

Tax & Legal Update

January 2022

TAX AND LEGAL UPDATE IN JANUARY 2022

I. Tax update

1. Corporate Income Tax ("CIT")

(i) *Notable points in determination of total revenue for eligibility assessment of 30% CIT reduction*

According to the provision of Decree 114/2020/ND-CP and Decree 92/2021/ND-CP on CIT reduction for 2020 and 2021, the total revenue for assessment of eligible enterprises for 30% CIT reduction does not include income from financial activities. However, according to Official Letter 4454/TCT-CS dated 19 November 2021 issued by the General Department of Taxation ("GDT"), where an enterprise registers its main business as financial support services, the revenue from financial activities will be included in the total revenue for the assessment of 30% CIT reduction eligibility.

In addition, according to the guidance of Official Letter 3918/TCT-CS dated 12 October 2021, the revenue from sale of goods and provision of services does not include indirect taxes such as output VAT (including cases declaring VAT on the deemed method), special consumption tax, export tax and environmental protection tax.

(ii) *Enterprises are allowed to make provision for bad debts for advance payments which are converted into receivables*

According to Official Letter No. 4325/TCT-CS dated 9 November 2021 of the GDT, upon the conversion of an advance payment into a receivable on the mutual agreement between the buyer and the seller, the seller is allowed to make provision for bad debts in accordance with Circular 48/2019/TT-BTC. Of note, the provision must be supported with proper documents as prescribed in Article 6 of Circular 48/2019/TT-BTC in order to be considered as CIT deductible expenses.

2. Value Added Tax ("VAT") and invoices

(i) *An investment project which registers for implementation in multiple phases will be eligible for VAT for the phases under construction*

According to Official Letter 4838/TCT-CS dated 10 December 2021, where an enterprise registers to implement their project in multiple phases, if some of those phases have come into commercial production while others are still under construction as per the timeline registered under the Investment Registration Certificate, the input VAT related to phases under construction shall be declared under form 02/GTGT for the investment project. After offsetting against the VAT payable from production and business activities declared under form 01/GTGT, the enterprise is entitled to a VAT refund for the remaining creditable input VAT of the investment project in accordance with the provision of Circular 130/2016/TT-BTC.

(ii) *No VAT refund for the reporting period which does not generate export revenue*

According to Official Letter 4815/TCT-CS dated 09 December 2021, where an enterprise requests a refund of input VAT related to exported goods and services in a specific period but, in one or several periodical tax declarations within such a period, no export revenue is generated, the enterprise will

be granted a VAT refund for the declaration periods that generate export revenue only. The input VAT amount of the declaration period that does not generate export revenue will be carried forward to the next tax declaration periods for credit purposes.

(iii) *A VAT refund is still available where a construction permit is issued after the construction stage*

According to Official Letter 4491/TCT-CS dated 23 November 2021, where an enterprise is granted with a construction permit after the project has entered operation and production, if the procedures and progress for granting the construction permit is in compliance with the prevailing regulations on construction and the project has satisfied the conditions for creditable VAT upon a VAT refund request, the project will be eligible for a VAT refund for the construction stage.

(iv) *Enterprises are entitled to a VAT refund upon dissolution for the accumulated creditable VAT amount which was not eligible for a VAT refund during the operation period*

According to Official Letter 4329/TCT-CS dated 10 November 2021, where an enterprise has an accumulated creditable input VAT amount upon its dissolution and closure of the tax code, including the creditable input VAT amount which was not eligible for refund but eligible for credit during the business operation (for example, the input VAT corresponding to the revenue from domestic sales), such enterprise will be entitled to a refund for related input VAT upon its dissolution in accordance with the Circular 130/2016/TT-BTC.

(v) *Taxpayers must register to use the e-invoice types (either with or without code) as required under the notice from the tax authority*

On 27 December 2021, the GDT issued Official Letter No. 5113/TCT-CS providing guidance on e-invoices, notably:

- If a taxpayer has many business activities where some of those are eligible to use e-invoices without the tax authority's code (e.g. e-commerce business, supermarket business, clean water, insurance, etc.) and some do not qualify to do so, the taxpayer is allowed to simultaneously register both types of e-invoices (i.e. with and without the tax authority's code) corresponding to each business activity. The GDT will upgrade the e-invoice system to facilitate this application.
- Where the tax authority has sent a notice to the taxpayer to apply e-invoices with the tax authority's code but the taxpayer then registered to use e-invoices without the code, the taxpayer must amend the registration information for the e-invoice type as per the notice from the tax authority. If not, the tax authority will assess the risk level to determine whether to carry out a tax audit at that taxpayer to inspect on the information and technology ("IT") infrastructure.

3. Personal Income Tax ("PIT")

(i) *Circular 100/2021/TT-BTC amending Circular 40/2021/TT-BTC on VAT and PIT applicable to business households and individuals*

On 15 November 2021, the Ministry of Finance issued Circular 100/2021/TT-BTC ("Circular 100") amending and supplementing Circular 40/2021/TT-BTC guiding on VAT, PIT and tax administration for business households and individuals with some notable changes as follows:

- For individuals who have property leasing activities for less than one year, if the total actual rental revenue of such year is less than VND100 million, such individuals are not subject to PIT and VAT payment. Previously, according to Circular 40, the individuals were taxed if the estimated revenue for a full 12 months of that calendar year was assumed to be VND100 million or more.
- Where the leasee pays a rental fee as a lump-sum for a lease for a number of years, the revenue to determine whether an individual is liable to taxes is the amount allocated over the whole lease period.
- E-commerce platforms declare and pay taxes on behalf of business individuals only on the basis of authorization in accordance with the provisions of Civil Law. If the owner of an e-commerce platform does not declare and pay taxes on behalf of business individuals, the tax authorities shall coordinate with the e-commerce platform to obtain the relevant information of business individuals for tax management purpose. Previously, according to Circular 40, e-commerce platform owners are required to declare and pay taxes on behalf of business individuals according to the tax authority's roadmap.

Circular 100 takes effect from 1 January 2022.

4. Tax administration

(i) Strengthening the coordination mechanism between the tax authorities and social insurance (“SI”) authorities

To enforce the collection of compulsory insurance contributions and enhance the tax administration, on 09 July 2021, GDT and Vietnam SI Authority signed a Regulation on data sharing and coordination No. 1999/QCPH-BHXH-TCT. On 06 December 2021, the GDT issued Official Letter No. 4740/TCT-DNNCN guiding local tax departments on the implementation of the coordination mechanism, specifically:

- Tax authorities and SI authorities will share taxpayers’ data via an IT system that is directly connected between the GDT and Vietnam SI Authority.
- Tax authorities will exploit taxpayers’ information to support the development of tax risk assessment and management criteria and decide on tax audit and inspection measures. This is also a data source to reconcile the information for PIT management.
- If tax authorities identify any risks related to the compulsory insurance contribution for the employees, the tax authorities and SI agency can coordinate to schedule for an inspection plan.

5. Other taxes and fees

(i) Reduction of 50% of the registration fee for domestically manufactured and assembled automobiles from December 2021 until the end of May 2022

According to Decree No. 103/2021/ND-CP dated 26 November 2021, the registration fee for motor vehicles, trailers or semi-trailers towed by motor vehicles and the likes which are domestically manufactured or assembled shall be halved for the period from 01 December 2021 until 31 May 2022. From the period from 1 June 2022 onwards, the registration fee level shall continue to comply with the prevailing Decree No. 20/2019/ND-CP.

Decree 103/2021/ND-CP takes effect from 01 December 2021 to 31 May 2022.

II. Legal update

1. New changes on goods labelling regulations

On 9 December 2021, the Government approved Decree 111/2021/ND-CP (“**Decree 111**”), amending some regulations of Decree 43/2017/ND-CP on goods labelling (“**Decree 43**”). Decree 111, which comes into effect on 15 February 2022, features the following highlights:

- For imported goods: Decree 111 supplements the mandatory contents displayed on original labels of goods imported into Vietnam, such as name of goods, origin of goods, name of the manufacturer or the party in charge of goods overseas, to prevent enterprises taking advantage of changing labels and origin of goods.
- For exported goods: Decree 111 expands the scope of governing to include labelling of exported goods and organizations exporting goods to limit trade fraud, prevent illegal transshipments, and protect national interests. In principle, the exported goods must be labeled in accordance with the regulations of the exported country and must not include prohibited contents (e.g., image, contents relating to sovereignty disputes and affecting security, politics, economy, and society). If the label indicates the origin of the goods, such label must comply with Decree 111 regarding the origins of the goods.
- Amends the identification and recording of origin of goods:
 - Goods with identifiable origins: the label’s origin of goods information must include the name of the country or territory where the good is produced, followed by one of these terms: “manufactured in”; “made in”; “producing country”; “origin”; “made by”; “product of”.
 - Goods with unidentifiable origins: the label’s information on the place where the final stage of finishing goods is performed must include the name of the country or territory where the final stage is conducted, followed by one or some of these terms: “assembled at”; “bottled at”; “mixed at”; “completed at”; “packed at”; “labelled at”.
 - The name of the country or territory where the good is produced or the final stage is conducted must not be abbreviated.
- Supplements with new rules on labelling:
 - Supplementing the mandatory contents to be shown on the original labels of goods imported into Vietnam to prevent enterprises taking advantage of changing labels and the origin of the goods.

- Some mandatory contents can be shown electronically in accordance with the guidance of Ministry of Science and Technology.
- Where medical devices circulating in Vietnam have not been granted visa numbers, the name and address of the medical device's owner and import license holder should be shown on the label.

2. New regulations on regulatory sandbox of financial technology activities in the banking sector

On 6 September 2021, the Government issued Resolution No. 100/NQ-CP approving the proposal to develop a decree on regulatory sandbox of financial technology (fintech) activities in the banking sector ("**Fintech Regulatory Sandbox**"). Accordingly, the State Bank of Vietnam ("**SBV**") is responsible for presiding over and coordinating with relevant ministries and agencies in formulating and submitting the decree to the Government for approval.

- The draft decree promulgating the Fintech Regulatory Sandbox was enclosed in the Statement No. 62/TTr-NHNN dated 3 August 2021 providing the following key points:
 - Introduces for the first time definitions in fintech such as:
 - (i). Fintech in the banking sector means technologically based innovations in financial services applied in the banking sector;
 - (ii). Fintech company means a non-credit institution, established and legally operating in Vietnam under the Law on Enterprise 2020, which independently or in cooperation with a credit institution, provides fintech solutions to the market; and
 - (iii). Peer-to-peer lending (P2P lending) means a financial technology-based lending operation designed and built on an online trading platform that directly connects borrowers and lenders without the involvement of financial intermediaries such as credit institutions.
 - Specifies the fintech solutions to participate in the Fintech Regulatory Sandbox, including: peer-to-peer lending (P2P lending), credit granting on technology-based platform, data sharing via open API, blockchain application on banking activities, credit scoring, and other technological applications supporting banking activities.
 - The participants of the Fintech Regulatory Sandbox must be a legal entity established and legally operating in Vietnam, having fintech solutions ensuring novelty, creativity, feasibility and full risk management and approved by the SBV.

The Fintech Regulatory Sandbox is expected to be implemented in 1 or 2 years. Based on the results of Fintech Regulatory Sandbox, the competent State management authority will elaborate the legal framework for fintech activities in the future.

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