

Technical Update

October 2024

TECHNICAL UPDATE ON TAXATION FOR OCTOBER 2024

1. Corporate Income Tax ("CIT")

- (i) *Representative Office ("RO") is required to declare and pay CIT on income from deposit interest*

According to Official Letter No. 3227/TCT-CS dated 26 July 2024, in case the RO generates income from deposit interest, which belong to the income subject to CIT, the RO is required to declare and pay CIT according to the guidance in Article 11 of Decree No. 218/2013/ND-CP, dated 26 December 2013 of the Government.

2. Value-Added Tax ("VAT")

- (i) *Payment by securities is not considered a "non-cash payment"*

According to Official Letter No. 2086/TCT-CS dated 16 May 2024, in case the company's shareholders make payments to the company's suppliers with securities of individuals through the Securities Company, it is not considered as a form of offsetting payment through a third party as prescribed in Clause 4, Article 15, Circular No. 219/2013/TT-BTC. Therefore, this form of payment is not considered as non-cash payment and related input VAT is not qualified for VAT credit purpose.

- (ii) *Transportation and customs declaration services performed outside non-tariff zones are not eligible for 0% VAT rate*

According to Official Letter No. 3814/TCT-CS dated 28 August 2024, in case a company provides domestic transportation and customs declaration services to an export-processing enterprise but does not meet the conditions for service consumption within the non-tariff zone, the 0% VAT rate will not be applicable.

- (iii) *International Bill of Lading ("BL") in sea and air carriage are used to replace the contract of carriage in some cases*

In response to queries regarding the use of international BL in sea and air transport to replace international seaway and airway transport contracts for the purpose of applying 0% VAT rate, the GDT issued Official Letter No. 3639/TCT-CS dated 20 August 2024, referring to the opinion of Ministry of Transport. Accordingly:

- For sea freight under charter hire, the BL serves as evidence of the sea freight contract, which is in compliance with the provision of guiding circular on VAT in order to enjoy 0% VAT rate for international transport and maritime services.

- For air freight:
 - The Airway Bill (Airways Bill/Master Airways Bill) serves as evidence of a contractual agreement between the air cargo carrier and the charterer, thereby satisfying the requirement of having "a contract for the transport of passengers, luggage, or goods between the carrier and the charterer" in order to apply 0% VAT rate.
 - A House Airway Bill serves as evidence of the freight forwarding contract between a freight forwarder and the shipper, which is not an integral part of the transport contract between the carrier and the charterer.

(iv) Transfer of Voluntary Emission Reduction Certificate ("VER") is subject to 10% VAT

According to Official Letter No. 3390/TCT-CS dated 1 August 2024, the transfer of VER does not fall into the categories of goods/services exempt from VAT declaration. Thus, 10% VAT rate shall be applied in this case.

3. Foreign Contractor Tax ("FCT")

(i) FCT is not applicable in case loan interest is waived by a foreign lender

According to Official Letter No. 3602/TCT-CS dated 15 August 2024, in case a foreign lender waives loan interest to the borrower who is a Vietnamese enterprise, the Vietnamese enterprise does not have to settle any interest payment to the lender, the borrower is not required to withhold, declare and pay FCT on the loan interest to be written off.

4. Other Regulations

(i) Decree 128/2024/ND-CP amending decree 81/2018/ND-CP on trade promotion activities

On 10 October 2024, the Government issued Decree No. 128/2024/ND-CP, amending Decree No. 81/2018/ND-CP with some noteworthy changes as follows:

- Clarifying the maximum monetary value for a unit of promoted goods or services shall not exceed 50% of the selling price;
- Adding cases of promotional activities approved by the competent commercial authorities not subject to the value limitation for goods or services used for promotion;
- Amending the provision on promotional cases not subject to notification procedures, regardless of the total value of promotional programs, including:
 - Providing free samples of goods or services for customers to try/test without paying;
 - Giving away goods or services for free;
 - Offering goods or services at reduced prices as part of a promotional period;
 - Offering goods or services in association with goods purchase and service provision vouchers.
- Amending regulations on cases in which the promotion program is not subject to notification procedures for certain types if total value of promotional prize or gift is less than VND100 million, or for companies who are only engaged into goods sales or service provision via e-commerce platform, websites, or online promotion applications.

- Decree No. 128 also amends, supplements, and replaces a number of forms of report, notification and registration.

The decree will take effect from 1 December 2024.

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