



**IC&PARTNERS VIETNAM**

*Supporting*

*Business Worldwide*

# TAX NEWSLETTER

MAY, 2024



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# **TAXATION**

### ***Official Letter No. 3088/CTBGI-TTHT regarding corporate income tax (CIT) incentives for investment projects producing supporting industrial products***

On April 26th, 2024, the Bac Giang Tax Department issued Official Letter No. 3088/CTBGI-TTHT regarding CIT incentives for investment projects producing supporting industrial products, specifically as follows:

In case the income of the Company from implementing investment projects to produce products belonging to the List of prioritized industrial products for development support complies with the regulations in Article 11 of Circular No. 96/2015/TT-BTC, it shall enjoy a preferential tax rate of 10% for a period of fifteen (15) years from the year the project is granted a Certificate of preferential production of supported industrial products; exempt from tax for four years from the year the taxable income arises and reduce 50% of the CIT payable in the following nine years. The preferential CIT applies only to enterprises that implement accounting regimes, invoices, documents, and corporate income tax returns according to declarations.

In the case where an enterprise has an industrial support product production project and income from this project is currently enjoying CIT incentives under different conditions (other than the conditions for incentives for industrial support product production projects), it shall enjoy CIT incentives according to the conditions of the industrial support product production project for the remaining period from the tax assessment period when the authorized agency issues the Certificate of Incentives for supported industrial product production.

During the period of enjoying CIT incentives, if an enterprise conducts multiple production and business activities, the enterprise must separately calculate income from activities entitled to CIT incentives (including preferential tax rates, tax exemptions, tax reductions) and income from non-incentivized business activities for tax declaration and payment.

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### ***Official Letter No. 3088/CTBGI-TTHT regarding corporate income tax (CIT) incentives for investment projects producing supporting industrial products***

In cases where, during the tax assessment period, an enterprise does not separately calculate income from activities entitled to tax incentives and income from activities not entitled to tax incentives, the income from incentivized business activities is determined by multiplying the total taxable income by the percentage of revenue or deductible expenses of incentivized business activities compared to the total revenue or total deductible expenses of the enterprise in the tax assessment period.

If there are revenue items or deductible expenses that cannot be separately accounted for, these items are determined based on the proportion of revenue or deductible expenses of incentivized business activities to the total revenue or deductible expenses of the enterprise.

The remaining CIT incentives for supported industrial product production projects are determined in accordance with Point g, Article 1 of Decree No. 57/2021/ND-CP dated June 4, 2021, by the Government.

Regarding the procedures for implementing CIT incentives, the Company follows Article 22 of Circular No. 78/2014/TT-BTC dated June 18, 2014, by the Ministry of Finance. In cases where the regulations of Decree No. 57/2021/ND-CP dated June 4, 2021, by the Government are implemented (including cases where the competent authority has conducted inspections or audits) resulting in a reduction of CIT or late payment penalties (if any), the Company submits a written request to the tax authority for direct management to adjust the reduced amount of CIT that has been declared or has been inspected and audited, and the corresponding late payment penalties.

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## TAX NEWSLETTER

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### *Official Letter No. 1517/TCT-CS from the General Department of Taxation regarding the depreciation of fixed assets and income from real estate transfers*

On April 12th, 2024, the General Department Taxation issued Official Letter No. 1517/TCT-CS on the depreciation of fixed assets and income from real estate transfers, specifically as follows:

- *Regarding depreciation of fixed assets:*

If an enterprise purchases an apartment in a condominium for business purposed such as leasing, and does not possess documentation proving ownership by the enterprise as required by law, it is not eligible to depreciate the apartment asset as a deductible expense unless taxable income for CIT purposes is determined.

The portion of depreciation exceeding the current regulations of the Ministry of Finance on the management, use, and depreciation of fixed assets will not be deductible unless taxable income is determined. Depreciation period for fixed assets shall be carried out according to the provisions of Clause 1, Article 10 of Circular No. 45/2013/TT-BTC dated April 25, 2013, by the Ministry of Finance.

- *Regarding tax payment for income from real estate transfer activities:*

If an enterprise earns profit from real estate transfer activities, it must separately account for and declare corporate income tax at a tax rate of 22% (effective from January 1<sup>st</sup>, 2016, applying a tax rate of 20%), which cannot be offset with losses from other production and business activities (including leasing apartments in condominiums).



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***Official Letter No. 2455/CTBNI-TTHT on value-added tax rates for activities involving the transfer of rights to sublease land and assets attached to land to export processing enterprises (EPE), and the leasing of factories to EPE***

On April 16<sup>th</sup>, 2024, Bac Ninh Tax Department issued Official Letter No. 2455/CTBGI-TTHT on value-added tax rates for activities involving the transfer of rights to sublease land and assets attached to land to EPE, and the leasing of factories to EPE, specifically as follows:

**1. In case the Company transfers the sublease rights of land and attached assets to EPE**

If the location of the land plot transferred is identified in the “Project Implementation Location” section on the investment registration certificate issued by the competent state authority to the transferee EPE, and is determined by the customs authority to not require customs procedures, while also meeting the conditions stipulated in Clause 2, Article 9 of Circular No. 219/TT-BTC dated December 31, 2013, by the Ministry of Finance, then a VAT rate of 0% shall be applied. When transferring the sublease rights of land and attached assets, the Company is required to declare and pay relevant taxes (corporate income tax, etc.) at the time of transfer as regulated.

**2. In case the Company leases a workshop to EPE for production and business activities**

In this case the Company is eligible for a VAT rate of 0% if it meets the conditions stipulated in Clause 1 and Point b, Clause 2, Article 9 of Circular No. 219/2013/TT-BTC dated December 31, 2013, and does not fall under the cases specified in Clause 3, Article 9 of Circular No. 219/2013/TT-BTC as amended and supplemented at Point 2, Article 1 of Circular No. 130/2016/TT-BTC dated August 12, 2016, by the Ministry of Finance.

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***Some notes on market access conditions for foreign investors seeking to acquire capital contributions in a domestic company***

Regarding market access conditions, Appendix I issued with Decree No. 31/2021/ND-CP specifies the business lines with prohibited and restricted market access applied to foreign investors.

In case where foreign investors invest in business lines restricted market access, according to Clause 3, Article 9 of the Investment Law 2020, they must comply with the conditions regarding:

- Holding of charter capital by the foreign investor in a business organization
- Investment method
- Scope of investment
- Capacity of the investor; partners participating in the investment activities
- Other conditions specified in the Laws and Resolutions of the National Assembly, Ordinances and Resolutions of the Standing Committee of the National Assembly, Decrees of the Government and international treaties to which the Socialist Republic of Vietnam is a signatory

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***Conditions for loans from the Small and Medium Enterprise Development Fund effective June 10, 2024***

On April 26<sup>th</sup>, 2024, Government issued Decree No. 45/2024/ND-CP on organization and operation of the small and medium enterprise development fund. Specifically, conditions for the Small and Medium Enterprise running innovative startups, participating in inter-sectoral complexes and value chains as follows:

- Meet criteria for small and medium-sized startup enterprises as prescribed in the Law on assistance for small and medium-sized enterprises and its guiding documents
- Have feasible business projects or plans that must satisfy criteria for small and medium-sized startup or inter-sectoral complex enterprises having products in the value chain.
- Ensure the equity participation in a production and business project or plan makes up at least 20% of the total investment capital to implement that production and business project or plan, and ensure sufficient capital for implementation of a production and business project or plan
- Meet regulations on loan guarantee laid down in Decree No.39/2019/ND-CP

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*Regulations on registration of branch operations and representative offices of cooperatives and unions of cooperatives from July 1, 2024*

On March 26<sup>th</sup>, 2024, the National Assembly of Viet Nam promulgated the Law on Cooperatives and officially takes effect from July 1<sup>st</sup>, 2024. In particular, regulations on registration of branch operations and representative offices of cooperatives and unions of cooperatives as follows:

**1. Procedures for establishing branches and representative offices**

- The cooperative or cooperative union shall submit an application for registration of branch/representative office to the business registration authority in charge of the area where its branch/representative office will be located;
- Within 03 working days from the receipt of the application, the business registration authority shall consider the validity of the application and decide whether to issue the certificate of branch/representative office registration. In case of invalid application, the business registration authority shall request the applicant in writing to make necessary modifications. If an application is refused, a written notice indicating reasons for refusal shall be given
- Within 03 working days from the receipt of the application, the business registration authority shall consider the validity of the application and decide whether to issue the certificate of branch/representative office registration. In case of invalid application, the business registration authority shall request the applicant in writing to make necessary modifications. If an application is refused, a written notice indicating reasons for refusal shall be given.



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*Regulations on registration of branch operations and representative offices of cooperatives and unions of cooperatives from July 1, 2024*

- A cooperative or cooperative union is entitled to establish its branches and/or representative offices in foreign countries. Within 30 days from the establishment date of its overseas branch or representative office, the cooperative or cooperative union shall send a written notification thereof to the business registration authority in charge of the area where it is headquartered
- Within 10 days from the issuance date of its decision to establish a business location, the cooperative or cooperative union shall send written notification thereof to the business registration authority in charge of the area where the business location is situated.

**2. Relations on branches, representative offices and business locations of cooperatives and cooperative unions**

- A branch of a cooperative or cooperative union is its dependent unit that has some or all functions of the cooperative or cooperative union, including authorized representative. The business lines of the branch shall match those of the cooperative or cooperative union
- A representative office of a cooperative or cooperative union is its dependent unit that acts as an authorized representative for interests of the cooperative or cooperative union. The representative office shall not do business.
- A business location of a cooperative or cooperative union is a place where its specific business operations are carried out

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**INTELLECTUAL PROPERTY**

***New points in penalties for administrative violations of industrial property regulations.***

On May 4<sup>th</sup>, 2024, the Government issued Decree No. 46/2024/ND-CP on amending and supplementing a number of regulations on sanctioning administrative violations in the field of industrial property. Depending on the nature and severity of the violation, violating organizations and individuals may also be subject to one or more of the following additional sanctions. As follows:

- Confiscation of material evidence and means used in the commission of administrative violations, including goods bearing counterfeit marks or geographical indications; raw materials, materials and means used mainly for producing or trading in those goods
- Deprivation of the right to use industrial property representation practice certificates; assessor cards; or certificates of eligibility for assessment practice, for between 01 and 03 months from the effective date of the sanctioning decision;
- Suspension of part or all of production, trading or provision of infringing products or services, for between 01 and 03 months from the effective date of the sanctioning decision.

In addition to the main and additional forms of sanction, the Decree also amends and supplements regulations forcing violating organizations and individuals to apply one or more remedial measures such as forced restoration, original condition, forced distribution or non-commercial use of goods with counterfeit trademarks or geographical indications (must meet the conditions specified in Decree No. 65/2023/ND-CP),...



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## INTRODUCTION

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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, regulations and policies of the Tax Authority are increasingly strict while the Enterprises cannot anticipate possible risks because they have not yet grasped the 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
- VAT, PIT refund
- Consulting on preparing transfer pricing documentation
- Procedures for dealing with tax problems (tax exemption, reduction, 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!*

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