



IC&PARTNERS VIETNAM

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TAX NEWSLETTER

DECEMBER 2022



❖ **Headquarter in Hanoi:**

3rd Floor, TNL Plaza, Gold Season, 47 Nguyen Tuan, Thanh Xuan Trung Ward, Thanh Xuan District, Hanoi

❖ **Hai Phong Office**

No. 55A/69 Cho Con, Trai Cau Ward, Le Chan District, Hai Phong

❖ **Ho Chi Minh Office**

LE 04.69, Lexington Apartment, 67 Mai Chi Tho, An Phu Ward, Thu Duc City, Ho Chi Minh

❖ **Contact:**

IC&Partners Vietnam

Tel: +84 243 2373 793

Mobi: +84 915 432 043

Web: www.icpartners.it

Email:

info@icpartnersvietnam.com

IN THIS ISSUE

➤ *Taxation*

- Official Letter No. 59940/CTHN-TTHT on tax policy of foreign contractors
- Official Letter No. 51874/CTHN-TTHT on tax policy about transferring intellectual property (IP) rights
- Official Letter No. 4901/TCHQ-TXNK on import goods tax creating fixed assets when converting the type of business
- Official Letter No. 3776/CTBNI-TTHT on declaring corporate income tax (CIT) finalization for wholly dependent accounting units entitled to CIT incentives
- Official Letter No. 3734/CTBNI-TTHT on tax policy when changing the business locations

➤ *Labor*

- Collecting trade union fee, contributions 2023

➤ *Enterprises*

- Adding a new conditional business line



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TAX NEWSLETTER

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TAXATION

➤ *Taxation*

- **Tax policy of foreign contractors**
- Tax policy about transferring IP rights
- Duties on import goods tax creating fixed assets when converting the type of business
- Declaring CIT finalization for wholly dependent accounting units entitled to CIT incentives.
- Tax policy when changing the business location

➤ *Labor*

- Collecting trade union fee, trade union contributions 2023

➤ *Enterprises*

- Adding new conditional business line

Official Letter No. 59940/CTHN-TTHT on tax policy of foreign contractors

Tax Department of Hanoi city issued Official Letter No. 59940/CTHN-TTHT on December 6, 2022 answering questions on tax policy of foreign contractor as follow:

The Company (in Vietnam) bought plane tickets of business trip for the Company Director in Korea through the airline's website (which is an foreign business organization): The airline has earned incomes in Vietnam from providing passenger transport service based on transportation contract (ticket) subjected to obligation of foreign contractors as per Clause 1, Article 1, Circular 103/2014/TT-BTC.

If the ticket has been bought through a website and the airline issues the tickets via ticket agents, airline offices in Vietnam, the Company shan't be subjected to declare and pay tax on behalf of the airline. The airline's agents, ticket offices have responsibility to declare and pay tax in accordance with clause 2, Article 4 Circular 103/2014/TT-BTC.

If the airline issued e-ticket directly to the Company via website without registering, declare and pay tax as per Article 76, 77, 78, 78 Circular 80/2021/TT-BTC, or failing to meet conditions prescribed in Article 8 Circular 103/2014/TT-BTC, the Company shall be responsible for declaring and paying foreign contractor tax on behalf of the airline. CIT rate for passenger transport service is 2% of revenue subject to corporate income tax. Tax registration dossier for the Company when declaring and paying tax on behalf of foreign contractor is complied with Clause 6, Article 7 of Circular 103/2014/TT-BTC.

➤ *Taxation*

- Tax policy of foreign contractors
- **Tax policy about transferring IP rights**
- Duties on import goods tax creating fixed assets when converting the type of business
- Declaring CIT finalization for wholly dependent accounting units entitled to CIT incentives.
- Tax policy when changing the business location

➤ *Labor*

- Collecting trade union fee, trade union contributions 2023

➤ *Enterprises*

- Adding new conditional business line

Official Letter No. 51874/CTHN-TTHT on tax policy about transferring intellectual property (IP) rights

Taxation Department of Hanoi issued Official Letter No. 51874/CTHN-TTHT on October 27, 2022 to answer questions on tax policy of transferring intellectual property (IP) rights as follows:

In case a Vietnamese company (hereinafter “the Company”) pays for a foreign enterprise to use their trademark registered in Vietnam:

For Corporate Income Tax (CIT): In case the foreign enterprise generates income from trademark use right in line with law provisions on intellectual property, **this income is subject to CIT** and the rate (%) of CIT is **10%** of taxable turnover.

For Value Added Tax (VAT): According to Circular 219/2013/TT-BTC dated December 31, 2013, Decree 209/2013/ND-CP dated December 18, 2013 and Circular 103/2014/TT-BTC, in case an foreign enterprise receives money from the transfer of the trademark use right that are in accordance with the law provisions on intellectual property shall be subject to VAT and the **VAT rate of 10%** (if the deductible method is applied) or **5% of taxable turnover** (if the direct method is applied).

➤ *Taxation*

- Tax policy of foreign contractors
- Tax policy about transferring IP rights
- **Duties on import goods tax creating fixed assets when converting the type of business**
- Declaring CIT finalization for wholly dependent accounting units entitled to CIT incentives.
- Tax policy when changing the business location

➤ *Labor*

- Collecting trade union fee, trade union contributions 2023

➤ *Enterprises*

- Adding new conditional business line

Official Letter No. 4901/TCHQ-TXNK on duties of import goods tax creating fixed assets when converting the type of business

Official Letter No. 4901/TCHQ-TXNK of the General Department of Vietnam Customs dated November 18, 2022 answering import goods tax duties creating fixed assets when converting type of business as follow:

In case Export Processing Enterprises (EPEs) converts into enterprises that are not entitled to the EPE policy regime, **the EPEs must make a new customs declaration and fully pay tax on goods** which were previously entitled to the EPE tax policy.

In case of converting an enterprise that is not enjoyed EPE policies, the custom authority shall check to determine if the enterprise after the conversion continues to satisfy conditions for investment incentives applicable to domestic enterprises, and at the same time goods creating fixed assets still satisfy conditions for tax exemption under Clause 11 Article 16 of Law on Import and Export Duties No. 107/2016/QH13, Article 14 of Decree 134/2016/ND-CP, **then the goods creating fixed assets of the EPE after its conversion of unenjoyable EPE policy shall be exempt from import tax after the conversion.** The enterprise must make **annual using reports on tax-free imported goods.**

After conversion of unenjoyable EPE policy, the enterprise is only exempted from import tax on imported goods that create fixed assets if the enterprise notifies the list of tax exemptions before importing under Article 30 of Decree 134/2016/ND-CP.

➤ **Taxation**

- Tax policy of foreign contractors
- Tax policy about transferring IP rights
- Duties on import goods tax creating fixed assets when converting the type of business
- **Declaring CIT finalization for wholly dependent accounting units entitled to CIT incentives.**
- Tax policy when changing the business location

➤ **Labor**

- Collecting trade union fee, trade union contributions 2023

➤ **Enterprises**

- Adding new conditional business line

Official Letter No. 3776/CTBNI-TTHT on declaring corporate income tax (CIT) finalization for dependent accounting entitled to CIT incentives

Taxation Department of Bac Ninh Province issued Official Letter No. 3776/CTBNI-TTHT on November 17, 2022, guiding on declaring corporate incomes tax (CIT) finalization for dependent accounting units entitled to CIT incentives as follows:

- ❖ ***In case the branch is a dependent accounting unit entitled to CIT incentives for incomes from new investment project in the province different from headquarter location.***

The company declares CIT finalization in the form No. 03/TNDN issued together with Appendix II of Circular 80/2021/TT-BTC and submits it to the Taxation Department where the head office is located, determines payable CIT amount entitled to CIT incentives in the form No. 03-3A/TNDN issued with Appendix II of Circular 80/2021/TT-BTC, submits it to taxation Department where the branch and head quarter are located. The centralized tax management system of Tax Authority has supported the transmission of information, after the Company submits the CIT finalization dossier with form 03-3A/TNDN, the data will be automatically transmitted to Tax departments where the branch is entitled to preferential treatment. Therefore, the Company does not have to send form 03-3A/TNDN to the Tax Department where the branch is located.

- ❖ ***In case all of production and business activities of branch in the province where is different with head quarter location entitled to CIT incentives.***

The branch's payable CIT amount is the CIT amount arising from the income of activities entitled to CIT incentives. The declaration and payment of CIT of the branch whose income is entitled to CIT incentives is applied from the tax period of 2021.

➤ *Taxation*

- Tax policy of foreign contractors
- Tax policy about transferring IP rights
- Duties on import goods tax creating fixed assets when converting the type of business
- Declaring CIT finalization for wholly dependent accounting units entitled to CIT incentives.
- **Tax policy when changing the business location**

➤ *Labor*

- Collecting trade union fee, trade union contributions 2023

➤ *Enterprises*

- Adding new conditional business line

Official Letter No. 3734/CTBNI-TTHT on tax policy when changing the business location

Taxation Department of Bac Ninh Province issued Official Letter No. 3734/CTBNI-TTHT on November 14, 2022, guiding on tax policy when changing the business location as follows:

❖ *Regarding procedures for relocation according to tax law*

In case the **Company changes the business location and its headquarters from industrial zone to outside of industrial zone but does not change the tax administration department directly, Company must notice to change tax registration information and enterprise registration information** at Authority for Planning and Investment.

❖ *Regarding CIT incentives*

Company changing the business location and its headquarters from the industrial area to outside industrial area will not be eligible for CIT incentives because it does not meet the requirements about preference area from the changing time.

Company accounts incomes separately from production and business activities which are eligible and ineligible for CIT incentives. If an enterprise fails to separately account incomes from production and business activities eligible and ineligible for tax incentives, the incomes from production and business activities which are eligible for tax incentives will equal (=) the total taxed incomes multiplied by (x) the ratio (%) of the turnover from or deductible expenses for production and business activities eligible for tax incentives to the total turnover or total deductible expenses of the enterprise in the tax period according to clause 2 Article 18 Circular 78/2014/TT-BTC.



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➤ *Taxation*

- Tax policy of foreign contractors
- Tax policy about transferring IP rights
- Duties on import goods tax creating fixed assets when converting the type of business
- Declaring CIT finalization for wholly dependent accounting units entitled to CIT incentives.
- **Tax policy when changing the business location**

➤ *Labor*

- Collecting trade union fee, trade union contributions 2023

➤ *Enterprises*

- Adding new conditional business line

TAX NEWSLETTER

DECEMBER 2022

TAXATION

Official Letter No. 3734/CTBNI-TTHT on tax policy when changing the business locations

❖ *Regarding tax administration for individual for Company leases assets*

In case Company leases the warehouse of an individual for production and business, if total income from production and business of individual in the calendar year is **from 100 million dong or less, he/she will not need to pay VAT and personal income tax (PIT) according to VAT and PIT regulations.** If the total income from production and business of individual in the calendar year is more than 100 million, he/she must declare and pay the taxes. Household business, individuals have responsibility for declaring the tax accurately, honestly, fully and submitting tax documents on time; taking responsibility before the law for the accuracy, honesty and fullness of the tax dossiers.



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TAX NEWSLETTER

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LABOR

Collecting trade union fee, trade union contributions 2023

➤ *Taxation*

- Tax policy of foreign contractors
- Tax policy about transferring IP rights
- Duties on import goods tax creating fixed assets when converting the type of business
- Declaring CIT finalization for wholly dependent accounting units entitled to CIT incentives.
- Tax policy when changing the business location

➤ *Labor*

- **Collecting trade union fee, trade union contributions 2023**

➤ *Enterprises*

- Adding new conditional business line

Collecting trade union fee, contributions 2023 was guided at Instruction 65/HD-TLD and Decision 5440/QD-TLD on October 10, 2022.

Wage fund used to collect trade union fee, contributions 2023 at units shall be declared from **average salary paid for social insurance for employees in the first 6 months of 2022 which has determined growth factors** (followed by information provided by social insurance department) **multiplied the number of employees must paid trade union fee, trade union contributions.**

The rate of trade union fee, contributions is **2% of wage fund** as a basis of paying social insurance for employees.

The number of collecting trade union fee, contributions 2023 is based on number of union members (with the Organizing Committee of the General Confederation) at the unions multiplied with the salary and allowance of the union members.



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TAX NEWSLETTER

DECEMBER 2022

ENTERPRISES

Adding new conditional business line

➤ *Taxation*

- Tax policy of foreign contractors
- Tax policy about transferring IP rights
- Duties on import goods tax creating fixed assets when converting the type of business
- Declaring CIT finalization for wholly dependent accounting units entitled to CIT incentives.
- Tax policy when changing the business location

➤ *Labor*

- Collecting trade union fee, trade union contributions 2023

➤ *Enterprises*

- **Adding new conditional business line**

The National Assembly approved Law amendments to some articles of the Law on Radio Frequencies 2022 enforced from July 1, 2023.

Amended Law on Radio Frequencies 2022 added new conditional business line on Annex IV List of Conditional Business Lines issued together with Investment Law 2020 (amended by Law No. 03/2022/QH15, Law on Cinematography of Vietnam, Law Insurance Business 2022), specified:

Add section 228 after section 227 of the List: **“Provide training to radio operators and issue radio operator certificates”**.

Currently, there are 229 conditional business lines specified at Annex IV Investment Law 2020 (amended by Law No. 03/2022/QH15, Law on Cinematography of Vietnam, Law Insurance Business 2022).



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LE 04.69, Lexington Apartment, 67 Mai Chi Tho, An Phu Ward, Thu Duc City, Ho Chi Minh

❖ **Contact:**

IC&Partners Vietnam

Tel: +84 243 2373 793

Mobi: +84 915 432 043

Web: www.icpartners.it

Email:

info@icpartnersvietnam.com

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!