

PROFESSIONAL NEWSLETTER JANUARY 2025

A. OFFICIAL LETTER FOR GUIDANCE AND RESPONSES

1. The General Department of Taxation: Dispatch No. 73/TCT-CS dated January 07, 2025 Re: Corporate income tax policy

- Pursuant to Circular No. 78/2014/TT-BTC dated June 18, 2014 of the Ministry of Finance guiding the implementation of the Government's Decree No. 218/2013/ND-CP of December 26, 2013, detailing and guiding the implementation of the Law on corporate income tax.

+ In clause 2 Article 2 Chapter I giving guidances on taxpayer:

“2. Foreign organizations engaged in production and business activities in Vietnam not under the Investment Law or the Enterprise Law or earning income in Vietnam shall pay CIT under separate guidance of the Ministry of Finance. These organizations, if having capital transfer activities, shall pay CIT under the guidance in Article 14, Chapter IV of this Circular.”

+ At Point a Clause 2 Article 14 Chapter IV provides guidance on taxable income from capital transfer:

“a) Taxed income from capital transfer shall be determined as follows:

$$\begin{array}{ccccccc} \text{Taxed} & & & & \text{Purchasing price} & & \\ \text{income} & = & \text{Transfer price} & - & \text{of the} & - & \text{Transfer} \\ & & & & \text{transferred} & & \text{expenses} \\ & & & & \text{capital} & & \end{array}$$

Of which:

- The transfer price is the total actual value earned by the transferor under the transfer contract.

....

If the payment price is not stated in the transfer contract or when the tax agency has grounds to determine that the payment price does not match the market price, the tax agency may inspect and fix the transfer price. For an enterprise that transfers part of its contributed capital at a transfer price not matching the market price, the tax agency may re-valuate the whole enterprise at the time of transfer for re-determining the transfer price in proportion to the transferred contributed capital amount.

The transfer price shall be fixed on the basis of investigation documents of the tax agency or capital transfer prices in other cases at the same time, of the same economic organization or under similar transfer contracts at the time of transfer. In case the transfer price fixed by the tax agency is inappropriate, it shall be based on the valuation by a professional valuation organization which is competent to determine transfer prices at the time of transfer.

If an enterprise transfers capital to an organization or individual, the capital amount transferred under the transfer contract valued at VND 20 million must have non-cash payment documents. In case the capital transfer has no non-cash payment documents, the tax agency may fix the transfer price.

- The purchasing price of the transferred capital amount is determined on a case-by-case basis as follows:

...”

+ At point c clause 2 Article 14 Chapter IV stipulates the declaration and payment of capital transfer tax:

“c) Foreign organizations doing business in Vietnam or having incomes in Vietnam but not operating under the Investment Law or the Enterprise Law (collectively referred to as foreign contractors) with capital transfer activities shall declare and pay tax as follows:

Capital transferees shall determine, declare, withhold and pay payable CIT amounts on behalf of such foreign organizations. In case capital transferees are also foreign organizations not operating under the Investment Law or the Enterprise Law, enterprises established under Vietnamese law invested by these foreign organizations shall declare and pay payable CIT amounts of such foreign organizations on their behalf.

The tax declaration and payment must comply with legal documents on tax administration”.

2. The General Department of Taxation: Dispatch No. 242/TCT-CS dated January 16, 2025

Re: Adjustment of annual land rent for the next cycle

- Pursuant to clause 1 Article 26, Clause 1 Article 30 of the Government's Decree No. 103/2024/ND-CP stipulates:

“Article 26. Land rent per unit of area

1. If the land is leased out with annual payments without auction:

Annual land rent per unit of area = percentage (%) for calculation of land rent per unit of area multiplied by (x) land price on which land rent is calculated. where:

a) Percentage (%) for calculation of annual land rent per unit of area is from 0,25% to 3%.

On the basis of the actual situation, the first-level People’s Committee shall regulate the percentage (%) for calculation of land rent per unit of area in each zone or route corresponding to each land use purpose after asking for opinions from the People's Council at the same level.

b) The land price on which land rent is calculated is the land price in the Land price list (according to the provisions of point b, point h clause 1 Article 159 of the Land Law); is determined in VND/square meter (VND/m²).

“Article 30. Calculation of land rents

1. In case land is leased out with annual land rent payments, the land rent per year shall be:

$$\begin{array}{lcl} \text{Land rent} & & \text{Annual land rent per unit of area} \\ \text{per year} & = & \text{as prescribed in clause 1 Article} \\ & & \text{26, clause 1, point a clause 2} \\ & & \text{Article 27, clause 1, clause 2} \\ & & \text{Article 28 of this Decree} \end{array} \times$$

- Pursuant to Clause 1 Article 257 of the Land Law 2024 stipulates:

“Article 153. State budget revenues from land

2. Annual land rent is applied stably for every period of 05 years from the date on which the State issues a decision to lease out land or grant permission for repurposing land associated with changing land use mode into land lease by the State with annual land rent payments.

“Article 257. Settlement relating to land finance and land prices when this Law takes effect

1. The land price lists issued by the People's Committees of first-level administrative divisions according to the provisions of Land Law No. 45/2013/QH13 may continue applying until December 31, 2025; In case of necessity, the People's Committees of first-level administrative divisions shall decide to adjust the land price lists according to the provisions of this Law to suit the actual situation of land prices in their divisions.”

- Pursuant to Article 32 of the Government's Decree No. 103/2024/ND-CP stipulates:

“ Article 32. Stabilization of annual land rent

1. The annual land rent (including the annual land rent in case of LUR auction) shall be applied stably according to the provisions of clause 2 Article 153 of the Land Law.

2. The determination of land rent for the next cycle shall comply with the provisions of Clause 1, Article 26, Clause 1, Article 30 of this Decree. In case the land rent for the next period does not increase in comparison with the previous period, the land rent does not have to be adjusted; In case of increase in comparison with the previous period, the adjustable rate of the annual land rent as prescribed in Clause 2, Article 153 of the Land Law shall be equal to (=) the total annual national consumer price index (CPI) of the 5-year period immediately preceding the time of adjustment.

In case the CPI increases by at least 10% for 5 consecutive years, the Ministry of Finance shall cooperate with relevant ministries and central authorities in submitting reports to the Government which will regulate the adjustment to the adjustable rate of the annual land rent of the next period accordingly.”

- Pursuant to Clause 10 Article 51 of the Government's Decree No. 103/2024/ND-CP stipulates:

“Article 51. Transitional provisions applicable to land rent collection:

... 10. In case the land is leased out before the effective date of this Decree and the land rent per unit of area is being applied stably according to land laws before the effective date of the 2024 Land Law, the land rent per unit of area shall continue being applied stably until the end of the stability period. When the stability period ends, the land rent shall be calculated according to the provisions of Article 30 hereof for the next cycle. This land rent shall be stably applied for 05 years; when land rent stability cycle is completed, the land rent shall be adjusted according to the provisions of Article 32 of this Decree.”

3. The General Department of Taxation: Dispatch No. 330/TCT-CS dated January 21, 2025

Re: corporate income tax policies

- At clause 1 Article 15 of the Law on Investment No. 61/2020/QH14 dated June 17, 2020 stipulates the forms and objects for application of investment incentives:

“1. Forms of investment incentives:

a) Corporate income tax incentives, including application of a lower rate of corporate income tax for a certain period of time or throughout the investment project execution; exemption from and reduction of tax and other incentives prescribed by the Law on Corporate Income Tax.”

- In the Appendix to the list of areas eligible for investment incentives issued together with Decree No. 31/2020/ND-CP dated March 26, 2021 guiding the Law on Investment, Tran De district, Soc Trang province is in an extremely difficult social area.

- At clause 6 Article 1 of the Government's Decree No. 91/2014/ND-CP dated October 1, 2014 amending and supplementing clause 3 Article 16 of the Government's Decree No. 218/2013/ND-CP dated December 26, 2013:

“3. The incomes from performing new investment projects prescribed in Clause 3, Article 15 of this Decree and income of the business from performing new investment projects in industrial parks (except for industrial parks located in socially and economically advantaged areas) shall be eligible for tax exemption for 2 years and 50% tax reduction for the next 4 years.

The socially and economically advantaged areas prescribed in this Clause are urban districts of special class cities or the first class cities affiliated to the Central and the first class cities affiliated to provinces, not including urban districts of the aforesaid cities converted from districts from January 1, 2009; where the industrial parks are located in both advantaged and disadvantaged areas, the determination of tax incentive for industrial parks based on actual location of the investment project. The determination of special class cities prescribed in this Clause shall comply with regulations of the Government on classification of cities.”

- According to the provisions of Articles 15 and 16 of the Government's Decree No. 218/2013/ND-CP dated 26/12/2013 guiding the implementation of the Law on Corporate Income Tax and Circular No. 96/2015/TT-BTC dated 22/6/2015 of the Ministry of Finance guiding corporate income tax amending and supplementing Circular No. 78/2014/TT-BTC dated 18/6/2014 stipulating: Incomes of enterprises from the implementation of new investment projects in areas with extremely difficult socio-economic conditions specified in the Appendix issued together with Decree No. 218/2013/ND-CP are entitled to a incentive tax rate of 10% within 15 years, corporate income tax exemption for 4 years, reduction of 50% of tax payable for the next 9 years.

- At clause 3, Article 19 of Decree No. 218/2013/ND-CP mentioned above stipulates the conditions for application of incentives of corporate income tax:

“3. In the same period of time, if the enterprise is entitled to different rates of incentive tax for the same income, then the enterprise may choose the most favorable tax incentive”.

- Clause 3, Article 18 of the Law on corporate income tax No. 32/2013/QH13 (on the amendments to the law on corporate income tax No. 14/2008/QH12) stipulates:

“3. The tax rate of 20% in Clause 2 Article 10 and the tax incentives in Clause 1 and Clause 4 Article 4, Article 13, and Article 14 of this Law are not applicable to:

a) Incomes from transfer of capital, transfers of the right to contribute capital; incomes from the transfers of real estate, except for social housing specified in Article 13 of this Law; incomes from transfers of investment projects, transfers of the right to participate in investment projects, transfers of the right to explore and extract minerals; incomes from operations outside Vietnam;...”

- At Article 13 of the Government's Decree No. 218/2013/ND-CP dated 26/12/2013 stipulates:

“Article 13. Income from transfer of real estate including income from transfer of land use right; income from the sublease of land of the real estate business enterprises as prescribed by law on land regardless of with or without infrastructure, architectural works attached to the land, income from the transfer of houses and construction works attached to land, including the assets attached to those houses and construction works regardless of with or without transfer of land use right, land lease right and income from the transfer of other assets attached to land;”

4. The Tax Department of Phu Yen province: Official Letter No. 99/CTPHY-TTHT dated January 10, 2025

Re: Tax declaration for adjusted invoices

- Pursuant to Clause 3, Article 7 of Circular No. 78/2021/TT-BTC dated September 17, 2021 of the Ministry of Finance providing guidance on the law on tax administration dated June 13, 2019, and the government's decree no. 123/2020/ND-CP dated October 19, 2020, prescribing invoices and records:

“Article 7. Handling of erroneous e-invoices and e-invoice datasheets sent to tax authorities

...

3. The supplementation of tax dossiers concerning corrected or replaced e-invoices (including cancelled e-invoices) shall be carried out in accordance with regulations of the Law on tax administration.”

- Pursuant to Article 47 of the Law on Tax Administration No. 38/2019/QH14, dated June 13, 2019:

“Article 47. Tax dossier supplementation

1. In case the tax declaration dossier submitted to the tax authority is erroneous or inadequate, supplementary documents may be provided within 10 years from the deadline for submission of the erroneous or inadequate tax declaration dossier but before the tax authority or a competent authority announces a decision on tax document examination.

2. When the tax authority or a competent authority has announced the decision on tax inspection or tax audit on the taxpayer's premises, the taxpayer is still allowed to provide supplementary documents; the tax authority shall impose administrative penalties for the violations specified in Article 142 and 143 of this Law.

3. After the tax authority or competent authority issues a conclusion or tax decision when the inspection is done:

a) The taxpayer may provide supplementary tax documents if they increase the tax payable or reduce the deductible tax, exempted tax or refundable tax, and shall face administrative penalties for the violations specified in Article 142 and Article 143 of this Law;

b) If the supplementation leads to a decrease in the tax payable or an increase in the deductible tax, exempted tax or refundable tax, the taxpayer shall follow procedures for filing tax-related complaints.

4. Supplementary documents include:

a) The supplementary tax return;

b) The explanation for the supplementation and relevant documents.

5. Supplementary tax documents on exports and imports shall be provided in accordance with customs laws.”;

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