

# Technical Update

## Tax and Legal

September 2020

### 1. Corporate Income Tax ("CIT")

#### ***(i) Resolution 116 on 30% reduction of CIT liability for 2020***

On 19 June 2020, the National Assembly issued Resolution No. 116/2020/QH14 on 30% reduction of CIT payable of 2020 for taxpayers who have total revenue in 2020 not exceeding VND200 billion. Taxpayers shall make self-assessment to determine the reduced quarterly and annual CIT payable amounts of 2020.

Resolution 116 takes effect on 3 August 2020 and applies for the tax year 2020.

#### ***(ii) Revenue of exported goods must be recorded upon the completion of customs procedures for CIT purpose***

By way of background, output VAT for exported goods is triggered at the point customs procedures are complete. CIT regulations however do not include a similar rule and revenue recognition is understood to be at transfer of ownership/right to use.

According to Official Letter No. 5476/BTC-CST dated 7 May 2020 of the Ministry of Finance ("MoF"), revenue recognition for exported goods is upon the completion of customs procedures. With this OL5476, the MOF's view is that, with effect from 1 September 2014, customs procedures will mark the point of revenue recognition for both CIT and VAT purposes.

#### ***(iii) Software production definition and processes***

Under the current CIT regulations, an investment project in the field of 'software production' is entitled to a CIT incentive package including 10% preferential CIT rate for 15 years, 4 years CIT exemption, and the subsequent 9 years 50% CIT reduction.

The issue of course is what is 'software production'?

The Ministry of Information and Communications ("MIC") issued Circular 13/2020/TT-BTTTT dated 03 July 2020 containing a definition of 'software production'. Circular 13 defines 7 processes of software production and also outlines required supporting documentation.

Taxpayers wishing to apply these CIT incentives should refer to Circular 13 to determine their eligibility.

Circular 13 takes effect from 19 August 2020, replacing Circular 16/2014/TT-BTTTT dated 18 November 2014.

#### ***(iv) Land rental payments due to violating regulations on land management are non-deductible for CIT purposes.***

According to Official Letter No. 2776/TCT-CS dated 08 July 2020, the General Department of Taxation has taken a position that land rental payments (i.e. clawed back) due to non-compliance with regulations on land management are not deductible expenses as it is regarded as fines for administrative offences.

#### ***(v) Income generated from the sale of manufactured products which has been outsourced to entities located outside incentivized zones shall not be entitled to CIT incentives.***

According to Official Letter No. 3218/TCT-CS dated 10 August 2020, the General Department of Taxation ("GDT"), has taken a position that income from outsourcing manufacturing activities may not qualify for CIT incentives where the outsourcing is conducted in locations (or by taxpayers) who might not otherwise qualify for CIT incentives.

The example given by the GDT is as follows: Company A (who is qualified to receive CIT incentives on a location basis), subcontracts / outsources manufacturing capacity to Company B (who is not located in incentivized location) The corresponding income of Company A was not, according to the GDT eligible for CIT incentives. This matter raises many issues as there are different forms of outsourcing especially as Vietnam's manufacturing activities and supply chains become more expansive and varied.

### 2. Value Added Tax ("VAT")

#### ***(i) Projects that do not meet requirements of investment laws are not eligible for a VAT refunds***

According to the Official Letter No. 2410/TCT-KK dated 15 June 2020, the General Department

of Taxation has taken a position that where an investment project is not executed in compliance with investment laws, the taxpayer is not eligible for a VAT refund applicable to an “investment project”.

### **3. Foreign Contractor Tax (“FCT”)**

#### ***(i) Foreign contractors declaring and paying FCT under hybrid and deduction methods are also eligible for tax payment deferrals for COVID***

According to the Official Letter No. 3086/TCT-KK dated 4 August 2020, the General Department of Taxation, has taken a position that foreign contractors declaring and paying FCT under hybrid and deduction methods are also eligible for tax payment deferral if the conditions under Decree 41 are satisfied. On the other hand, foreign contractors declaring and paying FCT under deemed method (i.e. Vietnam parties to withhold and declare FCT on foreign contractors’ behalf) are not eligible for tax payment deferral.

#### ***(ii) Vietnamese party has to withhold and pay FCT to the local tax authority where the construction work is implemented***

According to the Official Letter No. 3026/TCT-KK dated 29 July 2020, the General Department of Taxation has taken a position that a foreign contractor providing construction services in Vietnam (and who does not use VAS) is not eligible to declare FCT under the hybrid method. Accordingly, the Vietnamese party remains responsible for withholding, declaring and paying FCT on behalf its foreign contractors to the tax authority of the location where the construction and installation work is implemented.

Where the Vietnamese party withheld, declared and paid FCT to the tax authority of the location where the Vietnamese party is based, the adjustment of tax payment shall be required.

#### ***(iii) Reimbursement of salary costs for assignees is subject to FCT***

According to the Official Letter No. 755/TCT-TTKTT dated 20 February 2020, the General Department of Taxation has taken a position that FCT may be due on payments made by a Vietnamese business cooperation contract (“BCC”) for employees seconded to work in Vietnam. In particular, where an overseas company A and a Vietnamese company B sign a BCC, Company A assigns employees to work for the BCC and Company B reimburses Company A the salary costs of those employees, such reimbursement payments are subject to FCT.

Notably, the FCT seems to apply regardless of whether this is a pure ‘reimbursement’ of employee costs paid by Company A to its employees, or whether payments also include some sort of mark-up which may result in a recharacterization of such reimbursement payments.

### **4. Personal Income Tax (“PIT”)**

#### ***(i) Clarification on the application of monthly family circumstance relief under Resolution 954/2020/UBTVQH14***

According to the Official Letter No. 2546/TCT-DNNCN dated 23 June 2020, the General Department of Taxation has taken a position that the new monthly family circumstance relief (i.e. VND11 mil/month for taxpayers and VND4.4 mil/month for eligible dependents) as stipulated in Article 1, Resolution 954/2020/UBTVQH14 shall be applied from the monthly PIT reporting period of July 2020 (i.e. which is due for submission by 20 August 2020), or from quarterly PIT reporting period of Quarter III 2020 (i.e. which is due for submission by 30 October 2020).

#### ***(ii) Suspension of contribution to retirement and survival funds to be continued up to December 2020***

According to the guidance of Vietnam Social Insurance under Official Letter No. 2533/BHXH-BT dated 10 August 2020, employers facing financial difficulties due to Covid-19 pandemic are allowed to extend the suspension of contribution to retirement and survival funds up to December 2020. The procedures and approval process would follow the previously issued Official Letter 1511/LĐTBXH-BHXH of the Ministry of Labor, War Invalids and Social Affairs.

### **5. Import Duty**

#### ***(i) Export and Processing Enterprises (“EPEs”) sub-leasing factories are subjects to import duty and import VAT claw-back***

According to the Official Letter No. 4927/TCHQ-TXNK dated 24 July 2020, the General Department of Customs has taken a position that where an EPE who was exempt from import duty and import VAT upon its importation of goods for factory construction, then sub-leases (including subleasing to a domestic business) a part of such factory, such EPE is required to declare and pay import duty and import VAT for the imported goods for factory construction. At the end of the leasing period, if the EPE continues to use the factory for its business, the paid import duty and import VAT are not subject to a refund.

# Contact us

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