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Newsletter

Tax & Customs

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**Transfer Pricing
Firm of the Year**

**Tax Firm
of the Year**



Corporate Income Tax

Guidance ruling

Loss from independent branch after dissolution can be utilized by head office

If the branch is qualified following conditions:

- Being independent accounting unit, declares CIT separately;
- The company inherits all the obligations and rights of the branch upon dissolution;
- Tax authority has audited the tax finalization at the Branch and determined the loss of each year.

Then such loss per year can be offset against head office's taxable income when determining CIT subject to expiration rule (5 year since occurrence).

(The Official Letter No. 9579/CTHN-TTHT dated 28 February 2024 issued by Hanoi Tax Department)

Projects manufacturing supporting industrial products, which are granted more than one certificates of incentive

The Certificate of incentives for supporting industrial products prioritized for development is the basis for applying CIT incentives according to supporting industry conditions. Therefore:

- If an investment project qualifies the conditions, it will be entitled to CIT incentives given for supporting industry from the date of Certificate of incentives.
- If an investment project manufacturing several supporting industry products and is granted several Certificates of incentives, such eligible product will enjoy CIT incentive for supporting industry for the remaining period of the investment project starting from the taxable period when the Certificate of incentive is issued.

(The Official Letter No. 658/TCT-CS dated 23 February 2024 issued by the General Department of Taxation)

Determining the ratio of immovable property and the real beneficiary of income for purpose of application of Double Taxation Avoidance Agreement (“DTA”)

Determine immovable asset ratio:

The General Department of Taxation request the local Tax Department(s) to refer to Clause 2, Article 6 of the DTA; Articles 105, 107, 108 of the Civil Code 2015; Article 8 of Circular No. 205/2013/TT-BTC to accurately determine the immovable property value of the company.

Review, inspect, and determine the reasonableness of items such as: short-term liabilities, cost in construction, etc., to determine the appropriate immovable property value.

Review, inspect, and determine the reasonableness of items such as: cash, short-term receivables, account payables, undistributed retained earnings, etc., to determine the appropriate total asset value.

Determine real income beneficiaries:

The General Department of Taxation has collected information on foreign enterprises (the transferor) through information exchange with foreign tax authorities; accordingly, it requests the local tax authorities to base on the actual business activities of the company to clearly identify the real owners benefiting from income of capital transfer.

Determine transfer price:

The General Department of Taxation also requests tax authorities to determine the purpose of the transfer and the structure of transfer prices between affiliated companies to correctly apply the provisions of the DTA.

(Official Letter No. 688/TCT-HTQT and Official Letter No. 689/TCT-HTQT dated 27 February 2024 issued by the General Department of Taxation)

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Indirect Tax

Guidance ruling

VAT rate for EPC contracts, whether the value of each scope can be separated/not separated

When the company sign EPC contract (including supply of materials and installation services), determining reduction of VAT rate according to Decree No. 94/2023/NĐ-CP (“Decree 94”) is as follow:

- If the contract value of each scope of work can be separated, VAT reduction for each item should be determined separately according to the Decree 94.
- If the value of each work item cannot be separated, the highest VAT rate will apply.

(Official Letter No. 2172/CTHDU-TTHT dated 07 March 2024 issued by the Hai Duong Tax Department)

VAT rate for sales returns during the VAT reduction period

When goods are purchased with invoice issued at VAT rate of 10% during the period from 01 January 2023 to 30 June 2023; then after 01 January 2024 the buyer returns the goods due to inadequate specifications and quality, then:

- The seller should issue adjustment invoices or replacement invoice at 10% VAT rate to return the goods.
- The seller and buyer should have an agreement documenting the sales return.

(Official Letter No. 3948/CTHBDOU-TTHT dated 06 March 2024 issued by Binh Duong Tax Department)

Taxable VAT revenue for international travel services

In case the company operates international travel services, in which the outbound tour price includes meals, accommodation, sightseeing and other overseas expenses (with legitimate documentations), then the amount collected from customers for oversea expenses will be deducted from VAT taxable revenue.

Input VAT for the whole travel package shall be fully declared and creditable in accordance with regulations.

(Official Letter No. 801/TCT-CS dated 05 March 2024 issued by the General Department of Taxation)

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Personal Income Tax

Guidance ruling

PIT withholding when offering Tet gifts to employees

When the company gives New Year gifts, supermarket vouchers, ... to employees, if the gifts are benefit-in-kind paid by the employer to the employees, it will be considered as income subject to PIT as prescribed in Clause 2, Article 2 of Circular No. 111/2013/TT-BTC ("Circular 111"). The company shall withhold PIT as prescribed in Clause 1, Article 25 Circular 111.

(Official Letter No. 7443/CTHN-TTHT dated 05 February 2024 issued by Hanoi Tax Department)

PIT withholding when purchasing life insurance for employees

- **When the company purchases life insurance for employees and this life insurance:** As it is not compulsory insurance contribution, thus not allowed for deduction when calculating PIT (Section a, Clause 2, Article 9 of Circular 111).
- **If the company purchases life insurance for employees with accumulative premiums:** PIT should be declared (Clause 2, Article 14 of Circular No. 92/2015/TT-BTC).
- **For income from interest on life insurance and compensation from life insurance contracts:** PIT exempted (Section g, Clause 1, Article 3 of Circular 111 and Clause 3, Article 12 of Circular 92).
- **If the company purchases life insurance for employees without accumulative premiums:** the fee is exempt from PIT withholding (Clause 3, Article 11 of Circular 92).

(Official Letter No. 8974/CTHN-TTHT dated 23 February 2024 issued by Hanoi Tax Department)

Determination of PIT taxable income from sales brokerage activities, product promotion under service contract

When a foreigner is Vietnam tax non-resident, receiving income from sales brokerage and product promotion under service contracts signed with Vietnamese companies:

- If the income is from independent services in the fields and occupations that are licensed or certified to practice as prescribed by law, it shall be considered as business income.
- If the income is determined as agent commission for selling goods, brokerage commissions, it shall be treated as taxable employment income.
- If there is a discrepancy between the provisions of the Tax Treaty and local laws, the provisions of Treaty shall prevail.

(Official Letter No. 764/TCT-DNNCN dated 01 March 2024 issued by the General Department of Taxation)

PIT implication when offering gifts to guests and spending money for collective

- When the company offers gifts to individuals (who are not employees) and the gifts are not in the list mentioned in Clause 10, Article 2 of Circular 111, such gift shall not be taxable.
- If the company spends money for collective purpose (this money will be used by the collective and the individual is only the designated representative to receive on behalf of the collective), this amount shall not be treated as taxable income of the individual receiving the money.

(Official Letter No. 11223/CTHN-TTHT dated 08 March 2024 issued by Hanoi Tax Department)

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Foreign Contractor Withholding Tax

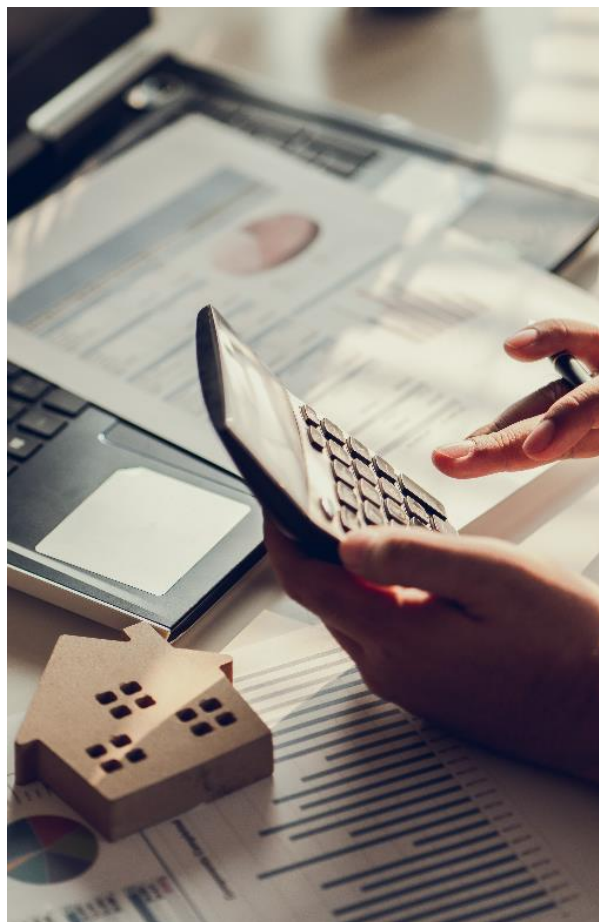
Guidance ruling

Apply DTA on declaring and paying FCWT in Vietnam

- When foreign enterprises earn income in Vietnam under the sea transport cooperation contract, the Vietnamese company is responsible for deducting the VAT and CIT amount before making payment to the foreign enterprises according to Article 4, Circular No. 103/2014/TT-BTC.
- When Korean enterprises does not constitute a permanent establishment in Vietnam as prescribed in Article 11 Circular No. 205/2013/TT-BT, CIT portion would be exempted under the DTA between Vietnam and Korea. Procedures for claiming tax exemption and tax reduction under DTA are carried out according to Article 62, Circular No. 80/2021/TT-BTC.

Vietnamese tax authority will refuse the request for the application of the DTA for tax amount incurred over 3 years as prescribed in Clause 1, Article 6 of Circular No. 205/2013/TT-BTC.

(Official Letter No. 8973/CTHN-TTHT dated 23 February 2024 issued by Hanoi Tax Department)



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Trade & Customs

Guidance ruling

Updates on the in-land import and export transactions

On 20 February 2024, the General Department of Taxation issued Official Letter No. 558/TCT-CS guiding on VAT refund for in-land import-export transactions with the involvement of a foreign trader.

Accordingly, for cases that the in-land export declaration is deemed by customs authorities as not complying with prevailing regulations due to the foreign trader has presence in Vietnam, the tax authorities will not process VAT refund as the case does not satisfy the condition on customs declaration.

(Official Letter No. 558/TCT-CS dated 20 February 2024 issued by General Department of Taxation)

On 29 February 2024, Official Letter No. 2156/BTC-TCHQ has been issued by the Ministry of Finance providing responses on in-land import and export activities per point c, Clause 1, Article 35 Decree No. 08/2015/ND-CP with the main points as below:

- Foreign entities **having a presence in Vietnam** include those which have business form in Vietnam of either (i) representative offices, branches, business establishment; (ii) shareholdings; (iii) investment projects; (iv) party of BCC contracts; and/or (v) new investment forms and new economic organization types as prescribed in regulations, then they **do not fall under the case of in-land import and export** specified in point c, Clause 1, Article 35 of Decree No. 08/2015/ND-CP.
- The act of trading goods with foreign entities and delivering goods within Vietnam's territory as designation without physically cross border transfer or transfer to separate customs-controlled areas, **are essentially not considered as import and export activities**.
- Current regulations on inland import-export activities have not been aligned with other related regulations.

Therefore, the Ministry of Finance keeps on collecting opinions from relevant government agencies to propose appropriate amendments and supplements to in-land import and export transactions.

Please refer to the news regarding the in-land import export updated in the January 2024 Newsletter of Deloitte in [here](#).

(Official Letter No. 2156/BTC-TCHQ dated 29 February 2024 issued by the Ministry of Finance)

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Trade & Customs

Guidance ruling

In-land exported goods and goods produced from domestic materials shall not be exempt from export duty

The General Department of Customs provides guidance that:

- **In-land exported goods are not exempt from export duty:** In-land exporters shall declare and pay export duty based on the export duty tariff rate and customs value of in-land exported goods at the time of customs declaration.
- **Exported goods produced from domestic materials are not exempt from export duty:** Enterprises shall declare and pay export duty for such goods in accordance with the prevailing regulations.

(Official Letter No. 651/TCHQ-TXNK dated 19 February 2024 issued by General Department of Customs)

Customs procedures for construction materials for export processing enterprises (“EPEs”)

Currently, no specific regulations are available to determine those goods as air conditioning systems, ventilation systems, electrical systems, water supply and drainage systems, fire protection systems, whether be consumer goods or not, and such determination is not within the scope and guidance authority of the General Department of Customs and the Ministry of Finance.

In case a company undertakes construction activities for EPEs, such activities are subject to a 0% VAT rate if the conditions specified by current regulations are met.

(Official Letter No. 788/TCHQ-GSQL dated 27 February 2024 issued by General Department of Customs)

Treatment for temporarily imported tax-free goods with using purpose changed for domestic consumption

Goods temporarily imported for warranty, repair, replacement and subsequently re-exported are subject to tax-free treatment. In case such goods change their purpose of usage for domestic consumption, importers shall make a new customs declaration. Management policies of exported and imported goods shall comply with regulations at the time of registering new customs declaration.

(Official Letter No. 1008/TCHQ-TKNK dated 12 March 2024 issued by General Department of Customs)

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