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Tax Administration



GUIDANCE RULINGS

Detail guidance for Circular No. 19/2021/TT-BTC on electronic transactions in tax administration

After the Ministry of Finance released the Circular No. 19/2021/TT-BTC dated 18 March 2021 guiding on electronic transactions in the tax administration (“Circular 19”), the General Department of Taxation (“GDT”) has issued the guidance ruling No. 1194/TCT-KK dated 20 April 2021 to introduce new contents of the Circular to facilitate the tax officers and taxpayers during implementation.

In this official letter, the GDT introduced the content and reason for amendments and supplements in Circular 19, compared to previous regulations. The guidance focuses on regulations related to electronic tax registration, tax declaration, tax refund, tax exemption and deduction.

(Guidance ruling No. 1194/TCT-KK dated 20 April 2021 issued by the GDT)

NOTIFICATION OF TAX AUTHORITY

Suggested common violation in e-commerce

On 26 April 2021, Ho Chi Minh City Tax Department posted on its website a notice regarding common violation in e-commerce for which the organizations and individuals conducting commercial business activities should pay attention to understand, self-review and adjust tax declaration, so as to avoid administrative penalty upon tax audit or inspection in the future.

Common offenders are (i) organizations and individuals selling products and goods on e-commerce platforms, sales websites, foreign social networking sites; and (ii) organizations and individuals providing cross-border services that generate income from foreign websites.

Ho Chi Minh City Tax Department has conducted inspection, examination and verification at logistic companies and commercial banks to detect the violations.

(For details, please refer to the Notice on the website of Ho Minh City Tax Department)



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Corporate Income Tax



GUIDANCE RULINGS

CIT incentive on interest income from term deposit

Technically, if the company is entitled to CIT incentive for investment project thanks to its location, income arising from business of investment project in such preferential area, except for the incomes mentioned at Points a, b, c, Clause 1, Article 10 of the Circular No. 96/2015/TT-BTC dated 22 June 2015, is eligible to CIT incentive.

Interest income from term deposit contracts, which is considered as financial investment activity, is irrelevant to the investment project enjoying incentive, thus, is not entitled to CIT incentive.

(Official Letter No. 755/CTHPH-TTHT dated 08 April 2021 issued by Hai Phong Tax Department)

Expenses incurred before generating revenue, and advisory expenses related to previous fiscal year

In the period before generating revenue, if the company incurs expenses for renting computers and purchasing software to serve business activities, the company shall determine the historical cost of fixed assets to be depreciated or allocated to deductible expenses for CIT purpose, according to the provisions of Circular No. 45/2013/TT-BTC and Circular No. 96/2015/TT-BTC.

Tax advisory expense related to financial year 2020, arise in 2021, with contract and invoice dated 2021, will be deductible in financial year 2021 if the conditions in Clause 4, Circular No. 96/2015/TT-BTC are met.

(Official Letter No. 717/CTHPH-TTHT dated 05 April 2021 issued by Hai Phong Tax Department)

Compensation expenses for goods returned due to poor quality

If an enterprise signs contract with customer to sell goods but the goods delivered to the customer do not meet the agreed quality, the enterprise has to compensate for damage, then it is the fault of the enterprise. Therefore, expenses related to compensation for sale returned are not deductible expenses when determining CIT taxable income.

Per our observation, according to Official Letter No. 75439/CT-TTHT dated 13 November 2018 issued by Hanoi Tax Department, compensation expenses under contractual agreements may be deductible for CIT purpose if having sufficient documents as regulated.

(Official Letter No. 1287/TCT-CS dated 28 April 2021 issued by the General Department of Taxation)



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Indirect Tax



GUIDANCE RULINGS

Conditions for deduction and accounting of food bills

With respect to "food and beverage" invoices, the Hanoi Tax Department has specified the following requirements:

- For paper invoices, the content on the invoice shall comply with Article 4, Circular No. 39/2014/TT-BTC and the attached list shall comply with Clause 2, Article 19, Circular No. 39/2014/TT-BTC.

- For electronic invoices, the content on the invoice shall comply with Article 6, Circular No. 32/2011/TT-BTC and the list of goods and services sold must be fully displayed on the invoice. Attached list is not permitted.

In addition, regarding "food and beverage" invoices, the tax declaration, deductions and expenses accounting shall comply with Clause 10, Article 1, Circular No. 26/2015/TT-BTC and Article 4, Circular No. 96/2015/TT-BTC.

(Official Letter No. 15176/CTHN-TTHT dated 11 May 2021 issued by the Hanoi Tax Department)

Special consumption tax to be declared and paid at the production facility

If an enterprise manufacture goods, which is subject to Special consumption tax, in a branch located outside head office's province, Special consumption tax should be declared and paid to the tax authority that manage that branch (even if that branch does not direct sale).

In case the tax was declared and paid to the head office's tax authority, the company should amend the tax declaration. However, the ruling does not provide guidance on whether amendment in that case would be subject to late payment interest or not.

(Official Letter No. 1462/TCT-DNL dated 11 May 2021 issued by the General Department of Taxation)

Value-Added Tax declaration dossier still applies the old form

According to Point c, Clause 1, Article 11, Decree No. 126/2020/ND-CP, VAT declaration dossier of power production plants outside the province of their headquarters must be submitted into the authority where the plant is located.

Regarding the VAT declaration form, since there is no Circular guiding Decree No. 126/2020/ND-CP, the form 01/GTGT issued in Circular No. 156/2013/TT-BTC shall be temporarily applied.

For investment projects outside the province of the headquarters, according to Point a, Clause 1, Article 11, Decree No. 126/2020/ND-CP, the project's VAT declaration dossiers must be declared separately at the authority where the project is located. The temporary tax declaration form also applies the old form (02/GTGT) issued in Circular No. 156/2013/TT-BTC.

(Official Letter No. 15166/CTHN-TTHT dated 11 May 2021 issued by Hanoi Tax Department)

Electronic invoices signed after the issuance date are still accepted

According to Article 59, Decree No. 123/2020/ND-CP, the issuance of invoices prior to 30 June 2022 will comply with Decree No. 51/2020/ND-CP and its guiding documents in case enterprises are not subject to compulsory application of the new electronic invoice ("e-invoice").

Accordingly, in case an enterprise is still using the old e-invoice, the time of invoice issuance should follow Clause 3, Article 15, Decree No. 51/2010/ND-CP and Clause 2, Article 16, Circular No. 39/2014/TT-BTC. In case the e-invoice is issued before being signed (the issuance date and the signing date is different), the tax liability determination must be based on the issuing date.

In addition, it must contain all the required contents, including the seller's electronic signature as guided in Article 6, Circular No. 32/2011/TT-BTC to be considered legitimate.

(Official Letter No. 14875/CTHN-TTHT dated 10 May 2021 issued by Hanoi Tax Department)

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Foreign Contractor Withholding Tax



GUIDANCE RULINGS

Foreign Contractor Withholding Tax (“FCWT”) levied on income from royalties

If a Vietnamese company enters an agreement to use copyright with a foreign partner, which resides in Belgium and does not have a permanent establishment in Vietnam but earns income in Vietnam, the company is responsible for withholding, declaring and paying FCWT on behalf of foreign contractors for income from royalties, specifically as follows:

- VAT: income from royalties is not subject to VAT.
- CIT:
 - 5% on total royalties if this is the case specified in Article 12 of the Double Tax Avoidance Agreement (“DTA”) between Vietnam and the Kingdom of Belgium dated 28/02/1996. In addition, the company is required to follow the procedure for tax exemption and reduction under treaty in Item b2, Point b, Clause 3, Article 20 of Circular No. 156/2013/TT-BTC dated 06/11/2013 of the Ministry of Finance; or

- 10% calculated on taxable revenue as guided in Article 13 of Circular No. 103/2014/TT-BTC dated August 06, 2014 of the Ministry of Finance, if this is not the case specified in the treaty.

(Official Letter No. 7924/CTBDU-TTHT dated 07 May 2021, issued by Binh Duong Tax Department)

FCWT from goods sold under the form of intermediary processing

If foreign company (A) signs a contract to sell goods to a foreign company (B) and these goods, which were processed by a Vietnamese company (C) under the purchase order of foreign company (A), were transferred from Vietnamese company (C) to the Vietnamese company (D) (who is authorized by the company B to receive goods under the signed 4-party contract) to continue processing and delivering to customer (E) as designated by the company B.

Therefore, the foreign company (A) and the foreign company (B) incurs income from goods sold where the location of goods transfer is located within Vietnam under the form of intermediary processing and on-spot import/export (under the signed 4-parties contract):

- The foreign company (A) is subject to FCWT on the value of the goods sold to the foreign company (B); the foreign company (B) is subject to FCWT on the value of goods sold to the customers E;

- The Vietnamese company (C) and the Vietnamese company (D) are responsible for withholding, declaring, and paying FCWT (CIT: 1% on taxable income) on behalf of the foreign company (A) and the foreign company (B) in accordance with Article 13 Circular No. 103/2014/TT-BTC dated August 06, 2014 of the Ministry of Finance.

(Official Letter No. 704/CTBNI-TTHT dated 22 April 2021, issued by Bac Ninh Tax Department)



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Foreign Contractor Withholding Tax



GUIDANCE RULINGS *(cont.)*

FCWT on compensation for defective goods

A Vietnamese company enters in a supply contract with a foreign company and the buyer discovers that the goods are defective, having low quality, unusable, must be destroyed overseas and Vietnamese company must repay to foreign company. Accordingly, Vietnamese company shall base on the supply contract and other agreements to determine if this is the compensation to the foreign company (for defective products):

- The compensation amount would be subject to FCWT; and
- Vietnamese company is responsible for declaring and paying tax on behalf of the foreign company as guided in Article 11, Article 12 and Article 13 of Circular No. 103/2014/TT-BTC dated 06/08/2014 issued by the Ministry of Finance.

However, if the Vietnamese company reimburse to the foreign company and does not bear any legal responsibilities related to the supply of defective goods, the reimbursement amount would not be subject to FCWT.

(Official Letter No. 757/CTBNI-TTHT dated 29 April 2021, issued by Bac ninh Tax Department).



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NEW REGULATIONS

Decree No. 53/2021/ND-CP of the Government issuing the Export and Import Tariff Schedule of Vietnam and Ministry of Industry and Trade (MoIT) draft Circular guiding the Rules of Origin under the Vietnam – United Kingdom Free Trade Agreement (“UKVFTA”)

1. After the UKVFTA between Vietnam and the United Kingdom of Great Britain and Northern Ireland (regarded as parties or member countries of the UKVFTA) takes effect temporarily from 01 January 2021 and officially on 01 May 2021, the Vietnamese Government has issued Decree No. 53/2021/ND-CP dated 21 May 2021 promulgating on:

- Vietnam’s Export and Import Tariff Schedules under UKVFTA applied from 01 January 2021 to 31 December 2022;
- Conditions for the application of the UKVFTA preferential import and export tariffs; and

- Tariff treatment on shipments declared on or after 01 January 2021 until the effective date of the Decree.

(Decree No. 53/2021/ND-CP dated 21 May 2021 issued by the Government. The key contents of the Decree is updated in the Quick Alert of Deloitte.)

2. MoIT has drafted and finalized a Draft Circular on rules of origin in the UKVFTA (expectedly to be issued in the coming month) with provisions on:

- Determination of the Rules of Origin;
- Proofs of Origin; and
- Cumulation rules and Minimal operations and processes.

(Detailed information of the Circular shall be updated in the upcoming Quick Alert of Deloitte)

GUIDANCE RULINGS

The texts for statement on Proof of Origin (“P/O”) under the European Union – Vietnam Free Trade Agreement (EVFTA) must be in accordance with the regulated template

The Foreign Trade Agency of the Ministry of Industry and Trade (“MoIT”) guided that the texts to be stated on P/O under EVFTA must comply with the texts specified in Appendix VI attached to Protocol No. 1 of the EVFTA, which has been speculated in Appendix VII, Circular No. 11/2020/TT-BCT.

Accordingly, the template text is as follows:

"The export of the products covered by this document (customs authorization No... (1) declares that, except where otherwise clearly indicated, these products are of ...(2) preferential origin."

In case the EU and Vietnam agree on a list of minor errors which shall not result in the rejection of P/O, such list shall be notified on the MoIT's website.

In case the EVFTA's P/O has been issued erroneously, the Vietnamese importer could request the exporter to issue a replacement.

(Official Letter No. 180/XNK-XXHH dated 05 April 2021 issued by the Import and Export department of Ministry of Industry and Trade)

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Trade and Customs



GUIDANCE RULINGS (cont.)

Procedures for additional declaration of "royalty fee" paid post import clearance

The additional declaration of "royalty fee" paid after import clearance shall be performed as follows:

- If the declaration is performed online, the declarant must submit Form No. 04 or No. 05 attached with Appendix II, Circular No. 39/2018/TT-BTC and documents related to the additional declaration through the electronic system;
- If the declaration is conducted by hard copies, the declarant must submit Form No. 03/KBS/GSQL attached with Appendix V, Circular No. 39/2018/TT-BTC (02 originals) and 01 copy of documents related to the additional declaration.

The specific types of submitted documents depend on the enterprise's dossier (for instance, payment requests of partners, payment confirmation minutes, payment documents, etc.).

Where it is necessary to perform additional declaration of "royalty fee" for a large quantity of declarations or numerous item lines, enterprises are permitted to conduct such activity on a single customs declaration with an attached list.

It is noted that the additional declaration must be carried out at the local customs sub-department where the import declaration was registered.

The deadline for duty payment shall comply with Point b, Clause 3, Article 7, Circular No. 06/2021/TT-BTC.

(Official Letter No. 1849/TCHQ-TXNK dated 19 April 2021 issued by the General Department of Customs)

Notes on the procedures of in-land import and export according to Decree No. 18/2021/ND-CP

Pursuant to Point h, Clause 2, Article 12, Decree No. 134/2016/ND-CP dated 01 September 2016 amended and supplemented by Clause 6, Article 1, Decree No. 18/2021/ND-CP, from 25 April 2021, regarding the mode of in-land importation of goods for manufacturing exports (mode in-land E31), duties must be declared and paid in accordance with current regulations.

In addition, from 25 April 2021, for in-land export declarations under exports processing and exports manufacturing scheme, if the in-land exporter fails to notify the corresponding in-land import declarations to Customs authority within 15 days from the clearance date, a new customs declaration must be registered. Furthermore, duty shall be declared and paid as prescribed upon the registration of the new declaration.

(Official Letter No. 333/KCNST dated 26 April 2021 issued by the Song Than Industrial Park Customs Sub-Department)

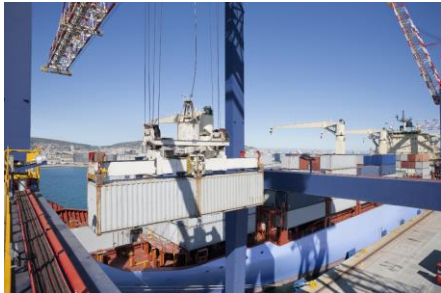


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Trade and Customs



GUIDANCE RULINGS (cont.)

Issuing customs procedure codes and instructions

On 18 May 2021, the General Department of Customs issued Decision No. 1357/QD-TCHQ publicizing the new customs procedure mode table, replacing the current regulation in Official Letter No. 2765/TCHQ-GSQL (' Official Letter 2765") dated 01 April 2015.

Notable points in Decision No. 1357/QD-TCHQ are as follows:

- Supplementing new modes of export and import not yet guided in Official Letter 2765 such as: C12 – Goods exported from bonded warehouses to foreign countries; A43 – Import of goods under the Tax Incentive Program; A44 – Temporary import of goods sold at duty-free shops.
- Amending the name and instruction of several export and import modes such as: B13 – Export of imported goods; G23 – Re-export of temporarily imported duty-free goods; A11 – Import for consumption and sale; A31 – Import of exported goods; A42 - Change of using purpose or change to domestic consumption from other categories, except for temporary import; G51 – Re-import of temporarily exported goods; C12 – Goods brought into the non-tariff zone.

- Obmitting mode E56 - Export of processed products delivered within Vietnam and merging into E52 - Exported processed products to foreign traders.
- The Decision takes effect from 01 June 2021.
- Transitional arrangements:
 - For customs declarations registered under the old modes before the effective date of this Decision, where the using purpose is amended or a new import/export declaration is registered, declarant shall comply with this Decision upon the registration of the new customs declaration.
 - For modes specified in this Decision but the customs procedures are not specified in any Decree of the Government and Circular of the Ministry of Finance, they shall not be implemented until specific regulations are issued.

(Decision No. 1357/QD-TCHQ dated 18 May 2021 issued by the General Department of Customs)



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