for the accuracy of the commitment. Any false statements may result in penalties under the Law on Tax Administration.

*(Official Letter No. 21458/CTBDU-TTHT dated 01 August 2024 issued by Binh Duong Tax Department)*

#### Supporting documents for deducting overseas compulsory insurance contributions in Vietnam

If a company has foreign employees who are assigned to work in Vietnam and these employees contribute to compulsory insurance in their home countries, the following documents are needed to deduct these insurance contributions in Vietnam:

1. A copy of the payment receipt from the relevant insurance agency, or
2. A confirmation from the company (as the income-payer) stating the insurance amounts that were withheld and paid on behalf of the employees.

These documents are required according to point 2, Article 9 of Circular No. 111/2013/TT-BTC (dated 15 August 2013) and Article 85 of Circular No. 80/2021/TT-BTC (dated 29 September 2021) issued by the Ministry of Finance.

*(Official Letter No. 21956/CTBDU-TTHT date 07 August 2024 issued by Binh Duong Tax Department)*

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## Foreign Contractor Withholding Tax

### Guidance ruling

#### Foreign Contractor Withholding Tax (“FCWT”) on road freight services

Foreign contractors providing road freight services and earning income in Vietnam under a contract or agreement or commitment with a Vietnamese organization or individual, are subject to FCWT. The tax rates potentially applicable are:

- **2% for CIT**
- **3% for VAT** on the taxable revenue.

However, if the freight services qualify as international transport services under the relevant regulations, the VAT rate would be 0%.

If a foreign contractor earns income from services that are both provided and consumed outside of Vietnam, those earnings are not subject to FCWT.

*(Official Letter No. 42509/CTHN-TTHT date 24 July 2024 issued by the Ha Noi Tax Department)*

#### FCWT on loan interest paid to the parent company

When a Vietnamese company enters into a long-term loan contract with its overseas parent company, where the principal and interest will be repaid in a lump sum after 10 years, the overseas parent company is subject to FCWT on the interest income as per regulations.

If the parent company decides to write off the loan interest debts, meaning the Vietnamese company is no longer required to pay any interest, then the Vietnamese company does not need to declare and pay FCWT on behalf of the parent company.

However, the loan interest expense that corresponds to the written-off interest must be recorded as other income for the purpose of determining taxable income according to Vietnamese regulations.

*(Official Letter No. 3602/TCT-CS dated 15 August 2024 issued by the General Department of Taxation)*



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## Trade & Customs

### New regulation

#### Issuance of new Decree amending, and supplementing the list of narcotic substances and precursors under Decree No. 57/2022/ND-CP dated 25 August 2022 issued by the Government

On 17 July 2024, the Government has issued Decree No. 90/2024/ND-CP to amend, and supplement the list of narcotic substances and precursors under Decree No. 57/2022/ND-CP dated 25 August 2022.

Specifically, Decree No. 90/2024/ND-CP has supplemented:

- **14** Chemicals, to List No. II “Drugs restrictedly used in analysis, testing, scientific research, criminal investigation, or in the medical sector, as regulated by competent authorities”; and
- **01** Chemical, to List No. III “Drugs used in analysis, testing, scientific research, criminal investigation or in the medical, and veterinary sectors, as regulated by competent authorities”.

*(Decree No. 90/2024/ND-CP dated 17 July 2024 issued by the Government)*



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## Trade & Customs

### Guidance ruling

#### Guidance on import rights and export rights of Foreign Direct Investment (“FDI”) entity

On 29 July 2024, Customs Supervision Department (under the General Department of Customs) have issued Official Letter No. 1238/QSQL-GQ2 to address questions relating to export rights of FDI entity. Specifically:

- If an FDI company has been granted import rights by the Governing authority under the provisions of Decree No. 09/2018/ND-CP dated 15 January 2018 then the FDI company should use customs import mode A41 when importing goods under the Import rights;
- When performing the rights granted, the FDI company will need to follow the guidance under Official Letter No. 695/TCHQ-GSQL dated 05 February 2021, namely that where goods:
  - ✓ have been imported (including those imported under Import rights of FDI entity), and then
  - ✓ exported as the same condition and not been used, processed (include goods exported under the export rights of FDI company) to overseas, or to Free Trade Zone,

the company should use customs export mode B13, or B11 following the guidance under Official Letter No. 4032/TCHQ-GSQL dated 16 August 2021.

*(Official Letter No. 1238/QSQL-GQ2 dated 29 July 2024 issued by the General Department of Customs)*

#### Guidance on the change of usage purpose for duty-exempted goods of investment project, in case the original import declaration has been lost

On 31 July 2024, the General Department of Customs issued Official Letter No. 3701/TCHQ-TXNK providing guidance on:

- registering Import declaration for change in usage purpose, from the duty exemption for investment project, to liquidation to domestic entity; and
- declaration of customs value in case the original import declaration has been lost.

Specifically:

#### Customs procedure for changing usage purpose of duty-exempted goods

- A new customs import declaration is required for duty-exempted goods that have been cleared from customs supervision, but later subject to change in usage purpose
- In the new customs import declaration, the customs declarant must clearly indicate the number of the original customs import declaration, and specify the reason for changing usage purpose (e.g., for domestic consumption), in the box titled “Notes” of e-customs declaration, or “Other notes” of paper customs declaration;
- If the time between importation and the change usage purpose/ domestic consumption, exceed the retention period of customs dossier (i.e., 05 years), the company is not required to provide the number of the original customs import declaration.

#### Regarding declaration of customs value

- When the change in usage purpose relates to sale of duty-exempted goods in Vietnam, the customs value to be declared on the new customs import declaration, is to be determined based on actual selling price (i.e., shown in the Liquidation Agreement);
- If the Customs authority concludes that the declared value is inappropriate, the customs value will be determined by Customs following prevailing customs valuation regulations and with reference to physical condition of the goods.

*(Official Letter No. 3701/TCHQ-TXNK dated 31 July 2024 issued by the General Department of Customs)*

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## Trade & Customs

### Guidance ruling

#### Ministry of Industry and Trade (“MOIT”) respond to General Department of Customs on the definition of “foreign trader without presence in Vietnam”

In response to an Official Letter No. 2643/TCHQ-GSQL from the General Department of Customs dated 10 June 2024 MOIT has provided the following comments:

##### Applicability of definition:

- The definition of a “foreign trader without presence in Vietnam” under the Law on Foreign Trade Management and Decree No. 90/2007/ND-CP is specifically intended for determining the export and import rights of foreign traders; and
- This definition does not apply in any other contexts.

#### Determination under Decree No. 08/2015/ND-CP

- Decree No. 08/2015/ND-CP, guides on Customs procedures, including regulations on the on-spot export and import arrangements, and uses the phrase “foreign organization, individual without presence in Vietnam.” However, it does not provide any detailed explanation of this phrase.
- The General Department of Customs has used the definition from Decree No. 90/2007/ND-CP to explain the term “foreign trader without presence in Vietnam” as it appears in Decree No. 08/2015/ND-CP

Then MOIT requests General Department of Customs to further study and clarify their definition of “foreign trader without presence in Vietnam” under Decree No. 08/2015/ND-CP from the perspective of customs regulations, considering customs' functions, responsibilities, and management requirements.

*(Official Letter No. 399/XNK-THCS dated 22 July 2024 issued by The Ministry of Industry and Trade)*



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