TAX BULLETIN February 2024

1. Personal income tax treatment for compulsory insurance payments abroad (Official letter No. 684/TCT-DNNCN dated 27th February 2024 of the General Department of Taxation)

On 27th February 2024, the General Department of Taxation issued an official letter No. 684/TCT-DNNCN which released taxpayers' concerns about PIT policy on deductions for compulsory insurance obligations that individuals pay abroad. According to the official letter, <u>in case a foreign individual is a tax resident assigned to Vietnam on an internal transfer, has income from salaries and wages from abroad, and has paid compulsory insurance according to regulations of the expatriates' home country similar to compulsory insurance in Vietnam, such insurance can be deducted when determining taxable income subject to PIT in Vietnam.</u>

It is recalled that in the official letter No. 6002/TCT-DNNCN dated 29th December 2023 of the General Department of Taxation, such insurance cannot be deducted when calculating personal income tax in Vietnam.

2. VAT policy applied to on-the-spot import and export activities (Official letter No. 558/TCT-CS dated 20th February 2024 of the General Department of Taxation)

Pursuant to the provisions of Clause 2, Article 3, Decree No. 90/2007/ND-CP dated 31st May 2007 of the Government providing guidelines on the export rights of foreign traders not present in Vietnam and Clause 5, Article 3, Law on foreign trade management No. 05/2017/QH14 dated June 12, 2017, if a foreign trader engaging in investment and business activities in Vietnam in the forms prescribed under the law on investment, law on commerce, and law on enterprise has a representative office or branch in Vietnam according to the provisions of laws on enterprise and commerce, it is not the case that a foreign trader without a presence in Vietnam. Accordingly, in case it is determined that the foreign trader is not in the case of a foreign trader without a presence in Vietnam, the goods purchased and sold between the Vietnamese enterprise and this foreign trader and delivered by another enterprise in Vietnam does not fall under the case of on-the-spot export and import stipulated in Point c, Clause 1, Article 35, Decree No. 08/2015/ND-CP dated 21st January 2015 of the Government and Point c, Clause l, Article 86, Circular No. 38/2015/TT-BTC dated 25th March 2015 of the Ministry of Finance.

<u>In case it is determined by the Customs Office that on-the-spot export declaration of an enterprise is not in accordance with the provisions at Point c, Clause 1, Article 35, Decree No. 08/2015/ND-CP, VAT refund dossier of the enterprise will not be settled by the Tax Office due to not meeting conditions required for customs declaration.</u>

3. Treatment of erroneous e- invoices detected after the tax inspection (Official letter No. 5695/CTBNI-TTHT dated 9th April 2024 of Bac Ninh Tax Department)

In case e- invoices had been issued to a purchaser and later on errors were found by the purchaser and seller with these e-invoices, in principle, the purchaser and the seller have to prepare adjusting e-invoices (or replacing e-invoices) in accordance with guidelines as provided for in the Clause 2, Article 19, Decree No. 123/NĐ-CP dated 19th October 2020 of Government. Based on the adjusting e-invoices (or replacing e-invoices), the purchaser and the seller will submit amended VAT returns in accordance with guidelines as provided for in the Article 47, Law on Tax Administration No. 38/2019/QH14 dated 13th June 2029 and the Clause 4, Article 7, Decree No. 126/NĐ-CP dated 19th October 2020 of Government.

<u>However, if the seller was examined by the tax authority, it is requested that before preparing the adjusting e-invoices (or the replacing e-invoices), the purchaser and seller must contact the tax inspection delegation to be guided for the treatment of e-invoices with error as well as VAT amount which is under the scope and period of the tax inspection</u>.

4. Guiding the foreign contractor tax with respect to contractual penalties (Official letter No. 35648/CTBDU-TTHT dated 28th December 2023 of Binh Duong Tax Department)

In case a foreign contractor derived income in Vietnam which is a contractual penalty paid by the Vietnamese company because the company had violated a contract signed between the Corporation and such a foreign contractor, <u>the income of contractual penalty is subject to foreign contractor tax as follows</u>:

- VAT: not subject to VAT;
- CIT: the applicable CIT rate is 2% in accordance with provisions as provided for in the Point a, Clause 2, Article 13, Circular No. 103/2014/TT- BTC dated 6th August 2014 of Ministry of Finance.

5. Strengthening tax audit and inspection on transfer pricing in 2024 of enterprises having potential transfer pricing taxation risk upon direction by the General Department of Taxation (Official Letter No. 5654/TCT-TTKT dated 13 December 2023 issued by the General Department of Taxation)

On 13th December 2023, the General Department of Taxation issued the Official Letter No. 5654/TCT-TTKT directing Provincial Tax departments, and the Large Taxpayer Unit to strengthen tax audit and inspection of enterprises having potential transfer pricing taxation risks. Relevant contents are summarized as follows:

- Tax departments are requested to carefully assess and review enterprises' tax declaration records, analyse business activities of enterprises having related party transactions; review and reconcile information from different sources based on industries, types of business, investment status, tax declaration status, adjustment in related party transactions' pricing to identify high TP risk taxpayers.

- Enterprises are considered to have high TP risks would include, but not limited to those that:
    - have significant sales and purchase amounts or significant transaction proportion with related parties;
    - have been incurring significant losses over several years but continued to expand their scale; or
    - have their revenue increased but incur low tax contribution to the State’s budget, etc.
- Tax departments are requested to add those high TP-risk taxpayer to the tax inspection plan for 2024 and clearly categorize them under TP inspection plan.
- Tax departments are requested to coordinate with other relevant provincial departments to enhance the exchange and collection of information regarding enterprises having related party transactions, especially for foreign direct investment enterprises for purpose of tax administration.