**LEGAL REGULATIONS ON RECEIVING THE NON-REFUNDABLE SPONSORSHIP BY A SUBSIDIARY IN VIETNAM FROM ITS FOREIGN PARENT COMPANY**

1. **May a foreign parent company (“Parent Company”) transfer a non-refundable sponsorship to its subsidiaries in Vietnam (“Subsidiary”)?**

First of all, in accordance with Article 4.7 of the Ordinance on Foreign Exchange 2005 (as amended in 2013), the transfer of a non-refundable sponsorship to Subsidiary by its Parent Company is defined as a one-way money transfer. Besides, according to Article 4.6(e) of the Ordinance on Foreign Exchange 2005 (as amended in 2013), a one-way money transfer is determined as a current transaction. Therefore, the transfer of a non-refundable sponsorship from the Parent Company to its Subsidiary is a remittance of money for current transactions.

In addition, Article 6 of the Ordinance on Foreign Exchange 2005 (as amended in 2013) stipulates that all payments and remittances for current transactions between residents and non-residents are free to perform. In which, the Parent Company is determined to be a non-resident, and the Subsidiary is determined to be a resident according to Article 4.2 and Article 4.3 of the Ordinance on Foreign Exchange 2005 (as amended in 2013). Since, the transfer of non- refundable sponsorship from the Parent Company to the Subsidiary will be made freely.

1. **Shall the non-refundable sponsorship from the Parent Company to Subsidiary be transferred to the direct investment capital account?**

Article 6.1 of Decree No. 70/2014/ND-CP stipulates that: *“Foreign currency receipts of residents as organizations earned from such transfer process must be deposited into foreign currency accounts opened at authorized credit institutions or sold to these credit institutions”*. At the same time, in accordance with Article 6.1 of Circular 06/2019/TT-NHNN, the non-refundable sponsorship does not fall under the revenue transactions that must be made through the direct investment capital accounts in foreign currencies.

From the light of the above, given that the transaction of transferring money from the Parent Company to the Subsidiary is a current transaction (one-way money transfer from abroad to Vietnam). Therefore, such non-refundable sponsorship from the Parent Company must not be transferred to the direct investment capital account of the Subsidiary, but must be transferred to a foreign currency account at an authorized credit institution. The opening and use of foreign currency accounts will be implemented in accordance with Circular 34/2015/TT-NHNN.

1. **Tax regulations on non-refundable sponsorship from the Parent Company to the Subsidiary.**
2. **Value Added Tax (“VAT”)**

The obligation to declare and pay VAT of the Subsidiary when receiving a non-refundable sponsorship from its Parent Company will be determined in the following two scenarios *(Circular No. 219/2013/TT-BTC, and the Official* *Letter No. 1070/CTHN-TTHT)*:

* **Scenario 1:** exempt from VAT

Pursuant to Article 5.1 of Circular 219/2013/TT-BTC, in case this non-refundable sponsorship is determined to be an allowance from the Parent Company, it will not be required to declare and pay VAT, but must make a receipt when receiving this amount according to the provisions of the Accounting Law 2015 and Circular No. 200/2014/TT-BTC. In the circumstance where a subsidiary is determined to be a small and medium-sized enterprise according to the criteria under Article 5 of Decree 80/2021/ND-CP, it will prepare receipts in accordance with the provisions of the Accounting Law 2015 and Circular No. 133. 2016/TT-BTC.

* **Scenario 2:** non-exempt from VAT

Under Article 5.1 of Circular No. 219/2013/TT-BTC, when the Subsidiary that uses such sponsorship from the Parent Company to perform services such as repair, warranty, promotion, or advertising for the Parent Company must declare and pay tax according to the provisions of the law on VAT.

Therefore, to determine the VAT payment obligation of the Subsidiary, it is necessary to determine whether the Subsidiary uses such sponsorship to perform services for its Parent Company such as repair, warranty, promotion, advertising or not. It could be seen that the above regulation is for the purpose of preventing the parties from taking advantage of the non-refundable sponsor to perform services without declaring and paying VAT as prescribed. Therefore, on the principle of caution, the parties should consider this provision in a broad sense, i.e. when the Subsidiary receives a non-refundable sponsorship from the Parent Company to perform any service for the Parent Company (not only limited to repair, warranty, promotion or advertising services), the Subsidiary still has to declare and pay VAT.

1. **Corporate Income Tax (“CIT”)**

Similar to the obligation to declare and pay VAT, the declaration and payment of CIT of the Subsidiary are also determined in the following two scenarios *(Circular No. 78/2014/TT-BTC, and the Official Letter No. 1070/CTHN-TTHT):*

* **Scenario 1:** exempt from CIT

In accordance with Article 8.7 of Circular No. 78/2014/TT-BTC, if the sponsorship received by the Subsidiary is used for educational, scientific research, cultural, artistic, charitable, humanitarian activities and other social activities in Vietnam will be determined as tax-exempt income. Therefore, the Subsidiary is not required to declare and pay CIT on this non-refundable sponsorship, unless the Subsidiary does not use such amount for the above purpose, it must be responsible for paying CIT calculated on the misused portion in the tax period in which the misuse arises.

* **Scenario 2:** non-exempt from CIT

In case where the non-refundable sponsorship received by the Subsidiary from its Parent Company is not eligible for CIT exemption as mentioned above, it will be determined as other income of the subsidiary under Article 7.15 of Circular No. 78/2014/TT-BTC and subject to CIT. Since, the Subsidiary still has to declare and pay CIT on this non-refundable sponsorship amount in accordance with the law.

Therefore, from the analysis above-mentioned, it could be concluded that the Parent Company is allowed to sponsor a non-refundable for its Subsidiary, and this sponsorship amount will be transferred to the foreign currency account of the Subsidiary, not transferred to the direct investment capital account. In addition, the subsidiary's obligation to declare and pay VAT and CIT in Vietnam shall be determined on a case-by-case basis as detailed in Section 3 above.