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Newsletter
Tax & Customs

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Corporate Income Tax
Guidance ruling

Loss offset and carry-forward among independent investment projects by an enterprise

On 19 December 2023, the General Department of Taxation issued Official Letter No. 5781/TCT-CS stating that prevailing CIT regulations do not mention the offset amongst incentivized projects which suffer losses and other incentivized projects having income, based on consultation with the Department of the Tax policies, fees and charges Supervisory Authority ("DTSA") and the Department of Legal Affairs (Ministry of Finance) as follows:

- The Department of Legal Affairs (Ministry of Finance) views that the loss of a CIT-incentivized project cannot be offset against the activities of other CIT-incentivized projects having income but can only choose to offset the loss with taxable income of non-incentivized business activities or other income of business activities.
- DTSA opts that considering investment projects of enterprises as different business activities being carried out at the same time to apply regulations on loss offsetting and carry forward is not sufficiently regulated.

After the above guidance was issued, the taxpayer continued to submit explanations on investment projects. Specifically, the Company has 03 independent Investment Registration Certificates for 03 projects in the same business line with different CIT incentive schemes. The General Department of Taxation issued Official Letter No. 1792/TCT-CS dated 02 May 2024, which states that current CIT legal documents do not have regulations on tax policies for loss offset and carry-forward among independent investment projects conducted by an enterprise. The General Department of Taxation will transfer related content to the DTSA for reporting to the Ministry of Finance and responding according to its authority.

(Official Letter No. 5781/TCT-CS dated 19 December 2023 issued by the General Department of Taxation)

(Official Letter No. 1792/TCT-CS dated 02 May 2024 issued by the General Department of Taxation)

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Corporate Income Tax
Guidance ruling

CIT incentives in case of changing the factory area in the Investment Certificate

If the Company is entitled to CIT incentives by its favorable location and changes the factory area under the amendment of the Investment Certificate, and the change in the Investment Certificate does not impact the qualification of incentive conditions of the investment project, the Company can:

- Continue to enjoy CIT incentives under the existing project's scheme for the remaining period; or
- Enjoy incentives under the expansion investment project's scheme if qualifying the preferential conditions as prescribed in clause 6, Article 18, Circular No. 78/2014/TT-BTC.

(Official Letter No. 3358/CTBGI-TTHT dated 09/05/2024 issued by Bac Giang Tax Department)

Allocate land rental fees in the construction phase

The General Department of Taxation issued Official Letter No. 1879/TCT-CS dated 07 May 2024, which mentions 02 official letters from 02 provincial tax departments on the treatment of once-off land rental fees allocated to investment years. In particular:

According to Official Letter No. 4305/CTLAN-TTHT dated 02 November 2023 issued by Long An Tax Department:

- A lump sum land rental fee for the entire land lease period and infrastructure tax will be gradually allocated to business expenses according to the number of years of the land lease.
- Land rental fees incurred during the construction period are not included in deductible expenses when determining taxable income for the year. The Company accounts for it as a long-term prepayment and gradually allocates it into business expenses at the end of the construction phase, with a maximum allocation period of no more than 3 years.

On the same matter, Dong Nai Tax Department issued Official Letter No. 13515/CTDON-TTHT dated 05 December 2023 guiding that the prepaid land rental and infrastructure rental fees that the Company has allocated according to the number of prepaid rental years into the construction-in-progress years will be included in deductible expenses when determining taxable income if it meets the prescribed conditions according to regulations in clause 1, clause 2.16, clause 2.32, Article 6, Circular No. 78/2014/TT-BTC amended by Article 4, Circular No. 96/2015/TT-BTC.

(Official Letter No. 4305/CTLAN-TTHT dated 02 November 2023 issued by Long An Tax Department)

(Official Letter No. 13515/CTDON-TTHT dated 05 December 2023 issued by Dong Nai Tax Department)

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Corporate Income Tax
Guidance ruling

Determining deductible expense and creditable input VAT for consumables in excess of the norm

In responding to local tax authority, the General Department of Taxation provides its view for materials, fuel, energy, and goods ("consumables") exceeding the norm:

- *From VAT perspective:*

✓ In principle, input VAT on consumables exceeding the norm is non-creditable.

✓ In case the consumption norms have been issued by the State, the input VAT amount exceeding the norm is not declared and credited.

- *From CIT perspective:*

✓ Enterprises build and manage consumption norms for materials, fuel, energy, and goods used in production and business by themselves.

✓ In case the State has issued consumption norms then shall comply with them.

(Official Letter No. 2087/TCT-CS date 16 May 2024 issued by the General Department of Taxation)

Cash reward payments under the point accumulation program are deductible

If the Company incurs a cash reward payment to the customer when the customer purchases and accumulates the targeted order value according to the Company's policies, the payment can be treated as a deductible expense when determining taxable income for CIT purposes if satisfying the conditions specified in Article 4, Circular No. 96/2015/TT-BTC.

(Official Letter No. 24940/CTHN-TTHT dated 26 April 2024 issued by Hanoi Tax Department)

Costs of raw materials and finished goods being destroyed are not deductible

Raw materials or finished products, which are destroyed due to changes in orders by customers or production and business strategies, are not considered a force majeure event, thus, not included in deductible expenses when determining CIT taxable income.

(Official Letter No. 995/CTVPH-TTHT dated 06 May 2024 issued by Vinh Phuc Tax Department)

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Indirect Tax

Guidance ruling

10% VAT rate will apply in case export processing enterprises rent warehouses outside the non-tariff areas

If the Company is an export processing enterprise that rents a factory to store raw materials and products, but the factory rental service is performed and consumed outside the non-tariff area, then such service is not entitled to VAT 0% as prescribed in Article 9, Circular No. 219/2013/TT-BTC. Therefore, 10% VAT rate will apply in accordance with regulations.

(Official Letter No. 2231/CTLAN-TTHT dated 09 May 2024 issued by Long An Tax Department)

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Personal Income Tax
Guidance ruling

Strengthen the management of PIT on incomes from stock dividends and bonus shares of existing shareholders

For the purposes of intensifying the management of PIT on incomes from capital investment, the General Department of Taxation hereby requests Provincial Tax Departments to implement the notable guidelines as following:

- **Supervision of organizations' declaration and payment of PIT on behalf of taxpayers:** If any organizations in their provinces have not yet declared and paid PIT on behalf of taxpayers, Provincial Tax Departments shall adopt tax management measures to review and expedite these organizations to fulfill their obligation to declare and pay PIT on incomes from stock dividends or bonus shares on behalf of their existing shareholders that are individuals as prescribed.
- **Regarding inspection tasks:** Tax authorities shall follow rules for the management of risks in tax management to carry out desk-review of tax dossiers of securities companies, commercial banks providing securities depository services, fund management companies and securities issuers as prescribed. If any risks are detected, physical inspection to taxpayers' premises must be conducted as prescribed. Accordingly, during tax audit, tax authorities should pay attention to the inspection of the declaration and payment of PIT on behalf of individuals (who receive stock dividends or bonus shares) and individuals' declaration and payment of PIT on incomes from capital investment when they transfer shares of the same type in accordance with regulations of law.

(Official Letter No. 1806/TCT-DNNCN dated 02 May 2024 issued by the General Department of Taxation)

Revenue subject to VAT and PIT for business individuals leasing property

Appendix I of Circular No. 40/2021/TT-BTC regulates VAT rate of 5% and PIT rate of 5% applicable to leasing out property for business individuals.

Based on the contract signed between the lessor being business individual and the corporate lessee, the lessor shall pay VAT and PIT on revenue from leasing out property as prescribed. As VAT-taxable and PIT-taxable revenue is the tax-inclusive revenue, if the contract regulates the leasing price does not include VAT and PIT, then tax authority shall re-determine VAT/PIT taxable revenue (=) tax-exclusive revenue paid to the lessor divided by (:) 0.9.

Whether the lessor or lessee is obliged to submit the declaration form and pay tax shall be agreed by the two parties in the contract according to civil laws.

(Official Letter No. 1368/TCT-DNNCN dated 03 April 2024 issued by the General Department of Taxation)

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Personal Income Tax
Guidance ruling

Tax withholding on housing allowance for non-residents

If the Company paid housing allowance for a foreign employee who is a tax non-resident, the taxable rent amount will be the actual amount but capped at 15% of the total taxable income arising in Vietnam (excluding housing allowance and associated utilities, if any) according to the instructions in clause 2, Article 11, Circular No. 92/2015/TT-BTC.

(Official Letter No. 23289/CTHN-TTHT dated 23 April 2024 issued by Hanoi Tax Department)

Tax treatment for contribution to voluntary pension funds and rewards to employee's children on academic achievement

Contributions to the voluntary pension funds which are purchased by the employer or contributed to the employee for insurance products with accumulated premiums shall be taxable as employment income. The amount of contribution to the voluntary pension fund can be deducted from taxable income according to actual arising but not exceeding one (01) million VND/month.

Bonuses, rewards in-cash or in-kind given to children of employees who have good academic achievements and receive excellent student certificates, city, and national awards... are not included in the bonuses stipulated in point e.1, clause 2, Article 2, Circular No. 111/2013/TT-BTC, thus, shall be taxable employment income.

(Official Letter No. 23290/CTHN-TTHT dated 23 April 2024 issued by Hanoi Tax Department)

PIT allocation shall not be re-determined at the finalization stage

When paying salaries and wages to employees working at business locations in other provinces, the Company should withhold PIT according to regulations and submit tax declaration documents according to Circular No. 80/2021/TT-BTC.

With respect to the amount of PIT allocated and remitted to the State budget for each province where the employee works, the Company is not required to re-calculate upon PIT finalization in accordance with item a.1, point a, clause 3, Article 19, Circular No. 80/2021/TT-BTC.

(Official Letter No. 24942/CTHN-TTHT dated 26 April 2024 issued by Hanoi Tax Department)

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Foreign Contractor Withholding Tax
Guidance ruling

Processing of defective exported goods abroad is not subject to FCWT

When a Vietnamese company exports goods to customers and the goods do not satisfy the quality requirements according to the signed sales contract, the Company has to hire a foreign company to reprocess. As this processing activity is provided and consumed outside Vietnam, the income received by the foreign organization is not subject to FCWT.

(Official Letter No. 12264/CTBDU-TTHT dated 09 May 2024 issued by Binh Duong Tax Department)

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Foreign Contractor Withholding Tax
Guidance ruling

The FCWT on forwarding services, international logistics, and international transportation from Vietnam to abroad

When foreign company generates income in Vietnam from forwarding services, international logistics, or international transportation from Vietnam to abroad, such income is subject to withholding tax according to the provisions of Article 1, Circular No. 103/2014/TT-BTC.

If the foreign contractor does not satisfy one of the conditions stated in Article 8, Circular No. 103/2014/TT-BTC, the Vietnamese company is responsible for deducting, declaring and paying taxes on behalf of foreign contractors according to the instructions in Article 12 and Article 13 of Circular No. 103/2014/TT-BTC, specifically:

- *For international transportation services from Vietnam to abroad (international freight charges):*

✓ VAT rate: international transport freight is subject to tax rate of 0% (if it satisfies the provisions of clause 2, Article 9, Circular No. 219/2013/TT-BTC) or 3% (if fail the VAT 0% conditions) on taxable revenue.

✓ CIT rate: tax rate of 2% on taxable revenue.

- *For forwarding services, international logistics from Vietnam to abroad (excluding international freight):*

✓ VAT rate: tax rate of 5% on taxable revenue

✓ CIT rate: tax rate of 5% on taxable revenue. CIT taxable revenue for forwarding services, international logistics from Vietnam to abroad is the entire revenue received by the foreign contractor, excluding international freight payable to the carrier (sea route).

(Official Letter No. 23287/CTHN-TTHT dated 23 April 2024 issued by Hanoi Tax Department)

No requirement for submitting a monthly FCWT tax return if no tax liability arises

If the Company is subject to tax declaration and payment on behalf of a foreign contractor and has transactions and payments to foreign contractor multiple times in a month, the Company can declare taxes on a monthly basis instead of each time it occurs. The deadline for submitting monthly tax declaration is the 20th day of the month following the month in which the tax liability arises.

In case the Company does not incur FCWT obligation during the month, the Company is not required to submit the monthly tax declaration to the tax authority.

(Official Letter No. 2547/CTBNI-TTHT dated 24 April 2024 issued by Hanoi Tax Department)

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Trade & Customs
Guidance ruling

Customs procedures for imported goods transported in split shipments

According to the guidance of the Department of Customs Management and Supervision (under the General Department of Customs), there is no provision on customs clearance for a part of the declared shipment on a customs declaration.

In cases imported goods under one bill of lading are transported in split shipments to Vietnam, enterprises must separate the bill of lading into multiple sub-bills for each shipment before performing customs declaration. The issued sub-bill numbers shall be used to separately declare corresponding shipment for customs clearance.

(Official Letter No. 496/GSQL-GQ1 dated 12 April 2024 issued by the General Department of Customs)

Tax refund for imported goods that have to be re-exported whilst undergone "minimal operation and processing"

According to the guidance of the General Department of Customs, the Law on Export Tax, Import Tax No. 107/2016/QH13 stipulates that for goods imported with tax paid and have to be re-exported, tax refund shall be applied for the paid import tax and no export tax is liable.

Besides, prevailing regulations do not specify the use of processing and manufacturing activities to determine tax refund policies for imported goods that have to be re-exported to overseas.

(Official Letter No. 1581/TCHQ-TXNK dated 12 April 2024 issued by the General Department of Customs)

VAT application for goods that are exempted from import duty then the using purpose is changed

As guided by the General Department of Customs, the VAT taxable amount at the importation stage is the total of "import valuation at the border gate" plus "import duty (if any)", plus "special consumption tax (if any)", and plus "environmental protection tax (if any)".

In case enterprises have already paid VAT on the "import valuation at the border gate" but have not paid VAT on the "import duty" due to the exemption of import duty at the importation stage. At later stage should the enterprises change the using purpose of the imported goods, then they have to pay additional VAT on the amount of the incurring "import duty".

(Official Letter No. 1570/TCHQ-TXNK dated 12 April 2024 issued by the General Department of Customs)

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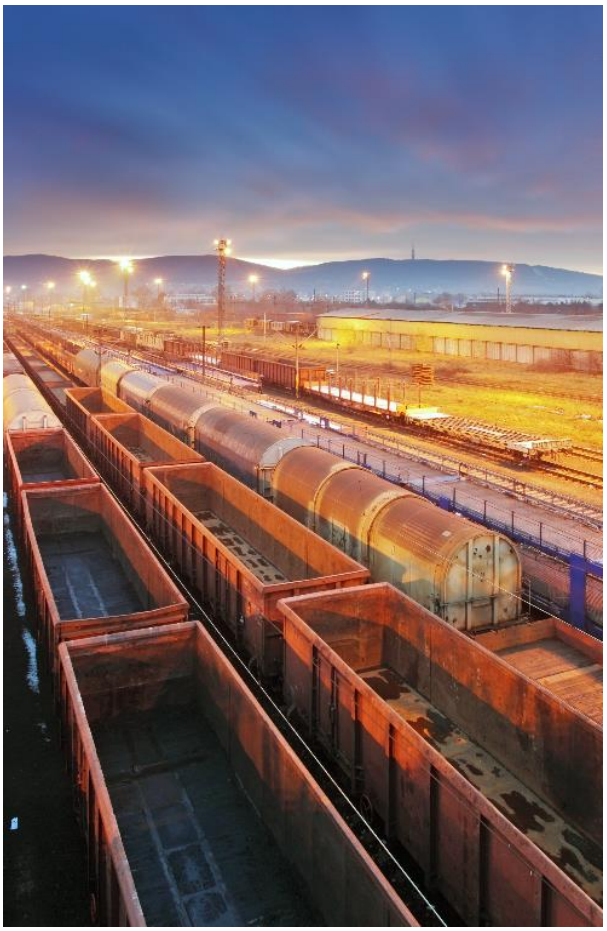
Trade & Customs
Guidance ruling

Guidance for cases with different HS codes on the certificate of origin and customs declaration

Regarding the different HS codes on the certificate of origin ("C/O") and import declaration, it is guided by the General Department of Customs that:

- In case there is sufficient basis to determine the product's name on C/O does not match the declared product's name on the import declaration, or the Notice ruling of HS code classification or the actual imported goods, then Customs authorities shall reject the C/O.
- In case there is insufficient basis to determine the product's name on C/O does not match the declared product's name on the import declaration, or the Notice ruling of HS code classification or the actual imported goods, then Customs authorities shall take provisions under Article 16, Circular No. 33/2023/TT-BTC dated 31/05/2023 issued by the Ministry of Finance shall be applied.

(Official Letter No. 2011/TCHQ-GSQL dated 09 May 2024 issued by the General Department of Customs)



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