



TAX ALERT AND LAW

December 2023

This update highlights the following matters:

1. Risk management in VAT refund classification
2. Official Dispatch No. 4859/TCT-CS on 01st November 2023 on VAT reduction.
3. On VAT policy.
4. Official Dispatch No. 5050/TCT-CS on 10th November 2023 on tax policy.
5. Official Dispatch No. 3511/CTBNI-TTHT on 6th September 2023 on VAT for company merger activities.
6. Foreign withholding tax.

1. Official Dispatch No. 4654/TCT-QLRR on 20th October 2023 guiding the implementation of risk management in VAT refund classification

On 18th September 2023, the General Department of Taxation issued Decision No. 1388/QD-TCT on applying risk management in classifying VAT refund dossiers and selecting taxpayers to develop inspection plans, post-tax refund inspection. In order for the application of risk management in classifying VAT refund dossiers to be implemented uniformly nationwide, the General Department of Taxation provides guidance on a number of contents.

1. Official Dispatch No. 4654/TCT-QLRR on 20th October 2023 guiding the implementation of risk management in VAT refund classification

Scope Applies to tax refund dossiers for investment projects and tax refunds for exported goods and services.

Collect information

- For the List of businesses with suspicious banking transaction information; List of businesses whose files have been transferred to the police by tax authorities: Tax Departments/Tax Branches are requested to review, import or push into the tax refund system risk management application in Clause 3, Article 8. Decision No. 1388/QD-TCT on 18th September 2023.
- For the list of businesses with signs of risk under the inspection plan on invoice management and use: request the Tax Departments to review and approve the list of businesses with invoice risks on the risk management application. The invoice subsystem is tight so that the application can automatically push it into the payment subsystem as a basis for comparison with Group I criteria index. The application will start implementing with the List of high-risk businesses from 25th October 2023. .
- In case the police agency has a document coordinating to review the list of businesses with invoice risks sent to tax authorities at all levels, the tax agency will update this list into the risk management application. risk as a basis for comparison with tax refund request documents. The application supports entering information on the list of invoice risks transferred by the police agency from 01st January 2024.

1. Official Dispatch No. 4654/TCT-QLRR on 20th October 2023 guiding the implementation of risk management in VAT refund classification

Determine risk threshold

Analytical method evaluates the risk level of each indicator
High risk thresholding method

Hierarchy in the use of Criteria Indicators

The General Department of Taxation uses Group II criteria index and can select additional Group III criteria index (if necessary) to analyze, assess risks, classify value-added tax refund dossiers and select businesses with signs of risk to develop an inspection and audit plan after returning value-added. The set of criteria indicators used by the General Department of Taxation is applied nationwide.

- The Tax Department can select and build an additional set of criteria indicators. On the basis of Group II and Group III criteria indicators issued under Decision 1388/QD-TCT on 18th September 2023, to analyze, evaluate risks, and classify tax refund dossiers applied locally. method to suit the business characteristics and management work. In case the Tax Department chooses to build a new set of criteria indicators, the Tax Department will send a written report to the General Department of Taxation (through the Risk Management Board) for consideration and decision on implementation.

Deployment plan

Online training guides Tax Departments to apply risk management in classifying value-added tax refund dossiers and selecting taxpayers to develop post-refund audit and inspection plans on 24th October 2023.

2. **Official Dispatch No. 4859/TCT-CS on 01st November 2023 on VAT reduction**

The Ministry of Finance has issued official dispatch No. 7169/BTC-TCT requesting the Ministry of Information and Communications to comment on determining goods subject to tax reduction and the Ministry of Information and Communications has commented in official dispatch No. 4206./BTTTT-KHTC on 14th August 2022 (photocopy attached). On that basis, on 22nd September 2022, the General Department of Taxation issued official dispatch No. 3522/TCT-CS responding to the Ho Chi Minh City Tax Department regarding the rental policy (photocopy attached). It is recommended that Panasonic Vietnam Co., Ltd., based on Official Dispatch No. 3522/TCT-CS above, implement

2. Official Dispatch No. 4859/TCT-CS on 01st November 2023 on VAT reduction

Excerpt from Official Dispatch No. 3522/TCT-CS on 22nd September 2022 on VAT policy

1. Regarding VAT reduction for collection activities on behalf of foreign carriers: Business establishments (including business households and individual businesses) that calculate value-added tax using the percentage-on-revenue method are entitled to a 20% reduction in the percentage rate to calculate value-added tax when doing so. Issue invoices for goods and services eligible for value added tax reduction.

2. Regarding VAT reduction for household electronic products: On 22nd July 2022, the Ministry of Finance issued official dispatch No. 7169/BTC-TCT requesting the Ministry of Information and Communications to comment on the Ministry of Finance's proposal: in cases where goods are identified as equipment products. Household electronics are not subject to VAT reduction according to the provisions of Decree 15/2022/ND-CP.

3. VAT reduction in case of specific invoice time For activities of providing goods and services with a specific invoice time specified in Clause 4, Article 9 of Decree No. 123/2020/ ND-CP, business establishments are entitled to VAT reduction according to regulations for invoices issued from 01st February 2022 to 31st December 2022.

2. Official Dispatch No. 4859/TCT-CS on 01st November 2023 on VAT reduction

Excerpt from Official Dispatch No. 4206/BTTTT-KHTC on 14th August 2022 determining goods subject to VAT reduction

According to the provisions of Decree No. 71/2007/ND-CP on 03rd May 2007 of the Government detailing and guiding a number of articles of the Law on Information Technology on the information technology industry and Circular No. 09/2013/TT-BTTTT on 08th April 2013 of the Minister of Information and Communications promulgating the List of software, hardware and electronic products, "Household electronic devices are electronic devices used in family activities. Electromagnetic equipment includes air conditioning equipment, refrigerators, washing machines, vacuum cleaners, microwave ovens. In particular, electronic devices are devices with a semi-mechanical structure including semiconductor components and integrated electromagnetic circuits, operating according to the control principles of electronic circuits.

Thus, to determine whether a product is a household electronic device according to the law on information technology, it is first necessary to consider and evaluate whether these devices are electronic devices or not. The devices mentioned in Official Dispatch No. 7169/BTC-TCT only have product names without specifying technical features or usage. Therefore, based on the above regulations and technical characteristics of each product to determine and classify products in accordance with the provisions of law and practice.

3. About VAT policy.

Official Dispatch No. 4980/TCT-CS on 07th November 2023 on VAT policy.

In case the Tax Department determines that investor BINH DUONG REAL ESTATE LTD (foreign investor) is the owner of 100% of the charter capital at Mapletree Vietnam Urban Business Co., Ltd., transfer all capital contributions to the Company. BW New City Industrial Development LLC for production and business in accordance with the law on enterprises and investment and is determined to be a capital transfer activity that is not subject to VAT.

3. About VAT policy.

Tax policy for sample goods and sample services; investment incentives

According to Official Dispatch No. 20792/CTBDU-TTHT dated August 29, 2023 of the Tax Department Binh Duong province, in case the Company provides sample goods and provides services Sample service for customers to try:

- Do not collect money, comply with the provisions of commercial law: Make an invoice stating the name and quantity of goods, clearly stating that they are exported goods promotions, sample products...; Taxable price is determined 0.
- Does not collect money, does not comply with commercial law regulations: Declare, calculate and pay VAT as normal sales.

3. About VAT policy.

Tax policy for sample goods and sample services; investment incentives

- Export sample products abroad if export conditions are met Export according to Article 9 of Circular No. 219/2013/TT-BTC is subject 0% VAT rate applies.
- In addition, the Official Dispatch also provides guidance in cases where the Company has a project Investments are eligible for corporate income tax incentives depending on the investment field income such as liquidation of scrap and product wasteIn the field of investment incentives, exchange rate differences are directly related revenue, costs of preferential areas, and deposit interestnon-term bank, directly related other income also enjoy corporate income tax incentives.

3. About VAT policy.

VAT policy on compensation value

Official Dispatch No. 3162/CTBDI-TTHT 13th September 2023 of the Provincial Tax Department Binh Dinh guides the case where the Company incurs compensation for foreign customers deducted directly from the cost of goods, resulting in the value of payment via bank being less than the value on the contract or invoice:

- For payment documents for exported goods through banks in this case, the Company must prepare a written price reduction agreement that clearly explains the reason for price reduction adjustment due to poor quality goods to the foreign customer.

3. About VAT policy.

VAT policy on compensation value

- The company re-issues VAT invoices to adjust the export sales price due to poor quality goods. Based on the adjusted invoice, minutes or agreement between the two parties, and payment documents via bank, the Company declares and adjusts the reduction in export revenue according to regulations.
- The Bank issues an adjustment or replacement invoice if the Insurance Company recovers part of the sales promotion and agent management support paid to the Bank due to the customer canceling/terminating before the insurance contract term. dangerous.

4. **Official Dispatch No. 5050/TCT-CS on 10th November 2023 on tax policy**

* Regarding the use of invoices by export processing enterprises (EPE).

“Article 8. Type of invoice

2. Sales invoices are invoices for organizations and individuals as follows:

b) Organizations and individuals in the non-tariff zone when selling goods and providing services to the domestic market and when selling goods and providing services between organizations and individuals in the non-tariff zone and exporting goods to each other. Exporting goods and providing services abroad, the invoice clearly states "For organizations and individuals in the non-tariff zone".

Based on the above regulations, an EPE that carries out processing activities for domestic enterprises in accordance with the law shall issue invoices according to the above regulations.

5. **Official Dispatch No. 3511/CTBNI-TTHT on 6th September 2023 on VAT for company merger activities.**

According to Official Dispatch No. 3511/CTBNI-TTHT dated September 6, 2023 of the Tax Department of Bac Ninh province, the declaration and handling of the undeducted VAT amount of the merged company is carried out as follows:

- In case the merged company has gone into production and business activities, declares and pays VAT according to the deduction method: When merging into the Company, there is input VAT that has not been fully deducted. are eligible for VAT refund (Point 5, Clause 3, Article 1 of Circular No. 130/2016/TT-BTC).
- In case of not refunding tax but transferring this tax amount to the merging company: to declare further deduction, the merged company shall declare it in item [39a] on Declaration Form No. 01/GTGT.

6. Foreign withholding tax.

Foreign income tax on sales promotion activities and product quality management abroad

Official Dispatch No. 66927/CTHN-TTHT on 15th September 2023 of the Hanoi Tax Department guiding the application of foreign income tax in cases where a Vietnamese Company signs a contract with a foreign contractor to perform business activities. In Asia, sales promotion activities and product quality management are as follows:

- Income arising in Vietnam: Subject to withholding tax.
- Income from services to sell products consumed outside Vietnam: not subject to Circular No. 103/2014/TT-BTC.

6. Foreign withholding tax.

Foreign income tax on contracts for providing goods and services

Pursuant to Official Dispatch No. 65205/CTHN-TTHT on 8th September 2023 of Hanoi Tax Department:

- Foreign contractors providing machinery and equipment and accompanying technical support and supervision services are subject to foreign income tax in Vietnam. The Vietnamese party is responsible for deducting foreign income tax when paying the Contractor in case the Contractor is not eligible to declare and pay tax directly in Vietnam.
- Based on the signed Contract, the service income received is a technical service fee, therefore the above income is taxed in Vietnam according to the provisions of Article 13 of the Double Taxation Agreement, Article 25 of the Circular. 205/2013/TT-BTC of the Ministry of Finance.

6. Foreign withholding tax.

Foreign income tax in the field of e-commerce and room booking in Vietnam

According to Official Dispatch No. 5934/CTBRVT-TTHT on 6th September 2023 of the Tax Department of BR-VT province:


- In case the customer rents a room and pays directly to the accommodation facility (AF) in Vietnam, then the AF pays the booking brokerage commission to the foreign contractor (FC), the AF is responsible for declaring and paying taxes instead of FC.
- In case the customer rents a room and pays directly to the FC, then the FC transfers the room fee to the AF and retains the commission received:
 - In cases where the AF and the foreign contractor have signed a contract, the AF is responsible for notifying the foreign taxpayer of their tax obligations and declaring and paying taxes on the foreign taxpayer's behalf.
 - In case AF and foreign taxpayer have not signed a contract, AF must clearly determine the tax obligations of foreign taxpayers when signing the contract and AF is responsible for declaring and paying taxes on behalf of foreign taxpayers.

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