



**IC&PARTNERS VIETNAM**

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# TAX NEWSLETTER

NOVEMBER 2022



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*Adjustment of temporary payment of Corporate Income Tax (CIT)*

Decree No. 91/2022/ND-CP was promulgated on October 30, 2022, which amends some regulations of Decree No. 126/2020/ND-CP.

Accordingly, the regulation on paying provisional Corporate Income Tax (CIT) is amended as follows: *“Total provisional CIT of 04 quarters must be at least 80% of CIT payable under the annual tax finalization dossier”*.

Previously according to the Decree No. 126/2020/ND-CP, *the total amount of provisional CIT paid in the first 03 quarters of the year shall be at least 75% of CIT payable under the annual tax finalization dossier*.

Note: Provisional CIT of tax period 2021 will be paid as follows:

- By October 30, 2022, if the provisional tax paid by the taxpayer in the first 03 quarters of 2021 is not smaller than 75% of the annually finalized tax, regulations of Clauses 3, 4, 5 Article 1 of Decree No. 91/2022/ND-CP on the ratio of provisional CIT of 04 quarters (at least 80% of annually finalized tax) shall not apply.
- By October 30, 2022, if the provisional tax paid by the taxpayer in the first 03 quarters of 2021 is smaller than 75% of the annually finalized tax, the regulations that provisional CIT of 04 quarters must be at least 80% of annually finalized tax will be applied if it does not lead to an increase in late payment interest.

*Decree No. 91/2022/ND-CP comes into force from October 30, 2022*

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*Official Letter No. 3504/CTBNI-TTHT on Corporate Income Tax (CIT) incentives*

The Tax Department of Bac Ninh Province issued Official Letter No. 3504/CTBNI-TTHT on October 21, 2022 to provide guidance on Corporate Income Tax (CIT) incentives as follows:

Pursuant to the above provisions, if the Company has invested, upgraded, supplemented more machinery and equipment, and expanded the factory in order to expand the production scale and increase the capacity of the investment project compared to the original; at the same time, the expanded investment project meets the criteria for investment expansion specified at Point a, Clause 6, Article 18 of Circular No. 78/2014/TT-BTC (amended and supplemented in Clause 4, Article 10 of Circular No. 96/2015/TT-BTC dated June 22, 2015 of the Ministry of Finance), and is consistent with the Investment Certificate issued by a competent state agency, the Company may choose to enjoy CIT incentives according to their operating projects for the remaining duration (including tax rate, exemption period if any) or to be entitled to a duration of tax exemption or reduction for additional incomes brought about by expansion investment (not eligible for preferential tax rates) equal to the tax exemption or reduction duration applicable to new investment projects in the same geographical area or field eligible for CIT incentives.

If the Company chooses to enjoy incentives for expansion investment, additional incomes brought about by expansion investment shall be separately accounted. If the Company cannot separately account additional incomes, such incomes shall be determined according to the ratio of historical cost of fixed assets newly invested for use for production and business activities to the total historical cost of fixed assets of the Company.

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***Official letter No. 3610/CTBNI-TTHT guiding the tax declaration of real estate transfer activities outside the province***

Official letter No. 3610/CTBNI-TTHT was issued by the Tax Department of Bac Ninh province on November 2, 2022, guiding the tax declaration of real estate transfer activities outside the province as follows:

- *Regarding Value Added Tax (VAT):* the Company declares, submits VAT returns according to form No. 05/GTGT issued under Circular No. 80/2021/TT-BTC on September 29, 2021 of the Ministry of Finance, and pays VAT on the sales before VAT for real estate transfer activities multiplied (x) by 1% to the tax office in the province where the transferred real estate is located according to the instructions in Clauses 2 and 3, Article 13, Circular No. 80/2021/TT-BTC.
- *Regarding corporate income tax (CIT):* the Company declares and pays CIT for real estate transfer activities according to the taxable revenue of real estate transfer activities multiplied by (x) by 1% to the tax office in the province where the transferred real estate is located under the guidance in Clause 2, Article 17 of Circular No. 80/2021/TT-BTC. The Company declares and submits annual CIT finalization for all real estate transfer activities with the Tax Department of Bac Ninh province according to the instructions in Clause 3, Article 17 of Circular No. 80/2021/TT-BTC.

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*Guidance on Value Added Tax (VAT) rates for services provided to export processing enterprises (EPEs)*

- 1. Official letter No. 3603/CTBNI-TTHT dated November 1, 2022 issued by the Tax Department of Bac Ninh province, providing guidance on VAT rates for services provided to EPEs as designated by foreign enterprises.**

In case the Company signs a contract to provide equipment installation, reparation, and maintenance services to a foreign enterprise headquartered in Korea and is assigned to perform such service for another EPE in Vietnam, the Company is entitled to the VAT rate of 0% if the above services are performed at such EPE, ensuring the conditions for consumption in the non-tariff zone (EPE), and at the same time fully meeting the conditions for applying the tax rate 0% as prescribed at Point b, Clause 2, Article 9 of Circular No. 219/2013/TT-BTC dated December 31, 2013 of the Ministry of Finance.

In case the Company does not satisfy the condition that it is an export service (consumption outside the non-tariff zone), the Company shall apply the VAT rate of 10% for the equipment installation, reparation, and maintenance services according to Article 11 of Circular No. 219/2013/TT-BTC dated December 31, 2013 of the Ministry of Finance.





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### *Guidance on Value Added Tax (VAT) rates for services provided to export processing enterprises (EPEs)*

#### **2. Official Letter No. 3664/CTBNI-TTHT issued by the Tax Department of Bac Ninh Province on November 7, 2022, providing guidance on VAT rates for services provided to EPEs.**

- In case the Company provides "warehouse" rental services to EPEs, it is not eligible to apply the tax rate of 0% as prescribed in Clause 3, Article 9 of Circular No. 219/2013/TT-BTC dated May 31, December 2013 of the Ministry of Finance (amended and supplemented in Article 1 of Circular No. 130/2016/TT-BTC dated August 12, 2016 of the Ministry of Finance).
- In case the Company provides services of lifting, loading, and unloading goods, cleaning warehouses, managing warehouses for EPEs, and ensures the principle of direct supply to organizations in non-tariff zones and consumption in non-tariff zones, the tax rate is 0% when the Company issues the invoice for the above services if meeting the conditions at Point b, Clause 2, Article 9 of Circular No. 219/2013/TT-BTC dated December 31, 2013 of the Ministry of Finance (amended and supplemented in Article 1 of Circular No. 130/2016/TT-BTC dated August 12, 2016 of the Ministry of Finance).



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### *New regulations on foreign loans that must be registered with the State Bank of Vietnam (SBV)*

Circular No. 12/2022/TT-NHNN issued by the State Bank of Vietnam (SBV) on September 30, 2022 (replacing Circular No. 03/2016/TT-NHNN, Circular No. 05/2016/TT-NHNN, Circular No. 05/2017/TT-NHNN) provides guidance on foreign exchange management for foreign borrowing and debt repayment of enterprises.

Accordingly, foreign loans that must be registered with the SBV include:

- Foreign medium and long-term loans.
- Short-term loans are extended the principal repayment period with the total term of the loan over 1 year.
- Short-term loans without an extension agreement but with outstanding principal balance (including principally entered interest) at the full date of 1 year from the date of first capital withdrawal, unless the borrower completes the payment of the above-mentioned principal balance within 30 working days from the date of full 1 year from the date of first capital withdrawal.

(Currently, Circular No. 03/2016/TT-NHNN stipulates: unless the borrower completes the loan repayment within 10 (ten) days from the date of full 1 (one) year from the date of first capital withdrawal).

*Circular No. 12/2022/TT-NHNN takes effect from November 15, 2022*

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*Official Letter No. 4826/TCHQ-GSQL on exported goods sent to bonded warehouses and imported back to inland*

The General Department of Customs issued Official Letter No. 4826/TCHQ-GSQL on November 14, 2022. Accordingly, customs clearance for domestically imported goods originating from export goods that have completed customs clearance for entering bonded warehouses are as follows:

According to Articles 85 and 88 of Decree No. 08/2015/ND-CP dated January 21, 2015 of the Government, goods moving from Vietnam which have completed customs clearance for export, goods moving from overseas countries which are waiting for customs clearance for entry into Vietnam or exit to the third country permitted to rent bonded warehouses shall be allowed to move into bonded warehouses for storage. In the case of import into the Vietnamese market, customs clearance must be carried out similarly to goods imported from abroad according to the respective type of importation; the time of actual import is the time when the customs office confirms that the goods are taken out of the bonded warehouse.

Therefore, for exported goods that have completed customs clearance and are sent to a bonded warehouse to wait for export, during the time of being stored at the bonded warehouse, the Company is allowed to transfer their ownership. If the owners of goods wish to re-import domestically them, they shall register the import declaration according to the corresponding type and carry out the import procedures as prescribed in Article 91 of Circular No. 38/2015/TT-BTC dated 25 March 2015 (amended and supplemented in Clause 59, Article 1 of Circular No. 39/2018/TT-BTC dated April 20, 2018 of the Ministry of Finance).



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*Official Letter No. 4700/TCHQ-TXNK on goods that are financially leased to export processing enterprises (EPEs)*

Official letter No. 4700/TCHQ-TXNK issued by the General Department of Customs on November 8, 2022 providing guidance on goods for export processing enterprises (EPEs) to financially lease as follows:

1. *In case the finance leasing company recovers the assets leased to the EPEs*

In case the EPEs return the finance lease company the machinery and equipment leased or borrowed by the EPEs, the EPEs shall carry out in-spot export procedures, and the financial leasing company shall carry out the procedures for in-spot import and perform tax declaration and payment as prescribed. *(The General Department of Customs has provided guidance in Official Letter No. 2105/TCHQ-TXNK dated June 7, 2022, Official Letter No. 1188/TCHQ-TXNK dated April 6, 2022).*

2. *In case the finance lease company purchases assets inland and then leases them to the EPE in a free trade zone*

In case the finance lease company purchases goods from the domestic market and brings them to the EPE, the EPE and the domestic enterprise shall carry out customs procedures for in-spot export and import according to the corresponding customs procedures. *(The General Department of Customs has provided guidance in Official Letter No. 1971/GSQL-GQ2 dated June 25, 2019)*

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3. *In case the finance lease company financially leases assets to the EPE located outside a free trade zone*
- a. In case the finance lease company purchases goods domestically and leases them to the EPE located outside the free trade zone (the EPE must meet Clause 1, Article 4 of the Law on Import and Export Tax No. 107/2016/QH13), the customs procedures shall follow Point 2 above.
  - b. In case the finance lease company imports goods from abroad and delivers them directly to the EPE located outside the free trade zone (the EPE must meet Clause 1, Article 4 of the Law on Import and Export Tax No. 107/2016/QH13) for finance lease and only using in the EPE, customs documents and procedures shall comply with Points a and b, Clause 2, Article 94 of Circular No. 38/2015/TT-BTC dated March 25, 2015 of the Ministry of Finance (amended and supplemented in Clause 61, Article 1 of Circular No. 39/2018/TT-BTC dated April 20, 2018 of the Ministry of Finance) (*The Ministry of Finance has provided guidance in Official letter No. 2040/BTC-CST dated February 21, 2019*)
  - c. In case the finance lease company purchases goods from the EPE then financially leases them to that EPE (the EPE must meet Clause 1, Article 4 of the Law on Import and Export Tax No. 107/2016/QH13). The goods are used in the EPE, not moved out of the EPE to the finance lease company, and vice versa, there are no import and export activities so no customs procedures are carried out. (*The Ministry of Finance has provided guidance in Official letter No. 2040/BTC-CST dated February 21, 2019*)



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## INTRODUCTION

IC&Partners Vietnam Co., Ltd. is a member of IC&Partners S.p.A in Italy, specializing in providing services on Tax Agent, Tax Consulting, Transfer Price Documentation Consulting, Corporate Consulting, and other support related to the day-to-day operations of the business. We have many years of experience in providing services for the field of consulting in general and tax consulting in particular for multinational corporations of different nationalities such as Korea, Japan, Italy, Germany, Singapore ... not only in Vietnam but also in many other countries around the world.

Currently, the regulations and policies of the Tax Department are increasingly strict while businesses cannot anticipate the risks that may occur due to the lack of grasp of current legal regulations.

We are pleased to serve you with the following services:

- Tax Agent (Quarterly Tax Report, Annual Tax Finality)
- Tax risk review
- Supporting the procedures for establishing, closing the Company
- Refund of VAT and PIT
- Consultancy on preparing transfer pricing documentation
- Procedures for dealing with tax problems (exemption, reduction, tax penalty, etc.)
- Consulting services, support on management and other administration.

With the strength of quality and prestige, IC&Partners Vietnam is confident to bring the most satisfaction to customers when coming to us.

*Sincerely thank you!*