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Tax & Customs Newsletter

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Tax Administration Information ruling

Guidance ruling

Announcement list of foreign suppliers that have done tax registration in Vietnam

On 19 November 2022, the General Department of Taxation (“GDT”) issued a list of foreign suppliers, who do not have the business establishment in Vietnam, that have obtained a tax registration to provide e-commerce activities, digital-based business and other services to Vietnamese organizations and individuals.

(Notification No. 357/TB-DNL dated 19 November 2022 issued by the General Department of Taxation)

Business license tax applicable to the representative office

If a company’s representative office does not have production and business activities, it will not be required to declare and pay the business license tax.

(Official Letter No. 18224/CTBDU-TTHT dated 02 December 2022 issued by Binh Duong Tax Department)



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Corporate Income Tax

Guidance ruling



Corporate Income Tax for bank deposit interest income

If a company generates interest income from bank deposits, it will be treated as taxable income in the tax assessment year when it is generated.

(Official Letter No. 57306/CTHN-TTHT dated 23 November 2022 issued by Hanoi Tax Department)

Corporate Income Tax declaration when dependent branch located in another province other than province of the head office having CIT incentivized activities

If a company's dependent branch is located in a province other than province of the head office, and eligible for Corporate Income Tax ("CIT") incentives, then the CIT finalization return under form No. 03/TNDN should be filed with the company's managing tax authority.

The company should determine the CIT payable corresponding to the CIT incentivized activities under Form No. 03-3A/TNDN, 03-3B/TNDN, 03-3C/TNDN, and 03-3D/TNDN and file to the local tax authority where the dependent branch is located, and to the tax authority managing the company.

(Official Letter No. 17305/CTBDU-TTHT dated 11 November 2022 issued by Binh Duong Tax Department)

Tax treatment on the return of purchased goods

If a company returns purchased goods which have not been used to the supplier, it should be considered a goods sale activity, rather than goods return activity due to low-quality.

The company must therefore issue invoices, declare, and pay tax in the same manner as a normal sales activity when selling the goods back to the supplier.

(Official Letter No. 17307/CTBDU-TTHT dated 11 November 2022 issued by Binh Duong Tax Department)

Corporate Income Tax for real estate transfer activities

A company is not required to submit quarterly CIT declaration dossiers but must determine and pay the provisional quarterly CIT according to point b, clause 2, Article 17, Circular No. 80/20121/TT-BTC, to the state budget of the province where the real estate transfer takes place.

(Official Letter No. 17527/CTBDU-TTHT dated 17 November 2022 issued by Binh Duong Tax Department)



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Indirect Tax Guidance Ruling

Value Added Tax for construction supervision consultancy services of Vietnamese subcontractors

If a company is a sub-contractor who provides project construction supervision consultancy services in Vietnam to an overseas main contractor, then the company must issue an invoice with the Value Added Tax (“VAT”) rate of 10% to the main contractor upon providing the service. The content of the invoice must follow Article 10, Decree No. 123/2020/ND-CP of the Government.

The provision of project construction supervision consultancy services in Vietnam to an overseas main contractor does not fall into VAT refund cases according to the law on VAT.

(Official Letter No. 54502/CTHN-TTHT dated 10 November 2022 issued by Hanoi Tax Department)

Value Added Tax for international transportation business activities

If a company operates seaway transportation of goods through international routes from Vietnam to abroad, or from abroad to Vietnam, or both the departure and arrival destination are abroad, and regardless of their being a direct transportation or not, this business activity would be subject to 0% VAT – provided qualifying conditions as regulated are satisfied.

(Official Letter No. 55346/CTHN-TTHT dated 15 November 2022 issued by the Hanoi Tax Department)

Value Added Tax for real estate transfer activities located in another province other than the province of the head office

If a company has real estate transfer activities of investment projects of infrastructure, houses for transfer, which is in another province other than the province of the head office, then the company must submit the form no. 01/GTGT to separately declare VAT on the project, or each single project (if in that province or city, the company has many different housing projects) to the tax authorities where real estate transfer activities are conducted.

For normal production and business activities of the head office, the company should declare these under form No. 01/GTGT, excluding the transfer of real estate activities located in a province other than the province of the head office.

(Official Letter No. 53403/CTHN-TTHT dated 04 November 2022 issued by Hanoi Tax Department)

Value Added Tax on inspection and classification services of electronic components providing for export processing enterprises

The inspection and classification service of electronic components under a contract signed with the export processing enterprise is considered as an export service and entitled to apply 0% VAT rate if qualifying conditions as regulated are satisfied.

(Official Letter No. 55897/CTHN-TTHT dated 17 November 2022 issued by Hanoi Tax Department)



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Personal Income Tax

Guidance ruling

Personal Income Tax for benefits granted to local employees including expatriates

- Lunar New Year gifts for employees should be included in their taxable income when calculating Personal Income Tax (“PIT”). The PIT assessment period is the month when the employees receive the gifts.
- Service fees paid to transport personal belongings for repatriating foreigners (whose labor contracts are terminated), that are supported by an invoice issued by the supplier after the time the labor contract ended, should be included in the employee’s taxable income when calculating PIT.

(Official Letter No. 3300/CTHPH-TTHT dated 17 October 2022 issued by Hai Phong Tax Department)



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Foreign Contractor Withholding Tax

Guidance ruling

Foreign Contractor Withholding Tax levied on the payment-on-behalf of the foreign expert

If a Vietnamese company made a payment on behalf of the overseas company for accommodation and travel expenses for foreign technicians in Vietnam and was directly reimbursed by the foreign company without any further income generated, then such payment on behalf of the overseas company is not subject to Foreign Contractor Withholding Tax ("FCWT").

(Official Letter No. 11261/CTHDU-TTHT dated 25 November 2022 issued by Hai Duong Tax Department)

Foreign Contractor Withholding Tax levied on the purchased air-ticket through the website of foreign airlines

If a company purchases round-trip air tickets for its director to go on overseas business trips via the website of a foreign airline, then:

- If the foreign airline issues air tickets through its agents or representative offices in Vietnam, the company would not have to withhold and pay any taxes on the airline's behalf. The airline's agents or representative offices are responsible for declaring and paying FCWT on behalf of the airline.
- If the foreign airline directly issues electronic air tickets to the company through the website other than its agent or representative offices in Vietnam and do not make the tax registration, declaration and payment according to Article 76, Article 77, Article 78, and Article 79, Circular No. 80/2021/TT-BTC, the company must withhold and pay taxes on behalf of the foreign airline.

(Official Letter No. 59940/CTHN-TTHT dated 06 December 2022 issued by Hanoi Tax Department)



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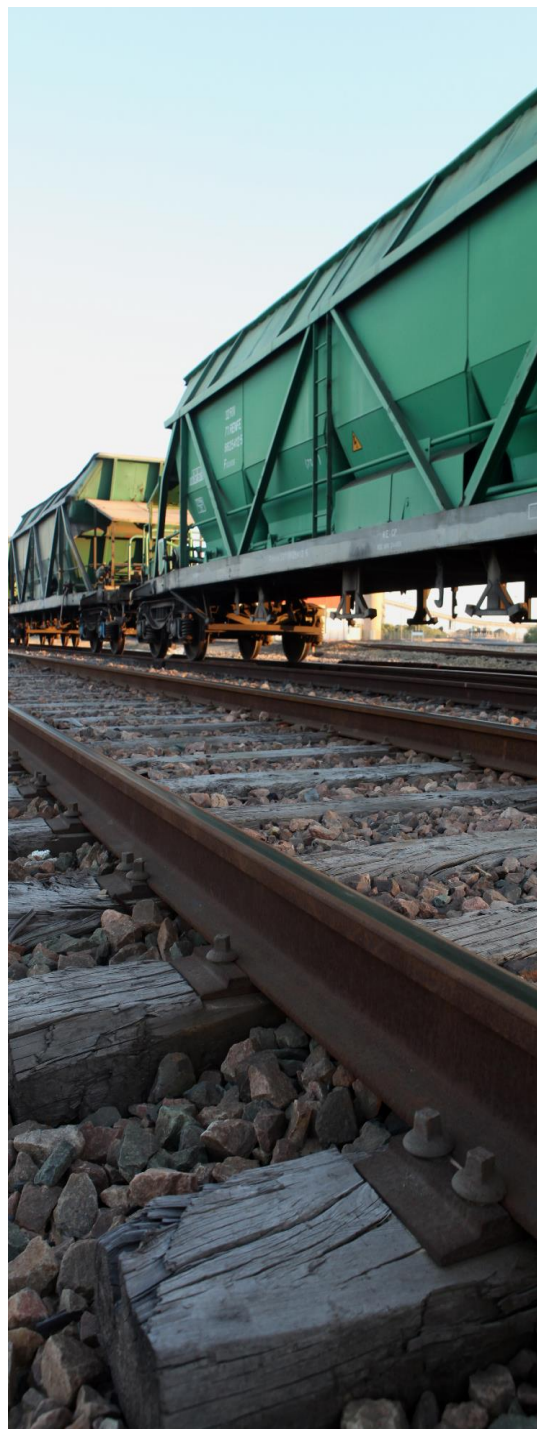
Transfer Pricing Guidance ruling

Related party transactions for the loan arrangement and declaration in the transfer pricing form

A loan arrangement with the company's related parties as specified in Article 5, Decree No. 132/2020/ND-CP of the Government dated 05 November 2020 will be considered a related party transaction and subject to the governance of Decree No. 132/2020/ND-CP.

The company is responsible for declaring and determining the price of related party transactions, declaring the information regarding to the affiliate relationship and related party transactions according to Appendices I, II, and III attached with Decree No. 132/2020/ND-CP and submit together with the CIT finalization return as prescribed in Article 18, Decree No. 132/2020/ND-CP of the Government.

(Official Letter No. 59003/CTHN-TTHT dated 30 November 2022 issued by Hanoi Tax Department)



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Trade & Customs

New regulations

New Circular regulating on the rules of origin under the Regional Comprehensive Economic Partnership

On 18 November 2022, the Ministry of Industry and Trade issued Circular No. 32/2022/TT-BCT (“Circular 32”) amending Circular No. 05/2022/TT-BCT dated 18 February 2022 which stipulates the rules of origin of goods under the Regional Comprehensive Economic Partnership (“RCEP”).

Specifically, Circular 32:

- replaces appendix I (Product specific rules) in point a, clause 1, Article 4, Circular No. 05/2022/TT-BCT by the appendix I attached with this circular.
- replaces appendix III (C/O form RCEP for exported goods and amended declaration of C/O) in point c, clause 1, Article 4, Circular No. 05/2022/TT-BCT by appendix II attached with this circular.

Circular 32 takes effect from 01 January 2023.

(Circular No. 32/2022/TT-BCT dated 18 November 2022 issued by the Ministry of Industry and Trade)

Guidance ruling

Customs procedures and duty treatment for goods imported to domestic market, that originated from exported goods, which had completed customs procedures and were stored in the bonded warehouse

Regarding to the customs procedures:

- The enterprises are eligible to transfer the ownership of goods that have been completed customs procedures and stored in the bonded warehouse for the export activities later.
- If the goods owners need to re-import goods stored in a bonded warehouse into the domestic market, then an import declaration must be registered, showing relevant customs modes, and import procedures must be completed as prescribed by regulation.

Regarding to the duty treatment:

- The enterprises make duty treatment following to the relevant registered customs mode.
- If the goods imported from the bonded warehouse into domestic market are for export manufacturing activities, that meet the conditions as regulated, then these goods shall be exempted from import duty and not subjected to VAT.

(Official Letter No. 4826/TCHQ-GSQL dated 14 November 2022 issued by the General Department of Customs)



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Trade & Customs

Guidance ruling

Strengthening the inspection, prevention of fraud and counterfeiting of goods origin, illegal labeling and transshipment and infringement of intellectual property rights

The General Department of Customs (“GDC”) requests the local Customs departments of provinces and cities to:

- Comply with the guidance issued by GDC, such as the Official Letter No. 5189/TCHQ-GSQL dated 13/08/2019, Directive No. 7988/CT-TCHQ dated 25/12/2019, Official Letter No. 906/TCHQ-GSQL dated 24/02/2021 and Official Letter No. 5951/TCHQ-GSQL dated 17/12/2021.
- Pay attention to certain points during reviewing customs dossiers and physical goods during the clearance procedures, specifically:
 - (i) For exported goods:
 - ✓ **Subjects:** Wooden furniture, plastic products, rubber tires, knives, scissors, tableware and motocross motorcycles exported to United States, European countries, etc.
 - ✓ **Scopes:** The labeling and origin of goods in accordance with clause 5 and clause 7, Article 1, Decree No. 111/2021/ND-CP dated 09/12/2021.

(ii) For imported goods:

- ✓ **Subjects:** Foods, spirits, beers, miscellaneous goods, electrical and electronic household articles, cosmetics, clothes and pharmaceutical products imported from primary markets for trading/ consumption in Vietnam.
- ✓ **Scopes:**
 - The labeling and origin of goods in accordance with the guidance in the section 1.1, Official Letter No. 5189/TCHQ-GSQL dated 13 August 2019 issued by GDC.
 - Goods supervision, to prevent infringement of intellectual property rights, in line with the guidance in point b.2.9, section 1.1, Official Letter No. 5189/TCHQ-GSQL dated 13/08/2019 issued by GDC.

(Official Letter No. 4823/TCHQ-GSQL dated 14 November 2022 issued by the General Department of Customs)



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Trade & Customs

Guidance ruling

Tax policy on goods exported for storage in an overseas bonded warehouse

GDC requested GDT to consider 02 options when for determining the timing of export revenue recognition, and invoice issuance (when a company opens export declarations to deliver goods to an overseas bonded warehouse and subsequently sells these goods to its overseas partners), namely:

- **Option 1:** The time of VAT invoice issuance/export revenue determination is the time of selling the goods, transferring the ownership, the usage right of goods to the buyer (i.e., Date the goods are physically shipped out of the overseas bonded warehouse).
- **Option 2:** The time of VAT invoice issuance/export revenue determination is after completing the procedures for export declaration and the goods are physically exported out of Vietnam. However, as at that time there has been no transfer of good ownership and the right to use the goods to other entities, the companies cannot issue legitimate invoices with sufficient information

GDC recommends GDT to:

- apply option 1 as at the time of selling the goods, the enterprise will have sufficient information of the buyer, to issue legitimate invoices as prescribed in Decree No. 123/2020/ND-CP dated 19 /10/2020.
- provide the guidance on the time of commercial invoice issuance to customers, that would be the time of revenue recognition; and
- instruct the fixed timeline that requires the company to notify the time of selling goods, transfer of ownership and usage right to overseas partners (e.g., submit the periodic report on goods stored in the bonded warehouse).

(Official Letter No. 4916/TCHQ-GSQL dated 18 November 2022 issued by the General Department of Customs)



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