

PROFESSIONAL NEWSLETTER FOR MARCH 2025

B. OFFICIAL LETTER FOR GUIDANCE AND RESPONSES

1. General Department of Customs. Official dispatch No. 896/TCHQ-TXNK. dated February 21, 2025
Re: Request for 100% tax refund

Pursuant to Point c, Clause 1, Article 19 of the Law on Export and Import Duties No. 107/2016/QH13, which provides for cases of tax refund:

“c) Any taxpayer who has paid import duty but the imports has to be re-exported shall receive a refund of import duty and does not have to pay export duty;”

Pursuant to Clause 2, Article 19 of the Law on Export and Import Duties No. 107/2016/QH13, which stipulates:

“2. Tax on the goods specified in Point a through c of Clause 1 of this Article shall be refunded if such goods have not been used or undergone working or processing.”

Pursuant to Clause 1, Article 34 of the Government’s Decree No. 134/2016/ND-CP dated September 01, 2016, as amended and supplemented by Clause 17, Article 1 of Decree No. 18/2021/ND-CP dated March 11, 2021, which provides for tax refunds on re-exported imported goods:

“1. Paid import duties on the following imports that have to be re-exported shall be refunded and export duties thereon shall be cancelled:

a) Imports that have to be re-exported and returned to their owners; Imports that have to be exported to a foreign country or exported into a free trade zone for consumption therein.

The re-export of goods must be done by the initial importer or a person authorized by the initial importer;

b) Imports that are sent by an overseas organization or individual to an organization or individual in Vietnam by international postal service or express delivery service, duties on which have been paid but delivery is failed and goods have to be re-exported;

c) Imports on which duties have been paid and then goods are sold to foreign vehicles operating international routes through Vietnamese ports or Vietnamese vehicles operating international routes;

d) Imports on which import duties have been paid and that are re-exported while they are retained at checkpoint depot under customs supervision.

The taxpayer shall provide truthful information about the imported goods, the number and date of the sale contract and the buyer’s name on the export declaration.

The customs authority shall verify information provided by the taxpayer and specify the result to serve the refund of duties.”

2. Binh Duong Provincial Tax Department. Official dispatch No. 2656/CTBDU-TTHT dated February 26, 2025

Re: Corporate income tax incentives

Pursuant to Clause 3, Article 10 of Circular No. 96/2015/TT-BTC dated June 22, 2015 of the Ministry of Finance, amending and supplementing Clause 5, Article 18 of Circular No. 78/2014/TT-BTC (as amended and supplemented under Article 5 of Circular No. 151/2014/TT-BTC), which provides:

“5. With regard to new project of investments:

a) New projects of investment that are given CIT incentives prescribed in Article 15 and Article 16 of Decree No. 218/2013/ND-CP include:

- Projects that are granted First investment certificates from January 01, 2014 and earn revenues after the grant of certificates of investment.
- Any domestic project of investment that is associated with establishment of a new enterprise whose capital is below VND 15 billion, not on the list of fields subject to conditions, and granted the Certificate of Enterprise registration from January 01, 2014.
- Any project of investment that is independent from the project of an operating enterprise (including those whose capital is below VND 15 billion and not on the list of fields subject to conditions) and granted the Certificate of Enterprise registration from January 01, 2014 to execute such independent project.

...

New projects of investment must be granted investment licenses or certificates of investment as prescribed by regulations of law on investment in order to be given CIT incentives.

...”

Pursuant to Article 6 of Circular No. 151/2014/TT-BTC dated October 10, 2014 of the Ministry of Finance, amending and supplementing Clause 3, Article 20 of Circular No. 78/2014/TT-BTC, which provides:

“3. The incomes from performing new investment projects prescribed in Clause 4, Article 19 of Decree No. 78/2014/TT-BTC dated June 18, 2014 of the Ministry of Finance 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 class I cities affiliated to the central and the class I cities affiliated to provinces, not including urban districts of the aforesaid cities converted from districts from January 1, 2009; where an industrial park is located in both advantaged and disadvantaged areas, the determination of tax incentive for such industrial park depends on the actual location of the investment project...”

Pursuant to Article 22 of Circular No. 78/2014/TT-BTC dated June 18, 2014 of the Ministry of Finance, which provides for the procedures for application of CIT incentives as follows:

“Article 22. Procedures for application of CIT incentives

Enterprises shall determine by themselves conditions for enjoyment of tax incentives, preferential tax rates, the tax exemption or reduction duration, and losses allowed to be cleared against taxed incomes in order to declare and finalize tax with tax agencies.”

3. Hanoi Tax Department. Official dispatch No. 11912/CTHN-TTHT dated March 3, 2025

Re: Tax policy

- Pursuant to Circular No. 103/2014/TT-BTC dated August 06, 2014 of the Ministry of Finance, which provides guidelines for the fulfillment of tax liability applicable to foreign organizations and individuals doing business in Vietnam or earning income in Vietnam:

+ At Clause 1, Article 1, which provides for regulated entities:

“1. 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.”

+ At Article 7, which provides for income subject to corporate income tax

“3. Incomes earned in Vietnam by foreign contractors and foreign sub-contractors are any incomes they receive under main contracts or subcontracts (except for the case described in Article 2 Chapter I), regardless of their business locations. Taxable incomes of foreign contractors and foreign sub-contractors in some cases:

...

- Income from loan interest means income of the creditor from loans, whether or not such loans are secured, whether or not the creditor receive profits of the borrower; income from deposit interest (except for deposit interest of foreigners and interest derived from deposit accounts meant to sustain operation in Vietnam of diplomatic missions, representative offices of international organizations and non-governmental organizations in Vietnam), including associated bonuses (if any); income from interest on late payment under contracts; income from bond interest and bond discounts (except for tax-free bonds), treasury bills, income from certificates of deposit.

Loan interest includes the fees payable by the Vietnamese party under the contract.”

+ At Article 11, which provides for the requirements and regulated entities subject to the direct method of tax payment:

“If the foreign contractor or foreign sub-contractor fails to meet any of the requirements mentioned in Article 8 Section 2 Chapter II, the Vietnamese party shall pay tax on their behalf in accordance with instructions in Article 12 and Article 13 Section 3 of Chapter II.

4. Long An Provincial Tax Department. Official dispatch No. 707/CTLAN-TTHT dated February 19, 2025

Re: Tax policy

- Pursuant to Article 2 of Circular No. 25/2018/TT-BTC dated March 16, 2018, amending and supplementing Clause 4, Article 18 of Circular No. 219/2013/TT-BTC dated December 31, 2013 of the Ministry of Finance (as amended and supplemented by Circular No. 130/2016/TT-BTC dated August 12, 2016 of the Ministry of Finance), which provides as follows:

“4. Refund of tax on exported goods/services

a) In a month (in case of monthly declaration) or quarter (in case of quarterly declaration), if the input VAT on exported goods/services (including goods that are imported and subsequently exported to non-tariff areas and the goods that are imported and subsequently

exported to other countries) of a business establishment remains at least 300 million dong after being offset against, it shall be refunded by month or quarter. If such input VAT is less than 300 million dong, it shall be offset against in the next month/quarter.

In a month/quarter, if a business establishment has both exported goods/services and goods/services sold domestically, input VAT on purchases used for manufacturing of exported goods/services shall be separately recorded. Otherwise, input VAT shall be determined according to the ratio of revenue from exported goods/services to total revenue from goods/services accrued from the tax period succeeding the period in which tax is refunded to the current period in which tax refund is claimed.

If the input VAT on exported goods and services (including the input VAT separately recorded and the input VAT determined through the aforementioned ratio) remains at least 300 million dong after having been deducted from VAT on goods and services sold domestically, the business establishment shall receive a refund of VAT on exported goods and services. The refunded amount of VAT on exported goods and services shall not exceed the revenue from such exported goods and services multiplied by (x) 10%...”

Pursuant to Article 16 of Circular No. 219/2013/TT-BTC dated December 31, 2013, which provides for the conditions for deducting and refunding input VAT on exported goods and services:

“Article 16. Conditions for deducting and refunding input VAT on exported goods and services

VAT on exported goods and services (except for the cases in Article 17 of this Circular) shall only be deducted and refunded when the documents mentioned in Clause 2 Article 9 and Clause 1 Article 15 of this Circular are presented. In particular:

1. The contract to sell, process goods, or provide services for a foreign entity. If the exported is entrusted, the compulsory documents are the entrustment contract and the note of entrustment contract finalization or a debt comparison note between the entrusting party and the entrusted party, specifying the quantity, categories, value of exported goods, the export contract number; the date and amount of money on the bank transfer receipt for the payment between the foreign party and the entrusted party, the date and amount of money on the receipt for payment to the entrusting party by the entrusted party, number and date of the customs declaration of exported goods made by the entrusted party.
2. If customs procedure has been completed in accordance with instructions of the Ministry of Finance: the customs declaration.

If the taxpayer exports software programs in the form of physical packages, the customs declaration must be made similarly to ordinary goods in order to deduct input VAT.

The customs declaration is not needed in the following cases:

- The software and export exported via electronic means. The taxpayer must follow the procedure for certifying that the buyer has received the exported services or software via electronic means in accordance with the laws on electronic commerce.
- The construction or installation executed overseas or in free trade zones.
- Supply of electricity, water, stationery, and goods serving every day life of export processing company, including food and consumables (including personal protective equipment).

3. Payment for exported goods and services must be made by bank transfer.

a) Bank transfer means the transfer of money from the importer's account to the exporter's account at banks in accordance with the contract and regulations of the banks. Payment receipts are credit notes of the exporter's bank regarding the amount transferred from the importer's account. If the payment is deferred, the agreement on deferred payment must be included in the export contract. When the payment is due, the taxpayer must obtain the bank

transfer receipt. If the export is entrusted, it is required to have a bank transfer receipt issued by the foreign party to the entrusted party, and the entrusted party must pay by bank transfer for the exported goods to the entrusting party. If the foreign party directly pays the exporting party, the exporting party must have the bank transfer receipt and this payment must be stipulated in the contract.”

5. Binh Duong Provincial Tax Department. Official dispatch No. 3144/CTBDU-TTHT dated March 10, 2025

Re: Value-added tax (VAT) policy

- Pursuant to Clause 2, Article 42 of the Law on Tax Administration No. 38/2019/QH14 (effective from July 1, 2020), which provides for the rules for tax declaration and tax calculation:

“Taxpayers shall calculate the tax payable themselves, except for the cases in which tax has to be calculated by the tax authority as specified by the Government.”

- Pursuant to Clause 1, Article 28 of the Law on Commerce No. 36/2005/QH11 dated June 14, 2005 of the National Assembly, which provides:

“Article 28.- Export and import of goods

1. Export of goods means the bringing of goods out of the territory of the Socialist Republic of Vietnam or into special zones in the Vietnamese territory, which are regarded as exclusive customs zones according to the provisions of law.”

- Pursuant to Clauses 4 and 5, Article 3 of the Law on Foreign Trade Management No. 05/2017/QH14 dated June 12, 2017 of the National Assembly, which provides:

“Article 3. Definitions

...

4. “customs-controlled area” means a geological area in the territory of Vietnam that is established in accordance with regulations of Vietnam law and international treaties to which the Socialist Republic of Vietnam is a signatory and the exchange of products between this area and the remaining territory of Vietnam or foreign countries are considered as import and export activities.

5. “foreign trader without presence in Vietnam” means a foreign trader who does not engage in investment and business activities in Vietnam according to the forms prescribed in law on investment, trade or enterprises and does not establish any representative office or branch in Vietnam in accordance with regulations of law on trade or enterprises.”

- Pursuant to Clause 2, Article 3 of Decree No. 90/2007/ND-CP dated May 31, 2007 of the Government, which provides for the export rights of foreign business entities without a presence in Vietnam:

“Article 3 Interpretation of terms

...

2. Foreign business entity which does not have a presence in Vietnam means a foreign business entity which does not make a direct investment in Vietnam in the forms stipulated in the Law on Investment and the Commercial Law; and which does not have a representative office or a branch in Vietnam pursuant to the Commercial Law.”

- Pursuant to Clause 1, Article 35 of Decree No. 08/2015/ND-CP dated January 21, 2015 of the Government, which provides for the implementation of the Customs Law:

“1. In-country exports and imports shall include:

- a) Goods processed in Vietnam under contract manufacturing agreements with foreign organizations or individuals, and sold to Vietnamese organizations or individuals;*
- b) Goods traded between domestic enterprises and exporting processing enterprises (EPEs) or enterprises in free trade zones;*
- c) Goods traded between Vietnamese enterprises and foreign organizations or individuals that have no commercial presence in Vietnam, and delivered to another enterprise in Vietnam under designation by the foreign trader.”*

- Pursuant to Clause 1, Article 86 of Circular No. 38/2015/TT-BTC dated March 25, 2015 of the Ministry of Finance, which provides for customs procedures, customs supervision and inspection, export duty, import duty, and tax administration applied to exports and imports:

“Article 86. Customs procedures applied to indirect export

1. Indirect exports include:

- a) Processed products: hired/borrowed machinery and equipment; excess materials; waste, rejects under processing contracts prescribed in Clause 3 Article 32 of Decree No. 187/2013/ND-CP ;*
- b) Goods traded between an inland enterprise and an EPE or an enterprise in a free trade zone;*
- c) Goods traded between a Vietnamese company and a foreign entity without a representative in Vietnam and are requested to be delivered to another enterprise in Vietnam by the foreign entity.”*

- Pursuant to Circular No. 219/2013/TT-BTC dated December 31, 2013 of the Ministry of Finance, providing guidance on implementation of the Law on Value-Added Tax and the Government’s Decree No. 209/2013/ND-CP dated December 18, 2013, which provides guidance on some articles of the Law on Value-Added Tax:

+ As prescribed in Clause 20, Article 4 of Circular No. 219/2013/TT-BTC:

“Article 4. Goods and services that are not subject to VAT

...

Free trade zones include: export-processing zones, export processing companies, tax-suspension warehouses, bonded warehouses, special economic zones, commercial - industrial zones, and other economic zones established and provided with similar tax incentives as free trade zones according to Decisions of the Prime Minister. The transactions between a free trade zone and an external party are considered export/import. ...”.

...”

+ As prescribed in Clause 1, Article 9 of Circular No. 219/2013/TT-BTC:

“Article 9. Tax rate of 0%

1. 0% VAT is applied to exported goods and services; construction and installation overseas and in free trade zones; international transport; exported goods and services that are not subject to VAT, except for the cases in Clause 3 of this Article, in which 0% VAT is not applied.

Exported goods and services are those that are sold to overseas organizations and individuals and are consumed outside Vietnam, sold to the entities in free trade zones, or sold to foreign customers as prescribed by law.”

+ As prescribed in Clause 2, Article 17, which provides conditions for deduction and refund of input VAT in some cases of deemed export:

“Article 17. Conditions for deduction and refund of input VAT in some cases of deemed export:

2. Compulsory documents for in-country exports:

a) A sales contract or a processing contract requiring goods to be delivered to a recipient in Vietnam;

b) A customs declaration of in-country exports for which customs procedure has been completed;

c) A VAT invoice or export invoice specifying the foreign buyer's name, the recipient's name, and delivery address in Vietnam.

d) The goods sold to foreign traders and delivered to a location in Vietnam must be paid with convertible foreign currencies by bank transfer. Wire transfer receipts must comply with this Clause 3 Article 16 of this Circular. If the appointed recipient is authorized by the foreign party to pay the in-country exporter, the currency used for payment must comply with the laws on foreign currencies

dd) The in-country exports of a foreign-invested company must be conformable with the investment license.”

