

VIETNAM BULLETIN

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Highlights of Vietnam's technical updates in Quarter 3/2022

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- ▶ Business Tax;
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- ▶ Personal Income Tax (“PIT”);
- ▶ Social Insurance (“SHUI”);
- ▶ Labor;
- ▶ Others.

Please refer to our following edition for further details.

BUSINES TAX

▶ Tax Administration

1. Official Letter No. 36823/CTHN-TTHT dated 28 July 2022 by Hanoi Tax Department regarding value added tax (“VAT”) and corporate income tax (“CIT”) with respect to the transfer of land use rights.

Transfer of land use rights in industrial parks between two export processing enterprises (“EPE”) is not subject to VAT. Enterprises are required to declare and pay CIT for the transfer of land use rights in accordance with the current regulations for real estate transfer.

2. Official Letter No. 45095/CTHN-TTHT dated 13 September 2022 by Hanoi Tax Department on not being required to declare related party transactions regarding payments/collection on behalf during pre-licensed period.

If an enterprise, prior to its incorporation, authorises another enterprise (a related party) to make payment of establishment expenses on its behalf, the enterprise's documents and invoices under its related party's name are legitimate documentations for being accounted as deductible expenses for CIT purpose when satisfying the conditions prescribed in Article 4 of Circular 96/2015/TT-BTC by Ministry of Finance.

In addition, transfer pricing declaration of such payments/collections on behalf are not required.

► Corporate income tax (“CIT”)

1. Official letter No. 2594/TCT-CS dated 21 July 2022 by the General Department of Taxation on the reduction in corporate income tax for 2021 according to Decree 92/2021/ND-CP.

Enterprises operated in 2019 but did not generate revenue are not eligible for a 30% CIT reduction for the tax period 2021.

2. Official Letter No. 37868/CTHN-TTHT dated 3 August 2022 by Hanoi Tax Department on CIT incentives.

Enterprises having investment projects that are entitled to CIT incentives due to their satisfaction of conditions regarding the encouraged sectors of investment as prescribed by laws shall be eligible for tax incentives for incomes from the encouraged sectors of investment and the following incomes:

- Income from disposal of scrap and biproducts of the products in CIT incentive sectors;
- Exchange rate differences which are directly related to revenues and expenses of CIT incentives sectors;
- Demand deposit interests;
- Other incomes directly related to such sectors

Where a company branches have a software production projects which meets the conditions on new investment project as prescribed in Clause 3, Article 10 of Circular No. 96/2015/TT-BTC, the branches are eligible for CIT incentives according to actual conditions satisfied.

3. Official Letter No. 2825/TCT-CS dated 4 August 2022 by the General Department of Taxation on the conditions for CIT incentives when establishing waste treatment establishments.

Enterprises operating in the environmental sector and meeting the conditions promulgated in Decision No. 1466/QD-TTg dated 10 October 2008 and Decision No. 693/QD-TTg dated 6 May 2013 as an establishment socialising in the environmental sector for a hazardous waste treatment establishment, shall be entitled to CIT incentives according to actual conditions satisfied.

4. Official Letter No. 39624/CTHN-TTHT dated 11 August 2022 by Hanoi Tax Department on capital transfer activity.

Foreign organisations are subject to CIT on income from capital transfer derived in Vietnam. If capital transferees are foreign organisations that do not operate under the Law on Investment, the Law on Enterprises, the enterprises established under Vietnam’s law in which capital is invested by such foreign organisations, must declare and pay the CIT on income from capital transfer on behalf of the foreign organisations.

5. Official Letter No. 37372/CTHN-TTHT dated 1 August 2022 by Hanoi Tax Department on tax declaration of foreign contractors (foreign organisations which have not established a legal entity in Vietnam and do not operate under Vietnam’s law).

Foreign contractors having income from contracting with securities Companies (established and operating under Vietnam’s law) to transfer shares of Company A in Vietnam are subject to Circular 103/2014/TT-BTC. Foreign contractor withholding tax computation depends on the types of share transfer as follows:

- Transfer of investment capital in Company A of foreign investors (Vietnam); or
- Securities transfer.



► Value added tax (“VAT”)

1. Official Letter No. 1954/TCT-DNL dated 8 June 2022 by the General Department of Taxation on VAT for rental and sale of property and gifts of banks.

For leases, sales and disposal of assets of cargo ships in which ownership was transferred to banks and gifts of goods or services which are subject to VAT rate of 10% as well as are not eligible for VAT reduction specified in Annexes I, II and III attached with Decree No. 15/2022/ND-CP, the VAT rate of 8% will be applied from 1 Feb 2022 to 31 December 2022.

2. Decree No. 49/2022/ND-CP (“Decree 49”) dated 29 July 2022 by the Government amending Decree No. 209/2013/ND-CP dated 18 December 2013, Decree No. 12/2015/ND-CP, Decree No. 100/2016/ND-CP and Decree No. 146/2017/ND-CP on VAT calculation of some cases and VAT refund for investment projects.

Decree 49 has the following notable points:

For the determination of deductible value of land for VAT purposes in real estate transfer:

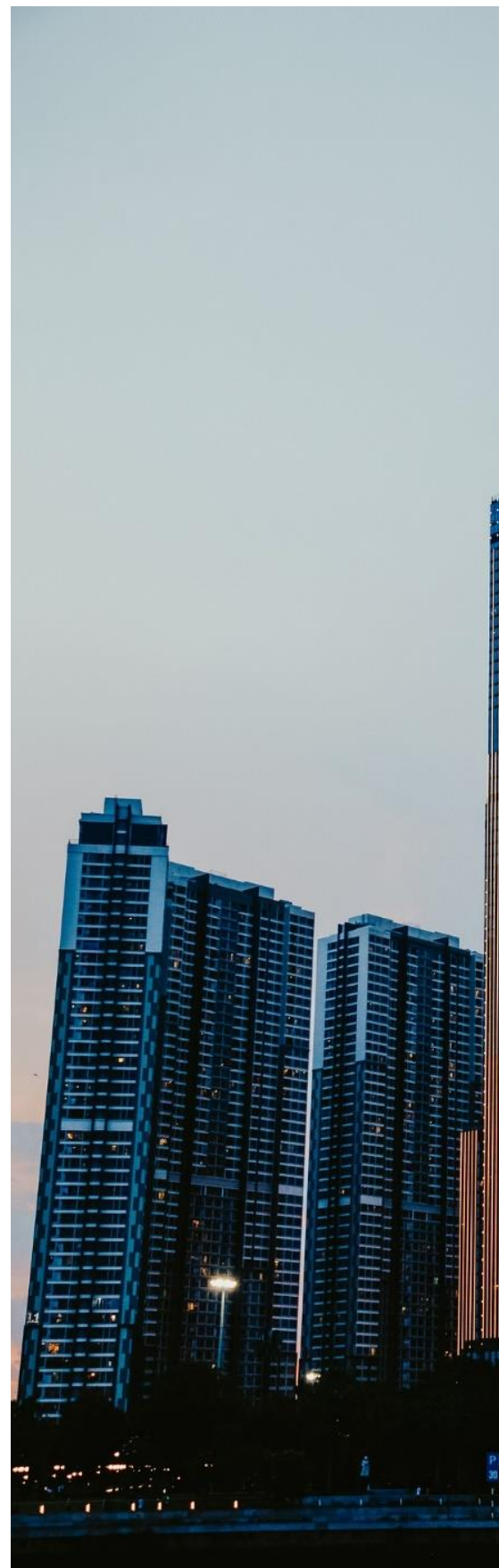
- Supplementing guidance on deductible compensation and site clearance expenses for VAT purposes. Accordingly, the deductible compensation and site clearance expenses are the expenses approved by the Authorities and deducted from land rent and water surface rent prescribed by laws.
- For land use rights transferred from individuals/organisations to organisations in which the value of land use rights including or excluding infrastructure value, the deductible value of land for VAT purposes is the land value at a time when receiving the transfer of land-use rights without infrastructure value. Enterprises are entitled to declare and claim the input VAT of the infrastructure (if any) as prescribed by laws.

Amendments to regulation on VAT refund for new investment projects:

- Supplementing the regulation on VAT refunds in accordance with investment phases as well as investment categories for new investment projects and abolishing the regulations on annual VAT refunds for investment projects, which have from duration of one year or more.
- Supplementing the regulation on VAT refund for investment projects of enterprises operating in conditional business sectors prescribed in Decree 49. Such regulations of VAT refund shall be retroactively applied from 1 July 2016.

3. Official Letter No. 7460/BTC-TCT dated 29 July 2022 by the Ministry of Finance on VAT reduction for construction activities.

Construction and installation activities having the time of acceptance and handover of works, construction items, completed construction and installation workload from 1 February 2022 to the end of 31 December 2022, irrespective of money receipt, are eligible for VAT reduction in accordance with Decree No. 15/2022/ND-CP.





4. Official Letter No. 40071/CTHN-TTHT dated 15 August 2022 by Hanoi Tax Department on VAT declaration for import goods after post clearance audit.

In case companies incurred VAT liabilities according to the decision on tax imposition of the customs authority, the paid VAT will be fully claimed as deductible except for being sentenced as tax violations and fraud. Input VAT arose in a period must be declared and deducted when determining the tax payable of such period.

5. Official Letter No. 3375/TCHQ-TXNK dated 15 August 2022 by the General Department of Customs on the VAT of import products.

In case import components are determined as synchronous components, designed exclusively for assembling specialised machinery and equipment for agricultural production and applied the same HS code with specialised machinery and equipment for agricultural production in accordance with the rules in Official Letter No. 12848/BTC-CST on 15 September 2015 by the Ministry of Finance, such components are not subject to VAT.

6. Official Letter No. 3506/TCHQ-TXNK dated 24 August 2022 by the General Department of Customs on the VAT of "green tea".

The Law on VAT and regulations has not yet regulated that "crushing" is a type of preprocessing. Accordingly, "(dried) green tea which is not fermented, crushed, not packaged for retail, goods not in the list of cites..." are subject to VAT of 10%.

7. Official Letter No. 46742/CTHN-TTHT dated 23 September 2022 by Hanoi Tax Department on the applicable VAT rate for brokerage activity.

In case companies providing brokerage services in Vietnam is a company located in an export processing zone in Vietnam and the brokerage services are performed and consumed in the exporting processing zone (export service), the companies issue VAT invoices with the VAT rate of 0% when satisfying the conditions prescribed by laws.

In case companies providing brokerage services to the customers which are domestic and foreign companies and the brokerage services are performed and consumed in Vietnam, the Companies issue VAT invoices with VAT rate of 10% as prescribed by laws.

► Invoice

1. Decision No. 1391/QD-TCT dated 23 August 2022 by the General Department of Taxation on the promulgation of the management process of electronic invoices with the tax authority code generated from Point-of-sales (POS).

IMPORT DUTY & CUSTOMS

1. Official Letter No. 1877/HQTPHCM-GSQL dated 28 July 2022 by Ho Chi Minh City Customs Department on customs declaration under the export processing category required to have a processing contract.
2. Official Letter No. 3269/TCHQ-TXNK dated 8 August 2022 by the General Department of Customs on tax policy for goods leased or rented from EPEs.

Domestic enterprises leasing/ renting goods from EPE under a leasing/rental contract for manufacturing purposes are not exempted from import duty as prescribed by laws. Domestic enterprises are required to declare and pay customs duty upon temporary import and are not eligible for tax refund upon the re-export.

3. Official Letter No. 3489/TCHQ-TXNK dated 23 August 2022 by the General Department of Customs on the additional declaration for royalties of import goods.
4. Official Letter No. 3292/TCHQ-TXNK dated 9 August 2022 by the General Department of Customs on tax declaration and payment when converting from an export-processing enterprise (“EPE”) to an enterprise not subject to EPE policies.
5. Official Letter No. 3417/TCHQ-TXNK dated 17 August 2022 by the General Department of Customs on tax and duty treatments of import goods according to the tax incentive scheme.
6. Decree No. 51/2022/ND-CP dated 08 August 2022 by the Government on amendment of preferential tax rates on gasoline products categorised in 27.10 group.
7. Official Letter No. 3466/TCHQ-TXNK dated 19 August 2022 by the General Department of Customs on tax refund for on-spot import goods for production and export.

ACCOUNTING

1. Circular No. 41/2022/TT-BTC dated 05 July 2022 by the Ministry of Finance on accounting system applied for social and charity activities.



PERSONAL INCOME TAX (“PIT”)

1. Official Letter No. 2414/TCT-DNNCN dated 7 July 2022 by the General Department of Taxation provides that expatriates are subject to progressive tax rates if the term of their assignment letter is over 183 days.

Accordingly, a foreigner who is assigned to work in Vietnam for a period of 5 years under the assignment letter must declare and calculate PIT according to the partially progressive tax schedule.

2. Expatriates coming to Vietnam on a short-term trip to conduct market survey must pay PIT as tax non-residents according to Official Letter No. 32313/CTHN-TTHT dated 8 July 2022 by the Hanoi Tax Department.
3. Official Letter No. 33223/CTHN-TTHT dated 14 July 2022 by the Hanoi Tax Department provides that housing rents for foreigners are still subject to PIT withholding according to the cap of 15% of total income in Vietnam and in overseas.

4. Official Letter No. 39281/CTHN-TTHT dated 10 August 2022 by the Ha Noi Tax Department on the determination of PIT treatment for the case of authorisation to donate real estate.

Accordingly, where the real estate owner authorises another individual to carry out the procedures for gifting real estate to his/her siblings, the recipient of the property is also exempted from PIT.

5. Official Letter No. 35195/CTHN-TTHT dated 19 July 2022 by the Ha Noi Tax Department guiding the first tax assessment period of expatriates.

In case an expatriate is appointed to Vietnam to work, the tax period shall be based on the working time in Vietnam stated on the labour contract or assignment letter to temporarily withhold tax according to the progressive tax rates (for those staying in Vietnam from 183 days or more) or at a flat rate of 20% (for those staying in Vietnam below 183 days in a tax year).

When an expatriate is considered a Vietnam tax resident, the first tax finalisation period is the calendar year (from 1 January to 31 December).

6. Official Letter No. 35192/CTHN-TTHT dated 19 July 2022 by the Ha Noi Tax Department on PIT exemption for the case of an individual receiving rewards on behalf of a group.

Accordingly, in case an enterprise pays a bonus to a collective of employees and the individual who receives the bonus is only the representative to receive such bonus (without specifying any individual), it is not required to withhold PIT for this bonus.

7. Official Letter No. 46348/CTHN-TTHT dated 21 September 2022 by the Ha Noi Tax Department on PIT exemption and reduction under the Double Taxation Avoidance Agreement (“DTA”).

For foreigners working in Vietnam, if they satisfy simultaneously the conditions for tax exemption under the DTA and the provisions of Clause 2, Article 31, Circular No. 205/2013/TT-BTC, they will be exempted from PIT in Vietnam.

In case the foreigner has paid the exempted tax amount, he/she can file a request for a PIT refund according to the provisions of Article 30 of Circular No. 80/2021/TT-BTC.

8. Official Letter No. 40222/CTHN-TTHT dated 16 August 2022 by the Ha Noi Tax Department on determining taxable income from gifts.

Where companies give gifts to their employees as salaries or wages (a gift in lieu of salary, the value of such gifts shall be subject to PIT withholding), in accordance with the provision of Clause 2 of Article 2 of Circular No. 111/2013/TT-BTC (“Circular 111”).

If the gifts are not paid in lieu of salary and are not securities, contributed capital, real estate, assets subjected to ownership registration, etc in accordance with Clause 10 of Article 2 of Circular 111, they are exempted from PIT withholding.

In the event when the gifts are received as a result of winning contests or games as prescribed in Clause 6 of Article 2 of Circular 111, the Company must withhold PIT at the rate of 10% on the gift’s value in excess of VND10 million.



SOCIAL SECURITIES (“SHUI”)

1. Decision No. 1392/QĐ-BHXH dated 1 July 2022 by the Vietnam Social Security promulgating the process of receiving and paying unemployment allowance through the National Public Service Portal, effective from the signing date.
2. Plan No. 234/KH-UBND dated 31 August 2022 by the Hanoi People's Committee on the support of 10-30% of the premium for participants of voluntary SI from 1 August 2022 to end of 31 December 2025.
3. Official Letter No. 2243/BHXH-TST dated 17 August 2022 by the Vietnam Social Security on the unannounced inspection of enterprises committing late payment of SI premiums if the outstanding payment is significant or the delayed period is more than 3 months.
4. Official Letter No. 2841/UBND-VX dated 12 August 2022 by the Ho Chi Minh City People's Committee regarding employees in Ho Chi Minh City to receive rent support fee by 30 August 2022.
5. Enterprises in Ho Chi Minh City must update the application for housing rental support for employees on the website (<https://sldqd08.tphcm.gov.vn>) in accordance with the Official Letter No. 20832/SLDTBXH-VLATLD dated 20 June 2022 of the DOLISA of Ho Chi Minh City.
6. Official Letter No. 4887/BHXH-CNTT dated 27 August 2022 by the Ho Chi Minh City SID requesting businesses in the city to update the ID card number/ PIN of employees to the SID before 30 September 2022.

LABOUR

1. Notes when hiring foreign employees according to Official Letter No. 3180/SLDTBXH-VLATLD dated 8 August 2022 by the Ha Noi DOLISA.

Accordingly, organisations and enterprises employing expatriates in Hanoi City must conduct the followings:

- Submit the reports on the use of foreign employees on a biannual basis (before 5 July and 5 January of the next year) using Form No. 07/PL1 issued in Decree No. 152/2020/ND-CP. Particularly for the report of the first 6 months of 2022, the deadline has been extended to 15 August 2022.
- Send copies of signed labour contracts (if any) to the competent authority that has granted the work permit.
- Do not employ expatriates that do not have a work permit or a certificate of eligibility for work permit exemption.
- When submitting the explanation report for the demand for employment of foreign workers or change in the demand for employment of foreign workers, it is necessary to correctly determine the job positions and working forms to serve as the basis for determining the subjects of social insurance contributions.

OTHERS

1. Resolution No. 125/NQ-CP dated 22 September 2022 by the Government on reducing land rent and water surface rent in 2022 for those affected by the Covid-19 pandemic.

Accordingly, the Government agreed to the Government's draft Report to the Standing Committee of the National Assembly on reducing land rent and water surface rent in 2022 for subjects affected by the Covid-19 pandemic.

2. People in Ho Chi Minh City will be granted electronic health records from Quarter 4/2022 according to Plan No. 3160/KH-UBND dated 7 September 2022 by the People's Committee of Ho Chi Minh City.

According to this Plan, the Department of Health of Ho Chi Minh City shall implement the creation of electronic health records for the city's citizens according to the step-by-step roadmap as follows:

- Quarter 4/2022: for people in the high risk group (over 50 years old or have underlying disease);
- 2023: for the group of pregnant women and children;
- 2024-2025: for the remaining group of people.

The data required when composing an electronic health record includes administrative data, expanded immunisation data (for children) and vaccination against Covid-19, medical history data, allergies data, data of anthropometric index (weight, height), blood type data, data on underlying medical conditions such as hypertension, diabetes and other comorbidities.

3. Decree No. 59/2022/ND-CP dated 5 September 2022 by the Government regarding electronic identification and authentication, effective from 20 October 2022.

This Decree details the electronic identity, the grant of electronic identification accounts, the conditions for providing electronic authentication services and the rights and obligations of the users of the electronic authentication services.

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