



# Update new legal documents and important tax policies

May 2024





In this newsletter, Grant Thornton Vietnam would like to update our valued customers the relevant legal policies and guidelines in the field of labor, taxes, and invoices recently issued.

**1. Notable clarifications from the General Department of Taxation at the online support conference on Personal Income Tax (PIT) and Corporate Income Tax (CIT) Finalization 2023 held on the General Department of Taxation's electronic information portal on March 12 and March 14, 2024**

**2. Draft amendments and supplements to VAT Laws**

**3. Official Letter No. 1442/TCT-CS issued by the General Department of Taxation providing guidance on regulation of loss carried forward for the case where independent accounting branch switch to dependent accounting branch**

**4. Official Letter No. 658/TCT-CS issued by the General Department of Taxation providing guidance on tax incentives for industrial support product manufacturing projects**

**5. Official Letter No. 4267/CTHN-TTHT issued by the Hanoi Tax Department regarding Value Added Tax (VAT) policies when implementing enterprise mergers**

**6. Official Letter No. 558/TCT-CS issued by the General Department of Taxation regarding VAT policies for on-site import and export activities.**

**7. Official Letter No. 296/TCT-CS issued by the General Department of Taxation providing guidance on tax invoice declaration by Vietnamese companies for advertising activities on Google.**



## 1. Notable clarifications from the General Department of Taxation at the online support conference on Personal Income Tax (PIT) and Corporate Income Tax (CIT) Finalization 2023 held on the General Department of Taxation's electronic information portal on March 12 and March 14, 2024 (1/3)

On March 12 and 14, 2024, the General Department of Taxation organized an online support conference on 2023 tax finalization. The conference provided some notable clarifications as follows:

**Clarification 1:** In the case of enterprises enjoying CIT incentives under the condition of having new investment project in economic zones, when supplementing business lines during operation, it is necessary to base on the actual situation of the enterprise to determine whether the supplementary business lines fall within the scope of the new investment project or the expanded investment project of the enterprise, thereby determining the appropriate CIT incentives according to regulations. If the supplementary business lines are not related to the investment project eligible for incentives, and the enterprise does not increase capital or carry out expansion investment to increase assets, the income from this operation will not be entitled to CIT incentives.

**Clarification 2:** In the case of the company incurring expenses for payment of unused leave days for employees as per regulations in the Labor Code and guiding documents, as stipulated in Article 4 of Circular No. 96/2015/TT-BTC of the Ministry of Finance, such expenses are deductible when calculating CIT.

**Clarification 3:** In the case of employees voluntarily working overtime and the company paying overtime wages to employees, the corresponding expenses for overtime hours exceeding the prescribed cap in the Labor Code are not eligible for deduction for PIT purposes, specifically as follows:

According to labor code, employees are allowed to work overtime for no more than 200 hours/year, and in some special industries, they are allowed to work overtime for no more than 300 hours/year.

According to tax regulations, in order to be eligible for deductible expenses, the expenses must be supported by legitimate invoices and documents as per legal regulations. Therefore, working overtime expenses exceeding 200-300 hours/person/year violates labor code, thus not meeting the conditions for deduction when determining taxable income.

## 1. Notable clarifications from the General Department of Taxation at the online support conference on Personal Income Tax (PIT) and Corporate Income Tax (CIT) Finalization 2023 held on the General Department of Taxation's electronic information portal on March 12 and March 14, 2024 (2/3)

**Clarification 4:** The company declares Foreign contractor tax (FCT) declarations on monthly basis based on the invoices incurred, it depends on FCT declaration method applied to determine the annual finalization obligation.

Pursuant to Point e, Clause 6, Article 8 of Decree 126/2020/ND-CP stipulating that contractors who pay taxes by direct and hybrid methods shall declare finalization at the end of the contractor contract (not finalizing on annual basis);

In case contractors pay CIT on the basis of declaring revenue and expenses to determine taxable income, they shall declare CIT finalization on annual basis.

**Clarification 5:** How to determine whether deductible social insurance amount in case previous month's salary is paid in following months, according to C12 form in the year or the actual amount deducted when paying the employee's salary.

At Point b, Clause 2, Article 8, Circular No. 111/2013/TT-BT dated August 15, 2013 of the Ministry of Finance guiding that time to determine taxable income from salaries and wages shall be calculated when the income is paid to the taxpayer. Accordingly, the tax authority replied that in principle, when finalizing PIT, the item "Deductible social insurance" is calculated according to the actual social insurance amount deducted from the employee's salary in the calendar year.

**Clarification 6:** The treatment when an employee commits to having a source of income and authorizes finalization for the company but is later informed by the tax authority that the individual is subject to direct finalization.

In case after authorizing tax finalization, the company finds that the individual is subject to direct finalization with the tax authority, the company shall follow the guidance at point 3, section I of official letter No. 883/TCT-DNNCN dated March 24, 2022, of the General Department of Taxation as follows:

After authorizing tax finalization, if the organization has already finalized taxes on behalf of the individual, if it is found that the individual is responsible for direct tax finalization with the tax authority, the organization shall not adjust the PIT finalization of the organization, only issue PIT withholding certificate (PIT WHC) for individual according to the finalized amount and write in the lower left corner of PIT WHC: "The Company ... has finalized PIT for Mr./Ms. ... (as authorized) at line (serial number) ... of Appendix Form 05-1/BK-TNCN" for the individual to directly finalize tax with the tax authority. In case organizations or individuals paying income use electronic PIT WHC, the organization shall print converted version from the original e-PIT WHC and write the above content into the converted print to provide to the taxpayer.



## 1. Notable clarifications from the General Department of Taxation at the online support conference on Personal Income Tax (PIT) and Corporate Income Tax (CIT) Finalization 2023 held on the General Department of Taxation's electronic information portal on March 12 and March 14, 2024 (3/3)

**Clarification 7:** The Corporation has 10 branches in different provinces and is responsible for paying salaries to employees at the branches. During the year, the Corporation declares and submits the PIT declaration according to Circular No. 80/2021/TT-BTC which is summary of the income of employees at the branches and an appendix for PIT allocation for each branch. Upon PIT finalization, the company shall declare tax finalization according to the below regulations:

At point a.1, clause 3 of Article 19 of Circular No. 80/2021/TT-BTC instructs: "...The PIT amount determined for each province on monthly/quarterly PIT return shall not be re-determined when finalizing PIT."

Based on the above regulations and guidelines, in case the company deducted PIT for income from salaries and wages paid at the headquarters to employees working at dependent units or business locations in other provinces, when finalizing PIT, the company is not required to re-determine the PIT amount allocated to the dependent units or business locations in other provinces.

At indicator No. [31] Total PIT deducted on PIT Finalization Declaration No. 05/QTT-TNCN according to Circular No. 80/2021, the company declares the total amount of actual PIT deducted from individuals' income from salaries and wages in the tax year.

## 2. Draft amendments and supplements to VAT Laws (1/2)

The National Assembly has issued a draft on Value Added Tax (VAT) with the following notable contents:

- Changing and supplementing some entities which are exempted from VAT.
- Narrowing down the group of "exported services subject to 0% VAT" to two service groups provided to foreign organizations and individuals, including:  
Rental services of transportation means used outside the territory of Vietnam;  
Services of aviation and maritime sectors directly supplied to international transportation or through agents.
- Increasing the threshold of revenue from sales of goods and services not subject to VAT for households and individual businesses from 100 million VND/year to 150 million VND/year.
- Supplementing provisions allowing enterprises to declare and deduct input VAT omitted in the period of error detection, before the tax authority announces tax inspection, tax audit at the taxpayer's headquarters.
- Amending the provisions for conditions of input VAT deduction: non-cash payment vouchers for payments from 5 million VND, instead of 20 million VND as currently regulated.
- Supplementing some documents to meet the conditions of VAT deduction and refund for exported Goods and service, including packing slips, delivery bills, cargo insurance documents.





## 2. Draft amendments and supplements to VAT Laws (1/2)

The National Assembly has issued a draft on Value Added Tax (VAT) with the following notable contents:

- Expanding the scope of VAT refunds for the following cases:
  - Businesses only producing goods, providing services subject to VAT rate of 5% generating input VAT not fully deducted from 300 million VND upwards after 12 months or 04 quarters.
  - Businesses registered for VAT payment according to the deduction method with investment projects (including new investment projects and expanded investment projects) according to the regulations of investment laws are in the investment stage with input VAT of the investment project not fully deducted from 300 million VND upwards. The deadline for businesses to implement VAT refund is not more than 01 year from the date of completion of the investment project or investment stage/investment item.
- Removing the provision of not refunding VAT for investment projects of businesses not fully contributing registered capital .
- Removing the provision on VAT refund for ownership conversion, business conversion, merger, consolidation, division, termination of activities.





### **3. Official Letter No. 1442/TCT-CS issued by the General Department of Taxation providing guidance on regulation of loss carried forward for the case where independent accounting branch switch to dependent accounting branch**

On April 9, 2024, the General Department of Taxation issued Official Letter No. 1442/TCT-CS providing guidance on tax policies as follows: current legal documents regarding corporate income tax (CIT) stipulates loss carried forward in case where an enterprise convert its business type, division, separation, merger, consolidation, and there is no regulation for loss carried forward in case independent accounting branch switch to dependent accounting branch. Accordingly, when an independent accounting branch transform into a dependent accounting branch, the accumulated loss of the independent accounting branch is not allowed to be transferred to the dependent accounting branch after the transformation.





#### **4. Official Letter No. 658/TCT-CS issued by the General Department of Taxation providing guidance on tax incentives for industrial support product manufacturing projects**

On February 23, 2024, the General Department of Taxation issued Official Letter No. 658/TCT-CS providing guidance for projects manufacturing multiple industrial support products granted multiple incentive certificates. Accordingly, the certificate of incentive for industrial support product manufacturing prioritized for development is the basis for applying CIT incentives according to industrial support conditions.

- If the investment project meets the specified conditions, it is eligible for CIT incentives according to industrial support conditions from the time of being granted the incentive certificate.
- In case the investment project manufactures multiple industrial support products and is granted multiple incentive certificates, the products granted certificates will enjoy incentives for the remaining period of the investment project from the period the incentive certificates were granted.

## 5. Official Letter No. 4267/CTHN-TTHT issued by the Hanoi Tax Department regarding Value Added Tax (VAT) policies when implementing enterprise mergers

On February 22, 2024, the Hanoi Tax Department issued Official Letter No. 4267/CTHN-TTHT to address concerns regarding VAT policies when implementing enterprise mergers as follows:

- A company (hereinafter referred to as the merged company) may merge into another company (hereinafter referred to as the receiving company) by transferring all assets, rights, obligations, and legal benefits to the receiving company and simultaneously terminating the existence of the merged company.
- According to Article 201 of the Enterprise Law No. 59/2020/QH14 dated June 17, 2020, regarding enterprise mergers, a company may merge into another company by transferring all assets, rights, obligations, and legal benefits to the receiving company while simultaneously terminating the existence of the merged company. Accordingly, the receiving company will enjoy rights and legal benefits, and take responsibilities for obligations according to the law of the merged company.
- Based on the provisions of Article 1 of Circular No. 130/2016/TT-BTC, the company paying VAT by deduction method will be refunded VAT if there is overpaid VAT or input VAT that has not been fully deducted when implementing the merger.





## 6. Official Letter No. 558/TCT-CS issued by the General Department of Taxation regarding VAT policies for on-site

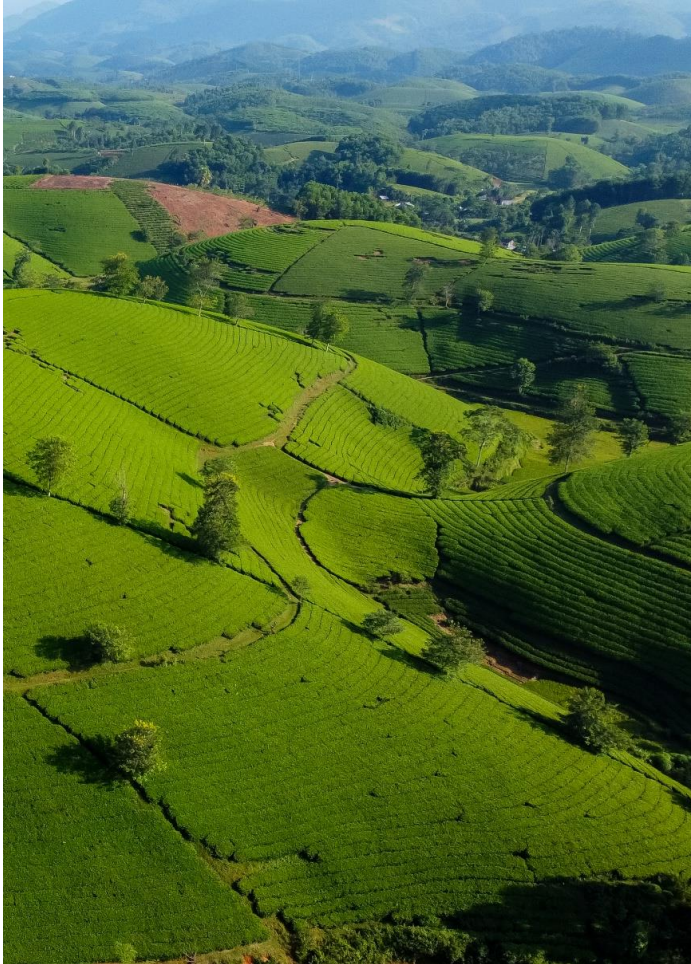
On February 20, 2024, the General Department of Taxation issued Official Letter No. 558/TCT-CS to address inquiries from Tax Departments in Khanh Hoa, Thanh Hoa, Ha Nam, Binh Duong, Bac Ninh, Ho Chi Minh City, and Binh Phuoc regarding VAT policies applied to on-site import and export activities as follows:

Based on the regulations of Decree No. 90/2007/ND-CP and the Law on Foreign Trade Management No. 05/2017/QH14, if it is determined that foreign traders have invested or conducted business activities in Vietnam through forms stipulated by laws on investment, trade, and enterprises; and have representative offices or branches in Vietnam as regulated by laws on trade and enterprises, they are not considered as foreign traders without presence in Vietnam. If foreign traders fall under this situation, goods traded between Vietnamese enterprises and foreign traders are assigned for other enterprises and delivered in Vietnam are not considered as import/export on-site activities.

Therefore, in cases where customs authorities identify that enterprises have filed export declarations on-site incorrectly according to the regulations at point c, clause 1, Article 35 of Decree No. 08/2015/ND-CP, the tax authorities will not process VAT refunds as the customs declaration requirements are not met.



## 7. Official Letter No. 296/TCT-CS issued by the General Department of Taxation providing guidance on tax invoice declaration by Vietnamese companies for advertising activities on Google.



On January 24, 2024, the General Department of Taxation issued Official Letter No. 296/TCT-CS providing guidance on tax invoice declaration by Vietnamese enterprises for advertising activities from foreign suppliers. Accordingly:

- VAT: Prepaid invoices issued by Google Asia Pacific Pte. Ltd. (Google) to companies are not VAT invoices for organizations who are subject to VAT deduction method. Therefore, they do not meet the conditions for creditable input VAT declaration as stipulated.
- CIT: The letter refers to guidance in Official Letter No. 3149/TCT-CS dated August 15, 2018, which instructs that expenses incurred for online advertising on Facebook and Google can be included in deductible expenses for CIT if they meet conditions related to business activities, have sufficient legal invoices, documents bearing the name, address, tax code of the enterprise (if the seller does not provide invoices, FCT declaration and payment vouchers are required as per regulations), and payment vouchers as prescribed by VAT law.
- In order to determine whether foreign suppliers engaged in e-commerce and digital platform business have registered for tax declaration in Vietnam: Companies can access the Electronic Tax Portal for foreign suppliers (<https://etaxvn.gdt.gov.vn/>) to check the tax registration status of foreign suppliers.



# Contact

Please study the newly issued regulations and review the internal compliance procedures in order to comply with the regulations on customs tax as well as reduce errors in the process of filing and preparing documents that could lead to additional tax obligations or administrative penalty.

Please contact the experts of Grant Thornton Vietnam for in-depth advice if you have any inquiries during the implementation of tax and customs compliance.

Please visit our [Tax Hub](#) to view more information

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