SUMMARY OF TAX ISSUES

Prepared by VBF Tax & Customs WG - Vietnam Business Forum

A. Issues of corporate income tax, VAT, contractor tax, and tax penalties

No.	Relevant regulations	Issue	Proposal
1	Circular 201/2013/TT-BTC Decree 126/2020/ND-CP Circular 41/2021/TT-BTC	**Applying the Advance Pricing Agreement (APA) on the method of calculating taxable prices in tax administration for enterprises having related party transactions that have remained outstanding for many years.** Adopting APA is necessary because this is a general trend that tax authorities around the world are effectively adopting to manage revenue from cross-border transactions. In principle, this mechanism will also bring benefits to taxpayers and serve as a bridge for Vietnam's international integration in tax. Although Vietnam has yet to obtain much practical experience as it is a new tax mechanism, since the first issuance of APA guidance, Circular 201/2013/TT-BTC (December 2013), and most recently Article 41 of Decree 126/2020/ND-CP and Circular 41/2021/TT-BTC, it has been 8 years without any bilateral APA applications approved or circulated, leading to a major backlog of taxpayers' pending APA applications over the years even though there is already a legal basis. By observations, taxpayers' difficulties include: - Vietnam has not published the commercial database used for related party transaction and APA applications, therefore, there is no legal basis for verification when negotiating with tax authorities of other countries. Tax authorities of countries in the region such as Japan,	It is recommended that Ministry of Finance (MOF) and the General Department of Taxation (GDT) process the pending APA applications to create favorable conditions for taxpayers, and avoid removal of required time for application processing (according to international practice) that leads to backlogs at the multiple levels and untimely progress updates to APA applicants. - Vietnam tax authorities should officially publish the commercial database used in processing APA application and increase the legality of this commercial database for taxpayers to use. - It is recommended to provide clear regulations on calculating and applying the standard market price range in APA application, whether it is based on: + The most recent 3-year weighted average data of selected similar independent companies up to the time of APA application submission. + The standard independent transaction value range proposed in bilateral/multilateral APA application, which is a set of values from the 25th percentile to the 75th percentile according to international practice.

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<tr><th>No.</th><th>Relevant regulations</th><th>Issue</th><th>Proposal</th></tr>
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Korea, Singapore, Malaysia, Indonesia are all using commercial databases as reliable source in processing APA applications.
- Current regulations do not provide clearly for calculating and applying the standard market price range in bilateral APA applications using 1-year data or a 3-year average up to the time of APA application submission.
- Circular 41/2021/TT-BTC applies international practice, removing phased-based time for processing APA applications, but in reality, no application has been completely processed since 2014, leading to a major backlog. Taxpayers are also not regularly updated on application processing progress. Meanwhile, countries in the region have handled the process efficiently for taxpayers, including:
<table>
<tr><th>Year</th><th>2018</th><th>2019</th><th>2020</th><th>2021</th><th>2022</th></tr>
<tr><td>China</td><td>156</td><td>177</td><td>206</td><td>226</td><td>260</td></tr>
<tr><td>Japan</td><td>146</td><td>145</td><td>No data</td><td>No data</td><td>No data</td></tr>
<tr><td>South Korea</td><td>204</td><td>218</td><td>225</td><td>No data</td><td>240</td></tr>
<tr><td>Singapore</td><td colspan="2" rowspan="3">No data</td><td>As of end of 2020: 46</td><td>As of end of 2021: 58</td><td>As of end of 2022: 69</td></tr>
<tr><td>Indonesia</td><td>153</td><td>No data</td><td>No data</td></tr>
<tr><td>Malaysia</td><td>421</td><td>No data</td><td>No data</td></tr>
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- MOF and GDT should amend regulations so that local Tax Departments do are not involved in APA appraisal, discussions, and negotiation. Local tax departments should only be involved in providing information to GDT when necessary.

We also have some other recommendations for MOF and GDT to consider:

- Supplementing regulations guiding GDT on referencing bilateral APAs signed by companies in the same group of the taxpayer with foreign tax authorities with the same functions as that of the Vietnam taxpayer, aiming to expedite the process of APA application approval and appraisal due to international precedents.

- Additional regulations on the time frame for processing APA applications to assure taxpayers in implementing business plans according to the submitted APA application.
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		Local Tax Departments join with the General Department of Taxation (GDT) in APA appraisal, discussions, and negotiation and also conduct tax inspection and supervision. However, according to Circular 41/2021/TT-BTC, when an APA application negotiation is suspended, or the application is withdrawn, canceled or revoked, the information and data provided by the taxpayer in the APA application, explanation upon requests, annual APA reports, and ad hoc reports shall not be used by tax authorities as evidence or documents for the purposes of inspection, audit, or tax imposition. There is no guarantee that the local tax department will not use the information and data in subsequent tax inspections.	
2	• Decree 218/2013/ND-CP date December 26, 2013 • Decree 12/2015/ND-CP dated Februrary 12, 2015 • Law on Investment 2014 • Law on High Technologies 2008 • Law on Science and Technology 2013 • Law on Technology Transfer 2017 • Decree 08/2014/ND-CP date January 27, 2014 • Decree No. 55/2010/ND-CP dated September 10, 2010 • Circular 32/2011/TT-BKHCN dated November 15, 2011	**The issue of "*Using technology appraised according to the Law on High Technologies and the Law on Science and Technology*" should be implemented adequately not to affect the interests of large-scale project investors.** According to current regulations on corporate income tax (CIT) (Law on CIT and Decree 12/2015/ND-CP guiding the law thereof), one of the conditions for a large-scale investment project of VND 12,000 billion to enjoy CIT incentives is **"*Using technology appraised according to the Law on High Technologies and the Law on Science and Technology*"**. LG Display Vietnam Hai Phong has met the conditions of capital, revenue, products and market according to regulations. Particularly for the criteria for using technology	We recommend that the Government, MOF, and MOST research and issue guidance to clarify technology appraisal criteria for businesses entitled to preferential regulations based on large-scale investment in this case. The regulations should clarify: • Is there a separate process for technology appraisal for large-scale investment projects, and are there specific instructions on the process; or • Are projects required to have its technology appraised according to the Investment Law **if** the technology is subject to appraisal or comments by a competent authority before investment approval or issuance of a certificate of investment registration according to the investment law. The issue of **"Using technology appraised according to the Law on High Technologies and the Law on Science and Technology"** should be

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	Point 1e, Article 15 and Point 1a, Article 16 of Decree 218/2013/ND-CP, amended and supplemented in Clause 10 and Clause 15, Article 1 of Decree 12/2015/ND-CP **10. Supplement Point e, Clause 1, Article 15 as follows:** "e) Corporate income from implementing investment projects in the manufacturing sector, except for projects producing goods subject to special consumption tax and mining projects with a minimum investment of VND 12,000 (twelve thousand) billion using technology subject to appraisal according to the Law on High Technologies, Law on Science and Technology, disbursement of total registered investment capital no later than 5 years from the date of investment approval according to the investment law." **Article 44 of Decree 08/2014/ND-CP:** "Article 44. Appraisal authority for scientific basis and technology of	appraised according to the Law on High Technologies and the Law on Science and Technology, we have been instructed by MOF - GDT in the Official Letter 6544/BTC-TCT dated June 23, 2023: *"To have a legal basis, **the Company should consult the Ministry of Science and Technology** (MOST) on the appraisal of the Company's production technology according to the provisions of the Law on High Technologies and Law on Science and Technology **(clarifying whether the Company is subject to technology appraisal before granted an investment registration certificate and the appraisal process**)*. Accordingly, we requested guidance from the MOST on this issue and received MOST response that, according to the provisions of the law on CIT, to enjoy large-scale investment incentives, the company must use the technology appraised according to regulations. MOST also provided that technologies can be appraised in cases where businesses apply for high technology certificates (such as high-tech enterprises, CNC adoption projects, production of high-tech products). However, LG Display is not subject to apply for these types of certificates. We believe that, the procedures to be granted high technology certificates and satisfy other irrelevant criteria to our project to indirectly meet the criteria for using appraised technology will cause unnecessarily complicated administrative burden for businesses. Therefore, we respectfully request that MOF coordinate with MOST and the Ministry of Planning and Investment (MPI) to suggest a solution to us. We are willing to engage experts to	implemented adequately not to affect the interests of businesses.

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	investment projects and socio-economic development programs 1. Socio-economic development programs, investment projects under the approval authority of the Prime Minister and conditional investment projects according to the investment law are subject to appraisal of a scientific basis and technology. … 2. Investment projects subject to investment registration must be appraised by the Department of Science and Technology on scientific basis and technology before granted an Investment Certificate according to investment law. **Clause 2, Article 13, Law on Technology Transfer 2017:** "Article 13. Appraise or provide comments on the technology of investment projects 2. In the investment policies approval process according to the Investment Law, the following investment projects must be appraised or commented on	evaluate the technology we have been using for production at LG Display Vietnam Hai Phong factory. .	

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	technology by a competent state management agency: a) Investment projects using technology restricted from transfer; b) Investment projects that have the risk of adverse impacts on the environment according to the law on environmental protection and use technology."		
3	Clause 4, Article 14 of the Law on Corporate Income Tax No. 14/2008/QH12, as amended and supplemented by Clause 8, Article 1 of the Law on Corporate Income Tax No. 32/2013/QH13 Clause 5, Article 18 of the Law on Corporate Income Tax No. 14/2008/QH12, as amended and supplemented by Clause 12, Article 1 of the Law on Corporate Income Tax No. 32/2013/QH13 Article 5 of Circular No. 151/2014/TT-BTC amending and supplementing Points e & g Clause 5 Article 18 of Circular No. 78/2014/TT-BTC:	**Problems with procedures for declaring CIT incentives for expansion investment projects with phased investment** Currently, instructions on procedures for declaring tax incentives for phased investment projects are only specified in the guiding documents, i.e. Decree and Circular (Circular No. 151/2014/TT-BTC), and only applies to new investment projects without regulations for expansion investment projects, while the nature of investment phasing for new investment projects and expansion investment projects is similar. In fact, many enterprises implementing expansion investment projects also phase their investment and clearly state the investment stages with corresponding time lines. However, because there are no specific regulations, it is difficult for both tax authorities and businesses to carry out procedures for declaring CIT incentives in this case. Specifically: - Determination of whether the criteria for increasing the historical cost/share of historical cost of fixed assets will be based on the additional value of fixed assets of the first investment phase or after	Please amend and supplement Clause 4, Article 14 and Article 18 of the Law on Corporate Income Tax in a manner consistent with new phased investment projects. The application of incentives follows the principle of ensuring investors' entitlement during the full incentive period if the project is granted an investment certificate that meets the conditions for investment incentives. Specifically: **Clause 4, Article 14 of the Law on Corporate Income Tax shall be amended and supplemented as follows:** 4. When an enterprise, which has projects of investment in the fields or localities eligible for enterprise income tax incentives according to this Law, expands the production scale, increases the productivity, upgrades production technologies (expansion), it may choose between tax incentives for operating projects for the remaining time (if any) or tax exemption or reduction for the additional incomes from expansion if one of the three criteria in this Clause is satisfied. The period of tax exemption and tax reduction for the additional incomes from

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		completing the investment with the entire registered capital. - Entitlement period of tax incentives for income arising from each investment stage Therefore, it is necessary to have specific regulations on the principles of applying tax incentives to investment expansion projects in the Law on Corporate Income Tax to address the above problems, ensure consistency in implementation and also ensure profitability rights of investors, incentivizing them to continue investing in Vietnam.	expansion in this Clause is equal to the period of tax exemption and tax reduction for new projects of investment in the same field or locality that is eligible for enterprise income tax incentives. The expansion must satisfy one of the criteria below to be given incentives: a) Historical cost of additional fixed assets reaches at least VND 20 billion when the **registered project of investment is completed ~~and commenced~~**, applicable to expanding investments in the fields eligible for enterprise income tax according to this Law, or at least VND 10 billion, applicable to expanding investments in disadvantaged or extremely disadvantaged localities; b) The proportion of historical cost of incremental fixed assets when the **registered project of investment is completed** reaches at least 20% of the total cost of fixed assets before investment; c) Design capacity increases **when the investment project is completed with a minimum registered capital** of 20% compared to the design capacity before investment. **Clause 5 is added to Article 18 of the Law on Corporate Income Tax as follows:** Article 18. Eligibility conditions for tax incentives: …. 5. For investment projects (including both New and Expanded Investment Projects) hat have been licensed, the investment capital and investment phasing with implementation progress have been registered in the investment registration application submitted to the investment licensing agency, in case

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			the next phases are actually implemented, they will be considered component projects of the licensed projects if they are implemented according to schedule (except for the force majeure or difficulties due to objective reasons in site clearance, handling of administrative procedures by state agencies, natural disasters, fires or other difficulties or force majeure), the component projects of the investment project are entitled to tax incentives for the remaining period of the investment project from the time the component projects earns preferential income. During the implementation of component projects in each of the above phases, if the investor is allowed by the investment authorities to extend the project implementation period and the enterprise implements it according to the extended deadline, they will also enjoy tax incentives according to the above regulations. **[Option 1]:** For an expanded investment project, when applying for tax incentives according to the above regulations, the investor must have a written commitment of eligibility for tax incentives specified in Clause 4 Article 14 of this Law. During the actual implementation of an expanded investment project, if the investor does not meet the conditions and criteria as prescribed, the investor must return the declared amount for tax incentives and a fine and late payment penalty, if any, to the state budget. **[Option 2]:** For an expanded investment project, when applying for tax incentives according to the above regulations, the time the project begins to enjoy incentives is from the tax period when the project meets the conditions

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			and criteria for tax incentives specified in Clause 4, Article 14 of this Law and enjoy the full tax incentive period according to regulations.
4	The Law on Insurance Business 2000 *(amended and supplemented in 2010 and 2019)* effective until December 31, 2022. Decree 73/2016/ND-CP dated July 1, 2016 on details of implementation of the Law on insurance business and Circular 50/2017/TT-BTC dated May 15, 2017. Law on Insurance Business 2023 and Decree 46/2023/ND-CP guiding the Law on Insurance Business 2023. Currently, MOF is drafting a Circular guiding this Law and Decree.	**Upfront Supports for exclusive bancassurance transactions:** In fact and according to market practice, insurance businesses pay upfront supports *for* exclusive bancassurance transactions between insurance businesses and banks as insurance agencies when establishing a model of "cooperative bancassurance between insurance businesses and banks" ("**Upfront Supports**"). However, **difficulties now arise** due to inconsistencies related to the application of **(i)** specialized laws on insurance business to determine whether **the Upfront Supports** are the expenses that insurance businesses are allowed to spend and account and **(ii)** whether these expenses are considered reasonable and valid expenses that insurance enterprises are allowed to deduct when calculating corporate income tax according to the regulations on corporate income tax. **The above content is not a new issue at all because it has been discussed and agreed upon between the Tax Working Group and GDT** regarding the acceptance of Upfront Support as a reasonable and valid expense that insurance businesses are allowed to deduct when calculating their corporate income tax at the meeting on November 25, 2020. ***Because insurance businesses' operations are facing many difficulties, in order to mitigate risks of legal compliance and increased costs for insurance businesses with Exclusive Bancassurance partnership, we would like to restate this content as follows:*** **1. Nature of Upfront Support**: **Upfront Support** is an upfront support amount when establishing a model of "*cooperative bancassurance between insurance businesses and banks*". Accordingly, insurance businesses will pay an upfront fee to banks **to**	With this recommendation, GDT is kindly requested to confirm in writing for insurance businesses and banks that **the Upfront Support is considered as a reasonable and valid expense that insurance businesses are allowed to be deducted when calculating corporate income tax.**

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		be the only partner distributing insurance products to customers of these banks (Exclusive Partner). Based on the widespread recognition of international practice, Upfront Support began to appear in the Vietnamese market around the 2010s and currently exists in most exclusive bancassurance transactions between insurance businesses and banks. In general, the Upfront Support will depend on the calculation and negotiation of the parties; however, basically, the Upfront Support is calculated based on the following two principles: • **Principle of opportunity cost offset**: In an exclusive partnership between an insurance enterprise and a bank, the bank as a distribution partner **is only allowed to have <u>one (01)</u> exclusive partner** that is an (01) insurance enterprise at a time throughout the term of the distribution contract and therefore the bank may lose income and business opportunities that could have been obtained if at the same time distributing insurance products of many different insurance partners. Therefore, the Upfront Support is intended to offset the lost opportunity costs of distribution partners over a long period of time, which can last from 15 to 19 years. This explains the nature of the Upfront Support as mentioned above and why the Upfront Support will not usually be tied to any business results or targets for the distribution partner as applied to bonuses and other remunerations. • **Principles of taking advantage of the distribution network of distribution partners, specifically banks:** When insurance businesses establish exclusive transactions with distribution partners/institutional agents, they will have exclusive access to the	

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		systems, facilities/transaction networks, human resources and customers of those institutional agents, they have to invest much resources over a long period of time to have those assets. Therefore, based on the insurance company's assessment factors, the Upfront Support is **not more expensive than the costs that the insurance company must invest** to build, operate and exploit the scale and similar advantages that institutional distribution partners/dealers already have. **2. Legal regulations governing Upfront Support and interpretation by insurance company**: Currently, **there are no legal provisions directly governing Upfront Support**, but accordingly, relevant parties will refer to the general principles of relevant regulations to determine the nature and the laws governing Upfront Support. According to this approach, from 2001 to present, the law has been applied to determine the Upfront Support amount divided into 2 stages: • ***The period from April 1, 2001 to December 31, 2022***: Governed by the Law on Insurance Business 2000 *(amended and supplemented in 2010 and 2019)* effective until December 31, 2022. Decree 73/2016/ND-CP dated July 1, 2016 on details of implementation of the Law on insurance business and Circular 50/2017/TT-BTC dated May 15, 2017. • ***Period from January 1, 2023 to present***: regulated by the Law on Insurance Business 2023 and Decree No. 46/2023/ND-CP guiding the Law on Insurance Business 2023. Currently, MOF is drafting a Circular guiding this Law and Decree. In both of the above stages, on the insurance business side, we find that the Upfront Support is considered a reasonable and valid expense associated with the insurance company's	

No.	Relevant regulations	Issue	Proposal
		business activities and is a legal income of the bank receiving the Upfront Support provided that they can provide adequate invoices and documents in accordance with the specialized tax regulations. Because: • **There are no regulations restricting or prohibiting insurance companies from paying Upfront Support**. In addition, the Upfront Support does ***not violate the law and is not contrary to social ethics;*** • We also understand that the Upfront Support ***is in the list of expenses specified in "other expenses and deductions according to legal regulations"*** specified in Article 69 on expenses of insurance enterprises and foreign branches in Decree 73/2016/ND-CP dated July 1, 2016 detailing the implementation of the Law on Insurance Business and the Law amending and supplementing a number of articles of the Law on Insurance Business. This law continues to be specifically guided in Article 22 on principles for determining costs of insurance enterprises and foreign branches in Circular 50/2017/TT-BTC dated May 15, 2017. Decree 46/2023/ND-CP dated July 1, 2023 detailing the implementation of a number of articles of the Law on Insurance Business 2022 also has a similar approach when there are provisions on "*other expenses and deductions according to legal regulations*" at Point o Clause 3 Article 50.	

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		• Based on that understanding, this Upfront Support has been recorded by the paying party (insurance company) and the receiving party (bank) in their audited financial statements and fully tax declared in the corresponding fiscal years, in accordance with principles of accounting and recording revenue and expenses. • In fact, as far as we know, independent auditor have never had any comment to exclude the Upfront Supports from income in the financial statements of the banks that received the Upfront Supports. The banks' financial statements are publicly announced on their websites in accordance with the law, including regulations applicable to listed credit institutions and companies. As stated in the above section, the insurance enterprises' understanding and adoption has been agreed by GDT. Specifically, in the Summary of the meeting between MOF and the Vietnam Business Forum on November 25, 2020, the **Issue 21** - ***" Upfront Support expenses paid by insurance agent to banks are not considered deductible expenses"*** was included in the discussion and the parties agreed that ***"agreed with the proposal that the corresponding expenses should be included in deductible expenses for corporate tax purposes" ("Summary of the meeting")*** . This document is currently publicly available at the Vietnam Business Forum Annual Report 2020, at the VBF annual meeting on December 22, 2020 (" **Report**"). The full Report and Meeting Summary are publicly available and can be accessed via the link on VBF's website. We respectfully send the link for easy reference (on page 233): *https://vbf.org.vn/wp-content/uploads/2020/12/VBF-2020-Report-VI.pdf*.	

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		Issue 21 above will not be further discussed or proposed at the Annual Business Forums in subsequent years. According to the operation and communication regulations of VBF and the Government of Vietnam, **the contents agreed** at meetings and recorded in VBF's Public Report **will be considered resolved and no longer an outstanding issue regarding the application of tax regulations and not mentioned again in the VBF subsequent annual reports**. **Therefore, the issue of the Upfront Support cost accounting content for corporate income tax purposes has been clearly confirmed for *the Upfront Support payment practice***, to which insurance businesses and their distribution/agency banks can refer to conduct exclusive transactions and payment and accounting of Upfront Support.	
5	**According to Articles 13, 41, & 42 of Circular No. 80/2021/TT-BTC:** **Article 13. VAT declaration, calculation, allocation and payment** c) With respect to construction activities: c.1) If the taxpayer is a construction contractor, signing a contract directly with the developer to **implement a construction project** in a	**For VAT in the province** Currently, Article 13 of Circular 80/2021/TT-BTC has regulations that VAT for construction activities is equal to 1% of revenue before tax for construction activities in each province. At the same time, the VAT amount paid in the province where the construction project is located is offset against the VAT amount payable at the head office. The indicator [39n] have been removed from the declaration form 01/GTGT as per applicable regulations, so the offset will be done by the tax authorities themselves. However, in case there is an undeducted amount in the head office but it still incurs a payable of 1% in other provinces (usually arising when it has construction and installation activities for EPE customers so there is no payable amount), then there are concerns about how to	To simplify administrative procedures and reduce difficulties for businesses, in case there is no payable amount at the head office for the construction activities in the province, the regulations should follow the direction of not requiring allocation. E.g. **The total amount of VAT payable to provinces where there are construction activities must not exceed the amount of VAT payable by taxpayers at the head office** (similar to regulations on VAT allocation for manufacturing establishments): Not allocate when the total amount of VAT payable to the provinces where the manufacturing facilities are located does not exceed the amount of VAT payable by the taxpayer at the head office).

No.	Relevant regulations	Issue	Proposal
	province other than where the taxpayer's headquarters is located, including the cross-provincial construction projects and items, the taxpayer shall declare value added tax of those projects and items to the tax authority where the construction project is located according to form No. 05/GTGT attached to Appendix II of this Circular; pay the declared tax to the state budget in the province where the construction work is located. In case the State Treasury has made a deduction according to the provisions of Clause 5 of this Article, the taxpayer is not required to pay the tax to the state budget corresponding to the tax amount deducted by the State Treasury. Article 41. Tax authorities' responsibilities for receiving and processing the overpayment refund application. 1. Responsibility for receiving the application for overpayment refund: a) Supervisory tax authorities shall receive and process applications for refund of	handle this province VAT amount. According to the provisions of Articles 41 and 42 of Circular 80, the supervisory tax agency is responsible for receiving the application for refund of overpaid VAT related to construction activities in the province. However, in reality, the Hanoi Tax Department does not accept the refund application but requires the enterprise to apply for a refund in each province where the enterprise has paid taxes.	The enterprises having construction activities in the province shall declare form 05/GTGT in the province at the same time as form 01/GTGT at the head office (both declare and pay tax on monthly basis) and shall only declare the allocation on form 05/GTGT if there are tax payable amount on form 01/GTGT.

No.	Relevant regulations	Issue	Proposal
	overpayments (including refund of overpaid CIT; **refund of overpaid VAT according to Point b, c Clause 3 Article 13 of this Circular**; refund of overpayments upon transfer of ownership, conversion of enterprises, consolidation, merger, full division, partial division, bankruptcy and shutdown of enterprises), except the cases specified in Point b and Point c of this Clause. Article 42. An application for overpayment refund consists of: 2. An application for refund of overpayments of other taxes and amounts shall include: a) Written request for handling overpaid tax amounts, late payment penalty, and fines according to form No. 01/DNXLNT issued with Appendix I of this Circular; b) 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; c) Enclosed documents (if any).		

No.	Relevant regulations	Issue	Proposal
6	Clause 2, Article 16 of Circular No. 219/2013/TT-BTC of MOF: ***"Article 16. Eligibilities for deduction and refund of input tax on exported goods and services*** *2.* ***Customs declaration for exported goods*** *that have completed customs procedures according to MOF's instructions on customs procedures; customs inspection and supervision; export tax, import tax and tax administration for exported and imported goods.* ***Customs declaration is not required in the following cases:*** *For business establishments that export services and software via electronic means, a customs declaration is not required. Business establishments must fully comply with regulations on procedures to confirm that the buyer has received exported services and software via electronic means in accordance with the law on e-commerce.* ***Construction and installation activities abroad or in non-tariff zones."***	**VAT on machinery and equipment used for construction projects for export processing enterprises (EPDs) under lump-sum contracts** Domestic FDI enterprises are construction contractors specializing in implementing lump-sum construction and installation projects in the form of turnkey contracts covering raw materials, goods, and equipment such as *"Factory renovation and construction, gas station construction, construction of floors, parking lot roofs, installation of fire protection equipment, installation of electrical systems"*. In particular, the contractor will assign a domestic enterprise as a subcontractor to perform the mechanical and electrical items, including the value of electrical equipment used, which is an indispensable part to put the work into use and operate according to basic conditions. These are equipments that are attached to the wall or part of the building to contribute to the function of the building upon handover, such as a ceiling air conditioning system used to cool the factory, an electric light system for lighting, wall-mounted ventilation fan systems, water pumps installed to operate water tanks and toilets, etc. Upon handover, the construction contractor will hand over the completed and usable factory and construction project. However, during the inspection process, the tax officer has the opinion that construction, installation of machinery and equipment for EPEs still have to carry out customs procedures and require the construction contractors to have customs declaration to apply the 0% output VAT rate and receive a tax refund. They are only exempt from declaration for the value of construction labor. We find that this view is not reasonable, because: - If construction and installation activities in this regulation only include labor services, there is no need for this exception because customs declaration is not required for services according to Clause 2b, Article 9 of Circular 219/2013. Construction and installation activities here need to be understood as including the	We also observe that the Ministry of Finance and the General Department of Taxation have many instructions for different businesses but are consistent in content. Specifically: - In Official Letter No. 14899/BTC-CST dated October 31, 2013, the Ministry of Finance guides that the **turnkey installation of mechanical and electrical systems** for EPEs, including raw materials, machinery, and equipment, is **eligible for tax refunds and no customs declaration is required**. - Official Letter No. 6689/BTC-CST dated May 27, 2013 of the Ministry of Finance has the content **that "turnkey construction including supply of materials, equipment and complete installation of mechanical and electrical systems** for factories of EPEs... **is entitled to a tax refund and customs declaration is not required**." - Official Letter No. 3469/BTC-CST dated March 19, 2014, the Ministry of Finance refers to regulations in Article 16, Circular 219, guiding that domestic enterprises signing construction contracts in the form of design and construction as general contractors, are eligible for 0% VAT rate, no customs declaration conditions are required. - Official Letter No. 2716/TCT-CS dated July 28, 2022 instructs Vinh Phuc Tax Department to comply with Official Letter No. 3469/BTC-CST mentioned above. The above mentioned Official Letters all have very clear and consistent instructions. The regulations on which tax and customs references are based remain unchanged, so we understand that this guidance is still valid. However, because the instructions were

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		value of labor, design, materials and equipment to create a complete work; the final product that the construction contractor hands over to the EPE is a complete construction work, not providing separate components of labor, materials and equipment services. If there is no electrical equipment, the work can not be put into use according to its functions. - This exception is also specified in Clause 2 - referring to the conditions on customs declarations for exported goods that must comply with the Ministry of Finance's instructions on customs procedures, so there must be an exception for goods, not for services. - Furthermore, based on the wording of the regulations here, in terms of tax, even if customs procedures are required, construction and installation activities for EPEs are also an exception and the declaration condition is not needed to be eligible for 0% VAT applicable export activities.	only for one specific business, the explanation was not accepted by the local tax authority. To create a stable and favorable policy environment for business operations, we recommend that the Ministry of Finance and the General Department of Taxation have similar guidance based on current regulations to help FDI enterprises feel secure to conduct business activities in Vietnam.
7	**Clause 8, Article 14 of Circular No. 219/2013/TT-BTC** "8. Input VAT arising in any period shall be declared and deducted when determining the tax payable for that period, regardless of whether it has been released for use or is still in warehouse. In case an entity detects errors in the declared or credited input value-added tax amount, additional declaration and credit may be conducted before taxation agencies or other competent	**Difficulties in adjustment of incorrectly declared input invoices due to unclear regulations** Previously, the VAT declaration of input invoices was guided consistently by the tax authorities, based on the provisions of Clause 8, Article 14, Circular 219/2013/TT-BTC, meaning that if the taxpayer finds that the input VAT is incorrectly declared, an adjustment may be made before the tax authority or a competent authority announces the decision on tax inspection at the taxpayer's premises. Such declaration is also specifically guided by the General Department of Taxation in Official Letter No.	To align the handling and minimize unnecessary administrative procedures, the General Department of Taxation is recommended to issue specific instructions on how to declare VAT, especially in cases where input invoices are incorrectly declared, similar to Official Letter No. 4943/TCT-KK.

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	agencies announce decision on conducting tax examination, tax inspection at head offices of tax payers." **Article 7 of Decree No. 126/2020/ND-CP** "4. Taxpayers may submit additional declarations for each incorrect tax return according to the provisions of Article 47 of the Law on Tax Administration and according to the form prescribed by the Minister of Finance. Taxpayers make additional declarations as follows: ...b) If the taxpayer makes additional declarations leading to an increase in the payable tax amount or a decrease in the tax refunded by the state budget, the taxpayer must fully pay the additional payable tax amount or the over-refunded tax amount and the late payment interest into the state budget (if any). In case the additional declaration only increases or decreases the amount of VAT that is still deductible to the next period, it	4943/TCT-KK dated November 23, 2015, Official Letter No. 414/TCT-KK dated January 30, 2018. However, since Decree 126/2020/ND-CP was issued, some tax authorities have relied on the guidance on additional declaration in Clause 4b, Article 7 of the Decree to instruct that incorrectly declared input invoice must be adjusted in the period during which it is incurred (ie the taxpayer must complete the additional declaration form KHBS for the undeclared period and declare items 37 and 38 in the current period) even though the tax authority or a competent authority has not announced the decision on tax inspection at the taxpayer's premises. In reality, businesses receive invoices late due to many reasons (due to slow delivery by staff of the business departments, due to suppliers forgetting to send invoices, due to invoices requiring content/amount verification, etc.) while the deadline for submitting monthly VAT declaration is quite urgent. Accountants need to perform many steps of data entry, reconciliation, review and obtain approval before submitting the declaration and paying taxes to the state budget. Therefore, if the taxpayer has to return to the period during which the invoice is incurred to make additional declarations, it will waste time and create unnecessary administrative procedures. Declaring missed invoice in the period during which it is found also does not affect the state budget because this is input VAT which does not arise additional tax payable or late payment if not declared in the period during which it is incured. We also understand that Circular 219/2013/TT-BTC is still valid and some local Tax Departments still guide	

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	must be declared in the current tax period. Taxpayers are only allowed to make additional declarations to increase the VAT refund when the tax return of the next tax period and the tax refund application has not yet been submitted.	businesses to declare input invoices according to the provisions of Circular 219/2013/TTr-BTC. However, currently there is no official document from the General Department of Taxation to align the understanding and handling of incorrectly declared input invoices, causing a lot of controversy and difficulties for businesses when implementing.	
8	**Regulations on VAT**	**Difficulties in recording costs for input VAT which is not declared for input tax deduction or refund** In fact, there are many cases where businesses are not allowed to deduct input VAT incurred for production and business activities due to many reasons such as local tax authorities questioning the declaration of input invoices incurred in the period during which the inspection decision has been announced; or because input tax related to temporary imports, re-exports, according to regulations, businesses must follow tax refund procedures required by the customs authority. In the latter case, because the tax refund procedure takes a lot of time/effort/cost, and in many cases where the tax value is not high, many businesses accept not to carry out the tax refund procedure and bear this cost. In the above cases, when businesses record input VAT costs for the purpose of calculating corporate income tax, many local tax authorities, upon inspection, have requested to exclude these costs from taxable expenses. We believe that it is unethical and unfair to the business. Instead of deducting or refunding input VAT, businesses record expenses, which does not reduce the amount payable to the budget, but overall increases the amount payable to the state. In terms of regulations, expenses	We recommend that the Ministry of Finance/General Department of Taxation review this issue and soon have reasonable, clear, and consistent instructions for local tax departments, thereby allowing businesses to record valid expenses for actual input VAT arising in the cases mentioned above.

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		incurred related to production and business activities have full evidence of transactions/payments such as contracts, payment documents, import declarations, etc., therefore, input VAT that is not deducted or refunded needs to be recognized for CIT purposes.	
9	Pursuant to Clause 3, Article 1 of Circular No.130/2016/TT-BTC dated August 12, 2016 by the MOF amending and supplementing a number of articles of Circular No.219/2013/TT-BTC dated December 31, 2013 by the MOF: *"c) Clause 5, Article 18 shall be amended and supplemented as follows:* *"5. Business establishments which pay value-added tax according to the tax credit method are entitled to value-added tax refund if upon ownership transformation, enterprise transformation, merger, consolidation, separation, split, dissolution, bankruptcy or operation termination, they have an overpaid value-added tax amount or have some input value-added tax amount not yet fully credited.* *Business establishments in the investment phase that have not yet entered into operation but are subject to dissolution, bankruptcy*	**Issues related to value-added tax refund in cases of bankruptcy, closure, or dissolution** According to current regulations, businesses are entitled to refund of input VAT that has not been fully credited in cases of bankruptcy, closure, or dissolution. However, in practice, it takes a very long time for businesses to request tax refunds during the closure period, which may take as long as 7 or 8 years in many cases without final conclusion, in spite of multiple calls/visits to Tax Authorities. An example is Sofrecom Vietnam Company Limited with tax code of 0103682989, which has proceeded with closure and dissolution since 2018; or Hitachi Plant Technologies, Ltd Company – Singapore Branch office – tax code: 0104142954 which has filed for dissolution since 2019, etc. However, so far, these companies have received no response from the Tax Authorities.	We recommend that the application of provisions in practice must be consistent with applicable regulations to avoid pain points for businesses.

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	or operation termination without any input value-added tax amount incurred under its main business activities according to the investment project do not need to adjust the declared, credited or refunded value-added tax amount. Business establishments shall notify their tax authorities in charge of the dissolution, bankruptcy, or operation termination according to regulations. *After the business establishments complete all required procedures according to the laws on dissolution and bankruptcy, the refunded value-added tax amount shall comply with laws on dissolution, bankruptcy and tax management; the value-added tax amounts that have not been refunded shall not be processed for refund.* *In case the business establishments terminate operations without any output value-added tax incurred under its main business activities, the refunded tax amount must be returned to the state budget. In case there is a sale of assets subject to value-added tax, the corresponding input VAT amount*		

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	of the assets sold shall not be required to adjust."		
10	Clause 9, Article 3, Decree No. 123/2020/ND-CP dated October 19, 2020 regulating invoices and documents: "*9. Use of illegal invoice or record means the use of a fake invoice or record; the use of an invoice or record which is not yet valid or has been expired; the use of an invoice or record which is suspended from use during the required suspension period, unless it is used according to the tax authority's notice; the use of an e-invoice without applying for the registration for the use of that e-invoice with the tax authority; the use of an e-invoice without the tax authority's authentication in the event of use of authenticated e-invoices; the use of an invoice whose date falls after the date on which the tax authority determines that the seller no longer operates at the business address registered with competent authorities;* ***the use of an invoice or record whose date falls***	**Tax treatment of invoices of businesses that no longer operate at their business addresses registered with competent state agencies (hereinafter referred to as "absconding businesses")** According to the above regulations, in case of absconding businesses, the use of invoices by these businesses is only considered illegal in the following two cases: 1. An invoice whose date falls after the date on which the tax authority determines that the seller no longer operates at the business address registered with competent authorities; and 2. An invoice whose date falls before the date on which the issuer is determined not to operate at the business address registered with competent authorities or before the tax authority gives a notification indicating that the issuer no longer operates at the business address registered with competent authorities but which has been certified illegal in the police authority or another competent authority's conclusion. In fact, when inspections are carried out at businesses, even without conclusion from the competent authorities or police authority on the illegality of invoices, many local tax departments do not allow businesses to make credit for input VAT and deduction of CIT expenses for all invoices dated before the date the tax authority determines that the seller no longer operates at the registered business address even though the businesses provided all necessary	With the above rationale, we recommend that MOF/General Department of Taxation consider and elaborate this issue more clearly in the Decree amending Decree 123, and at the same time issue an Official Letter providing unified guidance for local tax authorities to handle satisfactorily, ensuring the legal rights and interests of investors.

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	before the date on which the issuer is determined not to operate at the business address registered with competent authorities or before the tax authority gives a notification indicating that the issuer no longer operates at the business address registered with competent authorities but which has been certified illegal in the police authority or another competent authority's conclusion."	documents proving actual transactions such as invoices, contracts, payment documents, delivery notes and receipt notes, liquidation records and expenditures to serve the businesses' operations. It is extremely unreasonable for the tax authority to reject these invoices because this is an actual expense and the business has fully complied with the requirements on documents according to the laws. It's beyond businesses' control when information about the absconding business has not been officially published on the tax authority's information portal. This has caused considerable damage to businesses, causing loss of trust and affecting the business environment, bringing even more challenges to businesses.	
11	• According to tax regulations (Clause 1, Article 1 and Clause 3, Article 17 of Circular No. 103/2014/TT-BTC dated August 6, 2014 of MOF), income from loan interest that IFC receives from the loan contract is subject to withholding tax in Vietnam. • According to the Charter of IFC and the Joint Ministerial Circular dated May 6, 1994 signed by the Deputy Governor of the State Bank of	**Issues in application for tax exemption or reduction under international treaties of International Finance Corporation (IFC)'s loans** • Many enterprises have submitted a written request following Form No. 01/DUQT on behalf of the lender to the State Bank of Vietnam according to the provisions of Circular No. 80/2021/TT-BTC to request confirmation for tax exemption purposes. However, up to now, SBV has not carried out any confirmation in request for tax exemption. • Regarding this issue, as far as we know, SBV and MOF have had many back and forth correspondences and reports to the Office of the Government. However, up to	We recommend that the Government consider and come up with a radical solution to help solve the current issues faced by many businesses related to the application for tax exemption and reduction on IFC's income from loan contracts. In particular, it is recommended that the SBV signs in the confirmation section as the agency that proposes the conclusion of International Treaty so that businesses can complete their tax exemption applications.

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	Vietnam, IFC are exempted from taxes and import duties for its assets and income as well as activities and transactions permitted under its Charter in Vietnam. • The Joint Ministerial Circular dated May 6, 1994 signed by the Deputy Governor of the State Bank of Vietnam affirmed IFC's immunities and privileges in Vietnam according to the provisions of its Charter. • According to MOF's Circular No. 80/2021/TT-BTC dated September 29, 2021 (Article 63), to enjoy tax exemption and reduction for income arising from lending activities in Vietnam according to the signed Treaty (in IFC's case, IFC's Charter), IFC or its authorized organization needs to submit an application for tax exemption or reduction according to the International Treaty to the tax registration	now, there has been no official implementation guidance for businesses to follow.	

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	authority, which includes, among others, a Written Request following Form No. 01/DUQT issued under Appendix I of the Circular certified by the agency that proposes the conclusion of International Treaty.		
12	Point a, Clause 7, Article 77 of Circular 80 stipulates: *"7. In case the overseas supplier is based in a country or territory that has concluded a Tax Agreement with Vietnam, tax exemption and reduction procedures shall follow the Double Tax Avoidance Agreement as prescribed in Article 62 of this Circular."*	**Regarding the application of the Double Tax Avoidance Agreement to overseas suppliers conducting e-commerce and digital-based businesses** Although this benefit has been clearly stipulated in Circular 80, in practice, many overseas suppliers which have considered themselves not having a permanent establishment in Vietnam applied for tax exemption under the double tax avoidance agreement, but so far no supplier has been entitled this benefit while GDT has not provided any official and clear guidance on this issue.	We recommend that MOF and GDT consider and issue an official guidance on this issue to avoid frustration from overseas suppliers.
13	Clause 1, Article 62 of Circular No. 80/2021/TT-BTC stipulates that: **"Article 62. Procedures and documentation for tax exemption and reduction under the Double Tax Avoidance Agreement (Tax Agreement)**	**Regarding tax exemption and reduction applications under the Double Tax Avoidance Agreement for overseas suppliers conducting e-commerce and digital-based business** Based on current regulations, we understand that tax exemption applications from overseas suppliers need to include contract with customers certified by the taxpayer.	We recommend that MOF/GDT consider handling this issue based on the nature of the transaction so as not to affect the benefits of overseas suppliers without permanent establishments in Vietnam. That is, acceptance of general standard terms published on digital platforms or electronic contracts will have the same legal validity as *"Contract with customers certified by the taxpayer";*

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	1. For foreign contractors: In addition to tax declaration dossiers, foreign contractors shall also submit additional documents to request tax exemption or reduction under the Tax Agreement. b.1) For business activities and other types of income: b.1.1.3) Copies of contracts signed with organizations and individuals in Vietnam certified by the taxpayer; …"	In practice, services of digital-based overseas suppliers are provided to many customers, including individuals and organizations, in a huge number of transactions. Customers also access services on digital platforms. Accordingly, overseas suppliers will provide general terms or agreements in electronic form that must be accepted by customers when using the services. These terms are also published on the supplier's platforms. Customers will have to confirm their understanding and consent to these terms before completing the registration to use the services of overseas suppliers. With such practices, overseas suppliers have only one general form of terms that applies to all customers, and customers only need to confirm their consent by choosing "acceptance of terms" on the public digital platforms. Usually there will not be a paper contract hand-signed by each customer.	
14	Pursuant to Article 64 of the Circular No. 80/2021/TT-BTC: *"Article 64. Time limit and return of results for tax exemption and reduction applications* *1. Time limit for processing an application for tax exemption or reduction* *Within 30 days from the receipt of the satisfactory application, the tax authority shall issue a decision on tax exemption or reduction; or send the taxpayer a notice justifying their ineligibility for tax*	**Issues related to processing tax exemption and reduction applications according to Article 64, Circular 80/2021/TT-BTC** In fact, there are cases where we have submitted tax agreement applications to the tax authority for more than a year but have not received any response of acceptance/rejection from the tax authority. The only response we have received is the officials' explanation that the tax authorities does not have a specialized department to handle tax exemption and reduction applications as prescribed in Circular 80/2021/TT-BTC. This causes difficulties for enterprises when they receive no response for their submitted applications, have no update of	We recommend that the application processing must follow the Law on Tax Administration. In case the delay is due to lack of a specialized department, we recommend the tax authority set up a specialized department to process the applications as prescribed. In cases where local tax authorities do not have authority to proceed, a centralized procedure should be introduced at GDT.

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	exemption or reduction; or notify the taxpayer's eligibility or ineligibility for tax exemption or reduction under Tax Agreements or other international treaties. *In case an actual inspection is needed to have sufficient grounds to process tax exemption or reduction applications, within 40 days from the date of receipt of the satisfactory documents, the tax authority shall a decision on tax exemption or reduction; or send the taxpayer a notice justifying their ineligibility for tax exemption or reduction; or notify the taxpayer's eligibility or ineligibility for tax exemption or reduction under Tax Agreements or other international treaties.* *In case the tax authority receives the application for tax exemption or reduction and the tax declaration dossier via the single-window system, within 05 working days from the receipt of the satisfactory application via the single-window system, the tax authority shall determine the amount of tax eligible for tax exemption or reduction or send the taxpayer a notice justifying their ineligibility for tax exemption or reduction."*	the application status and no idea when results are available. An example is the case of Mr. Kitagawa Ken - tax code: 8708449710 who submitted an application for personal income tax exemption under the Double Tax Avoidance Agreement between Vietnam and Japan. However, so far he has not received any response from the Tax Authority. Another case is Itochu Textile Prominent (ASIA) Limited. The company submitted a request for application of double tax avoidance agreement to Hanoi Tax Department in 2020 and has repeatedly submitted additional documents ever since at the request of the Tax Department. The Tax Department also sent an Official Letter asking GDT about the procedural bottleneck and received GDT's response in Official Letter No. 2652/TCT-HTQT dated June 28, 2023. Thus, the company's application has been satisfactory. Although it has been nearly a year since Hanoi Tax Department received a response from GDT, Itochu has not received any response from Hanoi Tax Department about the application results.	

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15	According to Point c, Clause 3, Decree No. 123/2020/NĐ-CP: *"c) Business establishments that declare and pay value-added tax by following credit-invoice method having exported goods and services (including export processors) use electronic value-added invoices when exporting goods and services.* *When exporting goods for transport to the border gate or to the place where export procedures are carried out, the establishments use the delivery and internal transfer note as documents for circulation of goods on the market.* ***After procedures are completed for exported goods, the establishments shall issue value-added invoices for exported goods****."* Clause 7, Article 3 of Circular No. 119/2014/TT-BTC dated August 25, 2014 by the MOF amending and supplementing some articles of Circular No. 219/2013/TT-BTC dated December 31, 2013 by the MOF stipulates the day to determine revenue from export as	**Issues related to the time of issuance of e-invoices for exported goods** According to current regulations, the time to issue e-invoices for exported goods and the date to determine revenue from export for tax calculation is after completing procedures for exported goods/the date to confirm completion of customs clearance on customs declaration. Thus, there are 2 cases: - The time to determine revenue from export/issue of electronic VAT invoice is the date of completion of customs supervision; - The time to determine revenue from export/issue of electronic VAT invoice is the date of customs clearance on customs declaration. In fact, the customs clearance date on the customs declaration is not the date the goods actually complete customs procedures and are actually exported, rather than the date of completion of the tax obligations at the import stage. Goods are only actually exported when the customs supervision has been completed (completion date of customs supervision). However, this information is not timely updated on the website of the General Department of Vietnam Customs, causing bottlenecks for enterprises during implementation. On the other hand, prioritized enterprises in the field of state management of customs are given priority for customs clearance, even when their goods have not been eligible for transfer of ownership to the buyer. Therefore, in practice, the customs clearance date on the customs declaration is the same as the customs registration date and the completion date of customs inspection. At this time, it is not certain that	To ensure relevancy for businesses and export of goods and to avoid the mentioned issues, we recommend to use the date of completion of customs supervision (the date of passing through the customs controlled area) as the date of invoice. At the same time, we request the customs authority to promptly update data on the customs portal so that businesses and tax authorities have a basis for implementation. In case such data has not been updated to the portal, then the date the goods are loaded onto the outbound vehicle displayed on the bill of lading shall be the date of invoices to determine revenue from export At the same time, we would like to know the roadmap for the issuance of a decree to amend Decree 123/2020/ND-CP

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	follows: "*Commercial invoice.* ***The day to determine revenue from export to calculate tax is the day on which customs procedure completion is confirmed on the customs declaration".*** Clause 2, Article 5 of Circular 78/2014/TT-BTC (amended in Circular 96/2015/TT-BTC) stipulates the time to recognize revenue as follows: *"For the sale of goods, it is the time of* ***transfer of the right to own or use goods to the buyer****."* According to Clause 33, Article 1 of Circular No. 39/2018/TT-BTC: *"1.* ***If goods are exported*** *by sea, air, railway, inland waterways, transshipment port, transshipment area; goods supplied for outbound vessels or airplanes; exports transported together with the carrier through air checkpoint; exports stored in CFSs or ICDs, the basis for determination of exports is the export declaration that has been* ***granted customs clearance and certified that***	goods will be exported, thus the seller still has to assume risks related to the goods. Therefore, it is necessary to clarify whether the date of determining revenue from export is based on the date on customs declaration or the date of completion of customs supervision.	

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	***goods have been released from the CCA**...”*		
16	Official Letter No. 2300/CTBNI-TTHT dated July 29, 2022 of the Tax Department of Bac Ninh Province; Notice No. 8625/TB-CTTPHCM dated June 1, 2022 of Tax Department of Ho Chi Minh City; Official Letter No. 7589/CTTPHCM-TTHT-2022 dated June 30, 2022 of Tax Department of Ho Chi Minh City; Official Letter No. 2121/TCT-CS dated May 29, 2023 of General Department of Taxation; Official Letter No. 8999/CTTPHCM-TTHT dated July 19, 2023 of Tax Department of Ho Chi Minh City; Official Letter No. 67049/CTHN-TTHT dated September 15, 2023 of Hanoi Tax Department.	**Issues related to issuers of invoices for returned goods and administrative penalties from Hanoi Tax Department on issuing invoices for returned goods to businesses** Currently, there are many different guiding documents from local tax departments and General Department of Taxation regarding which party (seller, buyer) is required to issue invoices for returned goods. This has caused difficulties and bottlenecks for businesses in complying with legal regulations on issuing invoices. For a long time, tax authorities and businesses agreed that the buyer should be the issuer of invoices for returned goods. However, recently, based on a vague provision of Decree 123, there has been another view that the invoice issuer should be the seller. This view so far is not really convincing and there is still a lot of controversy and inconsistence among localities. In the light of that, recently, Hanoi Tax Department reviewed and imposed sanctions for administrative violations against many enterprises for failure to comply with the regulations that the seller must issue an invoice when goods are returned by the buyer. This is extremely unreasonable, causing discontents among businesses, affecting their reputation and reducing confidence in the transparency of tax laws.	We propose providing more specific guidance for this aspect to facilitate businesses' compliance with regulations and ensure consistency between legal normative documents. There needs to be a clear and consistent guidance on implementation approach and roadmap if changes must be made following new requirements. At the same time, the General Department of Taxation needs to provide guidance and direction to Hanoi Tax Department on the administrative fines mentioned above, to avoid disadvantages for businesses and ensure fair treatment of tax law.
17	**1. Regulations on maximum fines for administrative violations of invoices in Law**	**Penalties for administrative violations of late issuance of invoices**	We find that the fine for the act of issuing invoices at the wrong time as prescribed in Clause 3, Article 24 of

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	No. 15/2012/QH13 - Law on Handling Administrative Violations. + Clause 2, Article 23 of Law No. 15/2012/QH13 stipulates that: *"2. The Government shall regulate the fine brackets or fines for specific administrative violations according to one of the following methods, but the highest fine bracket shall not exceed the maximum fine specified in Article 24 of this Law:* *a) Defining the minimum, maximum fines;* *b) Defining the number of times, the percentage of the value and quantity of violation goods, material evidences, violated subjects or revenue, amount earned from acts of administrative violations."* + Point c, Clause 1 and Clause 2, Article 24 of Law No. 15/2012/QH13 stipulates the maximum fine of invoices as follows: *"1. **The maximum fine** in the field of state management for individuals shall be regulated as follows:* *…*	One example is a Company which exports goods abroad. At first, the Company used commercial invoices (while it has registered to use electronic invoices), then the Company re-issued electronic VAT invoices but the date of e-invoices is after the date the goods are exported. Perspective of local tax authorities, or Hanoi Tax Department in this case: The inspection team of Hanoi Tax Department decided to impose a fine for administrative violation of late issuance of invoices. Every single late invoice was sanctioned VND 5 million each. Accordingly, **227 invoices** were fined for administrative violations in total **of over VND 1 billion**, while according to Clauses 1 and 2, Article 24 of Law No. 15/2012/QH13 on Handling Administrative Violations, the maximum fine in the field of state management imposed for entities is **VND 100 million**. Clause 1, Article 7, Decree No. 125/2020 on sanctioning administrative violations in the field of taxes and invoices stipulates a maximum fine of **VND 100 million**. We understand that based on Article 6 of Decree No. 125/2020/ND-CP, the Company's late issuance of more than 10 invoices is considered a **large-scale administrative violation** and is an aggravating circumstances as prescribed in Clause 1, Article 10 of the Law on Handling Administrative Violations. Pursuant to Point d, Clause 1, Article 3 and Clause 1, Article 10 of the Law on Handling Administrative Violations 2012, amended in Law No. 67/2020/QH14 effective from January 1, 2022, administrative violations of 10 or more invoices are considered **large-scale administrative violations** and are	Decree No. 125/2020/ND-CP is completely consistent with Clause 2, Article 23 of Law No. 15/2012/QH13, accordingly, the highest fine bracket that the Government stipulates for violations does not exceed ***the "Maximum fine in the fields of state management"*** stipulated at Point c Clause 1 and Clause 2, Article 24 of Law No. 15/2012/QH13, which is VND 100,000,000 for the field of invoices. At the same time, we see that Decree No. 125/2020/ND-CP ensures consistency with ***"Maximum fine in the fields of state management"*** stipulated in Article 24 of Law No. 15/2012/QH13 above based on Clause 1, Article 7 of Decree No. 125/2020/ND-CP on the maximum fine for organizations that commit administrative violations on invoices, which is ***"Maximum fine not exceeding VND 100,000,000".*** Thus: We understand that the total administrative fine for issuing invoices at the wrong time (regardless of the number of invoices) shall **not exceed VND 100 million.** However, as far as we know, only Hanoi Tax Department does not apply maximum fine for administrative violations on invoices according to Clause 1 and Clause 2, Article 24 of Decree 125/2020ND-CP. Other local tax departments interpret and apply a maximum fine for administrative violations of no more than VND 100 million.

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	*c) **A fine of up to VND 50,000,000**:….; charges, fees; public asset management; **invoices**; national reserve; electricity; chemicals; hydrometeorology; cartography; business registration; state audit;* *2. The maximum fine in the field of state management specified in Clause 1 of this Article **for organizations shall be 02 times compared with the fine applied for individuals.*** + Clause 1, Article 10 of the Law on Handling Administrative Violations regulates aggravating circumstances: "*1. **The following circumstances shall be the aggravating circumstances:*** *…l) **Administrative violations of large-scale,** large quantity or large value of goods;...*" - Point d, Clause 1, Article 3 of the Law on Handling Administrative Violations 2012 is amended in Law No. 67/2020/QH14 effective from January 1, 2022, stipulating: *d) The sanction of administrative violations shall be conducted for*	classified as repeated administrative breaches with aggravating circumstances, so only one administrative sanction with aggravating circumstances should be imposed, in stead of imposing fine for each single breach. Because no administrative violation of invoices shall be imposed a fine of over VND 100 million (maximum of VND 50,000,000), the Company understood that the fine of VND 100 million in the above clause is the maximum fine for more than 01 administrative violation of invoices per sanction, this is not the maximum fine to apply to 01 breach. In case each invoice issued at the wrong time is considered 01 breach, with a fine of 4-8 million VND/breach, similar breaches of issuing invoices at the wrong time can be considered aggravated circumstances with a 10% increase in the average fine of the VND 4-8 million bracket, but cumulatively, the maximum fine as understood by Company should be VND 100 million for multiple violated invoices in 01 sanction. The above understanding is completely appropriate because Decree No. 125/2020/ND-CP does not prescribe the sanctions for each invoice, rather than the concept of sanctions for "each single breach". The act of delay in issuing invoices as mentioned above is a repeated violation with aggravating circumstances, so only one sanction should be imposed for this breach. This method of handling is also reasonable, consistent with the nature of sanctioning administrative violations and consistent with the fact of late issuance of invoices of the Company due to many objective reasons and the huge number of invoices to be issued.	Therefore, we respectfully request MOF and GDT to provide specific guidance documents to ensure consistent interpretation: - Only impose sanction once for administrative violations on invoices with aggravating circumstances (large-scale administrative violations of more than 10 invoices) - Only apply a maximum fine of VND 100 million to administrative violations on invoices and similarly to other administrative violations.

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	only administrative violations regulated by the law. *An administrative violation shall be sanctioned only once.* *...A person who commits repeated administrative violations shall be sanctioned for each individual breach*, ***except for cases where repeated administrative violations are regulated by the Government as aggravating circumstances***;" **2. Regulation in Decree No. 125/2020/NĐ-CP** + Clause 1, Article 7 of Decree No. 125/2020/ND-CP stipulates the maximum fine for organizations that commit administrative violations on invoices: ***"Fines not greater than VND 100,000,000 shall be imposed on entities committing invoice-related violations.*** *Fines not greater than VND 50.000.000 shall be imposed on individual committing invoice-related violations."* + Article 6 of Decree No. 125/2020/ND-CP: "*2. Any administrative violation*		

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	with tax amount (underpaid tax amount, evaded tax amount, higher-than-prescribed amount of tax exemption, reduction or refund) which is at least VND 100,000,000, or the value of goods or services rendered which is at least VND 500,000,000, shall be determined as a large-scale tax-related administrative violation as prescribed at Point l, Clause 1, Article 10 of the Law on Handling Administrative Violations. ***Any administrative violation involving at least 10 invoices shall be determined as a large-scale invoice-related administrative violation*** *under point 1, clause 1, Article 10 in the Law on Handling Administrative Violations.*		
18	Clause 2, Article 19 of Decree No. 218/2013/NĐ-CP dated April 20, 2018 (amended and supplemented by Decree No. 12/2015/NĐ-CP on eligibility conditions for tax incentives) stipulates that: "2. The corporate income tax incentives specified in Clause 1, Clause 4, Article 4 and Article 15,	**Corporate income tax incentives for income from transfer of fixed assets in geographical areas eligible for investment incentives** The Company is located in Dinh Vu Cat Hai Economic Zone, Hai Phong and is entitled to CIT incentives applied to Economic Zone. During its production and business operation, the Company invested in production lines to perform processing activities under the contract signed with customer. After that, due to the change in its operating	We respectfully request that GDT thoroughly consider the Company's specific situation, based on the nature of the transaction (assets before and after transfer are used by the company for production and business activities in areas eligible for incentives) and related legal normative documents to have specific and clear guidances in accordance with the direction in Official Letter No. 5029/TCT-PC dated November 9, 2023 of GDT. Thereby, the Company and the Tax Department

No.	Relevant regulations	Issue	Proposal
	Article 16 of this Decree do not apply and the tax rate of 20% specified in Clause 2, Article 10 of this Decree does not apply to the following income: d) Other incomes specified in Clause 2, Article 3 of this Decree not related to the business and production activities entitled to tax incentives (in case of meeting the preferential conditions on fields and industries specified in Article 15 and 16 of this Decree). Clause 3 and Clause 4, Article 18 of Circular No. 78/2014/TT-BTC have been amended and supplemented by Article 10 of Circular No. 96/2015/TT-BTC stipulating conditions for applying corporate income tax incentives and tax incentives by geographical areas as follows: "4. Incentives for enterprises whose projects of investment are given CIT incentives because their fields or geographical areas are eligible to investment incentives are determined as follows:	model, the Company transferred the above production lines to the same customer with whom they signed processing contract earlier and this generated income. After receiving the transfer of the production lines, this customer handed them back to the Company to continue to use the lines for processing activities. During the inspection of Hai Phong City Tax Department at the Company, the Tax Department expressed their opinion that if an enterprise's investment project is eligible for CIT incentives because its location is eligible for CIT incentives, then incomes eligible for CIT incentives include only incomes arising from production and business activities of investment projects in the areas eligible for incentives. Accordingly, the Tax Department determined that the Company's income from the above asset transfer is other income, so it is not eligible for CIT incentives. After that, the Tax Department sent an official letter to GDT asking for guidance on this issue. At the same time, the Company also sent a detailed written explanation about the Company's asset transfer transaction to GDT. However, up to now, the Company has not received any written response from GDT to have a ground to discuss this issue with Hai Phong City Tax Department. In our opinion, the corporate income tax law clearly stipulates that for enterprises having investment projects which are entitled to CIT incentives for being located in geographical areas eligible for investment incentives, all incomes from production and business activities arising in areas eligible for CIT incentives are entitled to CIT incentives. In particular, income from production and business activities eligible for	can reach agreement on this issue, avoiding lengthy lawsuits and complaints due to vague policies.

No.	Relevant regulations	Issue	Proposal
	a) For enterprises having investment projects eligible for CIT incentives for being engaged in the fields eligible for investment incentives, incomes from these fields and incomes from the liquidation of waste materials and scraps of products in these fields, exchange rate differences directly related to turnover from and expenses for these fields, demand deposit interests and other directly related incomes are also eligible for CIT incentives. b) For enterprises having investment projects eligible for CIT incentives for being located in geographical areas eligible for investment incentives (including industrial parks, economic zones and hi-tech parks), incomes eligible for CIT incentives are all incomes from their production and business activities in such geographical areas, except those specified at Points a, b and c, Clause 3 of this Article. Clause 6, Article 7 of Circular No. 78/2014/TT-BTC	incentives includes not only income from its main production and business activities registered on the Investment Registration Certificate but also other income related to the production and business activities of the enterprise. - The above principle is also stipulated in Clause 2, Article 19 of Decree 218/2013/ND-CP (amended and supplemented by Decree 12/2015/ND-CP) and Clause 4, Article 18 of Circular 78/2014/TT-BTC (amended and supplemented by Circular 96/2015/TT-BTC) for incentives based on industries and fields. In particular, for businesses that are entitled to investment incentives based on industries and fields, other income related to production and business activities eligible to incentives, such as incomes from the liquidation of waste materials and scraps of products in these fields, exchange rate differences directly related to turnover from and expenses for these fields, demand deposit interests and other directly related incomes are also eligible for CIT incentives. We understand that this principle also applies in the same way as in the case of incentives based on geographical areas because income eligible for incentives arising in the area eligible to incentives includes income from main production and business activities and other income related to production and business activities of the enterprise. Before the transfer, the production lines were used by the Company for processing and production activities (the Company's main production and business activities), generating income for the Company. After transferring the production lines to another party and generating income from liquidation of fixed assets (this is other income, not income from commercial activities), this is essentially an income to	

No.	Relevant regulations	Issue	Proposal
	dated April 20, 2018 (as amended and supplemented by Clause 1, Article 5 of Circular No. 96/2015/TT-BTC) by MOF stipulates other incomes include: "Article 7. Other income Other income includes the following: 6. Income from transfer or liquidation of assets (excluding real estate) and other valuable papers. This income equals (=) turnover from asset transfer or liquidation minus (-) the residual book value of the transferred or liquidated asset at the time of transfer or liquidation, and deductible expenses related to the asset transfer or liquidation.	offset the investment costs the company had spent for the project lines to serve production and business activities carried out in the area eligible for incentives. Therefore, income from liquidation of the Company's production lines is income directly related to the machinery and equipment involved in the company's business operations (similar to income from liquidation of waste materials and scraps generated from production and business activities). The location of the transfer is in Dinh Vu - Cat Hai Economic Zone, so this is income arising in the area eligible for CIT incentives according to regulations. In addition, after transferring ownership of the production lines, these lines continue to be assigned to the Company to use for production and processing activities in Dinh Vu - Cat Hai Economic Zone (area eligible for CIT incentives). Thus, before and after being transferred to another company, the production lines continued to be used and generate income in the area eligible for investment Incentives. Regarding this issue, through our research at local tax departments, we know that the local tax departments have issued many guiding documents for cases similar to our Company's, which provide specific guidance that: Income from liquidation of fixed assets of an investment project generating in an area eligible for investment incentives is eligible for CIT incentives (for example: Official Letter No. 549/CTBDI-TTHT dated February 27, 2023 of Binh Duong Provincial Tax Department, Official Letter No. 593/CTBNI-TTHT dated April 8, 2021 of Bac Ninh Provincial Tax Department, Official Letter No. 425/CTHYE-TTHT dated February 4, 2021 of Hung Yen Provincial Tax Department,	

No.	Relevant regulations	Issue	Proposal
		Official Letter No. 56/CT-TTHT dated January 5, 2016 of Dong Nai Provincial Tax Department)	

B. Issues with Personal Income Tax

No.	Relevant regulations	Issue	Proposal	Information about Enterprise/Tax Department in charge (If any)	PIC
1	**Article 2 of Circular No. 119/2014/TT-BTC** provides that: *"Taxable income of a non-resident is income earned in Vietnam, regardless of the place where income is paid and received."*	**Recommendations on PIT declaration for foreign individuals coming to Vietnam for short-term business trips** Current regulations do not provide a specific explanation of "income earned in Vietnam", thus it can be understood that foreign individuals must declare PIT in Vietnam if they come to work in Vietnam even though this person is present in Vietnam for 1 day only. This leads to difficulties in identifying the group of foreign individuals coming to Vietnam for working who are subject to PIT declaration and bottlenecks in implementing tax declaration for this group. Specifically: – In case a foreign individual coming to Vietnam not to perform services under a contract signed between an individual or employer in a foreign country and an organization or individual in Vietnam (ie not contractor agreement), but to perform other tasks such as: Participate in meetings, conferences, seminars, market	In order to facilitate the compliance with PIT regulations for **non-resident** foreign individuals coming to Vietnam for short-term business trips, we recommend that a number of cases **exempt from PIT declaration** be included in the regulations where foreign individuals come to Vietnam for short-term business trips, for example: - Based on the individual's number of days in Vietnam, for example: Individuals present	A common issue faced by many businesses	Son Ha

No.	Relevant regulations	Issue	Proposal	Information about Enterprise/Tax Department in charge (If any)	PIC
		surveys, inspect product quality at suppliers, meet with businesses and state agencies, attend training courses as a trainees, etc., it is unreasonable to consider that individual has income earned in Vietnam, because this business trip does not create income for the individual or their employer abroad. – Procedures for registering tax code (turn-around time: 03 business days), registering an electronic account with the tax authority (many tax authorities require a certified copy of passport in case the individual is not directly present at the tax authority; a SIM card from a Vietnamese carrier is required to receive OTP code), declaring and paying taxes still have many obstacles for foreign individuals, especially language matter. In many cases, time to complete all these procedures exceeds the time that person is present in Vietnam. Some countries globally have introduced a number of conditions under which foreign individuals are exempt from PIT when they come to that country to work, for example: – Taiwan: Foreign individuals working in Taiwan for no more than 90 days are not subject to personal income tax in Taiwan if their income is paid by a foreign company and the company in Taiwan is not required to reimburse expenses. – Malaysia: Non-resident individuals working in Malaysia for no more than 60 days in 1 or 2 consecutive calendar years are exempt from personal income tax in Malaysia.	in Vietnam for less than 30 days (refer to previous regulations in Point dd, Clause 2, Article 3, Ordinance on Personal Income Tax for High-Income Earners 2001) or individuals present in Vietnam for less than 30 days and no more than 03 times in 01 year (similar to regulations on work permit exemption for foreign individuals entering Vietnam to work as managers, executives, experts or technical workers in Clause 8, Article 7, Decree 152/2020/ND-CP); and/or - Based on the individual's		

No.	Relevant regulations	Issue	Proposal	Information about Enterprise/Tax Department in charge (If any)	PIC
		– Singapore: Foreign individuals working in Singapore for no more than 60 days per calendar year are exempt from personal income tax in Singapore. Hong Kong: Foreign individuals working in Hong Kong for no more than 60 days per tax year may be exempt from personal income tax in Hong Kong.	purpose of entry, for example: Exemption from PIT declaration for individuals coming to Vietnam under visa exemption, DH visa (issued for internship and education purpose), HN visa (issued for conference and seminar attendance purpose), DT1/DT2/DT3/DT4 visa (issued to foreign investors in Vietnam), DL visa (issued to tourists), EV visa for entry purposes such as attending summits, conferences, official visit, investment, etc. if these individuals do not receive income or incur expenses paid by		

No.	Relevant regulations	Issue	Proposal	Information about Enterprise/Tax Department in charge (If any)	PIC
			a company in Vietnam.		