

PROFESSIONAL NEWSLETTER

FEBURARY 2025

B. OFFICIAL LETTERS FOR GUIDANCE AND RESPONSES

1. **General Department of Taxation. Official Letter No. 680/TCT-CS dated February 18, 2025**
Re: Value-Added Tax (VAT)

Regarding deductible land prices for VAT calculation

The determination of deductible land prices for value-added tax (VAT) calculation in real estate business activities is as follows: (i) Before September 12, 2022, it was implemented in accordance with Point a, Clause 3, Article 4 of Decree No. 209/2013/ND-CP dated December 18, 2013 issued by the Government; (ii) From September 12, 2022 onwards, it follows Clause 1, Article 1 of Decree No. 49/2022/ND-CP dated July 29, 2022, which amends and supplements Decree No. 209/2013/ND-CP dated December 18, 2013. This decree details and guides the implementation of certain provisions of the Law on Value-Added Tax, as amended and supplemented by Decree No. 12/2015/ND-CP, Decree No. 100/2016/ND-CP and Decree No. 146/2017/ND-CP.

Articles 48 to 53 of the 2014 Law on Real Estate Business regulate the transfer of part or the entirety of a real estate project.

Point d, Clause 3, Article 2 of Decree No. 209/2013/ND-CP dated December 18, 2013, stipulates that: Organizations and individuals transferring investment projects for the purpose of producing or trading goods and services subject to VAT to enterprises or cooperatives are not required to declare and pay VAT.

Based on these regulations, in order to determine the deductible land price when calculating VAT for real estate business activities (constructing houses for sale) by Anh Sao Trading and Business Development Co., Ltd., it is necessary to clarify whether the transfer transaction between Thai Son Construction Investment JSC and Anh Sao Trading and Business Development Co., Ltd. Is an investment project transfer that is exempt from VAT declaration and payment, or a real estate transfer classified as a real estate business activity subject to VAT.

If the transaction is determined to be a real estate business activity, a 10% VAT rate shall apply.

2. Determining the deductible land price per square meter of housing for sale and VAT taxable price for invoicing based on progress payments

Before the effective date of Decree No. 49/2022/ND-CP dated July 29, 2022, issued by the Government, and Circular No. 13/2023/TT-BTC dated February 28, 2023, issued by the Ministry of Finance: The determination of the deductible land price per square meter of housing for sale and the VAT taxable price for invoicing based on progress payments was implemented in accordance with Point a.7 and Point b, Clause 10, Article 7 of Circular No. 219/2013/TT-BTC dated December 31, 2013. This Circular provides guidance on the Law on Value-Added Tax and Decree No. 209/2013/ND-CP, which details and guides the implementation of certain provisions of the Law on Value-Added Tax. From the effective date of Decree No. 49/2022/ND-CP dated July 29, 2022, and Circular No. 13/2023/TT-BTC dated February 28, 2023: The determination of the deductible land price and the VAT taxable price shall be implemented in accordance with Clause 1, Article 1 of Circular No. 13/2023/TT-BTC dated February 28, 2023, issued by the Ministry of Finance.

2. Tax Department of Tien Giang Province. Official Letter No. 452/CTTGI-TTH dated February 7, 2025

Re: Issuance of E-Invoices for goods given, donated, or presented

- Pursuant to Decree No. 123/2020/ND-CP dated October 19, 2020, of the Government, prescribing invoices and records:
 - + *At Clause 1, Article 4, regulations on rules for issuance, management, and use of invoices and records:*

“1. When selling goods or providing services, the seller shall issue and send invoices to buyers (including goods/services used for sales promotion, advertising or as samples, goods/services gifted, donated, exchanged or used as salary payment to employees and internal use (except goods which are internally rotated in production process), and goods rented, lent or returned). Such invoices shall have adequate contents written according to the provisions in Article 10 hereof, except e-invoices which must follow the standard format prescribed by tax authorities as prescribed in Article 12 hereof.”
 - + *At Point d, Clause 6, Article 10, regulations on contents of invoices.*

“...d) In case a discount or sales promotion is offered by the seller, the invoice must clearly specify that discount or sales promotion. The price on which VAT is imposed (VAT-exclusive price) in case of discount or sales promotion shall be determined in accordance with the Law on VAT.”
- Pursuant to Clause 3, Article 7 of Circular No. 219/2013/TT-BTC dated December 31, 2013, providing guidance on taxable prices:
 - “...3. Taxable prices of the goods and services (whether bought externally or not) used as gifts, donations, or substitute for wages are the taxable prices of the same kinds or equivalent goods and services at the same time.”

Based on the above guidelines, the Tax Department of Tien Giang Province provides the following opinions:

- In case the Company uses goods and services for giving, donating, or presenting to customers, the Company must issue an invoice. The invoice must fully include the contents as prescribed in Article 10 of Decree No. 123/2020/ND-CP. The taxable price for goods and services given, donated, or presented shall be determined in accordance with the guidance in Clause 3, Article 7 of Circular No. 219/2013/TT-BTC.

3. Tay Ninh Provincial Tax Department. Official Dispatch No. 197/CTTNI-TTHT dated January 14, 2025
Re: VAT and CIT policy

Circular No. 186/2010/TT-BTC dated November 18, 2010, of the Ministry of Finance guiding the remittance abroad of profits earned by foreign organizations and individuals from their direct investment in Vietnam under the Investment Law:

+ At Article 2, Clause 1 stipulates:

“Article 2. Profits which are remitted abroad

1. Profits from Vietnam are remitted abroad by foreign investors under this Circular are legal profits that they are shared or earn from direct investment activities in Vietnam under the Investment Law after finished fully financial obligations with the Vietnam State under regulations”

+ At Article 1, Clause 3 stipulates:

“Article 3. Determination the number of profits remitted abroad

1. Annual profits remitted abroad mean profits foreign investors are shared or earn in a financial year from their direct investment based on audited financial statements, enterprise income tax balance sheets in which foreign investors join investment plus (+) other profit items example as profit items have not remitted yet from previous years adding this year; minus (-) profit items foreign investors have used or committed using in order to reinvest in Vietnam, the profit items foreign investors have used to pay for expenditure items of foreign investors for production and business activities or for foreign investors’ personal demands in Vietnam.”

- Circular No. 103/2014/TT-BTC dated August 6, 2014, of the Ministry of Finance guidelines for fulfillment of tax liability of foreign entities doing business in Vietnam or earning income in Vietnam:

+ Article 1. Regulated entities

This Circular is applied to the entities below (except for the cases in Article 2 Chapter I):

“Foreign business organizations having permanent establishments in Vietnam or not; foreign business individuals that are residents of Vietnam or not (hereinafter referred to as foreign contractors and foreign sub-contractors) who do business in Vietnam or earn income in Vietnam under contracts, agreements, or commitments between the foreign contractor and a Vietnamese entity or between a foreign sub-contractor and a foreign sub-contractor to perform part of the main contract”

4. Da Nang Tax Department. Official Letter No. 1430/CTDAN-TTHT dated February 24, 2025

Re: Personal income tax finalization for transferred employees

Pursuant to Points d.1 and d.2, Clause d, Item 6, Article 8 of Decree No. 126/2020/ND-CP dated October 19, 2020, of the Government, which provides regulations on personal income tax finalization:

“d) Personal income tax for salary payers; salary earners that authorize salary payers to finalize tax on their behalf; salary earners that finalize tax themselves. To be specific:
d.1) Salary payers shall finalize tax on behalf of authorizing individuals, whether tax is deducted or not. Tax finalization is not required if an individual does not earn any income. In case an employee is re-assigned to a new organization after the old organization is acquired, consolidated, divided or converted, or to a new organization that is in the same system as the old organization, the new organization shall finalize tax as authorized by such employee, including the income paid by the old organization, and collect documents about deduction of personal income tax issued by the old organization to the employee (if any).

d.2) A resident salary earner may authorize the salary payer to finalize tax if:

The salary earner has an employment contract with duration of at least 03 months and is working for the salary payer in reality when the tax is finalized by the salary payer, even if the salary earner has not worked for full 12 months in the year. In case the salary earner is reassigned to a new organization as prescribed in Point d.1 of this Clause, he/she may authorize the new organization to finalize tax.”

Accordingly, in cases where an employee with a labor contract of at least 3 months is reassigned from a subsidiary to the parent company and is still working at the time the parent company finalizes tax, the employee is allowed to authorize the parent company to finalize their personal income tax (PIT) in accordance with Point d.2, Clause d, Item 6, Article 8 of Decree No. 126/2020/ND-CP.

The parent company is responsible for finalizing PIT on behalf of the employee for the income paid by both the parent and subsidiary company. Additionally, the parent company must collect PIT deduction certificates issued by the subsidiary for the employee for the period from January 1, 2024, to November 30, 2024, as instructed in Point d.1, Clause d, Item 6, Article 8 of Decree No. 126/2020/ND-CP.

5. Dak Lak Tax Department – Official Letter No. 360/CTĐLA-TTHT dated February 17, 2025

Re: Personal income tax policy

1. Deadline for personal income tax finalization

Pursuant to Point a.5, Clause 3, Article 21 of Circular No. 92/2015/TT-BTC dated June 15, 2015

“a.5) Some cases of tax statements:

...

If a foreign resident who finishes his/her employment contract in Vietnam has not made a tax statement before exit, he/she may authorize the income payer or another entity to make the tax statement according to Civil Code. The authorized entity is responsible the tax authority for the PIT payable by the foreign resident. In this case the tax statement must be submitted within 45 days from the day of exit.”

2. Tax finalization dossier

Pursuant to the list of tax declaration dossiers issued together with Decree No. 126/2020/ND-CP and the tax declaration form issued together with Circular No. 80/2021/TT-BTC, the PIT finalization dossier includes:

- Personal income tax finalization declaration: Form No. 02/QTT-TNCN.

- Appendix on dependent deduction: Form No. 02-1/BK-QTT-TNCN (if applicable).
- Tax withholding certificate: Issued by the income-paying organization.
- Copy of passport: Including the personal information page and pages with entry/exit stamps.
- Labor contract and termination decision.
- Income confirmation: Issued by the income-paying organization.

If an individual authorizes the income-paying organization to finalize tax on their behalf, they must prepare a Tax Finalization Authorization Form according to Form No. 08/UQ-QTT-TNCN issued in Appendix II of Circular No. 80/2021/TT-BTC.

3. Personal Income Tax Refund

Pursuant to Article 28 of Circular No. 111/2013/TT-BTC dated August 15, 2013, issued by the Ministry of Finance, which stipulates:

- “1. The refund of personal income tax applies to the persons that have registered and obtain tax codes when they submit the tax settlement form.*
- 2. If the person has delegated the income payer to settle tax, tax refund shall be made via the income payer. The income payer shall offset the overpaid and underpaid tax. After offsetting, the overpaid tax shall be offset against the tax in the next period or refunded on request.*
- 3. The person that declares tax directly may choose to claim a tax refund or offset it against the tax in the next period at the same tax authority.*
- 4. Person eligible for the refund of personal income tax that submits the tax settlement behind schedule is exempt from fines for overdue tax statement.”*

Application for personal income tax refund on income from salaries and wages
Pursuant to Article 42 of Circular No. 80/2021/TT-BTC dated September 29, 2021, issued by the Ministry of Finance, the regulations are as follows:

“a) In case the income payer finalize tax as authorized by the individual, the application shall include:

- a.1) The application form No. 01/DNXLNT in Appendix I hereof;*
- a.2) The authorization letter in case the taxpayer does not apply for tax refund himself/herself, unless the tax agent submits the tax refund application under a contract between the tax agent and the taxpayer;*
- a.3) The list of tax payment documents according to Form No. 02-1/HT in Appendix I hereof (prepared by the income payer).*

b) In case the income earner directly finalizes tax with the tax authority and has overpaid tax on the terminal PIT form, the tax refund application is not required. The tax authority shall decide whether to refund overpaid tax according to PIT finalization dossier as per regulations.”

4. Responsibility for finalizing personal income tax on behalf of individuals

Pursuant to Point d, Clause 6, Article 8 of Decree No. 126/2020/ND-CP dated October 19, 2020 of the Government elaborating a number of articles of the Law on Tax Administration.

“d) Personal income tax for salary payers; salary earners that authorize salary payers to finalize tax on their behalf; salary earners that finalize tax themselves. To be specific:

d.1) Salary payers shall finalize tax on behalf of authorizing individuals, whether tax is deducted or not...

*d.2) A resident salary earner may authorize the salary payer to finalize tax if:
The salary earner has an employment contract with duration of at least 03 months and is working for the salary payer in reality when the tax is finalized by the salary payer, even if the salary earner has not worked for full 12 months in the year. In case the salary earner is reassigned to a new organization as prescribed in Point d.1 of this Clause, he/she may authorize the new organization to finalize tax.*

The salary earner has an employment contract with a duration of at least 03 months and is working for the salary payer in reality when tax is finalized by the salary payer, even if the salary earner has not worked for full 12 months in the year, and earns an average monthly irregular income not exceeding 10 million VND which on which 10% personal income tax has been deducted and does not wish to have this income included in the tax finalization dossier.

d.3) A resident salary earner shall directly submit the personal income tax finalization dossier to the tax authority in the following cases:

...

An individual that is a foreigner whose employment contract in Vietnam has ended shall submit a tax finalization dossier to the tax authority before exit or authorize the income payer or another organization or individual to prepare and submit the tax finalization dossier as per regulations. The income payer or the authorized organization/individual must pay tax arrears if tax is underpaid or will receive a refund in case tax is overpaid.”

