

VIETNAM BULLETIN

DECEMBER 2020

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Highlights of Vietnam's technical updates in December 2020

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- ▶ Customs;
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- ▶ Others.

Please refer to our following edition for further details.

TAX

▶ **Circular No. 105/2020/TT-BTC (“Circular 105”) by the Ministry of Finance (“MOF”) dated 3 December 2020 providing new regulations on tax registration and tax code issuance, effective from 17 January 2021.**

The notable points of Circular 105 include:

- Regulating the filing location and the required documents for initial registration of dependent per laws on Personal Income Tax (“PIT”).
- Regulating the submission of notification for business suspension or resumption of business operations after such business suspension prior to schedule; and
- Regulating the tax obligations of the taxpayers to be completed before tax code deactivation.

Circular 105 replaces Circular No. 95/2016/TT-BTC dated 28 June 2016 and Article 9, Circular No 156/2013/TT-BTC dated 6 November 2013 by the MOF.

► **Official Letter No. 5162/TCT-CS by the General Department of Taxation (“GDT”) dated 4 December 2020 regarding land rental exemption and reduction for capital contribution by factory.**

Accordingly, an enterprise is allowed to use its own assets associated with rental land, including rental land with annual payment, for capital contribution. The capital receiver is allowed to lease the contributed land according to specific purposes. However, the capital receiver is not entitled to land rental exemption or reduction for the remainder of the lease term. Simultaneously, the capital contributor will pay the land rental amounts previously exempted or reduced as prescribed by laws.

► **Official Letter No. 5216/TCT-CS dated 8 December 2020 by GDT regarding the retained 10% of the environment protection fee of water providers that would not be allowed to enjoy Corporate Income Tax (“CIT”) incentives.**

Accordingly, 10% of the environment protection fee retained by the clean water provider is considered as other income and not income from socialisation activity which is eligible for CIT incentives as regulated.

► **Official Letter No. 5032/TCT-CS dated 26 November 2020 by GDT guiding social-distance expenses against Covid-19 of expatriates.**

Regarding CIT:

- For hotel accommodation expenses of expatriates, if the labour contract stipulates that the housing expenses of the expatriate shall be paid by the enterprise, such expenses are treated as deductible expenses for CIT purposes provided such expenses are supported with sufficient invoices and documents.
- The air ticket expenses for business purposes of expatriates are deductible provided such expenses are supported with sufficient invoices and documents.
- The Covid-19 test fees are deemed as staff welfare paid directly to employees and treated as deductible for CIT purposes provided such expenses are supported with sufficient invoices and documents.

Regarding PIT: Where the quarantine expenses due to the Covid-19 pandemic are paid by the company when the expatriates enter into Vietnam, such expenses shall be deemed as employees’ welfare and shall be included in taxable income for PIT from salary and wages.

► **Official Letter No. 107998/CTHN-TTHT by the Hanoi Tax Department dated 17 December 2020 regarding tax declaration of dependent branches having income subject to tax incentives.**

From 5 December 2020 (the effective date of Decree No. 126/2020/ND-CP dated 19 October 2020), where the enterprise establishes dependent units in other provinces different from the location of the headquarters, the tax declarations of the dependent units shall be filed with the tax authority where the dependent units are located if they are eligible for CIT incentives.

► **Official Letter No. 4868/TCT-CS by the General Department of Taxation dated 16 November 2020 introducing new points about e-invoices.**

Accordingly, the Official Letter introduces several new contents of Decree No. 123/2020/ND-CP (“Decree 123”) regulating invoices and documents, effective from 1 July 2022.

► **Official Letter No. 5189/TCT-CS by the General Department of Taxation dated 7 December 2020 introducing new points about tax declaration from 2021.**

Accordingly, the Official Letter introduces some new contents of Decree No. 126/2020/ND-CP (“Decree 126”) detailing a number of articles of the Law on Tax Administration, effective from 5 December 2020.

► **Official Letter No. 4818/TCT-PC dated 12 November 2020 by GDT stipulating new terms on sanctioning of administrative violation of taxes and invoices, and implementation of Decree No. 125/2020/ND-CP from 5 December 2020.**





LABOUR, PERSONAL INCOME TAX (“PIT”), SOCIAL INSURANCE (“SI”)

► Decree No. 145/2020/ND-CP (Decree 145) of the Government dated 14 December 2020 elaborating some articles of the Labour Code 2019 on working conditions and labour relations, effective from 1 February 2021.

The new points include:

- Employers must prepare labour management books and periodic reports on changes of employees;
 - The order and procedures for holding dialogue at the workplace is specified;
 - The working period for calculating annual leave;
 - Working time to calculate severance and redundancy allowance; and
 - The salary used as calculation base for leave encashment.
- The common base salary in 2021 shall not increase and shall remain at VND 1.49 million per month as per Resolution No. 128/2020/QH14 dated 12 November 2020 by the National Assembly on state budget estimation, effective from 27 December 2020.

► Official Letter No. 5079/TCT-DNL of the General Department of Taxation dated 30 November 2020 stipulating that the transportation cost support for agents who are individuals (whether in cash or in kind) is subject to PIT (1%).

In addition, business individuals shall authorise the company to declare and pay tax on transportation assistance under form No. 01/CNKD attached to Circular No. 92/2015/TT-BTC.

► Official Letter No. 5265/TCT-DNNCN dated 11 December 2020 by the General Department of Taxation guiding the tax policy applicable to house rental activities of non-resident individuals.

Non-resident individuals who have leased assets in Vietnam are subject to the tax laws on VAT, PIT and business licence fee as tax residents. Those individuals shall declare and pay VAT and PIT in accordance with Article 8 of Circular No. 92/2015/TT-BTC. Particularly for business licence fees, taxpayers are not required to submit the licence fee declaration dossiers but the tax authorities, based on the declaration and tax administration database, shall determine and announce the annual licence fees payable.

► Official Letter No. 4055/BHXH-CSYT of Vietnam Social Insurance (SI) dated 23 December 2020 regarding health insurance (HI) coverage for inpatient treatment at hospitals of inappropriate level from 1 January 2021.

From 1 January 2021, when seeking for medical examination and treatment at a provincial health care facility of inappropriate level, the patient shall be covered by the HI fund at the same rate as at appropriate level (80% of the cost of inpatient treatment). The regime for 5 consecutive years of HI participation only applies to medical services at hospitals of appropriate level.

► Decision No. 1666/QD-BHXH dated 03 December 2020 by Vietnam SI on releasing the new HI card from 01 April 2021.

The new form of HI card has many improvements with multiple utilities which would help ease the usage and information look-up process of participants of HI scheme. From 1 April 2021, the new HI card shall be consistently used across the country. While waiting to switch to the new HI card, the former HI card, if still valid, shall continue to be used for medical examination and treatment covered by the HI scheme.

► Official Letter No. 9895/VPCP-KGVX of the Government Office dated 26 November 2020 announcing the 2021 Lunar New Year and National Day holiday schedules of public officers and employees.

Accordingly, the Lunar New Year holiday shall last from 10 February 2021 to the end of 16 February 2021 and the National Day holiday shall be from 2 September 2021 to 5 September 2021.

CUSTOMS

- ▶ Official Letter No. 7692/TCHQ-TXNK by the General Department of Customs (“GDC”) dated 7 December 2020 guiding the implementation of the Law on Tax Administration No. 38/2019/QH14 and Decree No. 126/2020/ND-CP guiding some articles of the Law on Tax Administration.
- ▶ Official Letter No. 7594/TCHQ-PC by GDC dated 30 November 2020 guiding the implementation of regulations on sanctioning administrative violations in customs per Decree No. 128/2020/ND-CP and Circular No. 90/2020/TT-BTC.



IMMIGRATION

- ▶ Decree No. 152/2020/ND-CP (Decree 152) by the Government dated 30 December 2020 regarding foreign employees working in Vietnam and Vietnamese employees working for the foreign organisations, individuals in Vietnam, effective from 15/02/2021.

Decree 152 provides regulations related to foreign employees in accordance with the Labour Code No. 45/2019/QH14, including:

- Requirements and procedures for issuance, re-issuance, renewal and revocation of work permit (“WP”) and certification of WP exemption for foreign employees in Vietnam.
- Recruitment, recommendation and management of Vietnamese employees working for foreign organisations and individuals in Vietnam.

Besides, there are some updates for the case of WP exemption as follows:

- Foreigners, when investing for establishing a business in Vietnam, must contribute at least VND 3 billion in capital to be eligible for WP exemption.
- Foreigners who enter Vietnam to work as manager, executive director, expert or skilled worker for less than 30 days are accepted (for WP exemption) up to 3 times per year (the safe harbor in former regulation is 90 days cumulative in a year).

OTHERS

▶ **Law No. 67/2020/QH14 (Law 67) by National Assembly dated 13 November 2020 amending and supplementing some articles of the Law on Handling Administrative Violations, effective from 01 January 2022.**

Law 67 amends the regulations on "recidivism"; principles of sanctioning repetitive administrative violations; statute of limitations for sanctioning administrative violations and application of administrative handling measures; penalty cap; time for deprivation of licenses and practicing certificates, etc.

Compared to the current Law on Handling Administrative Violations, Law 67 increases the maximum penalty level in 10 fields, especially in the field of road traffic and real estate. This Law also additionally specifies the penalty cap for certain fields such as: foreign affairs, cyber security, state audit, obstructing legal proceedings, etc.

On top of that, Law 67 supplements the provision that organisations could be entitled to deferment, reduction or exemption of penalty to promptly remove difficulties for organisations facing economic obstacles due to natural disasters, catastrophe, fires, epidemics, etc.

▶ **Law on Environmental Protection No. 72/2020/QH14 by the National Assembly dated 17 November 2020, including 16 chapters, 171 articles and replacing the Law on Environmental Protection No. 55/2014/QH13, effective from 01 January 2022.**

▶ **Circular No. 42/2020/TT-BCT by the Ministry of Industry and Trade (MOIT) dated 30 November 2020 regulating the declaration, management and use of environmental database, effective from 1 April 2021.**

Accordingly, the MOIT issued a list of 16 sectors and fields with sizes and capacities detailed in Appendix I attached to this Circular which are subject to declaration of environmental database and information such as heat power, petroleum exploration, petroleum refining and petrochemical, etc. Such declaration is filed annually according to the form prescribed in Appendix III attached to this Circular by no later than 31 January of the following year.

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