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Highlights of Vietnam's technical updates in November 2020

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Please refer to our following edition for further details.

TAX

▶ Decree No. 132/2020/ND-CP dated 5 November 2020 ("Decree 132") by the Government providing guidance on tax administration for enterprises engaging in related-party transactions, effective from 20 December 2020 and applicable from the Corporate Income Tax ("CIT") period of 2020.

The notable points of Decree 132 include:

- Supplement of cases regarded as related parties;
- Provisions and detailed guidance on comparable price method between controlled and uncontrolled transactions;
- Change in formula calculating the standard arm's length range: use percentile instead of inter-quartile;
- The cap on deductibility of interest expenses is increased from 20% to 30%. The interest expense exceeding the cap and not yet deducted are allowed to be carried forward for 5 years;
- Supplement of company objects not subject to the cap on of deductibility of interest expense;
- Additional exemptions from the Transfer Pricing documentation requirement; and
- Provisions on submission of Country-by-Country report under Decree 132 tend to be in favour of the taxpayers and in accordance with the international practice;

Decree 132 replaces Decree No. 20/2017/ND-CP dated 24 February 2017 and Decree 68/2020/ND-CP dated 24 June 2020 by the Government.

► **Circular No. 88/2020/TT-BTC dated 30 October 2020 by the Ministry of Finance (“MOF”) amending and supplementing Article 26 of Circular No. 68/2019/TT-BTC providing guidance on implementation of Decree No. 119/2018/ND-CP on electronic invoices when supplying goods and services, with effective from 1 November 2020.**

Accordingly, the legal documents including Circular No. 32/2011/TT-BTC, 191/2010/TT-BTC, 39/2014/TT-BTC, 37/2017/TT-BTC; Decision No. 1209/QĐ-BTC and 2660/QĐ-BTC are still in force till the end of 30 June 2022. The regulation, “From November 1, 2020, enterprises, economic organisations, other organisations, business households and sole proprietors shall have to register their use of electronic invoices” as per Article 26 of Circular 68/2019/TT-BTC is annulled.

► **Official Letter No. 12452/BTC-TCT dated 9 October 2020 by the MOF regarding the allowable depreciation of fixed assets if the enterprises had temporary suspension of operation for less than 9 months in 2020.**

In case an enterprise which is affected by the Covid-19 pandemic resulting in the suspension of operation of a number of fixed assets for less than 9 months in the CIT period of 2020, and the fixed assets are subsequently in continuous use for production and business activities, the enterprise is allowed to depreciate these assets and the depreciation expenses during the suspension period are treated as deductible expenses in determining taxable income/for CIT purpose.

► **Official Letter No. 4818/TCT-PC dated 12 November 2020 by the General Department of Taxation (“GDT”) introducing a number of new points in the handling/ sanctioning of administrative violations in tax, invoices and implementation of Decree No. 125/2020/ND-CP by the GDT.**

Some notable points in sanction level for administrative violations in tax and invoices are as follows:

- For administrative violations in tax: Fines are increased for the violations below:
 - ✓ Late tax registration: the fine range applied for this violation is currently VND400,000 - VND2,000,000 which becomes VND1 million - VND10 million under the new regulation.
 - ✓ Late notification of information changes in tax registration: fine range increases from VND400,000 - VND2,000,000 to VND500,000 - VND7,000,000.
- For administrative violations on invoices:
 - ✓ The fine for violation in preparing, notifying and reporting invoices increases from VND200.000 - VND1.000.000 to VND1.000.000 - VND3.000.000.
 - ✓ Fine imposed on violation of "Failing to report on the loss of invoices which occurs during printing, before delivery to clients" is decreased to VND4-8 million from VND6-18 million.
 - ✓ 2 groups of violations on e-invoices are supplemented including: (i) “violations against regulations on the transfer of e-invoice data” and “violations against regulations on the provision of invoice services”.

► **Official Letter No. 4433/TCT-CS by the GDT dated 21 October 2020 on value added tax (“VAT”) policy for transfer of investment project:**

Where the enterprise transfers an investment project which simultaneously produces goods and services both subject to VAT and not subject to VAT, the enterprise is required to declare and pay VAT on the transfer of investment project at rate of 10% if it is unable to separate the part of the investment project for manufacturing the products subject to VAT from the part which are not subject to VAT.

► **Official Letter No. 4160/TCT-CS by the GDT dated 2 October 2020 regarding VAT withholding and declaration for omitted invoices.**

In principle, the omitted invoices must be declared in the submitted tax declaration prior to the issuance of audit/ inspection decision by the tax authorities. Where the taxpayer detects omitted invoices in the period within the scope of the audit/ inspection after the conclusion/decision on tax sanction by the tax authorities, the taxpayer may make supplemental amendment declarations.



► **Official Letter No. 78002/CT-TTHT by the Hanoi Tax Department dated 24 August 2020 providing guidance on tax policies for advertising activities on Google and Facebook.**

The expenses for online advertising on Google and Facebook are treated as deductible expenses for CIT purposes if the following conditions are met:

- Incurred for the production and business activities of the company;
- Foreign contractor withholding tax return and payment evidence are in place;
- Proof of non-cash payment is in place.

Where the Company authorises an individual employee to use his/ her personal credit card to pay for the above service and then reimburses the individual through bank transfer from the Company's account to personal account, such arrangement is still considered proof of non-cash payment according to Article 1, Circular 173/2016/TT-BTC if the payment method is specifically stated in the internal finance regulations or Decision on the authorisation to the individual.

► **Official Letter No. 84841/CT-TTHT by the Hanoi Tax Department dated 21 September 2020 on the time of invoice issuance when selling goods via/ using voucher.**

Accordingly, when customers use gift vouchers to buy goods, the selling Company is responsible for issuing invoices to customers as prescribed. Information on the invoice must correctly reflect the economic transaction arises; the taxable price in this case is the VAT-exclusive selling price of the goods sold by the Company as prescribed under Article 7 of Circular No. 219/2013/TT-BTC.

► **Official Letter No. 95838/CT-TTHT of Hanoi Tax Department dated 2 November 2020 on the conditions for VAT deduction when purchase goods using personal credit card.**

In the event where the company authorises its employees to make payments on goods and services using the employees' credit card, please refer to and follow the instructions provided in the Official Letter No. 5465/TCT-KK dated 25 November 2016 by the GDT.

Accordingly, goods or services purchased via an employees' credit card are treated as deductible for CIT purposes and creditable for input VAT if the following conditions are met:

The decision of payment authorisation is available or the payment authorisation is specified in the internal financial regulations;

That the goods or services are used for business activities of the company is substantiated with proper supporting documents;

The company reimburses the employees by bank transfer.



CUSTOMS

► **Official Letter No. 6334/TCHQ-TXNK by the General Department of Customs dated 28 September 2020 on the responsibility to pay tax debts post company's closure.**

Accordingly, if the enterprise ceases its operation and has yet to fulfil its tax obligations, and the customs authority has applied certain measures but failed to recover the tax debt in full, the remaining tax debt will be borne by individuals and organisations according to each type of enterprise:

- An individual who is the owner of a private enterprise, a general partner of a partnership is responsible for all debts of the company.
- Individuals and organisation that contribute capital in a limited joint stock company are responsible for the company's debt limited at the amount of capital contributed to the company.

If the individuals and organisations have not fulfilled the above-mentioned tax obligations, their exit shall be suspended according to the provisions of law on entry and exit.



LABOUR, SOCIAL INSURANCE (“SI”)

► **Decree No.135/2020/ND-CP (“Decree 135”) by the Government dated 18 November 2020 on retirement age, effective from 1 January 2021.**

Decree 15 sets out the road map to increase the retirement age from 2021. Particularly, from 1 January 2021, the employee's retirement age in normal working conditions is as follows:

- For male: 60 years and 3 months, then increase by 3 months each year until the age of 62 in 2028; and
- For female: 55 years and 4 months (increased by 4 more months), then increase by 4 months each year until the age of 60 in 2035.

For employees who are doing heavy, hazardous or dangerous jobs, have worked in localities with extremely difficult socio-economic conditions for 15 years or more, or have a working capacity decrease of 61% or more, they are entitled to early retirement of maximum 5 years.

Additionally, employees can retire after the stipulated retirement age upon agreement with the employer.

► **Decision No. 1314/ QD-LĐTBXH by the Ministry of Labor, War Invalids and Social Affairs (“MOLISA”) dated 30 October 2020 on approval of inspection plan in 2021, effective from the signing date.**

MOLISA shall inspect 4 areas and 8 fields under its state management for projects/ construction works, corporations/ joint-stock companies, banks, etc. The list of the organisations subject to inspection is detailed in the Appendices attached to the Decision.

► **In 2021, the company-level union at the enterprise is allowed to use 60% of union fee (employee’s portion) and 71% of the trade union fund (employer’s portion) according to Instruction No. 11/ HD-TLĐ by the Vietnam General Confederation of Labour dated 1 October 2020.**

► **Inter-department Instruction No. 3789/HDLN-BHXH-LĐTBXH by the Social Insurance Department and Department of Labor, War Invalids and Social Affairs of Hanoi dated 30 October 2020 on the integration and connection of online public services on the National Public Service Portal, effective from the signing date.**

Accordingly, when there is a change in the number of employees participating in the SI scheme, the enterprise needs to log in to the National Public Service Portal then select the inter-department procedure to register the adjustment to compulsory insurance payment and report its usage of employees.

Noted that a penalty of VND1-3 million shall be imposed on enterprises which fail to report the change in employee status.

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