

Tax Update

August 2022

1. Corporate Income Tax ("CIT")

(i) Taxpayers not generating revenue in 2019 do not qualify for 30% CIT reduction in 2021

According to Decree No. 92/2021/ND-CP, enterprises with revenue in 2021 not exceeding VND200 billion and suffering a decline in revenue compared to 2019 will be entitled to a 30% CIT reduction in 2021. To clarify this policy, on 21 July 2022 the General Department of Taxation ("GDT") issued Official Letter No. 2594/TCT-CS confirming that where an enterprise did not generate revenue in 2019 (i.e. failing one of the two conditions as regulated under Decree No. 92/2021/ND-CP), it would not be eligible for a 30% CIT reduction in 2021.

Where an enterprise was established in 2019 and its period of operation was less than 3 months and it generated revenue, the revenue criterion of 2019 to assess eligibility for the 30% CIT reduction in 2021 shall be determined by the actual monthly average revenue multiplied by 12 months.

(ii) Output Value Added Tax ("VAT") included in the VAT invoice issued but uncollectable upon a donation / sponsorship in-kind is not deductible for CIT calculation purpose

According to Official Letter No. 1585/TCT-CS dated 16 May 2022 of GDT, goods imported by organizations and individuals to support the prevention of Covid-19 pandemic are not subject to VAT. However, an output VAT invoice must be issued upon the donation / sponsorship of such goods. The uncollectable output VAT which is recorded into the expenses of the taxpayers shall not be deductible for CIT due to the lack of the legal framework.

(iii) Adjustment of the project timeline without changing the CIT incentive conditions shall not impact the CIT incentive position of the taxpayers

According to Official Letter No. 923/TCT-CS dated 28 March 2022 of the GDT, where an enterprise amends its Investment Certificate during the construction stage to change the project duration without changing the CIT incentive conditions, the enterprise will still be entitled to CIT incentives in accordance with Investment Law and CIT regulations.

2. VAT and invoices

(i) Use of e-invoices for on-the-spot export and import of goods

According to Official Letter No. 8042/BTC-TCHQ dated 12 August 2022 of the Ministry of Finance ("MoF"), where a domestic enterprise applying the VAT-credit method provides goods to an Export Processing Enterprise ("EPE") or an enterprise located in a non-tariff zone, the procedure for on-the-spot export and import shall be as follows:

- For on-the-spot export declaration: A copy of delivery note cum internal shipping shall be used instead of an e-VAT invoice according to Decree No. 123/2020/ND-CP.
- For on-the-spot import declaration: a copy of e-VAT invoice must be attached to the customs declaration dossier to be submitted via the electronic customs system.

(ii) Timing of e-invoice issuance for EPE

As per Decree 123, the timing of e-invoice issuance shall be (i) upon the transfer of goods ownership/right to use goods to the buyer, or (ii) upon the completion of customs clearance if the taxpayers declare VAT under the deduction method. To clarify the timing of e-invoice issuance for EPE, the MoF has confirmed under the Official Letter No. 8404/BTC-CS dated 23 August 2022 that an EPE needs to issue e-sale invoice upon the transfer of ownership of the goods. Official Letter 8404 was copied to all provincial tax departments for consistent implementation.

(iii) Amendment of regulations on issuing separate VAT invoices for goods and services eligible for VAT reduction as per Decree No. 15/2022/ND-CP

On 20 June 2022, the Government issued Decree No. 41/2022/ND-CP amending, supplementing some articles of Decree No. 123/2020/ND-CP on invoicing and Decree No. 15/2022/ND-CP on VAT reduction, specifically:

- A taxpayer is not required to issue a separate invoice for goods and services eligible for VAT reduction. Instead, goods and services with different VAT rates can be billed under one invoice at the respective tax rates.
- Where the taxpayer follows the same approach as regulated under Decree No. 41/2022/ND-CP during the period from 01 February 2022 to 20 June 2022 (i.e. no separation of invoices for goods and services eligible for VAT reduction), such taxpayer is neither required to make any invoice adjustment nor subject to administrative penalties.

In addition, Decree No. 41/2022/ND-CP replaces the Notice of receipt and result of handling errors in e-invoices – Form 01/TB-SSDT as regulated under Decree 123/2020/ND-CP by Form 01/TB-HDSS.

(iv) E-VAT invoice is not required for export customs clearance

According to Official Letter No. 2054/TCHQ-GSQL dated 03 June 2022 of the General Department of Customs (“GDC”), the GDC opined on the use of e-VAT invoices for exported goods as follows:

- In accordance with customs regulations, a commercial invoice but not an e-VAT invoice shall be required under the export customs dossier
- The timing to issue an e-VAT invoice for exported goods is upon the completion of export customs procedure as prescribed in Decree No. 123/2020/ND-CP.

(v) Signs of tax violations in invoice management alerted by the tax authorities

On 01 June 2022, the GDT issued Official Letter No. 1873/TCT-TTKT on the measures to strengthen the review and inspection to detect taxpayers with signs of invoice risks and to prevent fraud in VAT refund. Notably, the GDT detailed 25 signs and indications of tax violations in invoice management as per the Appendix attached to this Official Letter.

3. Personal Income Tax (“PIT”) and policies for employees

(i) Regarding the use of e-receipts and e-certificates of PIT withholding

On 12 July 2022, the GDT issued Official Letter No. 2455/TCT-DNNCN providing guidance on the use of e-receipts and e-certificates of PIT withholding as follows:

- The GDT is currently in the process of developing a standard data format for e-receipt. In the temporary absence of guidance from the GDT, enterprises may continue to use the printed receipts, paper receipts purchased from tax authorities or e-receipt under Circular No. 32/2011/TT-BTC;
- From 01 July 2022, tax authorities will no longer sell printed PIT withholding certificates. Taxpayers can create e-certificates of PIT withholding from their software according to Decree No. 123/2020/ND-CP. During the transition period when there is no e-certificates of PIT withholding, enterprises can use the PIT withholding certificate in its own form. Remaining PIT withholding certificates purchased from tax authorities could be used after 01 July 2022.

(ii) PIT declaration for individuals entering business cooperation contract (“BCC”) with enterprises

According to Official Letter No. 1805/TCT-DNL dated 27 May 2022 of the GDT, where an enterprise signs a BCC with an individual, the tax declaration of such individual will be implemented as follows:

- If the individual signing the BCC is a non-business individual, the enterprise shall declare VAT on the total revenue generated from the BCC and PIT on the income portion earned by the individual, regardless of the revenue sharing method under the BCC.
- If the individual signing the BCC is a business individual who pays tax under the presumption method and their registered business activities are the same with that of the BCC, the individual shall declare tax corresponding to the actual revenue shared from the BCC.

(iii) Increase of the region-based minimum wage from 01 July 2022

On 12 June 2022 the Government issued Decree No. 38/2022/ND-CP regulating a region-based minimum wage for employees who work under labor contracts. Specifically, the updated base increased by approximately 6% compared to the previous levels as regulated under Decree No. 90/2019/ND-CP.

In addition, Decree No. 38/2022/ND-CP supplemented the hourly minimum wage to be consistent with the provision of the Labor Code.

Decree No. 38/2022/ND-CP takes effect from 01 July 2022.

4. Tax administration

(i) Review and invalidate the tax code of business locations whose tax liabilities and declaration were centralised at the head office

According to Official Letter No. 1269/TCT-KK dated 25 April 2022, the GDT requested local tax authorities to review the business locations of enterprises which were granted with 13-digit tax codes in accordance with Official Letter No. 3200/TCT-KK dated 12 August 2019. If the business location does not qualify to directly declare their tax, or must centrally declare tax at the head office according to the Decree 126/2020/ND-CP, Circular 105/2020/ TT-BTC and Circular 80/2021/TT-BTC, the local tax authorities will terminate the tax codes of these business locations after they have fulfilled all tax obligations.

Please contact KPMG if you need further consultancy on the matters of concern.

Contact us

Hanoi

46th Floor, Keangnam Landmark 72,
E6 Pham Hung, Me Tri, Nam Tu Liem

T: +84 (24) 3946 1600

Ho Chi Minh City

10th Floor, Sun Wah Tower,
115 Nguyen Hue, Ben Nghe, District 1

T: +84 (28) 3821 9266

Da Nang

D3, 5th Floor, Indochina Riverside Towers,
74 Bach Dang, Hai Chau I, Hai Chau

T: +84 (236) 351 9051

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