



## CORPORATE INCOME TAX

### Provisional CIT Payments

According to Decree 91/2022/ND-CP dated 30 October 2022 of the Government, the total amount of provisional CIT paid for 04 quarters shall be **at least 80%** of the CIT payable under the annual CIT return.

For 2021, Decree 91/2022 provides as follows:

- ▶ As of 30 October 2022 (*the effective date of Decree 91/2022*), if the provisional CIT paid for the first 3 quarters of the tax period in 2021 is not less than 75% of the CIT payable under the annual CIT return, the minimum threshold for provisional CIT payments for 04 quarters shall not apply.
- ▶ If the provisional CIT paid by the taxpayer in the first 03 quarters of 2021 is less than 75% of the CIT payable under the annual CIT return, taxpayers may apply the 80% threshold for provisional CIT of 04 quarters.

To avoid late payment interest, taxpayers need to take a note of the threshold when planning the calculations of the CIT amount payable for 04 quarters.

If you would like to further discuss any issues related to CIT declaration and payments, please feel free to contact us.

### Tax obligations related to the Science & Technology Development Fund

In accordance with Circular 67/2022/TT-BTC of the Ministry of Finance taking effect from 23 December 2022 regarding the tax obligation of taxpayers with Science & Technology Development (STD) Fund:

- ▶ The percentage (%) on the taxable income of each tax period allocated to the STD Fund of the taxpayer (*i.e. taxpayers are entitled to a tax deduction*): **3-10%** for State owned enterprises and **up to 10%** for other taxpayers.
- ▶ Taxpayers using the Fund more than the current Fund balance can elect to charge (the excess) to the tax deductible expenses or make an accrual of the subsequent year' amount to make up for the fund's deficit in the current year (under Clause 7, Article 10 of Decree 95/2014/NDD-CP).
- ▶ Within 5 year period from the accrual of the fund the balance of which has not been used or used less than 70%, taxpayers are required to pay to the State Budget: (i) the CIT corresponding to the Fund balance accrued but not used or used less than 70% and (ii) the interest charge thereof.

## TAXFLASH

### Issue No 01/2023

- ▶ Annually, taxpayers are required to prepare and submit the report using Form No 03-6/TNDN provided in Circular 80/2021/TT-BTC of the Ministry of Finance dated 29/09/2021 to the local tax authorities, Department of Finance and Department of Science and Technology. The filing deadline is the deadline for submission of the annual CIT return.

Circular 67/2022 applies from the 2022 tax year onwards.

Taxpayers with the STD Fund should take note of the changes for effective compliance with the tax regulations.

### RELATED-PARTY TRANSACTIONS

According to the Ministry of Finance, the overcapped loan interest disqualified for tax purpose in the prior tax years will not be tax deductible in the current year if the taxpayer no longer has any related party transaction on the basis that the taxpayer no longer is within the scope of application of Decree 132/2020.

Taxpayers need to pay attention to the above to avoid tax risks.

### VAT AND INVOICES

#### Handling of erroneous invoices

According to Official Letter No. 19903/CTBDU-TTHT of Tax Department of Binh Duong Province dated 19 December 2022:

- ▶ If the buyer's name or address is wrong but the tax code and other information are correct, the seller shall inform the buyer of the errors and is not required to re-issue the invoice. The seller shall inform the tax authority of the erroneous e-invoice by using Form No. 04/SS-HDDT.
- ▶ If the information about tax code, amount, tax rate, tax amount or goods on the invoice is wrong, the error shall be handled using one of the following methods:
  - **Method 1:** The seller shall issue an e-invoice to correct the erroneous one. The seller and the buyer shall prepare a document specifying the errors as agreed upon between them before the seller issues a corrective e-invoice. The corrective e-invoice shall bear the text "Adjust for Invoice Type... Serial No. dated....."



- **Method 2:** The seller issues a new e-invoice to replace the erroneous one. The seller and the buyer shall prepare a document specifying the errors as agreed upon between them before the seller issues a new e-invoice to replace the erroneous one. The replacing invoice shall bear the text “*Replaces the invoice Type.. Serial No.. dated .....*”.

- ▶ If the seller cancels the invoice by their own without advising the buyer of same or without prior mutual agreement, the said cancelled invoice is considered illegal. Hence, when calculating CIT, the buyer is not permitted to claim a tax deduction and input VAT.

### Sales of goods by EPEs

On 14 December 2022, the Tax Department of Binh Duong Province issued Official Letter No. 19699/CTBDU-TTHT on sales of unused raw materials into Vietnam providing as follows:

- ▶ Follow the liquidation procedures according to Clause 55 Article 1 Circular No. 39/2018/TT-BTC: EPEs can elect the option of either changing the purpose and registering a new customs declaration or implementing the procedures of import-export on the spot.
- ▶ When selling raw materials to the domestic market, invoices must bear the phrase “For organizations/individuals in free trade zones” according to Article 8 Decree No. 123/2020/ND-CP.

### VAT treatment of transfer of a part of the real estate project

In the Official Letter No. 19845/CTBDU-TTHT dated 16 December 2022, the Tax Department of Binh Duong Province emphasised that when transferring a part of the real estate project, the transferor will not have to declare, calculate and pay VAT (*conditions apply*).

As a result, to avoid the VAT implication on such a transfer, the transferor should carefully review the necessary conditions to ensure conditions for VAT purposes are met.

### VAT declaration on replacement and adjustment invoices

On 16 December 2022, the Hanoi Tax Department issued Official Letter No. 62542/CTHN-TTHT providing guidance on a case where invoices were adjusted or replaced for the errors resulting in inaccurate tax returns already submitted to the tax authorities.

In this case, additional declarations shall be made for each tax declaration with errors or omissions.

## PERSONAL INCOME TAX (PIT)

### Determining foreigners’ PIT payable

Official Letter No. 4571/TCT-DNNCN of the General Department of Taxation dated 7 December 2022 confirms the PIT for foreigners who are tax residents and have income paid in both Vietnam and overseas as follows:

- ▶ On a monthly basis, the employer calculates the taxable housing allowance according to the actual payment but does not exceed 15% of the total (gross) taxable income (*excluding rent, electricity, water and associated services if any*).
- ▶ Income for PIT finalization purpose is the total income earned in and out of Vietnam regardless of where the payments are made.

Hence, resident individual taxpayers need to declare global income for tax purposes to minimise the tax risks.

### PIT declaration for foreign contractors’ foreign employees

Official Letter No. 62543/CTHN-TTHT of Hanoi Tax Department dated 16 December 2022 guiding the declaration of PIT for foreign individuals as follows:

- ▶ The foreign contractor is granted a 10-digit tax code to declare all tax obligations (*except for the foreign contractor tax which is withheld and paid on its behalf by the Vietnamese party*).
- ▶ In case a foreign employee is determined to be a non-resident, the foreign contractor is obliged to declare and pay PIT for the foreign employee at the rate of 20% on salary and wage income arising in Vietnam.

Foreign contractors in Vietnam need to review their PIT position for their employees to remain in effective compliance with the prevailing regulations.

### 2022 PIT finalisation deadline

In accordance with Clause 2, Article 44 of the 2019 Law on Tax Administration, the deadline for 2022 PIT finalisation is as follows:

- ▶ Employer: **31/03/2023**.
- ▶ Individuals directly finalising PIT: **30/04/2023**.

Accordingly, employers and individual taxpayers with the obligation to finalise the PIT for 2022 should note the above deadline to avoid unnecessary penalty for late submission (*can be up to VND25 million depending on the number of delayed days*).

If you require additional information or assistance with PIT finalisation for 2022, please do not hesitate to contact us.



## FOREIGN EXCHANGE CONTROL

### *Guidance on foreign exchange management for enterprises' foreign borrowings and debt repayment*

Based on the provisions effectively applied in Circular 03/2016/TT-NHNN, on 30 September 2022, the State Bank of Vietnam (SBV) issued Circular 12/2022/TT-NHNN replacing Circular 03/ 2016/TT-NHNN in order to complete the legal framework on borrowing and paying foreign debts of enterprises in Vietnam.

We would like to summarize some of the more salient of Circular 12/2022 as follows:

- ▶ Circular 12/2022 specifies the cases where loans must be registered with the SBV including:
  - Foreign medium and long-term loans.
  - Short-term loans with extended principal repayment periods whose total term is over 01 year.
  - Short-term loans without an extension agreement but **with outstanding principal balance (including the outstanding interest converted into principal)** at the full date of 01 year from the date of first drawn down, **unless the borrower** has fully settled the **principal balance** mentioned above within 30 working days from the time when a 1-year period is fulfilled, beginning from the day of the first drawn down.
- ▶ Circular 12/2022/TT-NHNN specifies the 30-day or 60-day period (*depending on the loan term*) for the borrowers to submit the foreign loan registration to SBV.
- ▶ From 15 November 2022 (the effective date of Circular 12/2022), enterprises need to report online regarding the situation of foreign loans and repayments not guaranteed by the Government **on a monthly basis, but not later than the 5th day of the following month of the reporting period**. In case the website encounters technical errors, the borrower shall submit a written report using the Form in Appendix 5 provided in Circular 12/2022.

Enterprises should pay attention to changes in regulations on management of foreign loans to avoid unnecessary penalties.

## CONTACT

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