
TAX BULLETIN October 2022

1. Government promulgates Decree No. 91/2022/ND-CP on tax administration

On 30th October 2022, the Government issued Decree No. 91/2022/ND-CP providing amendment and supplement of a number of articles of Decree No. 126/2020/ND-CP dated 19th October 2020 stipulating a number of articles of the Law on Tax Administration. This Decree takes effect from the date of signing. Below are some important amendments and supplements to Decree No. 91/2022/ND-CP:

➤ Regulations on the termination of tax declaration and tax payment due date

If it falls on the prescribed holiday, the last day of the due date for tax declaration, tax payment, tax offices to handle relevant dossiers, and the last day of the validity period of the enforcement decision will spill over to the working day following the holiday.

➤ Cases where PIT declaration is not required

Income paying organizations or individuals will not be required to declare PIT monthly or quarterly if in that month or quarter, no PIT withholding incur.

➤ Provisional CIT payments in 4 quarters of a tax year accounts for not less than 80% of the total CIT liability for the year

- The total amount of provisional quarterly CIT paid in 4 quarters of a tax year should not be less than 80% of the total CIT liability for the year. Otherwise late payment interest calculated on the underpaid tax amount from the day following the last day of the fourth quarter CIT payment deadline to the day preceding the date of payment of the outstanding tax amount into the state budget shall be paid.

Previously, the total amount of provisional quarterly CIT paid in the first 3 quarters of a tax year should not be less than 75% of the total CIT liability for the year. In case of tax underpayment, late payment interest payable shall be calculated on the underpaid tax amount from the day following the last day of the third quarter CIT payment deadline to the day preceding the date of payment of the outstanding tax amount into the state budget.

- This regulation is applied from the tax period 2021 onwards.

➤ Replacing the notice form of the termination of invoice usage

Notice of cessation of use of invoices, made according to Form No. 04-1/CC issued together with Decree No. 91/2022/ND-CP replacing Form No. 04-1/CC in Appendix III enclosed with the Decree No. 126/2020/ND-CP.

2. Timing of e-invoice issuance (Official letter No. 8404/BTC-TCT dated 23rd August 2022 of Ministry of Finance)

Regarding the issue, Ministry of Finance provides guidance to Bac Ninh Tax Department as follows:

Upon the adoption of e-invoice in accordance with the Decree No. 123/2020/NĐ-CP as from 1st July 2022, the electronic sale invoice is a category of e-invoice used by entities, individuals in non-tariff areas, and those entities, individuals who pay and declare VAT under subtraction method in their business activities including export, provision of services to overseas. The issuance of e-invoice for exported goods and services is aimed at transmitting the data on export turnover to the tax authorities for tax administration purposes.

Accordingly, the Ministry of Finance agrees with the proposal by Bac Ninh Tax Department with respect to the case where Samsung Electronics Vietnam (SEV) Ltd. Company and Samsung Display Vietnam Co., Ltd. are export processing enterprises (EPE) exporting goods aboard in the Official letter No. 1495/CTBNI-TTHT dated 11th May 2022 that from 1st July 2022, the timing of e-invoice issuance in export transactions carried on by EPEs and those companies which pay VAT under subtraction method is the time when the ownership or the right to use of goods is transferred to the purchaser regardless of the fact that these companies has received payment or not in accordance with Clause 1, Article 9 of Decree No. 123/2020/NĐ-CP dated 19th October 2020 of Government.

3. Guidance on the invoices used for on-spot import and export goods ((Official letter No. 8042/BTC-TCHQ dated 12th August 2022 of General Department of Customs)

To implement the Decree No. 123/2020/NĐ-CP dated 19th October 2020 of Government on invoicing, the Ministry of Finance provides guidance on the requirement of invoice submission upon undertaking the procedures for on-spot import and export in case where a domestic enterprise paying VAT under the credit method sells goods to EPEs and/or enterprises located in non-tariff areas (including enterprises processing goods for export) as follows:

- For on-spot export procedure, the customs declarants are required to apply the customs procedures in accordance with the Clause 58, Article 1, Circular No. 39/2018/TT-BTC dated 20th April 2018 of Ministry of Finance and submit a copy of ex-warehousing cum internal transport note instead of a VAT invoice via customs electronic data processing system to the customs authority pursuant to Point c, Clause 3, Article 13, Decree No. 123/2020/NĐ-CP.
- For on-spot import procedure, the customs declarants are required to apply customs procedure in accordance with Clause 58, Article 1, Circular No. 39/2018/TT-BTC dated 20th April 2018 of Ministry of Finance and submit the customs dossier attached with a copy of a VAT invoice via customs electronic data processing system to the customs authority.

4. Tax treatment of destroyed materials (Official letter No. 999/CTHN-TTHT dated 12th August 2022 of Hai Phong Tax Department)

ZF Automotive Vietnam Co., Ltd. is an enterprise pays VAT under credit method and is entitled to CIT incentives because of meeting incentive conditions on investment locality in Dinh Vu – Cat Hai Economic Zone. If the company incurs costs in relation to destroying unused materials due to the changes of client’s business strategy, and at the same time, receives compensation from the client, tax treatment will be applied as follows:

➤ Invoicing

Regarding the compensation received from the client, the company is not required to issue the invoice but payment receipt will be issued instead in accordance with provisions of law.

➤ Value Added Tax

The Company is not allowed to claim for input VAT credit regarding the destroyed materials because the material have not yet been used for manufacturing taxable goods.

➤ Corporate Income Tax

- The fact that unused materials should be destroyed because of the client’s business strategy changes is not considered as a damaged case caused by natural disasters, epidemics, blazes, and other force majeure events; therefore, these material costs are not deductible for CIT purpose.
- Regarding CIT incentives applied to the compensation received from the client because of its violation of the contract, General Department of Taxation issued the Official letter No. 3489/TCT-CS dated 14th September 2021 as follows: *”In principle, an enterprise having an investment project which is entitled to CIT incentives by meeting incentive conditions on investment locality, the incentive income shall be the income derived from production, business activities of the investment project performed in the incentive locality, except for income items not qualified for incentives in accordance with provisions of Law on CIT. Income which are not income items derived in the incentive locality, not income items derived from production, business activities of the investment project shall not be given the CIT incentives.”*

5. VAT refund on investment projects located in another province other than the province of the head office (Official Letter No. 2697/CTBNI-TTHT dated 7th September 2022 of Bac Ninh Tax Department)

If a company declare and pay VAT under credit method and has a new investment project located in another province other than the province of the head office, VAT declaration and refund will be prepared as follows:

- If the company established a branch located in another province but did not assign the branch to directly manage the project in that province, the branch carries out dependent accounting and does not maintain the bank account, the accounting books, invoices and other documents of the project, then the company shall prepare the separate tax declaration

and VAT refund dossiers for the new investment project and submit to the managing tax authority in that province.

- Simultaneously, the input VAT amount of the new investment project must be transferred to offset against the VAT declaration of the production and business activities currently being carried out. The transferred VAT amount of the investment project is at most equal to the payable tax amount of production and business activities in the period of the business establishment. After offsetting, if the input VAT amount of the new project that has not yet been fully creditable is VND 300 million or more, this VAT amount will be refunded to the investment project.
- If the company decided to hand over the new investment project to the branch located in another province other than the province of the head office to directly manage the project in that province on behalf of the company, the branch having its legitimate seal, the accounting books and documents in accordance with the accounting laws and the bank deposit account, the branch must prepare the separate tax declaration and the application for VAT refund dossiers to the managing tax authority in that province.
- After the new investment project completed the procedures for business registration and tax payment are completed, the company must summarize the incurred VAT amount, refunded VAT amount, the VAT amount that has not yet refunded of the project for handing over to the newly established branch for tax filling and payment according to Point b, Clause 3, Article 1, Circular No. 130/2016/TT-BTC of Ministry of Finance.