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Newsletter
Tax & Customs

June 2024



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**Transfer Pricing
Firm of the Year**

**Tax Firm
of the Year**



Tax administration

Guidance ruling

Notification of temporary suspension on exit will be publicized on the website of the General Department of Taxation/Provincial Department of Taxation

To facilitate taxpayers to research information, the General Department of Taxation requests the Tax Departments of provinces and cities and the Large Enterprise Tax Department to summarize and review to ensure all exit-suspension notices, exit-suspension extension notices, and exit-suspension cancellation notices are fully publicized on the website of the Tax Department.

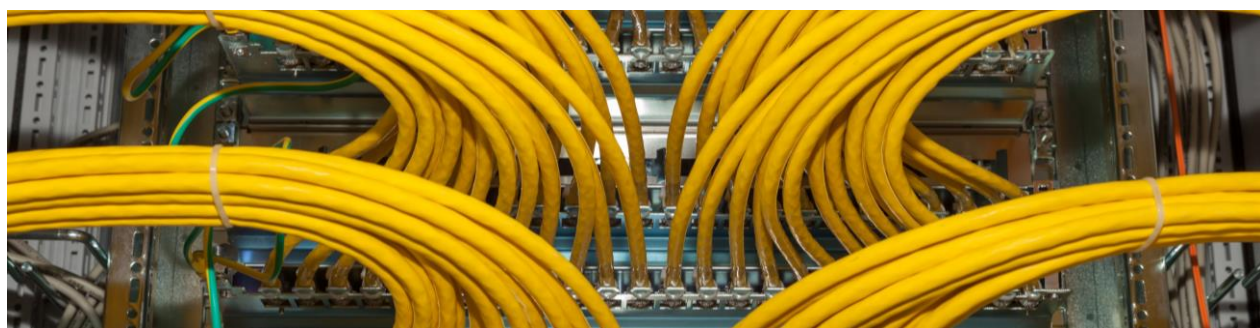
(Official Letter No. 2477/TCT-QLN dated 10 June 2024 issued by General Department of Taxation)

The General Department of Taxation strengthens tax debt collection

In order to strengthen the recovery of overdue tax debts to the state budget, limit the occurrence of new debts, The General Department of Taxation requests Departments of Taxation of provinces and cities and the Large Taxpayers Department to implement the following tasks:

- Continue imposing the temporary exit-suspension measures on individuals who are legal representatives of businesses being forced to implement administrative decisions on tax management; Pay attention to cases where taxpayers no longer operate at their registered addresses, or taxpayers doing e-commerce business, but they still owe tax and other liabilities with the state budget.
- Prevent tax arrears and handle small debts through regular propaganda and dissemination to make taxpayers to acknowledge, then be able to monitor, and look up their tax obligations (including the amount of tax owed), and encourage taxpayers to pay tax electronically through the Electronic Information Portal of the General Department of Taxation or the E-tax mobile application.

(Official Letter No. 2403/TCT-QLN dated 06 June 2024 issued by General Department of Taxation)



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Corporate Income Tax

Guidance ruling

CIT incentives for investment phasing and additional business activities

According to the Official Letter No. 2133/TCT-CS sent to Hai Phong Tax Department, the General Department of Taxation guides that:

- The company's project which does not meet the conditions for investment phasing will not be eligible for CIT incentives according to the regulations on investment phasing in clause 7, Article 1, Decree No. 91/2014/ND-CP and clause 3, Article 10, Circular No. 96/2015/TT-BTC.
- During operation, if the company supplements trading business activities without capital increment or expansion investment to increase assets, the income from such additional business activities shall not be eligible for CIT incentives.

(Official Letter No. 2133/TCT-CS dated 20 May 2024 issued by the General Department of Taxation)

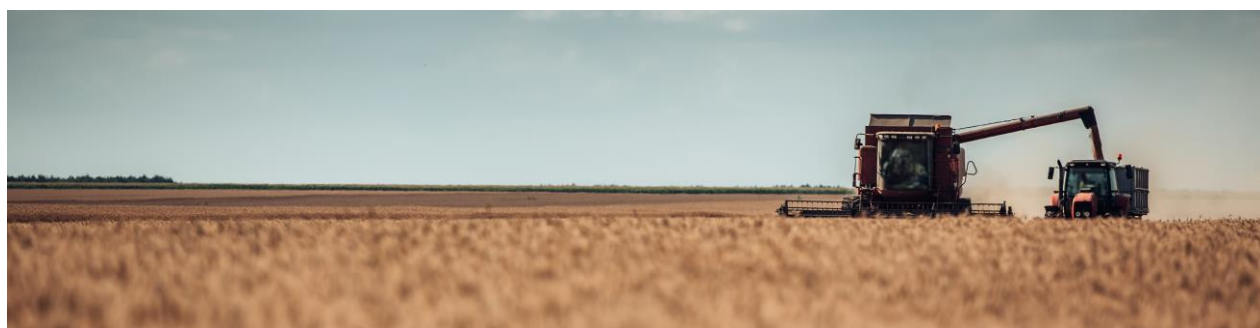
CIT incentives for enterprises entitled to different incentive schemes

Pursuant to the provisions of clause 4, Article 18, Law on CIT, enterprises can choose to apply the most beneficial incentive scheme if qualifying conditions for different incentive scheme.

Specifically, if the company chooses to apply incentives under the most beneficial conditions (production of supporting industry (“SI” products) for income arising from the company's investment project, then:

- The project manufacturing SI products is entitled to SI incentives since being granted a Certificate of Incentives from the Ministry of Industry and Trade.
- Income arising from products other than SI products does not continue to enjoy CIT incentives under the condition of new investment projects in industrial parks.

(Official Letter No. 2326/TCT-CS dated 03 June 2024 issued by the General Department of Taxation)



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Corporate Income Tax

Guidance ruling

CIT incentives for processing activity of the manufacturing project entitled to incentives under encouraged location

If the company conducts manufacturing activity (e.g. manufacturing product A) and has processing activity (processing product A) at the same time, income from the processing of that product (product A) incurred at the encouraged location shall be entitled to the same incentive scheme for manufacturing activities for the remaining period if processing activity does not disqualify the existing incentive conditions i.e. investment project locates in encouraged area.

(Official Letter No. 1894/CTHPH-TTHT dated 21 May 2024 issued by Hai Phong Tax Department)

New investment project inheriting location, assets and business from the existing project

If the enterprise has an investment project granted an Investment Certificate, which inherits the assets, location and business activities as well as uses old machinery and equipment of the existing project to continue production, this project shall not be considered a new investment project according to tax laws.

(Official Letter No. 2327/TCT-CS dated 03 June 2024 issued by the General Department of Taxation)

Transfer of renewable energy certificate ("REC")

Regarding the transfer of REC, the General Department of Taxation responded to Gia Lai Tax Department as follows:

- Regarding CIT: when the company implement investment projects of building hydroelectric plants and producing electricity with CIT incentives thanks to encouraged location, incurs additional income from transferring REC which is not part of the income of the investment project, this additional income shall not be entitled to CIT incentives of the investment project.
- Regarding VAT:
 - If the enterprise transfers the REC, which is not on the List of goods and services stated in Appendices I, II and III of Decree No. 44/2023/ND-CP and this transfer is in accordance with applicable regulations, VAT reduction according to Decree No. 44/2023/ND-CP can be applied.
 - If transferring REC abroad, justification of VAT rate 0% will be based on the documentation and regulations applied for exported goods. Proposal to competent authorities can be submitted for guidance if any problems arise.

(Official Letter No. 2127/TCT-CS dated 20 May 2024 issued by the General Department of Taxation)

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Corporate Income Tax

Guidance ruling

Tax treatment for transportation cost support

In case the company provides transportation cost support to the buyer to promote consumption of the company's products, then:

- Regarding VAT: when receiving the support in cash, the buyer shall issue a VAT invoice to the company and declare and pay VAT according to regulations.
- Regarding CIT: the transportation cost support which is agreed by both parties under written minutes to offset the debt with value of purchased goods and is specifically stipulated in the contract/contract appendix, with a detailed list and confirmation minutes shall be included in the deductible expenses when determining CIT taxable income if qualifying the conditions specified in Article 4, Circular No. 96/2015/TT-BTC.

(Official Letter No. 28812/CTHN-TTHT dated 17 May 2024 issued by Hanoi Tax Department)

Interest expense in case of negative EBITDA

In case the EBITDA is negative:

- Interest expense (after offsetting with interest income) shall not be deductible when determining CIT taxable income.
- However, it can be carried forward to the next tax period according to the provisions of point b, clause 3, Article 16, Decree No. 132/2020/ND-CP.

(Official Letter No. 15463/CTBDU-TTHT issued on 11 June 2024 by Binh Duong Tax Department)



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Indirect Tax

Guidance ruling

Invoice issuance for electricity and water bills paid on behalf of lessee

If the company does not register to provide clean water, wastewater treatment, and electricity, whereas the lessee has not yet completed the procedure for signing contracts to purchase directly from vendors:

- If the company agrees to pay for clean water, wastewater treatment, and electricity fees on behalf of the lessee, as specified in the lease contract, and the input invoices are in the name, address, and tax code of the company, then the company must issue an invoice when collecting these payments from the lessee.
- Regarding VAT rates: the VAT rate should base on the rate stated on the input invoices of goods and services supplied.

(Official Letter No. 4175/CTBGI-TTHT dated 12 June 2024 issued by Bac Giang Tax Department)

Invoices issuance for services with both original VAT rate and reduced VAT rate

When the company provides infrastructure management and maintenance services to customers, which include both VAT-reduced and non-VAT-reduced services, and it is not possible to determine the tax rate for each service component, the following principles apply:

- An invoice must be issued with the highest tax rate of 10% applicable to these services.
- The buyer can use this invoice to claim input VAT deduction and request a VAT refund (if applicable).

(Official Letter No. 2363/CTHYE-TTHT dated 11 June 2024 issued by Hung Yen Tax Department)



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Personal Income Tax

Guidance ruling

Tax treatment on phone allowance

In case the company applies flat expenditure policy on phone allowances for its employees for which enjoyment conditions and levels are specified in one of the following documents: employment contract, labor collective agreement, financial regulation of the company, corporation, reward scheme issued by the President of the Board of Directors, Director General, or Director in accordance with the financial regulation of the company:

- If the expenditure level is appropriate to the level for tax deduction under CIT regulations, it shall not be included in PIT taxable income from salary, wage of the employees.
- If the aforesaid expenditure is higher than the prescribed deductible level, then the excess amount must be included in PIT taxable income.

(Official Letter No. 28810/CTHN-TTHT dated 17 May 2024 issued by Hanoi Tax Department)

Tax treatment on business trip expenses of Representative Office

In case the Representative Office (the RO) pays airfare, hotel charges, business trip expenses, etc. for employees on their business trips in accordance with the RO's internal regulations and the expenses are considered business trip expenses according to the regulations at point d, clause 2, Article 2, Circular No. 111/2013/TT-BTC, they shall not be included in PIT taxable incomes of the employees.

(Official Letter No. 32969/CTHN-TTHT dated 31 May 2024 issued by Hanoi Tax Department)

Tax treatment on severance allowance

In case the company pays severance allowance to an employee who terminates employment with correct beneficiary and level as prescribed by the Labor Code, this income shall not be included in PIT taxable incomes from salary, wage of the employee in accordance with the guidelines at item b.6, point 6, clause 2, Article 2, Circular No. 111/2013/TT-BTC.

In case the company pays salary, wage, other benefits and allowances (which are not regulated by the Labor Code and the Law on Social insurance) after termination of labor contract, if this amount is from VND 2 million and above, the company shall withhold 10% PIT on total income before paying the individual according to the regulations at point I, clause 1, Article 25, Circular No. 111/2013/TT-BTC.

If at the end of the year, the individual that earns incomes from salary, wage is not qualified to authorize the income payer to finalize tax on his/her behalf, it is required to summarize all incomes in order to make tax finalization directly with the tax authority according to the regulations at point d.3, clause 6, Article 8, Decree No. 126/2020/ND-CP.

(Official Letter No. 32970/CTHN-TTHT dated 31 May 2024 issued by Hanoi Tax Department)

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Personal Income Tax

Guidance ruling

Tax treatment on cash allowance equivalent to Social, Health & Unemployment Insurance (“SHUI”) contribution paid on monthly payroll

In case the company pays employees cash allowance equivalent to the amount of SHUI contribution on monthly payroll, this amount shall be determined as benefits of the employees and included in PIT taxable incomes of the employees.

(Official Letter No. 28132/CTHN-TTHT dated 15 May 2024 issued by Hanoi Tax Department)

Tax treatment on tax consultation fees and allowance in accordance with Labor Code and Law on Social Insurance

In case the company hires service providers for consulting services or hires tax declaration for a specific individual or group of individuals, they will be subject to PIT from salaries and wages as prescribed in point đ.7, clause 2, Article 2, Circular No. 111/2013/TT-BTC.

In case the company pays benefits to employees according to the provisions of the Labor Code and the Social Insurance Law, these incomes are not included in PIT taxable income from salaries and wages of the employees specified in point b.6, clause 2, Article 2, Circular No.

111/2013/TT-BTC dated August 15, 2013, of the Ministry of Finance.

(Official Letter No. 28131/CTHN-TTHT dated 15 May 2024 issued by Hanoi Tax Department)

PIT on authorization transfer of real estate

Individuals who have income from receiving gifts of real estate must declare and pay taxes when receiving income. In case Mr. A gifts real estate to Mr. B through authorization, but Mr. A has no blood-relationship with Mr. B, he is not qualified for tax exemption as prescribed in Article 4 of Decree No. 65/2013/ND-CP.

(Official Letter No. 2509/TCT-DNNCN dated 12 June 2024 issued by General Department of Taxation)

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Foreign Contractor Withholding Tax

Guidance ruling

Foreign Contractor Withholding Tax (“FCWT”) declaration obligation of Vietnamese company signing contract with foreign suppliers engaging in e-commerce and digital platforms business

If the foreign supplier registered, declared, and paid tax directly in Vietnam according to the regulation of Articles 76, 77, 78, and 79 of Circular No. 80/2021/TT-BTC, the Vietnamese company does not have to declare, withhold, and pay tax on behalf of the foreign supplier according to the provisions of Circular No. 103/2014/TT-BTC.

Regarding the method of determination of foreign suppliers with e-commerce and digital platform business that have registered for tax in Vietnam, the General Department of Taxation has publicly announced a list of foreign suppliers that have registered for tax on the Electronic Information Website for foreign suppliers (etaxvn.gdt.gov.vn). The Vietnamese company can access the Electronic Information Website to determine the tax registration status of the foreign supplier.

(Official Letter No. 28807/CTHN-TTHT dated 17 May 2024 issued by Hanoi Tax Department)

The service of expanding sales in foreign markets is not subject to FCWT

In case the Vietnamese company signs a contract to engage a foreign supplier (without a permanent establishment in Vietnam) to perform services aimed at expanding sales in foreign markets, such as customer search, market development, and customer service,... these services are not subject to FCWT if they are provided and consumed outside of Vietnam as prescribed in clause 3, clause 4, Article 2 of Circular No. 103/2014/TT-BTC.

(Official Letter No. 3918/CTBGI-TTHT dated 31 May 2024 issued by Bac Giang Tax Department)



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Trade & Customs

Guidance ruling

Guidance on goods liquidation activities of Foreign Direct Investment (“FDI”) enterprises

In response to the General Department of Customs’s Official Letter No. 5555/TCHQ-GSQL seeking guidance on the application of regulations on export rights and import rights for cases where FDI enterprises import goods such as machinery, equipment to fixed assets or under temporary import - re-export mode, raw materials, and supplies for processing, manufacturing export, but subsequently change the using purpose for domestic sales (either after importation or within or after the production process), the Ministry of Industry and Trade provides the following opinion:

- Liquidation of imported goods of FDI enterprises shall follow the provision of Circular No. 04/2007/TT-BTM.
- The execution of export, import, and distribution rights of FDI enterprises shall follow the provision of Decree No. 09/2018/ND-CP.
- Liquidation of duty-free imported goods of FDI enterprises shall follow the provision of Article 85, Circular no. 38/2015/TT-BTC.

(Official Letter No. 396/XNK-THCS dated 28 May 2024 issued by the Ministry of Industry and Trade)

Guidance on outsourced processing activities of Export Processing Enterprises (“EPE”) for domestic enterprises

The Customs General Department provides guidance that enterprises should self-determine whether outsourced processing activities of EPE to domestic enterprises constitute the EPE activity, based on the provisions under clause 20, Article 2, Decree No. 35/2022/NĐ-CP and the enterprise’s actual operation.

Regarding tax policies: Where domestic enterprises import goods processed by EPE, the domestic enterprises shall declare, and fulfill payment for import duties and VAT before importing goods into the domestic market.

(Official Letter No. 2370/TCHQ-TXNK dated 29 May 2024 issued by the General Department of Customs)

Issuance of the List of Goods subject to classification risks

On 19 July 2021, the General Department of Customs issued Decision No. 2079/QĐ-TCHQ on:

- Issuance of the List of imported/exported goods subject to risks of incorrect classification and application of import and export tariff;
- Issuance of the Guidance on the built-up and application of the List of Goods subject to classification risks, which clearly states the cases for audit and reconciliation of the declared description and declared HS codes with the information in the List, including:
 - At clearance stage for yellow and red channel declarations; and
 - At post-clearance customs audit.

(Decision No. 2079/QĐ-TCHQ dated 19 July 2021 issued by the General Department of Customs)

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Trade & Customs

Guidance ruling

Proposal on performing Customs Finalization Reports (“CFR”) for goods imported to produce tools and equipment for internal use of EPE

The General Department of Customs proposes to the Ministry of Finance that EPE importing materials to produce tools and equipment serving export manufacturing activities shall carry out customs procedures and declare type E11 if materials are imported from overseas or type E15 if materials are imported from the domestic market.

EPE are responsible for reporting the actual BOM and CFR preparation for such imported material codes used to produce tools and equipment for internal use, as well as finished goods codes used internally as tools and equipment serving export manufacturing activities. Specifically:

- For materials codes, when preparing CFR for the in-out-balance of materials and suppliers under Form No.15, enterprises shall include the note “*for manufacturing tools and equipment*” in column 12;
- For finished goods codes, when preparing CFR for the in-out-balance of finished goods produced from imported materials under Form No. 15a, enterprises shall include the note “*for internal use in EPE*” in column 11;
- When declaring actual BOM for exported finished goods under Form No. 16, enterprises shall include the note “*for internal use in EPE*” in column 9.

(Official Letter No. 2713/TCHQ-GSQL dated 12 June 2024 issued by the General Department of Customs)

Issuance of the national plan on managing and reducing substances that deplete the ozone layer and greenhouse gases

On 11 June 2024, the Prime Minister issued Decision No. 496/QĐ-TTg along with the National Plan on managing and reducing substances that deplete the ozone layer and greenhouse gases.

Accordingly, in relation to imports and exports, the Ministry of Finance is assigned to:

- Update and provide guidance to customs officials in border gates for implementation of export and import management on substances and goods, equipment containing or being produced from substances under control per Decree no. 06/2022/ND-CP of the Government and other related regulations.
- Coordinate with the Ministry of Natural Resources and Environment during the amendment and supplement of the List of goods prohibited from import and export or import and export with conditions and per related regulations.

(Decision No. 496/QĐ-TTg dated 11 June 2024 issued by the Prime Minister)

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Transfer Pricing Guidance ruling

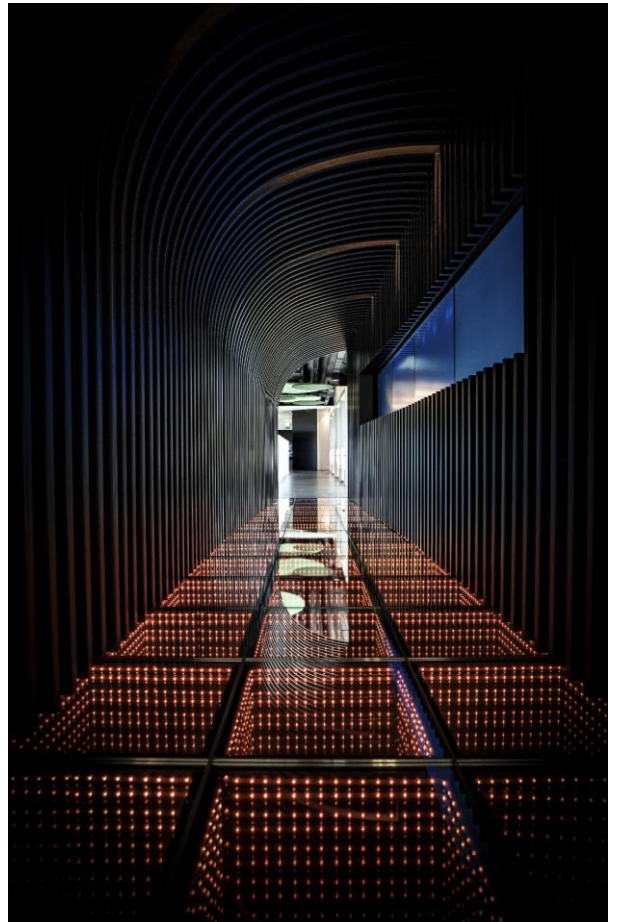
Tax policy for loan interests

Hanoi Tax Department notes that in case a parent company provides loans for its subsidiary companies without interest (0% tax rate), then this will be in-scope of related party transactions regulated under Decree No. 132/2020/ND-CP. Accordingly, the parent company shall adjust level of price, profit margin of the provision of loan transaction as stipulated under clause 1, Article 8, Decree No. 132/2020/ND-CP in order to declare and calculate CIT.

With regard to the activity of irregular loan provision of the company (which is not a financial institution), if the loan provider does not calculate interests or calculate interests with an interest rate lower than the normal interest rate applied in the loans with the same lending term, lending scale in the market, it may subject to tax imposition as regulated under clause 1, Article 50 of the Law on Tax administration No. 38/2019/QH14.

If the company has loan interests which are transferred into capital contributions by the company's capital contributor, the individual/organization who transfers the capital contributions has to pay PIT/CIT upon clause 4, Article 2, Circular No. 111/2013/TT-BTC and Article 14, Circular No. 78/2014/TT-BTC.

(Official Letter No. 27296/CTHN-TTHT dated 10 May 2024 issued by Hanoi Tax Department)



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