

### 1. CORPORATE INCOME TAX

#### ❖ ACCOUNTING FOR EXPENSES INCURRED DUE TO THE IMPACT OF COVID-19 PANDEMIC

OL No. 4110/TCT-DNNCN issued by the GDT on 27 October 2021 has guidance that the related COVID-19 expenses paid to employees are non-taxable of PIT and deductible for CIT as long as supported with legitimate invoices and have actually arisen. By the perspective of KMC, the legitimate invoices and documents included (i) contract; (ii) bank remittance for payment over 20 million; (iii) VAT invoice; (iv) other documents proved the actual arising of expenses. However, other than basic documents as mentions above, the supported papers for each case may be difference based on the decision of Tax Department.

These expenses include the following:

- ▶ Quarantine expenses for business trip which may occur in Vietnam or overseas (e.g. meals, accommodation, COVID-19 testing, transportation to quarantine location, incidental charges during quarantine period ...)
- ▶ Expenses for COVID-19 testing or rapid test kits for employees and necessary devices to prevent the spread of COVID-19.
- ▶ Meals and accommodation expenses for employees who are participating in the 3 on-site production models.

### 2. VALUE ADDED TAX

OL No. 3393/TCT-CS ("OL 3393") dated 09 September 2021 issued by the GDT guided on VAT refund applications for enterprises after converting into the export processing enterprises ("EPE") as:

Previously, the tax authorities from different provinces has different responses to the VAT refund applications of enterprises that had been converted into EPE. Some tax authorities approved the applications while others put the applications on pending and waited for guidance from the GDT.

Therefore, GDT issued OL 3393 to clearly state that:

▶ EPEs are not subject to VAT application entity

▶ Conversion into an EPE does not fall within the list of converting enterprise forms are entitled to a VAT refund in accordance with the regulations

Therefore, in case at the time applying for a VAT refund, enterprises had been converted to EPE, the investment project of the Company is not entitled to VAT refund.

*However*, the OL does not provide any guidance on the VAT refund applications which have been approved previously by some provincial tax authorities.

Enterprises should consider the timing for applying VAT refund to mitigate the risk of losing tax refund benefits.

### 3. FOREIGN CONTRACTOR TAX

OL No. 15538/CTBDU-TTHT dated 14 October 2021 guided the tax policy for foreign contractors as follows:

#### Personal Income Tax

In case the Company incurs accommodation and travel expenses for foreign experts to work in Vietnam under the contract signed with a foreign contractor who is determined to be a non-resident in Vietnam, the hotel expenses for the foreign expert is a taxable income. The Company is responsible for withholding PIT of the above experts according to the provisions at Article 18, Circular No. 111/2013/TT-BTC of the MOF. The Company declares PIT by the form 05/KK-TNCN attached together in Circular No. 92/2015/TT-BTC dated 15 June 2015 of the MOF.

#### Corporate income tax

In case the contract or agreement between the Company and the foreign contractor stipulates that the Company shall pay travel and accommodation expenses for the foreign contractor's experts during the working period in Vietnam, the above costs are allowed to account in deductible expenses when determining taxable income if meeting the conditions specified in Article 4, Circular No 96/2015/TT-BTC of the MOF.

#### 4. INCENTIVE POLICY FOR SPECIAL INVESTMENT

Decision No. 29/2021/QĐ-TTg ("Decision 29") dated 06 October 2021 issued by the Prime Minister guided the incentives policy for special investment takes effect from 6 October 2021 as:

Decision 29 is stipulated on special investment incentives for investment projects have a key impact on socio-economic development which is regulated at Clause 2, Article 20 of the Law on Investment No. 61/2020/QH14 ("LOI 61") included:

1) *The investment project to newly establish the innovation, research, and development centers with total investment capital of VND 3,000 billion or more, and disbursed at least VND1,000 billion within three years from the issuance of the IRC or the Approval of Investment Policy ("AIP"). These centers will be entitled to the following investment incentives:*

- ▶ An incentive CIT rate of 7% for 33 years
- ▶ A CIT exemption for 6 years and then reduced CIT by 50% CIT reduction for 12 years

2) *National innovation centers established pursuant to the Prime Minister's decision. Incentives include:*

- ▶ An incentive CIT rate of 5% for 37 years
- ▶ A CIT exemption for 6 years and then reduced CIT by 50% for 13 years

3) *Investment projects in especially encouraged sectors with total investment capital of VND 3,000 billion or more, and disbursed at least VND 1,000 billion within three years from the issuance of the IRC or AIP will be entitled to the following incentives:*

- ▶ An incentive CIT rate of 5% for 37 years, CIT exemption for 6 years and then 13 years for the reduction of 50% CIT that requires the projects should meet one or more of the below conditions:

- + The project is a hi-tech project at level 2
- + Vietnamese enterprises participating in the supply chain of the project at level 2
- + Value added tax of investment project occupied more than 40% of the total cost of final products which enterprise provides
- + The project satisfies the criteria of technology transfer at level 2

(The definition of level 2 are guided in Decision 29).

- ▶ An incentive CIT rate of 7% for 33 years, CIT exemption for 6 years and then reduced CIT by 50% for 12 years that requires the projects should meet one or more of the below conditions:

- + The project is a hi-tech project at level 1
- + Vietnamese enterprises participating in the supply chain of the project at level 1
- + The value added tax of project occupied from 30% to 40% of the total cost of final products which enterprises provides
- + The project satisfies the criteria of technology transfer at level 1

(The definition of level 1 are guided in Decision 29).

- ▶ An incentive CIT rate of 9% for 30 years, CIT exemption for 5 years, and then 10 years of reducing 50% CIT will be applicable to other remain cases in group 3 meet the additional criteria mentioned in the above two bullet points.

The special investment incentives must be stated in the IRC, AIP or written agreements with the competent authorities.

The special investment incentives will be assessed based on the actual conditions satisfied by the eligible projects. Eligible projects that fail to meet the required conditions will need to pay back any tax incentives that they have claimed, along with interest and penalties in accordance with the regulations on tax administration.

#### 5. INVOICES

- ❖ **How to write VAT invoices when applying tax reduction according to Decree 92/2021 start from 01 November 2021 to the end of 31 December 2021 for 02 groups of goods and services as follows:**

- *For enterprises and organizations in group 1 issuing VAT invoices for the provision of goods and services which is subject to VAT reduction; at the line of the VAT rate, writing the "prescribed applicable rate (5% or 10%) x 70%"; VAT amount; the total payment by the buyer.*

Based on VAT invoices, the seller (enterprise and organization provide goods and services) declare output VAT and the purchaser (enterprises and organizations purchase goods and services) declare input VAT according to the reduced tax amount written on the VAT invoice.

- For enterprises and organizations in group 2 issuing sales invoices for the provision of goods and services which is subject to VAT reduction; in the column "Total of goods/services value", writing the full amount of goods and services before reduced tax; at the line "Sum of goods and services" writing the amount of goods/services after reducing 30% and note: "reduced....(amount) corresponds to 30% of VAT according to Resolution No. 406/NQ-UBTVQH15".

**NOTE:**

(1) In case an enterprise or organization provides many kinds of goods and services, the enterprise or organization should issue a separate invoice for goods and services are subject to VAT reduction.

(2) In case an enterprise or organization has issued an invoice and declared at the tax rate or percentage had not yet been reduced for goods and service entitled to VAT reduction, the vendor and the purchaser must make a written minutes or agreement to clearly state the mistake and issue and deliver adjusted invoice to purchaser. Based on the adjusted invoice, the vendor declares the adjusted output tax and the buyer declares the adjustment of input tax (if any).

(3) In case an enterprise or organization provide goods and services eligible for VAT reduction but has issued a printed invoice by form of a ticket with the listed price, the enterprise or organization should stamp the new price after reduced 30% VAT or 30% of the percentage next to the criterion of printed price in order to continue using.

❖ **Implementing the application of e-invoices to businesses, economic organizations, households and individual business**

OL No. 10847/BTC-TCT dated 20 September 2021 issued by the GDT mentioned that the MOF has planned to implement the application of e-invoices in two phases: phase 1 from November 2021 and phase 2 from April 2022.

Specifically, the implementation of e-invoice in phase 1 applies to the following provinces and cities:

+ Hanoi according to Decision 1830/QD-BTC dated 20 September 2021.

+ Ho Chi Minh City according to Decision 1832/QD-BTC dated 20 September 2021

+ Hai Phong according to Decision 1839/QD-BTC dated 20 September 2021.

+ Phu Tho according to Decision 1838/QD-BTC dated 20 September 2021.

+ Quang Ninh according to Decision 1833/QD-BTC dated 20 September 2021

+ Binh Dinh according to Decision 1831/QD-BTC dated 20 September 2021.

Thus, from November 2021, except for some cases are not satisfied the conditions, enterprises, economic organizations, business households and individuals in the above-mentioned provinces and cities should conduct the application for e-invoices under Circular 78/2021.

**6. SOCIAL INSURANCE**

❖ **Implement the application for the settlement of SI benefits for employees under the treatment of Covid-19.**

OL No. 1492/KCB-PHCN&GD dated 19 November 2021 issued by the Ministry of Health and OL No.4055/BHXH-CD dated 26 November 2021 by Vietnam Social Insurance Department guiding on dossiers and documents as required for SI benefits of employees going under Covid-19 treatment with the following implementing contents:

▶ The issuance and management for the certificate of leave enjoying SI should comply with the provisions of Chapter IV. The forms specified in the appendix of Circular No. 56/2017/TT-BYT dated 29 December 2017 were issued by the Minister of Health.

▶ The certificate of leave enjoying SI is granted a maximum of 30 days by the patient per a medical examination. In case the patient needs to take a rest for longer than 30 days, the patient should take the re-examination when the granted leave period in the certificate is expired or about to expire for the practitioner to consider and decide.

▶ The dossiers and documents were issued not under the provisions of Circular No. 56/2017/TT-BYT are not accepted and collected, the employees are requested to complete the dossiers and documents by the provisions of Circular No. 56/2017/TT-BYT as the basis for the SI agency processing and settling SI benefits.

## Abbreviations

OL

Official Letter

GDT

General Department of Taxation

MOF

Ministry of Finance

IRC

Investment Registration Certification

AIP

Approval of Investment Policy

CIT

Corporate Income Tax

PIT

Personal Income Tax

VAT

Value Added Tax

EPE

Export Processing Enterprises

SI

Social Insurance

**Contact:**

**KHAI MINH CONSULTING COMPANY LIMITED**

Unit 704, 7F, Citilight Tower, 45 Vo Thi Sau Street

Dakao Ward, District 1, Ho Chi Minh City, Vietnam

Tel: 84 28 3820 5731 / 2

Fax: 84 28 3820 0906

(English)

Tran Mai Tuong Vy

[tran.mai.tuong.vy@kmc.vn](mailto:tran.mai.tuong.vy@kmc.vn)

Nguyen Van Mui

[nguyen.van.mui@kmc.vn](mailto:nguyen.van.mui@kmc.vn)

(Japanese)

Le Quoc Duy

[le.quoc.duy@kmc.vn](mailto:le.quoc.duy@kmc.vn)

Nguyen Thi Thao Uyen

[nguyen.thi.thao.uyen@kmc.vn](mailto:nguyen.thi.thao.uyen@kmc.vn)

*This newsletter aims to update and summarize general regulations associated with tax, accounting, investment and labor in Vietnam. You should refer to expertise before making decision.*