

## Tax Update

May 2023

This is to provide updates on guidance recently issued by several local tax departments, including:

- ▶ Declaration of adjustment/replacement invoices
- ▶ Value added tax (VAT) rates applicable to returned goods, trade discounts and on adjustment invoices for goods which were eligible for the VAT reduction and were invoiced for prior to 31 December 2022
- ▶ Corporate income tax (CIT) incentives applicable to new investment projects with changes in investment registration information
- ▶ Tax implications of remuneration earned by individuals performing service contracts
- ▶ Foreign contractor tax (FCT) of the supply component in a contract with a foreign supplier
- ▶ Expenditures on indirect support which may not be deductible for CIT purposes to the enterprises providing the support

### Declaration of adjustment/replacement invoices

The recent instruction from several local tax authorities is that adjustment/replacement invoices which are made according to the provisions of the Government's Decree No. 123/2020/ND-CP dated 19 October 2020 on invoices and documents, should be declared in the tax period in which the erroneous invoices were declared.

The Hanoi Tax Department in its Official Letter No. 62542 clarifies that the adjustment/replacement invoices could have led to an incorrect tax return. Hence, enterprises should make supplementary declarations to each incorrectly submitted tax return in accordance with the guidance in Article 47 of Law on Tax Administration No. 38/2019/QH14 dated 13 June 2019 of the National Assembly and Clause 4, Article 7 of Decree No. 126/2020/ND-CP dated 19 October 2020 of the Government. <sup>(1)</sup>

<sup>(1)</sup> According to Official Letter No. 3884/CTBNI-TTHT dated 29 November 2022 issued by Bac Ninh Province Tax Department and Official Letter No. 62542/CTHN-TTHT dated 16 December 2022 issued by Hanoi Tax Department.

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**VAT on returned goods, end-of-period trade discounts and invoices to adjust erroneous invoices for goods which were subject to a VAT reduction in accordance with the Government's Decree No. 15/2022/ND-CP (Decree 15) dated 18 January 2022**

For goods which were eligible for the VAT reduction as per Decree 15 and were sold during the period from February to December 2022, if:

- ▶ The goods are returned to the seller in 2023, invoices for the returned goods should be made at the VAT rate which is applicable on the purchase invoice previously made by the seller.
- ▶ The seller provides trade discounts where the program ends and is invoiced for in 2023, the trade discounts on the adjustment invoices made in 2023 can be applied at the reduced VAT rate used on the sales which were eligible for the discounts and the seller issued invoices at the reduced 8% rate prior to 1 January 2023.
- ▶ The seller is required to make adjustment invoices for goods subject to the VAT reduction as per Decree 15 which was issued before 1 January 2023, the seller should be able to claim the reduced VAT rate on the relevant adjustment invoices. <sup>(2)</sup>

<sup>(2)</sup> In reference to:

- ▶ Official Letter No. 313/CTTPHCM-TTHT dated 11 January 2023 issued by Ho Chi Minh City Tax Department
- ▶ Official Letter No. 168/CTBNI-TTHT dated 13 January 2023 issued by Bac Ninh Province Tax Department
- ▶ Official Letter No. 1635/CTBDU-TTHT dated 31 January 2023 issued by Binh Duong Province Tax Department
- ▶ Official Letter No. 1652/CTHDU-TTHT dated 1 February 2023 issued by Hai Duong Province Tax Department
- ▶ Official Letter No. 348/CTLAN-TTHT dated 3 February 2023 issued by Long An Province Tax Department
- ▶ Official Letter No. 7972/CTHN-TTHT dated 27 February 2023 and 9301/CTHN-TTHT dated 6 March 2023 issued by Hanoi Tax Department.

**Incentives applicable to new investment projects in an industrial zone with updates in investment registration information with additional business activities**

According to the guidance of Bac Ninh Province Tax Department in Official Letter No. 206/CTBNI-TTHT dated 18 January 2023, if there are changes in the investment registration information to supplement business activities of a new investment project, which is implemented in an industrial zone (IZ) (other than those located in urban districts of special-grade cities, centrally run grade-I cities and grade-I provincial cities) and is eligible for CIT incentives in terms of a tax holiday and a period of tax reduction, takes place:

- ▶ When the project is in the investment phase and has not yet come into operation and the enterprise has not generated revenue from that project, the supplemental business activities can be regarded as the business activities of the initial investment project.

Therefore, profits generated by such additional business activities carried out in the incentivized region are eligible for CIT incentives.

- ▶ When the investment project has already come into operation and the enterprise has not raised additional capital and has not carried out expansion investment to increase assets, profits from the supplemental business activities should not be entitled to CIT incentives.

### **Tax implications of remuneration earned by individuals performing service contracts**

Tax liabilities pertaining to remuneration earned by individuals performing service contracts should be determined based on the status of business registration of the individuals. In particular:

- ▶ If the individuals have not registered for doing business, the remuneration they earn should be regarded as in the nature of salary and wages. The income paying body, therefore, should refer to guidance in Circular No. 111/2013/TT-BTC dated 15 August 2013 of the Ministry of Finance to withhold PIT at the progressive tax rates if the service contract with the individuals has a term of more than three months or at the 10% flat rate applicable to each payment of VND 2,000,000 or more if the term of the service contract is less than three months.
- ▶ If the individuals have registered for doing business, the remuneration from the performance of their service contract should be regarded as income from doing business. The individuals must self-determine the tax liabilities and self-attend to tax declaration and payment obligations according to the guidance in Circular No. 40/2021/TT-BTC dated 1 June 2021 of the Ministry of Finance. <sup>(3)</sup>

<sup>(3)</sup> In reference to Official Letter No. 8205/CTHN-TTHT dated 28 February 2023 issued by Hanoi Tax Department.

### **Foreign contractor tax implications of the supply of materials and equipment in a contract**

According to Circular 103/2014/TT-BTC dated 6 August 2014 of the Ministry of Finance, if a contract with a foreign supplier can separately determine the value of each business activity, the value of each business activity under the contract could be subject to the CIT rates correspondingly applicable to that business activity.

In relation to the above, on 15 November 2022, the General Department of Taxation issued Official Letter No. 4223/TCT-CS to provide further guidance that there will be no basis to apply the rate of 1% to calculate CIT on revenue from the supply of materials and equipment if the contract, invoices and payment documents fail to specify the quantity, unit price and value of each type of materials, machinery and equipment associated with construction items. In this case, a different rate may apply.

Therefore, where relevant, enterprises should consider specifying in detail the quantity and value of supplied materials and equipment in contracts with foreign suppliers if the contracts

comprise various business activities. The specific provisions could form a basis for determining the applicable CIT rate when calculating associated FCT liabilities.

**Indirect support expenditures are not deductible when calculating CIT for enterprises providing such support**

Expenditures on indirect support payments may not be treated as deductible in determining CIT liabilities of the enterprises providing the support.

The GDT in Official Letter No. 786/TCT-CS dated 20 March 2023 (Official Letter 786) expressed a view that there is no basis to recognize the deductibility of certain indirect support payments for CIT calculation purposes. The indirect support mentioned in Official Letter 786 includes:

- ▶ Support payments to achieve sales targets paid through distributors to the distributors' customers to whom the enterprise does not directly sell goods.
- ▶ Incentives paid to the distributor's sales team who are not employees of the enterprise.

Enterprises should note this guidance when determining the deductibility of these types of indirect support expenditures.

In addition, we would remind relevant enterprises of the PIT withholding obligations pertaining to incentives paid directly to the distributors' employees.

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