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Tax Administration



GENERAL INFORMATION

Tax performance in the first 06 months of 2022

Tax performance in the first 06 months of 2022 with some notable points as follows:

1. Result of State budget collection in the first 06 months:

The accumulated revenue of the first 06 months was only VND 775,262 billion, equal to 66% of the 2022 estimation and 117.6% compared to the same period in 2021.

2. Tax audit/ inspection status

In the first 06 months of 2022, tax authorities at all levels have carried out 20,720 tax audit/ inspections at the taxpayer's premises and audited 276,726 tax declaration dossiers through desk-tax audits. The total amount proposed through the audits and inspections is VND 13,937 billion, of which:

- Increase in tax arrears: VND 3,855 billion;
- Reduce tax credits: VND 639 billion;
- Reduce tax losses: VND 9,443 billion;
- Transfer Pricing audit: inspected 74 enterprises; tax arrears and penalties of VND 288 billion; reduced losses of VND 488 billion, reduced tax credits of VND 0,87 billion.

3. Directions for the implementation of the 2022 plan in the upcoming 6 months:

- Strengthen the tax debts management, tax debts enforcement and fight against losses in tax collection;
- Continue to strengthen tax audits/ inspections exceeding the planned collection amount;
- Continue to effectively implement the support packages on the tax exemption, reduction, extension of tax and land rental payments for taxpayers.

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Corporate Income Tax



GUIDANCE RULING

The Corporate Income Tax reduction policy for enterprises that regularly employ female employees

If an enterprise employs more than 100 female employees, accounting for 30% of the total number of regular employees, the enterprise is entitled to a reduction of Corporate Income Tax ("CIT") corresponding to the actual extra money spent on female employees if enterprises can record separately.

The eligible enterprise is needed to keep sufficient documents proving the total number of female employees regularly employed together with a confirmation by the competent labor authorities.

(The Official Letter No. 1847/CTHPH-TTHT dated 07 July 2022 issued by Hai Phong Tax Department)

Cases where the assets contributed as capital are not valued at market price would be subject to tax imposition

If the Company receives capital contribution by way of a trademark from an individual and completes transfer of the trademark ownership right from the individual to the Company following Law on Intellectual Property, after which the Company is the owner of the trademark and records the trademark as an increase in equity, the trademark value shall not be subject to CIT.

If the assets contributed as capital are not valued at the market price, the taxpayer is subject to tax imposition as prescribed in Article 50, Law on Tax Administration.

(The Official Letter No. 32670/CTHN-TTHT dated 11 July 2022 issued by Hanoi Tax Department)

Time for deciding the first revenue generating year

If the enterprise has sales of goods produced from the trial production stage and the sales fully satisfy all 05 conditions according to Vietnamese Accounting Standard No. 14 - revenue and other income, this will be recorded as revenue and shall be considered as the first year of generating revenue by the enterprise.

(The Official Letter No. 9482/CTBDU-TTHT dated 31 May 2022 issued by Binh Duong Tax Department).

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Indirect Tax & Foreign Contractor Withholding Tax



GUIDANCE RULING

“Basic chemicals” are entitled to 2% Value Added Tax reduction according to Decree No. 15/2022/ND-CP

"Basic chemicals" are not included in the list of goods not eligible for Value Added Tax ("VAT") reduction in clause 1, Article 1, Decree No. 15/2022/ND-CP and are not specified in the Appendices attached to Decree No. 15/2022/ND-CP.

If an enterprise manufactures and trades "basic chemicals" and is applying the VAT rate of 10%, it would be entitled to 2% VAT reduction according to the provisions of the Decree No. 15/2022/ND-CP of the Government.

(The Official Letter No. 2252/TCT-CS dated 27 June 2022 issued by the General Department of Taxation)

Value Added Tax refund for the expansion investment project

The prevailing VAT regulation does not provide any guidance on VAT refund for expansion investment projects. For business establishment applying VAT refund for "expansion investment projects", the Ministry of Finance will report to competent authorities for their consideration and handling according to regulations.

In the meantime, the amounts of input VAT incurred for the expansion investment projects are not refundable according to the conditions of expansion investment projects. The Company declares such input VAT on the VAT return Form 01/GTGT together with the VAT arising from goods and services bought in the period.

(The Official Letter No. 11749/CTBDU-TTHT dated 07 July 2022 issued by Binh Duong Tax Department)

Foreign Contractor Withholding Tax levied on income from providing software copyrights attached with training services

If the Company buys robot software licenses combined with training services from a foreign contractor, the income earned by the foreign contractor from supplying both software licenses and training services in Vietnam will be subject to Foreign Contractor Withholding Tax ("FCWT") (including VAT and CIT).

- For provision of robot software license: the payable CIT applied the CIT rate as of 10% on the taxable revenue.
- For provision of training services:
 - ✓ VAT applied the VAT rate 5% on the taxable revenue;
 - ✓ CIT applied the CIT rate 5% on the taxable revenue.

(The Official Letter No. 2007/CTBNI-TTHT dated 29 June 2022 issued by Bac Ninh Tax Department)

Foreign Contractor Withholding Tax on bonded warehouse rental income

If a Vietnamese company's customer is an enterprise outside of Vietnam ("the foreign contractor") that rents the Vietnam Company's bonded warehouse to transshipment of goods (to export goods to a third party abroad), this rental income would not subject to the provision of Circular No. 103/2014/TT-BTC of the Ministry of Finance specified in clause 5, Article 2, Circular No. 103/2014/TT-BTC.

But if the foreign contractor uses a bonded warehouse leased by the Vietnam company to distribute goods in the Vietnamese market or sell goods to a Vietnamese trader per the Law on Commerce, then the foreign contractor shall be obliged to declare and pay FCWT on incomes generated in Vietnam.

(The Official Letter No. 1927/CTBNI-TTHT dated 23 June 2022 issued by Bac Ninh Tax Department)



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Labor and Social insurance & Personal Income Tax



GUIDANCE RULING

The contribution rate to the Labor Accidents and Occupational Diseases Insurance Fund from 01 July 2022

The policy of reducing the contribution rate to the Labor Accidents and Occupational Diseases Insurance Fund (“LAODIF”) to 0% of the salary fund, as the basis for paying social insurance (“SI”) according to the Prime Minister’s Decision No. 23/2021/QĐ-TTg, has been implemented for 12 months, i.e., from 01 July 2021 to the end of 30 June 2022.

Therefore, from 01 July 2022, the employer shall pay to the LAODIF at the rate of 0.5% of the salary fund as the basis for paying SI following Decree No. 58/2020/ND-CP dated 25 May 2020 stipulating contribution rates of compulsory insurance contributions to the LAODIF.

(The Official Letter No. 3288/BHXH-QLT dated 21 June 2022 issued by Ho Chi Minh City Social Security Department)

Instructions for using electronic Personal Income Tax withholding certificate

The General Department of Taxation guides the income payers not needed to register, notify its issuance and send the electronic data to tax authorities when using electronic Personal Income Tax (“PIT”) withholding certificate. The income payers build their own software system for using electronic receipts ensuring the mandatory contents as prescribed in clause 1, Article 32, Decree No. 123/2020/ND-CP.

During the time when the electronic PIT withholding certificate has not yet been implemented, organizations and enterprises may use PIT withholding certificate in the form of self-issuance.

From 01 July 2022, tax authorities no longer sell PIT withholding certificates printed by tax authorities; for cases where enterprises still hold PIT withholding certificates bought from tax authorities, they shall continue to be used.

(The Official Letter No. 2455/TCT-DNNCN dated 12 July 2022 issued by the General Department of Taxation)

Personal Income Tax policy for non-resident individuals

Where, an overseas company assigns foreign employees to come to Vietnam to study and survey the Vietnamese market, and meet the qualification as a Vietnam tax non-resident individual, then:

- Payments made by the Vietnamese company to foreign employees in Vietnam are determined as incomes generated in Vietnam, the company is responsible for withholding 20% PIT before making payment to individuals.
- If a Vietnamese company pays on behalf of the overseas company following the agreement between the two parties for collection and payment expenses for individual foreign employees and it does not generate PIT taxable income, such foreign employees would not be subject to PIT in Vietnam.

(The Official Letter No. 32313/CTHN-TTHT dated 08 July 2022 issued by Hanoi Tax Department)

Personal Income Tax exemption and reduction under Tax treaty

Regarding procedures for PIT exemption and reduction under the Double Taxation Avoidance Agreement (“DTA”), the company shall follow clause 2, Article 62, Circular No. 80/2021/TT-BTC dated 29 September 2021 issued by the Ministry of Finance.

Within 15 days before execution of the contract with a Vietnamese organization or individual, the foreign party shall send to the Vietnamese party signing the contract or paying income, the dossier of request for tax exemption or reduction under the DTA agreement, for submission to the direct managing tax authorities of the Vietnamese party together with the first tax declaration dossiers as regulated.

(The Official Letter No. 31196/CTHN-TTHT dated 01 July 2022 issued by Hanoi Tax Department)



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Trade & Customs



NEW REGULATION

New Circular stipulating the List of goods capable of causing harm under the management of the Ministry of Transport

On 30 June 2022, the Ministry of Transport issued Circular No. 12/2022/TT-BGTVT replacing Circular No. 41/2018/TT-BGTVT stipulating the list of goods capable of causing harm under the management of the Ministry of Transport. Circular No. 12/2022/TT-BGTVT replaces 02 Appendixes of Circular No. 41/2018/TT-BGTVT, including:

- Appendix I: List of goods subject to certification of technical safety quality and environmental protection prior to customs clearance (for imported goods) or before launching into the market (for production and assembly);
- Appendix II: List of goods subject to certification of technical safety quality and environmental protection/conformity announcement.

The Circular takes effect from 15 August 2022.

(Circular No. 12/2022/TT-BGTVT dated 30 June 2022 issued by the Ministry of Transport)

GUIDANCE RULING

Liquidation of empty containers

- If containers are used for goods storage under temporary-importation and rotation method: per Article 49, Decree No. 08/2015/ND-CP, the declarants are allowed to sell these containers after conducting import procedures per Section 5, Chapter III, Decree No. 08/2015/ND-CP, which was amended and supplemented in Decree No. 59/2018/ND-CP.
- If buying and selling empty containers of domestic origin, there is no requirement to complete a customs declaration.

(The Official Letter No. 1234/HQTPHCM-GSQL dated 07 June 2022 issued by Ho Chi Minh City Customs Department)

Proofs of origin for goods on the list of goods specified in Appendix II, Circular No. 38/2018/TT-BTC (List of imported goods subject to submission of proofs of origin to Customs Authorities)

In cases where imported goods originating under Free Trade Agreements such as ATIGA, CPTPP, EVFTA, UKVFTA, RCEP are on the list of goods specified in Appendix II, Circular No. 38/2018/TT-BTC, then Customs Authorities shall accept self-certification of origin issued by the exporters provided that the provisions of the respective Free Trade Agreements are satisfied.

(The Official Letter No. 2307/TCHQ-GSQL dated 14 June 2022 issued by the General Department of Customs)

Value allocation for imported controlling and operating software

Following clause 4, Article 6, Circular No. 39/2015/TT-BTC amended and supplemented in clause 5, Article 1, Circular No. 60/2019/TT-BTC, when enterprises import controlling and operating software (which are recorded, stored in CDs), of which the value includes the license fee of the software that are used to install in multiple engines, machinery, and equipment, then:

- Based on import dossiers and supporting documents, customs declarants can choose one of 04 methods of value allocation as specified in clause 2, Article 16, Circular No. 39/2015/TT-BTC to declare the value of imported software; and
- The software value must be fully allocated to the imported engines, machinery and equipment that are installed with controlling and operating software.

Following clause 2, Article 16, Circular No. 39/2015/TT-BTC, there are 4 methods of customs value allocation, including: (i) Allocation by quantity; (ii) Allocation by weight; (iii) Allocation by volume; (iv) Allocation by the invoice value.

(The Official Letter No. 2333 TCHQ/TXNK dated 15 June 2022 issued by the General Department of Custom)



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GUIDANCE RULING

Guidance on customs export procedures where the means of transport/or border gate is changed

If the goods owner receive information about the change of the following criteria before the goods are loaded on the means of transport from the exporting place, the following actions shall be taken:

- If the carrier/ shipping line changes the name of the means of transport but **not** changing the port of loading, the checkpoint of export: the goods owner does not have to make supplementary declaration, and the carrier/ shipping line is responsible for notifying the Customs Authorities.
- If the carrier/ shipping line changes the port of loading or the checkpoint of export/ other cases of information change: the goods owner shall make supplementary declaration following with prevailing regulation.

After receiving the goods delivered by the goods owner at the designated place, the carrier or the person authorized by the carrier to transport the exported goods from drop-off location to the checkpoint of export, shall carry out the procedures for the goods transported under customs supervision in the form of independent transport.

(The Official Letter No. 877/GSQL-GQ1 dated 27 June 2022 issued by the Customs Supervision and Management Department)

The declaration of the Enterprise's internal management number on the on-spot import declaration

Following point b1, clause 5, Article 86 and information criterion No. 1.69 in form No. 1 of Appendix I issued with Circular No. 38/2015/TT-BTC, which is amended and supplemented in Circular No. 39/2018/TT-BTC, the information criterion "Enterprise's internal management number" on the on-spot import declaration should be declared as follows: "#&NKT&#the corresponding on-spot export declaration number".

However, according to the design of the current VNACCS system, the criterion "Enterprise's internal management number" can only be declared up to a maximum of 20 characters. Thus, enterprises can only declare 01 corresponding on-spot export declaration on the on-spot import declaration.

The Customs Supervision and Management Department (of the General Department of Customs) will study, develop, and upgrade the System to enable the customs declaration, monitoring, and management in case one export declaration corresponding to multiple import declarations, and vice versa.

(The Official Letter No. 822/GSQL-GQ2 dated 14 June 2022 issued by the Customs Supervision and Management Department)

Guidance on the issuance of customs management codes for Decision on tax refund/ non-collection

According to form No. 13/TXNK (form of Decision on tax refund/non-collection) of Appendix I issued together with Circular No. 06/2021/TT-BTC, stipulates that the customs officer handling application dossiers shall issue customs management codes with the following structure: **The Customs Sub-department code/Order number/Year/Tax refund code/Customs mode**. Specifically:

- For paper application dossiers: after the Decision on tax refund/ non-collection is signed, the customs officer handling the application dossiers shall issue customs management codes in accordance with the instructions stipulated in form No. 13/TXNK BTC (form of Decision on tax refund/non-collection) of Appendix I issued together with Circular No. 06/2021/TT;
- For electronic application dossiers: after the Decision on tax refund/non-collection is approved via MGH System, the System will automatically generate customs management codes.

(The Official Letter No. 2697/TCHQ-TXNK dated 05 July 2022 issued by the General Department of Customs)

Announcement of the portal for searching information on competent authorities and organizations to issue proofs of origin under the Regional Comprehensive Economic Partnership Agreement (“RCEP Agreement”)

According to the provisions of Circular No. 05/2022/TT-BCT dated 18 February 2022 of the Ministry of Industry and Trade stipulating the rules of origin in the RCEP Agreement, and based on the ASEAN Secretariat’s announcement, the General Department of Customs has given instructions to Customs Departments of provinces and cities to check the information on competent authorities and organizations to issue proofs of origin under the RCEP Agreement on the portal <https://rcept.sharepoint.com>. In particular:

- The samples of seal and signature of the competent authorities or organizations to sign on the Certificate of origin;
- The list of exporters qualified to self-issue proof of origin.

(The Official Letter No. 2844/TCHQ-GSQL dated 12 July 2022 issued by the General Department of Customs)



Legal



NEW REGULATION

Decree No. 35/2022/ND-CP on management of industrial parks and economic zones in Vietnam

On 28 May 2022, the Government promulgated Decree No. 35/2022/ND-CP (“Decree 35”) on management of industrial parks (“IP”) and economic zones (“EZ”) in Vietnam. In addition to expanding the types of IPs (which is entitled to apply the incentivized scheme, general supportive policies instituted by the Government), to include “specialized IP” and the “high-tech IP”, Decree 35 being effective from 15 July 2022 and replacing Decree No. 82/2018/ND-CP also introduces some notable new points as follows:

I. Affected subjects: Companies developing IP’s infrastructure and relevant state management authorities

1. Abolish the procedure to issue the Decision on the establishment of IPs

An IP is defined as already established since the competent authority:

- Issues the decision on investment policy for IP’s infrastructure facilities using public investment funds following regulations of the law on public investment;
- Approves the decision on investment policy and investors; or issues the investment registration certificate for the implementation of investment projects on construction and business of infrastructure facilities of an IP following regulations of the law on investment.

2. Give local authorities more power in the IP’s management process

The adjustment of the location, scale and planning area of the IP will be decided by the Provincial People’s Committee if:

- The adjustment is not more than 2% and not more than 6 ha compared to the IP’s area scale as determined in the List of IPs in the area of province, city under the central government; or
- The adjustment is not more than 10% and not more than 30 ha compared to the IP’s area scale as determined in the List of IPs in the area of province, city under the central government after obtaining the written consent from the Ministry of Construction, the Ministry of Natural Resources and Environment, the Ministry of Planning and Investment.

3. Restrict developing new IPs in urban areas of cities

Specific provisions on not allowing the development of new IP in urban areas of special-categorized cities, centrally-affiliated category-I cities or provincially-affiliated cities, except for IP developed under the form of high-tech IP or ecological IP.

4. Transform IPs to development of urban – service zones

Supplementing regulations on the transformation of IPs to urban – service zones, including some of the following conditions:

- Conforming to the provincial or urban development planning scheme of province, city under central government;
- Being located within the urban area of special-categorized city, centrally-affiliated category-I city or provincially-affiliated city.
- The operation period from the establishment date of the IP to the date of consideration for transformation is at least 15 years or half (1/2) of the operating period of the IP;
- Obtaining the consent of the investor and enterprise in the transformation area;
- Achieving socioeconomic and environmental effectiveness.



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Legal



NEW REGULATION

Decree No. 35/2022/ND-CP on management of industrial parks and economic zones in Vietnam (Cont'd)

II. Affected subject: Companies developing IP's infrastructure and companies operating in IPs and EZs

Supplement specialized IPs and Hi-tech IPs into the definition of an IP: Supplementing two more types of IPs which are specialized IPs and High-tech IPs into the definition of an IP. Accordingly, investment projects being eligible for investment incentives under regulations on investment and in these two forms of IPs shall be eligible to apply tax incentives and tax supports in accordance with the law and get the priority to participate in personnel training and development, startup assistance, small and medium-sized enterprises support and other programs implemented by competent authorities

III. Affected subject: Organizations and individuals operating in IPs and EZs.

1. Professionals and employees are allowed for temporary residence or stay residence at accommodation establishments in an IP

Professionals and employees are allowed for the temporary residence or stay residence in the accommodation establishments of an IP for the production and business activities of enterprises (following the regulations of the law on residence for the Vietnamese; and the law on immigration for the foreigners)

- For the Vietnamese professionals and employees, the registration procedures for stay or temporary residence are carried out according to the provisions of the law on residence.
- For foreign professionals and employees, the registration procedures for stay residence or temporary residence are carried out according to the provisions of the law on immigration, transit, and the law on residence.

2. Some notable regulations for Export Processing Enterprises ("EPEs").

- More specific regulations on the exchange of goods between EPEs and other areas in the territory of Vietnam, which are not non-tariff zones.
- Supplementing the regulations on the business activities that EPEs are allowed to carry out in accordance with the provisions of the law on investment, the law on enterprises and other provisions of relevant law when certain conditions are satisfied.

(Refer details in Tax & Customs Newsletter in June 2022)



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