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**Tax & Customs
Newsletter**

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Corporate Income Tax

Guidance ruling

The expenses of purchasing goods from domestic enterprises without customs declaration

When an export processing enterprise (“EPE”) purchases goods from domestic enterprises without carrying out any customs procedures and the domestic enterprise issues VAT invoices with VAT rate of 8% or 10%:

- If goods and services are subject to customs procedures as stipulated in clause 50, Article 1, Circular No. 39/2018/TT-BTC dated 20 April 2018: expense might be treated as non-deductible as it fails conditions of having legitimate invoices and documents as prescribed by regulations.
- If customs procedures are not compulsory: the official letter does not specifically mention the necessity of customs returns, instead, re-state general conditions for expense deductibility.

(Official Letter No. 1454/TCT-CS dated 21 April 2023 issued by the General Department of Taxation)

Expenses for paying untaken leave days for employees working at the company

Payment for untaken leave days to the employees currently working at the company in accordance with Labor Code and guiding documents shall be treated as deductible expense for Corporate Income Tax (“CIT”) purpose if:

- General deductibility conditions are met, and
- It does not fall into the list of non-deductible expenses specified relevant CIT regulations (such as Circular No. 96/2015/TT-BTC and Circular No. 25/2018/TT-BTC).

(Official Letter No. 1292/CTBNI-TTHT dated 19 April 2023 issued by Bac Ninh Tax Department)

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Corporate Income Tax

Guidance ruling

Change the HS code of products from the HS code under Supporting Industry Incentive Certificate is not eligible for CIT incentives related to supporting industry products

When a company enjoys CIT incentive of investment project which produce supporting industry (SI) products (SI incentive certificate granted) and the list of Vietnam's export and import goods specified in Appendix I, Circular No. 31/2022/TT-BTC dated 08 June 2022 changing the HS code of Vietnam's exports and imports as prescribed in Circular No. 65/2017/TT-BTC dated 27 June 2017, which was issued previously, is no longer consistent with the HS code stated in the Certificate issued by the Ministry of Industry and Trade (MOIT):

- Income from such products is not eligible to CIT incentives for SI products.
- Update to SI Incentive Certificate by MOIT is required for CIT incentive continuance.

(Official Letter No. 2728/CTBGI-THT dated 25 April 2023 issued by Bac Giang Tax Department)

The electronic transaction documents

Law on Tax administration do not govern the company's adoption of electronic contract upon purchase or sale. The electronic contracts shall be subject to the provisions of the Law on Electronic transactions No. 51/2005/QH11.

If tax administrative procedure requests the taxpayer to provide economic contracts or other relevant documents, the electronic contract shall be converted into paper according to the guidance in clause 3, Article 6, Circular No. 19/2021/TT-BTC.

(Official Letter No. 7829/CTBDU-TTHT dated 27 April 2023 issued by Binh Duong Tax Department)



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Indirect Tax

Guidance ruling

VAT refund for exported goods and services in case of high-risk application

Tax authorities are responsible for receiving, classifying and handling the tax refund application dossier submitted by taxpayers pursuant to Articles 33, 34 and 35 of Circular No. 80/2021/TT-BTC.

During the process, if the dossier is classified as high-risk under the tax refund administration procedure, an examination would be conducted prior to VAT refund.

(Official Letter No. 1492/TCT-KK dated 25 April 2023 issued by the General Department of Taxation)



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Labor

New regulations



The statutory pay rate increased to VND 1.8 million per month from 01 July 2023

This Decree officially increases the statutory pay rate to VND 1.8 million per month from 01 July 2023, which is used for calculating:

- i. salary in payrolls, allowance levels and performing other regimes with regard to public officials, civil servants, public employees, contract employees in state agencies, units.
- ii. operational charges, living expenses as prescribed by law.
- iii. contributions and benefits under the statutory pay rate.

(Decree No. 24/2023/ND-CP dated 14 May 2023 of the Government on statutory pay rate for public officials, civil servants, public employees and armed forces' personnel)

Female employees shall receive obstetric and gynecological examinations when they undergo periodic health checkups

This Circular amends the form of periodic health checkup record and contents of periodic health checkup at Annex 3 of Circular No. 14/2013/TT-BYT by Annex 3a promulgated together with this Circular.

In addition, this Circular also supplements the regulations according to which female employees shall receive obstetric and gynecological examinations when they undergo periodic health checkups, including: obstetric and gynecological checkups, cervical cancer screening, breast cancer screening and uterine adnexal ultrasound (Annex 3b promulgated together with this Circular).

The Circular takes effect from 20 June 2023.

(Circular No. 09/2023/TT-BYT dated 05 May 2023 of the Ministry of Health on amendments to some Articles of Circular No. 14/2013/TT-BYT dated 06 May 2013 of the Minister of Health on provision of guidance on health checkups)

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Personal Income Tax

Guidance ruling

Guidelines for online tax submission by ID code

From 10 May 2023, the tax department will issue an ID code (unique for each tax type and fee) for businesses and individuals to declare, pay taxes and fees online according to the ID code.

The ID code will be notified to businesses and individuals at the Notice of Acceptance of online tax returns; Notice of tax payment or notice on the website of the General Department of Taxation.

Enterprises and individuals are allowed to use ID codes to: look up the situation of handling tax obligations; declare and pay tax and check and adjust tax payment information on the website of the General Department of Taxation. The method of implementation follows the instructions in Appendix 02 of the Official Letter.

(Official Letter No. 1483/TCT-KK dated 24 April 2023 of the General Department of Taxation on the implementation of tax collection and payment according to the payable identifier (ID))

Types of gifts for employees subject to Personal Income Tax withhold

When a company gives gifts to employees after termination of the labor contract, if such gifts are not in the form of gifts specified under Clause 10, Article 2, Circular No. 111/2013/TT-BTC (including securities, capital contributions, real estate, and properties subject to registration for ownership), they are not required to withhold Personal Income Tax ("PIT"). Otherwise, those gifts would be subject to PIT withholding at 10% on the gift value exceeding VND 10 million.

(Official Letter No. 33037/CTHN-TTHT dated 15 May 2023 of Hanoi Tax Department)



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Immigration

New regulations

New regulations on granting APEC business travel cards

This Decision promulgates new regulations on issuance of the APEC business travel card (ABTC) including: eligible entities who are granted the ABTC; procedures, authority for issuance and management of ABTCs for Vietnamese business; personal information review, issuance of temporary residence certificates for foreign business using ABTCs; responsibilities of agencies, organizations, enterprises and individuals in using and managing ABTCs.

ABTC is a card issued by the competent authority of an APEC participating economy to its entrepreneur after receiving the approval for entry from other participating economies. The ABTC has two forms: physical card and virtual card. A physical ABTC and a virtual ABTC have the same legal validity.

ABTC holders are given priority for immigration, temporary residence in participating countries written on the ABTCs to engage in business cooperation, trade, investment, service activities or attend conferences, seminars and for other business purposes.

Conditions for issuance of an ABTC are regulated at Articles 8, 9. In which, it is required to note that the enterprise applying for the ABTC must not fall under cases of temporary suspension from exit as prescribed in Article 36 of the Law on exit and entry.

Validity period of the ABTC issued to Vietnamese entrepreneur is 5 years and cannot be renewed (except the cases specified at points b, c, d, and dd, Clause 1, Article 14 of this Decision.

The Decision takes effect from 10 July 2023.

(Decision No. 09/2023/QĐ-TTg dated 12 April 2023 of the Prime Minister on procedures, authority for issuance and management of APEC business travel cards)



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Foreign Contractor Withholding Tax

Guidance ruling

Overpaid Foreign Contractor Withholding Tax due to the tax adjustment of the declaration can submit a request for refund or offset for the next payment

When a company declares and pays Foreign Contractor Withholding Tax ("FCWT") to State Budget then amends such tax return leading to an overpaid FCWT amount, off-setting against future FCWT liability or request for refund will accord Article 60, Law No. 38/2019/QH14 and Article 25, Circular No. 80/2021/TT-BTC.

(Official Letter No. 4358/CTTPHCM-TTHT dated 12 April 2023, issued by Ho Chi Minh City Tax Department)

Foreign Contractor Withholding Tax levied on supply of goods sourced from Vietnam

When a Vietnamese company sells goods to foreign company and delivers the goods to third party as designated in overseas and does not fall into the cases specified in Article 1, Circular No. 103/2014/TT-BTC, no FCWT liability will incur.

(Official Letter No. 24873/CTHN-TTHT dated 20 April 2023, issued by Hanoi Tax Department)

Responsibility to declare Foreign Contractor Withholding Tax when making payment to foreign suppliers through intermediary party

In case the supplier of goods and services is foreign company and subject to FCWT deemed method, Vietnamese company will be responsible for withholding, declaring and paying tax (if any) on behalf of the foreign supplier before making payment through intermediary party.

(Official Letter No. 7881/CTBDU-TTHT dated 27 April 2023, issued by Binh Duong Tax Department)

Implementation of Foreign Contractor Withholding Tax finalization

When a Vietnamese company and foreign company enter into a contract and Vietnamese company is responsible for declaring and paying FCWT on behalf of foreign company,:

- FCWT finalization: the company will submit FCWT finalization return for each contract upon contract termination;
- Determination of termination date and ending taxable period on FCWT finalization return (Form 02/NTNN issued with Circular No. 80/2021/TT-BTC dated 29 September 2021): Vietnamese company bases on the provisions on the applicable laws related to contract (Vietnamese law, foreign law, international treaty, commercial practice) to determine the termination date. The termination date is also the date of the ending taxable period on the FCWT finalization return.

(Official Letter No. 2225/CTHPH-TTHT dated 04 May 2023, issued by Hai Phong Tax Department)

Leasing services of international telecommunications transmission line in oversea

When a foreign company provides leasing service of international telecommunications line (from Hong Kong to Korea) to Vietnamese company, whose services are performed outside Vietnam, derived income will not be subject to FCWT as prescribed in clause 4, Article 2, Circular No. 103/2014/TT-BTC dated 06 August 2014.

(Official Letter No. 32469/CTBNI-TTHT dated 12 May 2023, issued by Hanoi Tax Department)

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Trade & Customs

Guidance ruling

Imported goods sold to Export Processing Enterprises by a domestic enterprise are entitled to import duty refund

In case a domestic enterprise (not FDI) imports goods from overseas to sell to EPEs, customs declaration mode A11 shall be applied and import duty and VAT must be paid.

After the goods have been exported to the EPE and used exclusively within the EPE, the domestic company is entitled to get refund of the paid tax if the following conditions are fulfilled:

- The exported goods have not been used or processed.
- The re-export procedures are carried out by the original importer or by an entity authorized/entrusted by the original importer. The export declaration mode shall be B13.

(Official Letter No. 1684/TCHQ-TXNK dated 12 April 2023 issued by the General Department of Customs)

Notable news

Finalizing the Draft Circular on origin determination of imported and exported goods

- The draft Circular on origin determination of imported and exported goods is being finalized, with notable contents as follow:
- Detailed procedures for advance rulings of origin for imported and exported goods.
- Detailed provisions on origin declaration on export declarations, proof of origin submission and procedures for origin of exported goods inspection and determination.
- Detailed provisions on origin declaration on import declarations, proof of origin of imported goods submission deadline, cases of refusal of proof of origin, origin inspection and verification procedures and handling method in some special cases where differences in HS codes on the proof of origin and customs declaration are found.

The draft Circular, when enacted, shall replace Circular 38/2018/TT-BTC and related Circulars, and is expected to further support import and export activities of business community by a number of facilitating provisions.

The Ministry of Finance is in the process of finalizing the draft Circular for enactment, expectedly within the 2nd quarter of 2023.

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Trade & Customs

Guidance ruling

Requirements on renting external warehouse by Export Processing Enterprises for storage of raw materials, supplies and finished goods

According to the General Department of Customs, the partition to separate the goods of EPEs will not be compulsory, if the below conditions of on rented external warehouse are satisfied:

- There are hard fences that separate warehouse from the outside area.
- Only goods of EPEs are stored in the warehouse.
- Stored goods of EPEs are separately managed and under continuous supervision (24/24) of surveillance camera system that meets the customs inspection and supervision conditions.

Nonetheless, the warehouse managing entity must establish managing policy for goods of each EPE when circulation within and stock-in/out of the warehouse.

(Official Letter No. 1964/TCHQ-GSQL dated 24 April 2023 issued by the General Department of Customs)

From 01 May 2023, new C/O Form of China under the Regional Comprehensive Economic Partnership will be applied

From 01 May 2023, the new C/O form under the Regional Comprehensive Economic Partnership (“RCEP”) issued by China shall be used.

Regarding the List of signatures of officials authorized to issue C/O form RCEP, such list will not be posted on the website of the ASEAN Secretariat since China has already announced on the portal of issuing authority for C/O verification.

(Official Letter No. 2114/TCHQ-TXNK dated 05 May 2023 issued by the General Department of Customs)

Products and semi-finished products sent to overseas for processing are subject to import duty without refund

According to the General Department of Customs, imported raw materials for export-manufacturing and semi-finished goods manufactured from imported materials, then sent to overseas for processing are exempt from export duty.

Re-imported goods from overseas after processing will be subject to import duty. The customs value shall be the product’s value remained after deducting the value of previously exported raw materials, supplies and components for processing.

If the imported processed products are then further processed in Vietnam for overseas export, refund of import duty will not be allowed.

(Official Letter No. 2093/TCHQ-TXNK dated 04 May 2023 issued by the General Department of Customs)

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