



PROFESSIONAL NEWSLETTER SEPTEMBER 2024

OFFICIAL LETTER FOR GUIDANCE AND RESPONSES

General Department of Taxation: Dispatch No. 3872/TCT-CS dated 30 August 2024
Tax policies

In case PDSG Company receives a transfer of 100% of capital contribution from existing members of a Company in Vietnam to become its owner. After completing the transfer, the two parties will carry out business merger procedures (Parent Company merged with Subsidiary Company). If the merger activity is carried out in accordance with the provisions of law, then:

- Regarding value added tax (VAT): When transferring assets to merge with another enterprise according to the provisions of the Enterprise Law, the enterprise with transferred assets must have an asset transfer order, accompanied by a set of asset origin dossiers and do not have to declare, calculate and pay VAT and do not have to issue VAT invoices.

- Regarding corporate income tax (CIT):

The difference due to revaluation of assets (if any) according to the provisions of law when transferring merged assets shall comply with the provisions of Point m, Clause 2, Article 3 of Decree No. 218/2013/ND-CP dated 26 December 2013 of the Government (amended and supplemented by Clause 1, Article 1 of Decree 91/2014/ND-CP dated 01 October 2014) and Clause 14, Article 7 of Circular No. 78/2014/TT-BTC dated 18 June 2014 (amended and supplemented by Article 2 of Circular 151/2014/TT-BTC dated 10 October 2014). The increased difference between the amount of money the owner spent to buy back 100% of the Company's capital compared to the value of the Company's assets after reassessment is calculated once into other income in the tax period when determining income subject to corporate income tax.

General Department of Taxation: Dispatch No. 3951/TCT-KK dated 09 September 2024

Re: Answering questions about additional tax declaration documents

- Pursuant to Clause 3, Article 47 of the Law on Tax Administration No. 38/2019/QH14 dated 13 June 2019 regulating additional declaration of tax declaration dossiers;

- Pursuant to Article 2, Article 7, Article 9, Article 11 of the Law on Complaints No. 02/2011/QH13 dated 11 November 2011 and Documents implementing the Law on Complaints.

Based on the above regulations, in the case of F89 Company, the Tax Department of Bac Lieu province conducted a tax audit in 2017 and 2018 at the Company's headquarters and issued a Decision to sanction administrative violations of tax, after F89 Company discovered that the 2017 and 2018 corporate income tax finalization declaration documents contained errors. If additional declaration reduces the tax amount payable, it shall comply with the provisions of Clause 3, Article 47 of the Law on Tax Administration No. 38. /2019/QH14. The order and

procedures for complaints and complaint resolution are carried out in accordance with the provisions of the Law on Complaints and guiding documents.

General Department of Taxation: Dispatch No. 4103/TCT-CS dated 17 September 2024

Pursuant to Clause 1, Article 44 of Decree No. 69/2018/ND-CP of the Government regulating notification, liquidation and settlement of processing contracts:

“Before implementing a processing contract, organizations and individuals notify the processing contract to the Customs authority. When the processing contract ends or the processing contract expires, the parties signing the processing contract must liquidate the contract and make a final report on the use of raw materials, supplies and exported products periodically with customs authorities. The Ministry of Finance guides procedures for notifying processing contracts and finalizing processing activities with customs authorities.

General Department of Taxation: Dispatch No. 3776/TCT-CS dated 27 August 2024
Tax policies

Pursuant to Clause 2, Article 11 of Decree No. 126/2020/ND-CP dated 19 October 2020 of the Government regulating the location for submitting tax declaration documents:

“2. Location for submitting tax declaration dossiers for taxpayers operating and doing business in many provincial areas other than where the taxpayer has its headquarters according to the provisions of Point b, Clause 4, Article 45 of the Law on Tax Administration is to perform centralized audit at the head office (except for the cases specified in Clause 1, Clause 3, Clause 4, Clause 5 and Clause 6 of this Article) at the tax agency managing the head office. At the same time, taxpayers must submit the Tax Allocation Table (if any) according to each provincial area where they receive state budget revenue (including dependent units and business locations) to the tax authority managing the head office, except for the following cases where they do not have to submit the Tax Allocation Table:...”

Pursuant to Point b Clause 2, Point b Clause 3 Article 13 Circular No. 80/2021/TT-BTC dated 29 September 2021 of the Ministry of Finance guiding tax declaration, tax calculation, tax finalization, tax allocation and payment VAT on real estate transfer activities:

“b) Allocation of value-added tax payable for real estate transfer activities:

The amount of value-added tax payable to each province for real estate transfer activities is equal to (=) the revenue without value-added tax for real estate transfer activities in each province (x) with 1 %.”

“b) For real estate transfer activities:

b.1) Taxpayers declare value-added tax and submit value-added tax declaration documents to the tax authority in the province where the transferred real estate is located according to form No. 05/GTGT issued with appendix II of This Circular; Pay the declared tax to the state budget in the province where the transferred real estate is located.

b.2) Taxpayers must summarize the revenue without value-added tax for real estate transfer activities into the tax declaration dossier at the head office to determine the tax amount payable for the entire property activity doing business at the head office, the value added tax amount paid in the province where the transferred real estate is located is offset against the value added tax amount payable at the head office.”

Binh Duong Provincial Tax Department: Dispatch No. 25992 dated 27 September 2024

Tax policies

Pursuant to Clause 1, Article 5, Circular No. 219/2013 TT-BTC dated 31 December 2013 of the Ministry of Finance stipulating cases in which VAT is not required to be declared, calculated and paid.

1. Organizations and individuals receive monetary compensation (including compensation for land and assets on land when land is recovered according to the decision of a competent State agency), bonuses, subsidy money, emission rights transfer money and other financial revenues.

When business establishments receive compensation, bonuses, support payments, emission rights transfer fees and other financial revenues, they must prepare receipts according to regulations. For business establishments that pay money, based on the purpose of payment to prepare payment vouchers.

If the Company has idle money at banks, income from interest on bank deposits of the Company is considered other financial income that is not required to declare and pay VAT. The company does not have to issue invoices for this financial revenue, but only prepare collection documents according to regulations.

Vinh Long Provincial Tax Department: Dispatch No. 970/CTVLO-TTHT dated 09 September 2024

Declare FCT finalization

Pursuant to the provisions of Point n, Clause 4 and Point e, Clause 6, Article 8 of Decree No. 126/2020/ND-CP dated 19 October 2020 of the Government detailing a number of articles of the Law on Tax Administration:

“Article 8. Taxes declared monthly, quarterly, annually, declared each time a tax liability arises and tax finalization declaration

4. Other taxes and revenues belonging to the state budget are declared each time they arise, including:

n) Value-added tax and corporate income tax of foreign organizations and individuals doing business in Vietnam or earning income in Vietnam (hereinafter referred to as foreign contractors) are applied according to the direct method. ; Corporate income tax of foreign contractors is applied according to the mixed method when the Vietnamese party makes payments to the foreign contractor. In case the Vietnamese party pays the foreign contractor many times in a month, it can be declared monthly instead of declaring each time it arises.

6. Taxes and revenues declared in annual settlement and finalize up to the time of dissolution, bankruptcy, termination of operations, contract termination or enterprise reorganization. ... Specifically as follows:

e) Value added tax and corporate income tax according to the foreign contractor's direct method of settlement at the end of the contractor contract; Corporate income tax according to the mixed method of foreign contractors is settled at the end of the contractor contract; Corporate income tax according to the declaration method of foreign contractors is finalized annually.”

Quang Nam Provincial Tax Department: Dispatch No. 7389/CTQNA-TTHT dated 11 September 2024

Instructions for declaring VAT

- In Clause 3, Article 1 of Decree No. 49/2022/ND-CP dated 29 July 2022 of the Government, regulations on VAT refund:

“3. Amending and supplementing Clause 2, Article 10 as follows:

“2. Business establishments are entitled to tax refunds for investment projects as follows:

a) Business establishments that have registered their business and registered to pay value added tax using the deduction method (including newly established business establishments from investment projects) have new investment projects (including including investment projects divided into multiple investment phases or investment categories) according to the provisions of the Investment Law in the same province, city or different province or city where the head office is located (except for cases where the head office is located) in accordance with the provisions of Point c of this Clause and investment projects to build houses for sale, investment projects that do not form fixed assets) in the investment phase or projects to search, explore and develop oil and gas fields in the investment phase, have an accumulated input value-added tax amount of 300 million VND or more on goods and services arising during the investment stage that has not been fully deducted and will be eligible for a value-added tax refund.

Business establishments shall declare value added tax separately for investment projects and must offset the input value added tax amount of the investment project with the value added tax amount payable for ongoing production activities (if any). After offsetting, if the accumulated input value added tax of the investment project that has not been fully deducted is 300 million VND or more, the value added tax will be refunded...”.

Tay Ninh Provincial Tax Department: Dispatch No.: 3021/CTTNI-TTHT dated 16 September 2024

Re: Policies on invoices and VAT refund documents for exported goods

Pursuant to Point b, Clause 3, Article 13 of Decree No. 123/2020/ND-CP dated 19 October 2020 of the Government regulating invoices and documents:

“Article 13. Application of electronic invoices when selling goods and providing services

...

3. Regulations on the application of electronic invoices, warehouse delivery notes cum internal transportation, warehouse delivery notes consigned to agents for a number of specific cases according to management requirements as follows:

...

b) In case of entrusted export of goods:

- When exporting goods to the entrusted facility, the facility that has the entrusted goods for export uses the warehouse delivery note and internal transportation.
- When the goods have been actually exported with confirmation from the customs authority, based on the comparison documents, confirmation of the quantity and value of the goods actually exported by the export consignment facility or the Departments with goods entrusted for export shall issue value-added electronic invoices for tax declaration and payment, value-added tax refund or sales electronic invoices. Export entrusted establishments use value-added electronic invoices or sales electronic invoices to export to foreign customers.”
- Pursuant to Clause 1, Point b Clause 2 Article 28 Circular 80/2021/TT-BTC dated 29 September 2021 of the Ministry of Finance guiding the implementation of a number of articles of the tax administration law and Decree No. 126/2020 /ND-CP dated 19 October 2020 of the Government detailing a number of articles of the Law on Tax Administration.

“Article 28. Dossier requesting value added tax refund

Documents requesting value-added tax refund according to the provisions of law on value-added tax (except for value-added tax refund according to international treaties; refund of input value-added tax that has not been deducted upon ownership change, enterprise conversion, merger, consolidation, division, separation, dissolution, bankruptcy, or termination of operations, comply with the provisions of Article 30 and Article 31 of this Circular) including:

1. Request for refund of state budget revenue according to form No. 01/HT issued with Appendix I of this Circular.

2. Relevant documents according to tax refund cases, specifically as follows:

...

b) In case of tax refund for exported goods and services:

b.1) List of invoices and documents for purchased goods and services according to form No. 01-1/HT issued with Appendix I of this Circular, except in cases where the taxpayer has sent electronic invoices to tax authorities;

b.2) List of customs declarations that have been cleared according to form No. 01-2/HT issued with Appendix I of this Circular for exported goods that have been cleared according to customs laws.”