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## Tax Administration



### NEW REGULATIONS

#### Circular guiding Value-Added Tax (“VAT”), Personal Income Tax (“PIT”) and tax management for business individuals and households

The Ministry of Finance issued Circular No. 40/2021/TT-BTC dated 01 June 2021 guiding VAT, PIT and tax administration for business households and individuals.

Circular No. 40/2021/TT-BTC governs the following subjects:

- Households and individuals doing business in accordance with law, notably covering those under Business Cooperation Contract (“BCC”) with organizations, under form of e-commerce...
- Business households and individuals taking production and business activities at border markets, border-gate markets, markets in border-gate economic zones belonging to Vietnamese territory;
- Individuals leasing properties;
- Individuals transferring the Vietnamese national internet domain name “.vn”;
- Organizations in BCC with individuals;
- Organizations, individuals declaring and/or paying taxes on behalf of individuals...

In the Circular, new provisions have been added, for example:

- "Household business" is specifically defined as a manufacturing or business establishment registered by an individual or members of a household and taken responsibilities for business activities by all owned assets according to the Article 79 of Decree No. 01/2021/ND-CP dated 04 January 2021 issued by the Government on business registration and subsequent guidance, amendment, supplement or replacement (if any);
- Addition of taxable income which are subject to VAT and PIT;
- Regulations on tax payment by declaration method for business households and individuals.

The Circular takes effect on 01 August 2021.

*(Circular No. 40/2021/TT-BTC dated 01 June 2021 issued by the Ministry of Finance)*

### GUIDANCE RULINGS

#### Guidance on deferral of Corporate Income Tax (CIT) in case the fiscal year is different from calendar year

If the enterprise is eligible to deferral of provisional CIT payment in the first and second quarter of the tax period 2021 as specified in Article 2, Decree No. 52/2021/ND-CP; and applied fiscal year is different from calendar year, then the extended deadline for tax payment is determined according to the CIT period of its fiscal year.

*(Official Letter No. 18037/CTHN-TTHT dated 24 May 2021 issued by Hanoi Tax Department)*



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## Corporate Income Tax



### NEW REGULATIONS

#### Tax incentives for project manufacturing supporting industry products

On 04 June 2021, the Government issued Decree No. 57/2021/ND-CP which amends, supplements Decree No. 218/2013/ND-CP on CIT incentives for projects manufacturing supporting industry (“SI”) products, which have been implemented before 01 January 2015, and granted with Certification for project manufacturing SI products. The Decree takes effect from the signing date (04 June 2021).

*(For details, please refer to Deloitte’s Tax Alert issued on 15 June 2021)*

#### Expenses for voluntary donations, supports, and contributions to Vietnam Fund for Vaccination Prevention of Covid-19 (“VFVC”)

Voluntary donations, supports, and contributions to VFVC shall be deductible for CIT purpose if meeting the conditions in Decree No. 44/2021/ND-CP and the amendments, supplements (if any).

*(Circular No. 41/2021/TT-BTC dated 02 June 2021 issued by the Ministry of Finance)*

### GUIDANCE RULINGS

#### Pre-establishment expenses

Before being granted the Enterprise Registration Certificate, the company’s founder(s) may authorize another organization to pay on behalf for labour expenses, compulsory social insurance, union fees, PIT, and other purchases. In this case, invoices and documents under the authorized organization’s name are still legitimate, valid documents to determine as deductible expenses for CIT purpose if qualify the conditions regulated by Article 4, Circular No. 96/2015/TT-BTC.

*(Official Letter No. 17151/CTHN-TTHT dated 20 May 2021 issued by Hanoi Tax Department)*

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## Corporate Income Tax



### GUIDANCE RULINGS

#### Commercial invoice received via email

Regarding the scanned commercial invoice received via email, the General Department of Taxation (“GDT”) has previously guided in Official Letter No. 4721/TCT- DNL dated 13 October 2017. Accordingly, under Circular No. 32/2011/TT-BTC, scanned commercial invoices received via email from the supplier are not considered as electronic invoices. Therefore, GDT requests enterprises to obtain original invoices for accounting and tax purposes when purchasing goods and services from suppliers.

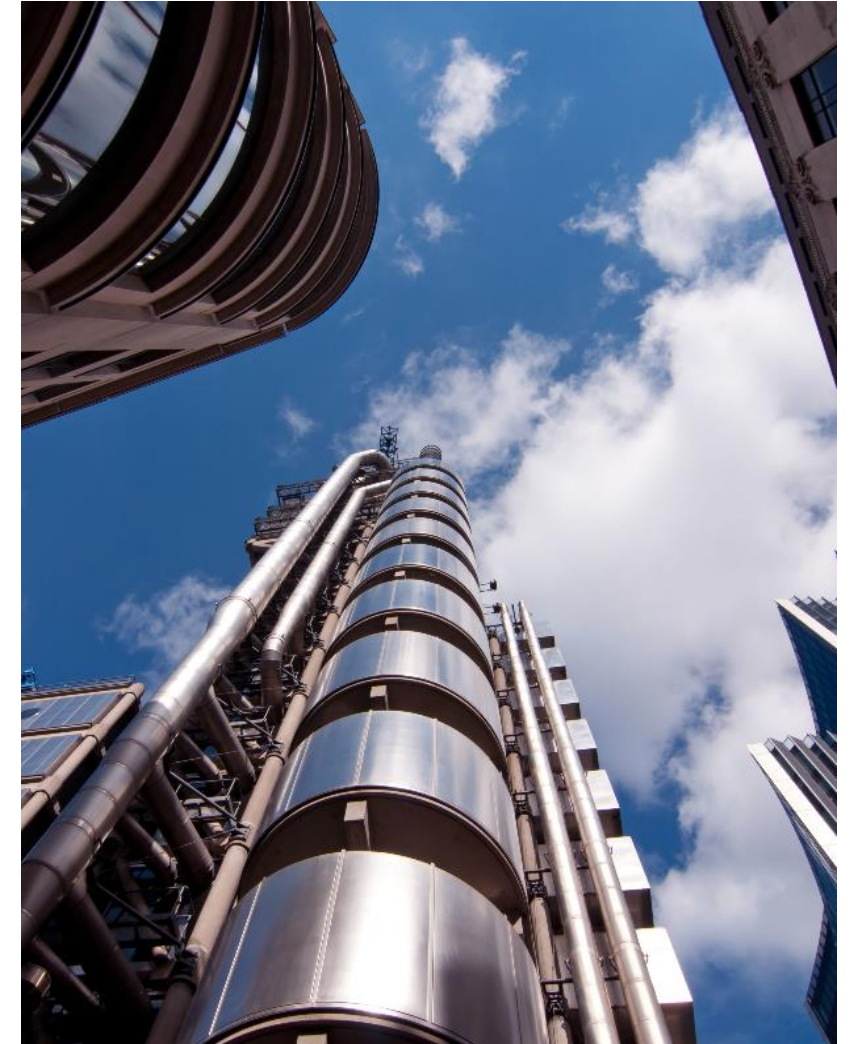
*(Official Letter No. 17657/CTHN-TTHT dated 21 May 2021 issued by Hanoi Tax Department)*

#### Salaries for unused annual leave

On 20 May 2021, the Ho Chi Minh City Labor Confederation issued an Official Letter requesting to follow the provision of Clause 3, Article 113 of the Labor Code No. 45/2019/QH14 when paying salaries for unused annual leave. It can be understood that, from 01 January 2021 (effective date of the Labor Code 2019), enterprises only have obligation to pay salaries for unused annual leave to employees who resign or lose their jobs, while it is not compulsory to pay to those who are still working at enterprises.

According to the Labor Code 2019’s provision and the above guidance, salaries cost that enterprises want to compensate for unused annual leave to the employees which are still working at the enterprises, may not be deductible for CIT purpose.

*(Official Letter No. 344/LDLĐ-TC dated 20 May 2021 issued by the Ho Chi Minh City Labor Confederation)*



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## Transfer Pricing



### NEW REGULATIONS

#### **Circular No. 45/2021/TT-BTC provide guidance on the application of the Advanced Pricing Agreement (“APA”) in tax administration of enterprises having related party transactions**

On 18 June 2021, the Ministry of Finance issued Circular No. 45/2021/TT-BTC guiding the application of the Advanced Pricing Agreement (“APA”) in tax administration of enterprises having related party transactions.

Accordingly, the following points are provided:

1. Covered transactions;
2. Principles for APA application;
3. Information used for APA application;
4. APA appraisal, discussion and negotiation;
5. Rights, obligations and responsibilities of taxpayers;
6. Rights and responsibilities of Tax authorities;
7. APA effectiveness;
8. Implementation.

Effective period of a signed APA is maximum of 03 tax years but not exceeding the number of years taxpayer actually operates declares and pays Corporate Income Tax in Vietnam.

This Circular is effective on 03 August 2021, replacing Circular No. 201/2013/TT-BTC dated 20 December 2013 issued by the Ministry of Finance guiding the application of the APA in Tax Administration.

Those official APA applications submitted before effective date of this Circular but not concluded yet and the covered period under APA has not concluded until the effective date of this Circular, they would be continuously processed in accordance with the Law on Tax Administration, Decree No. 126/2020/ND-CP and this Circular.

*(For details, please refer to Deloitte’s Tax Alert issued on 25 June 2021)*

### GUIDANCE ON WEBSITE

#### **Determine related party relationship by borrowed capital**

In the context that there are several questions and proposal from business association and local tax authorities regarding borrowing capital threshold in determination of related party, on 28 May 2021, the General Department of Taxation (“GDT”) re-affirm the regulations on determining related party relationships by borrowed capital on GDT’s website.

According to Point d, Clause 2, Article 5, Decree No. 132/2020/NĐ-CP regarding forms of related parties: “An enterprise guarantees or offers another enterprise a loan under any form (including third-party loans guaranteed by financing sources of related parties and financial transactions of same or similar nature) to the extent that the loan amount equals at least 25% of equity of the borrowing enterprise and account for more than 50% of total medium and long term debts of the borrowing enterprise”. Of note, this threshold was already introduced under Point d, Clause 2, Article 5, Decree No. 20/2017/NĐ-CP, and Point e, Clause 4, Article 3, Circular No. 66/2010/TT-BTC.

On that basis, when an enterprise's loan with the bank meet the above conditions, the bank will be considered as related party to the enterprise and trigger compliance requirements on such related party transaction while deductible interest expense relating to such loan of enterprise is subject to the regulatory cap.

*(The GDT’s website – News dated 28 May 2021)*

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## VAT and Invoice



### GUIDANCE RULINGS

#### Transferring investment projects is not subject to VAT however issuance of VAT invoice is still required

VAT treatment for transfer of investment project is specified in Clause 4, Article 5, Circular No. 219/2013/TT-BTC.

Accordingly, when enterprise transfers a project to another enterprise for further implementation, if the conditions for project transfer are satisfied and the project manufacturing goods and services subject to VAT, the transferor is exempted from declaration and payment of VAT when transferring the project.

Nonetheless, the project transferor is still required to issue an invoice, in which the selling price line indicates the payment price while the tax rate and the VAT amount shall be left blank (Clause 2.1, Appendix 4, Circular No. 39/2014/TT-BTC).

*(Official Letter No. 20844/CTHN-TTHT dated 11 June 2021 issued by Hanoi Tax Department)*

#### Electronic invoices with incorrect names of sellers, if not yet declared, can still be cancelled

If a company changes its name on its enterprise registration certificate but has not changed its name on electronic signature, resulting in inaccurate seller information on electronic invoices, the provisions in Article 9, Circular No. 32/2011/TT-BTC shall apply. Accordingly, if such incorrect invoices have not been declared for tax, they shall be cancelled and re-issued.

*(Official Letter No. 20855/CTHN-TTHT dated 11 June 2021 issued by Hanoi Tax Department)*

#### VAT rate for services provided to Representative office of foreign entities

According to Clause 1, Article 9, Circular No. 219/2013/TT-BTC, regarding the consulting and surveying services for overseas enterprises, they are only entitled to 0% VAT on the entire contract value if the foreign party does not have a permanent establishment in Vietnam and the service is consumed outside Vietnam.

In case the foreign party has a permanent establishment in Vietnam (for example, a representative office), 0% VAT is only applied to the value of services performed outside of Vietnam.

*(Official Letter No. 21842/CTHN-TTHT dated 18 June 2021 issued by Hanoi Tax Department)*



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## Foreign Contractor Withholding Tax



### GUIDANCE RULINGS

#### FCWT levied on processing contract

The ruling address the case where a foreign company enters processing contract with a Vietnamese company and the materials for processing are transferred to the Vietnamese company under Incoterms, which assumes the seller's responsibility on goods within Vietnam's territory.

If the goods, after processing completion, will be exported back to foreign company, the foreign company does not earn income, thus, is not subject to FCWT.

*(Official Letter No. 2552/CTBGI-TTHT dated 10 June 2021, issued by Bac Giang Tax Department)*

#### FCWT levied on international transportation

When a foreign company earning income from transporting goods from Vietnam to Africa, such income would be subject to FCWT. If the foreign company fails the conditions to directly declare and pay the tax in Vietnam, the Vietnamese company is responsible for withholding, declaring, and paying FCWT on behalf of the foreign company, specifically:

- VAT:
  - For international part: no VAT withholding is required
  - For domestic part: 3% on taxable income
- CIT: 2% on taxable income

*(Official Letter No.1734/CT-TTHT dated 04 June 2021, issued by Long An Tax Department).*

#### Income from compensation due to violation of the contract

In case a foreign company received compensation from the Vietnamese party due to violation of the contract, such income would be subject to FCWT as regulated in Article 1 of Circular No. 103/2014/TT-BTC. Foreign company may choose to declare and pay CIT under percentage on taxable income with the CIT rate of 2% or based on revenue and expenses with common tax rate.

*(Official Letter No. 17152/CTHN-TTHT dated 20 May 2021, issued by Hanoi Tax Department).*



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## Trade and Custom

### NEW REGULATIONS

#### Rule of origin of goods under the Free Trade Agreement between The Social Republic of Viet Nam and the United Kingdom of Great Britain and Northern Ireland (“UKVFTA”)

On 11 June 2021, the Ministry of Industry and Trade has issued Circular No. 02/2021/TT-BCT specifying the Rule of Origin of goods under UKVFTA. Key contents include:

- Concept of “Originating Products”;
- Proofs of Origin;
- Cumulation of Origin and Insufficient Working or Processing;

The Circular shall take effect from 27 June 2021.

*(For details, please refer to Deloitte’s Tax Alert issued on 14 June 2021)*

### GUIDANCE RULINGS

#### Guidance on the implementation of Decree 18/2021/ND-CP

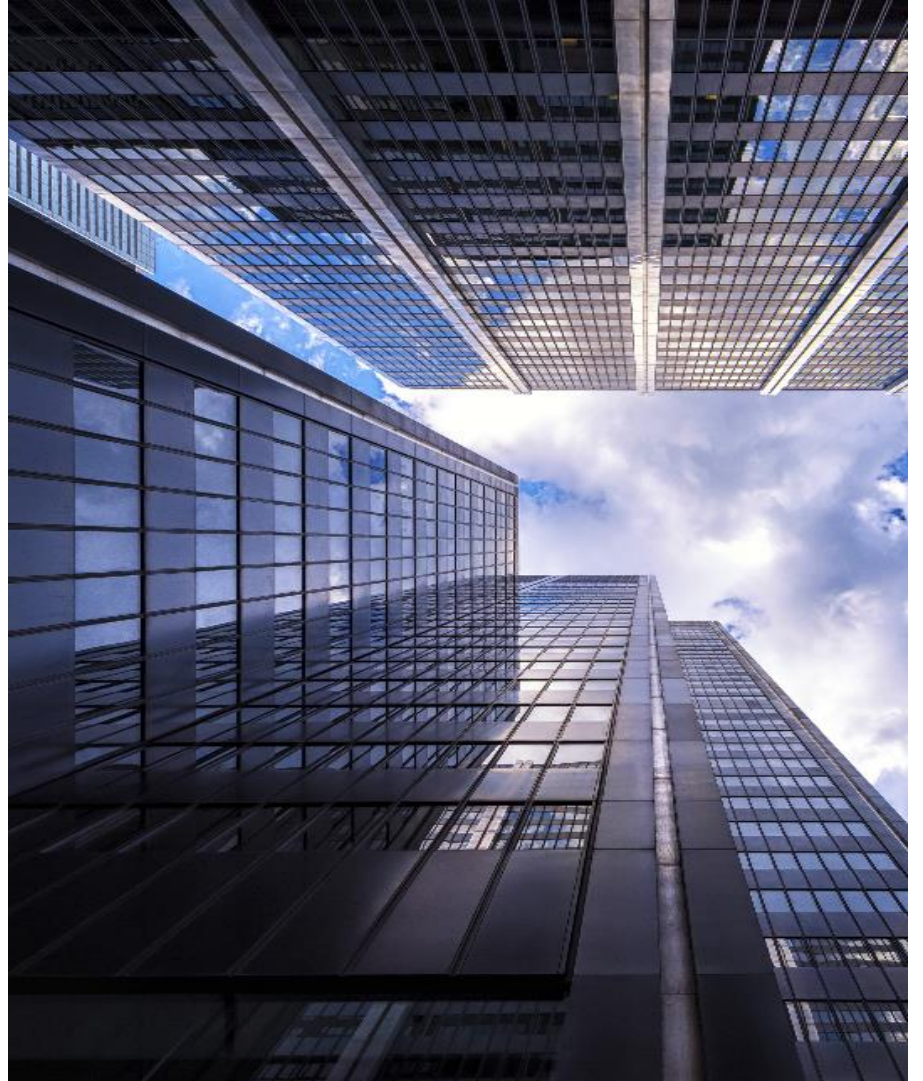
Key contents regarding guidance on the implementation of Decree No. 18/2021/ND-CP include:

Guidance on export processing and export manufacturing activities;

Guidance on the application of Article 28a on conditions of customs inspection and supervision for export processing enterprises;

Other notable points for in-land import and export activities

*(Official Letter No. 2687/TCHQ-TXNK dated 01 June 2021 issued by the General Department of Customs – For details, please refer to Deloitte’s Tax Alert issued on 11 June 2021)*



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## Trade and Custom



### GUIDANCE RULINGS

#### Duty treatment on imported machinery and equipment for replacement

Pursuant to Clause 11, Article 16, Law on Import and Export Duty No. 107/2016/QH13 and Clause 7, Article 1, Decree No. 18/2021/ND-CP, machinery and equipment imported to form fixed assets for projects entitled to investment incentives are exempt from import duty.

Nevertheless, the General Department of Customs (“GDC”) noted that at present, there is no provision for duty exemption in case machinery and equipment are imported to replace the machinery and equipment previously imported duty-free under incentive projects.

*(Official Letter No. 2369/TCHQ-TXNK dated 20 May 2021 issued by the General Department of Customs)*

#### Duty treatment for goods of enterprises converted into Export Processing Enterprises (“EPE”)

Pursuant to Point d, Clause 1, Article 19, Law on Import and Export duty No. 107/2016/QH13, in case goods have been imported with duty paid, but the goods are then used for manufacturing exports, such paid duty can be refunded.

In case an enterprise converts into an EPE and uses the duty-paid materials to manufacture exports, the enterprise can get refund for the import duty of these goods under the same provision as mentioned above.

Conditions for determining goods eligible for import duty refund shall comply with Clause 3, Article 36, Decree No. 134/2016/ND-CP.

The procedures for import duty refund shall comply with Article 12, Circular No. 06/2021/TT-BTC.

*(Official Letter No. 2551/TCHQ-TXNK dated 27 May 2021 issued by the General Department of Customs)*

#### Electronic self-certified proof of origin (e-P/O) under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”) and the EU-Vietnam Free Trade Agreement (“EVFTA”) are accepted

According to the General Department of Customs, for import shipments which have REX code and valuation at over EUR 6,000 under EVFTA and CPTPP, the e-P/O can be issued and sent online to the importer via their group’s internal management system or other electronic methods shall be accepted by Customs. The e-P/O could be submitted by attaching to the import declaration via the E-system of Customs.

In case the importer has submitted the self-certified e-P/O via the E-system of Customs, the hard copy version of P/O shall not be required at the import clearance stage.

*(Official Letter No. 2669/TCHQ-GSQL dated 31 May 2021 issued by the General Department of Customs)*



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## Trade and Custom



### GUIDANCE RULINGS (cont.)

#### Guidance on the new Import-Export modes applied from 01 June 2021 (in accordance with Decision No. 1357/QĐ-TCHQ dated 18 May 2021 of the GDC)

##### 1. Explanation on use of A21, E21 and E52 mode

- A12 – Import for commercial production: applied in case the foreign-invested enterprises (established in Vietnam) import raw materials, supplies, machinery and equipment for domestic production (including import for implementing investment projects).
- E21 – Imported materials and supplies for processing for overseas entities: applied to cases where the processing party imports raw materials and supplies from other entities in Vietnam (in-land import for processing) or from other overseas entities as designated by the outsourcing party.

- E52 – Export processed products to overseas parties: applied in cases the processed products are exported to other entities in Vietnam (in-land export processing) or other overseas entities as designated by the outsourcing party. This mode might also be applied in case the goods are transferred for other processing parties for further processing.

*(Official Letter No. 1067/GSQL-GQ2 dated 07 June 2021 issued by the General Department of Customs)*

##### 2. A41 mode must be used for goods imported under the import rights of FDI entities

Referring to the Import-Export Mode Index attached to Decision No. 1357/QĐ-TCHQ dated 18 May 2021, the Customs Department of Ho Chi Minh City implies that goods imported under the import rights of FDI enterprises, A41 mode should be used rather than A11 mode.

*(Official Letter No. 1460/HQTPHCM-GSQL dated 08 June 2021 issued by the Ho Chi Minh City Tax Department)*

##### 3. Guidance for other modes

- Temporarily, C12 mode shall not be used for goods exported from bonded warehouses to foreign countries until specific regulations are available.
- When an EPE imports goods from a bonded warehouse, E15 mode - Import raw materials and supplies of EPEs from the domestic market, should be used.
- When re-importing goods which had been previously exported for repair, if the importer has applied the A13 mode according to Official Letter No. 2765/TCHQ-GSQL, then B13 mode – Re-export imported goods could be used for the re-export to foreign countries. Since 01 June 2021, when re-importing goods which are previously exported for repair, if the importer applies G13 mode - temporary import duty-free goods pursuant to Decision No. 1357/QĐ-TCHQ, then when re-exporting such items to foreign countries, G23 mode - Re-export of temporarily imported duty-free goods shall be used.

*(Official Letter No. 2802/TCHQ-GSQL dated 08 June 2021 issued by the General Department of Customs)*

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