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Highlights of Vietnam's technical updates in November 2022

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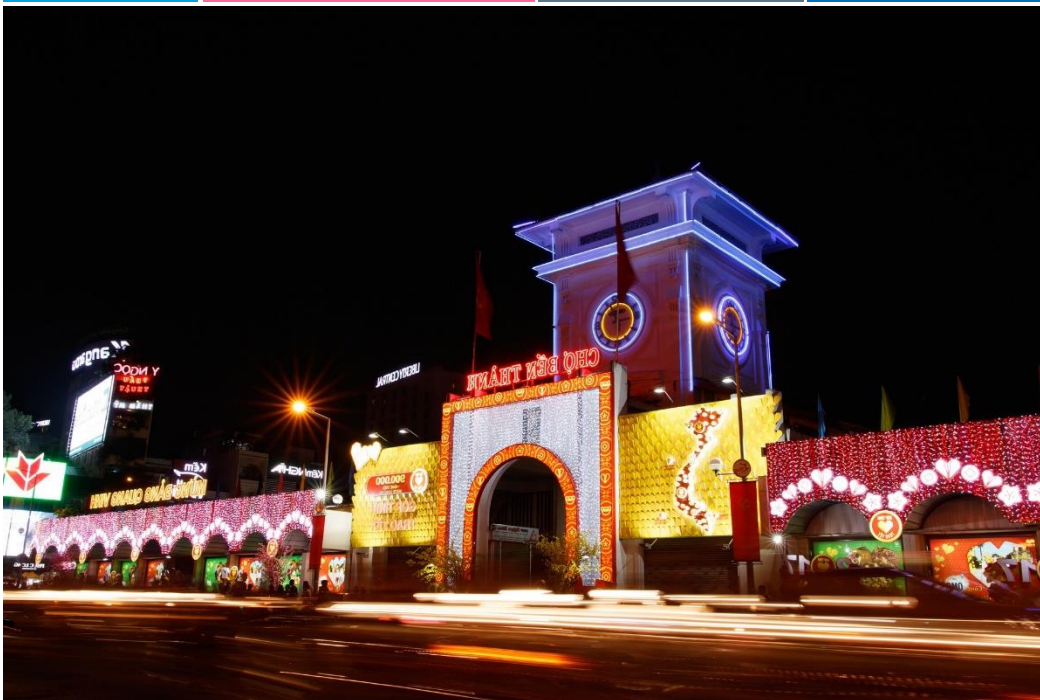
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Please refer to our following edition for further details.



BUSINESS TAX

▶ Tax Administration

1. Official Letter No. 4699/TCHQ-TXNK dated 08 November 2022 by the General Department of Customs on the treatment of tax overpayments which arised more than 10 years ago.

Where the company has a tax overpayment during customs procedures that have been over 10 years from the payment date until the state budget, it is not eligible for a tax refund.

2. Official Letter No. 4223/TCT-CS dated 15 November 2022 by the General Department of Taxation on the guidance of tax implications for foreign organisations and individuals having business or deriving income in Vietnam.

Where the quantity & the unit price of supplies and equipment in accordance with the standard of technical specifications that a contractor must provide are not specified in the contractor contract as well as invoices and payment vouchers do not specify the value of the construction machinery and equipment, there is no basis for determining the value of "purchase and provision of materials and equipment" for applying the corporate income tax rate of 1% to the taxable income.

► Corporate income tax (“CIT”)

1. Circular No. 67/2022/TT-BTC (“Circular 67”) dated 07 November 2022 by the Ministry of Finance on tax obligations for company creating and using the Science and Technology Development Fund (“STDF”).

Some updates are as follows:

- Companies are allowed to use the STDF for the purchase of machinery and equipment for technological innovation or for business activities of the companies for 2 years (in 2022 and 2023).
- Supplementing guidance on the management of fixed assets that are used for both research & development activities and business activities.
- Guiding in detailed as below:
 - ✓ For determining the CIT liabilities if the company makes a contribution to its STDF while it enjoys the preferential CIT rate and receives STDF from another company.
 - ✓ For determining the CIT liabilities of the income contributed to the STDF annually that has not been disbursed, or has been disbursed at less than 70% within 5 years.
- Circular 67 becomes effective from 23 December 2022 and applies for the determination of tax obligations from the 2022 tax year.

2. Official Letter No. 57306/CTHN-TTHT dated 23 November 2022 by the Hanoi Tax Department on CIT policy for bank deposit interest.

For CIT purposes, the interest on bank deposits earned must be included in the taxable income of the tax period. Accordingly, the interest that is expected to be earned, but has not been earned yet, is excluded from the taxable income of that tax period.

► Value Added Tax (“VAT”)

1. Official Letter No. 56701/CTHN-TTHT dated 21 November 2022 by the Hanoi Tax Department on VAT declaration for the business activities located in different province/cities from the head office.

- In case a Company has construction activities in provinces/cities different from the head office and conducts centralised accounting at its head office, it must declare, calculate and submit VAT returns to the tax authorities that directly manage the company and at the same time, allocate and make payment of VAT liability to the tax authorities that directly manage the business activities at the different provinces/cities.
- Company has construction activities in non-tariff zones of provinces/cities different than the head office, it is entitled to 0% VAT if it meets the conditions prescribed by law. Where there is no VAT payable on income deriving from such construction activities, it is not required to allocate VAT liability to the tax authorities directly managing the business activities.

2. Official Letter No. 53393/CTHN-TTHT dated 4 November 2022 by the Hanoi Tax Department on VAT declaration for the business activities at provinces/cities different from that of the head office.

Where the Company is a sub-contractor of construction and does not directly enter into any contracts with the investor to execute construction activities in provinces/cities different from the head office, the company is not required to declare VAT for construction activities to the tax authorities of the provinces/cities where the construction is located.

► Invoice

1. Official Letter No. 6620/CTTPHCM-TTHT dated 9 June 2022 by the Ho Chi Minh Tax Department on VAT policy according to Decree No. 92/2021/NĐ-CP (“Decree 92”).

Where the company purchased goods and services which are subject to a 30% VAT reduction according to Decree 92 and claimed VAT invoices under the non-reduction VAT rate, the company and seller must prepare a written minutes or agreement stating the errors. In addition, the seller must issue an adjustment invoice according to the reduced tax rate to the company.

2. Official Letter No. 3037/TCT-CS dated 17 August 2022 by the General Department of Taxation on e-invoices.

Accordingly, where the company changes the e-invoice information that was registered with the tax authority, the company must notify and submit the changed information using Form No. 01/DKTD-HDDT to the tax authority. The tax authority will receive the form and has the responsibility to send a notification using form No. 01/TB-DKDT to the company within one working day.

IMPORT & EXPORT TAX

1. Official Letter No. 4891/TCHQ-TXNK dated 17 November 2022 by the General Department of Customs on the implementation of Circular No. 31/2022/TT-BTC dated 8 June 2022 summarising new points of the Import-Export Commodity 2022 list.
2. Official Letter No. 4826/TCHQ-GSQL dated 14 November 2022 by the General Department of Customs on exporting goods to a bonded warehouses and importing back to the domestic.
3. Official Letter No. 4835/TCHQ-GSQL dated 14 November 2022 by the General Department of Customs on procedures for handling and supervising the destruction of raw materials and supplies.
4. Official Letter No. 3173/HQTPHCM-GSQL dated 18 November 2022 by the Ho Chi Minh Customs Department on guiding customs procedures for the processed goods in Vietnam that foreign organisations order and sell to organisations and individuals in Vietnam (on-spot export and import).
5. Official Letter No. 4613/TCHQ-TXNK dated 2 November 2022 by the General Department of Customs on the tax treatment for goods imported to produce export goods.

PERSONAL INCOME TAX (“PIT”)

1. Official Letter No. 53405/CTHN-TTHT dated 4 November 2022 by the Hanoi Tax Department on PIT declaration for the expatriate signing labour contract with the overseas parent company.

Accordingly, where the subsidiary in Vietnam directly pays salaries to the overseas parent company’s employee, it must withhold PIT in accordance with the provisions of Clause 1, Article 25 of Circular No. 111/2013/TT-BTC.

If the expatriate receives salary paid directly from abroad, he/she must declare PIT via direct filing method according to Point a.2, Clause 3, Article 19 of Circular No. 80/2021/TT-BTC.

2. Official Letter No. 53394/CTHN-TTHT dated 4 November 2022 by the Hanoi Tax Department on tax treatment for sales bonuses paid to business households and individuals.

In case an enterprise pays sales bonuses or other subsidies in cash or in kind to business households or individuals paying tax by the presumptive method, it must declare and pay tax on the individuals’ behalves at the rate of 1% VAT and 0.5% PIT. The enterprise must fill in the items listed in Appendix 01-1/BK-CNKD enclosed with Form No. 01/CNKD as prescribed in Clause 1, Article 16 of Circular No. 40/2021/TT-BTC.

Of note, the mentioned tax amounts paid by the company on behalf of these individuals are not CIT deductible expenses according to the provisions of Article 4 of Circular No. 96/2015/TT-BTC.

LABOUR

1. The base salary shall increase to VND1.8 million/month from 1 July 2023 according to the Resolution No. 69/2022/QH15 dated 11 November 2022 of the National Assembly. With this, the cap for social insurance (“SI”) and health insurance (“HI”) contribution shall increase to VND36 million/month and the one-off allowance for childbirth shall also increase to VND3.6 million.

2. Official Letter No. 34158/SLDTBXH-ATLD dated 18 November 2022 by the Department of Labour, Invalids and Social Affairs of Ho Chi Minh City on reporting Expatriates Usage in 2022.

Accordingly, agencies, organisations and enterprises in the city shall report their status of employing expatriates as follows:

- Submission time: From 15 December 2022 to 5 January 2023.
- Reporting form: Form No. 07/PLI issued in Appendix I attached to Decree No. 152/2020/ND-CP.
- Form of submission: online at <https://forms.gle/kNqRgsH42Vu4evwj8> or scan the QR code attached to this Official Letter.



SOCIAL INSURANCE (“SHUI”)

1. Notice No. 7405/TB-BHXH dated 15 November 2022 by the Social Insurance Department (“SID”) of HCMC on the issuance of new process for receiving application and paying unemployment benefits (Process 216) which is applicable in HCMC from 17 November 2022.

This Notice has attached specific regulations for Process 216, including the procedures for handling paper dossiers and online dossiers.

Of note, the issuance of Health Insurance (“HI”) cards to employees who are eligible for unemployment benefits shall be carried out according to the process of registration for payment and issuance of HI cards for individuals only participating in HI (Process 603).

2. Decision No. 3503/QD-BHXH dated 18 November 2022 by the Vietnam Social Security amending the process of settling Social Insurance (“SI”) benefits, paying SI and Unemployment Insurance (“UI”) benefits issued in Decision No.166/QD-BHXH by the General Director of Vietnam Social Security, effective from the signing date.

3. Official Letter No. 3511/BHXH-TST dated 18 November 2022 by the Vietnam Social Security on strengthening solutions to reduce late payment of SHUI fee in the latter months of 2022.

Accordingly, Vietnam Social Security requires SIDs of provinces/cities to:

- Advise the local People’s Councils to include targets of SI & HI development in annual resolutions; propose more support for voluntary SI participants who are in difficult circumstances or who have just escaped from poverty.
- Drastically review, exploit and develop participants of SHUI from the data provided by the tax authorities and related agencies; step up specialised inspection; increasingly follow up and mobilise HI participants whose HI cards have expired but have not yet been renewed.
- Regularly report to the People’s Committees of provinces and cities on the late payment of SHUI premiums of enterprises in the area.
- Accelerate specialised inspection against enterprises that are late in SHUI payment for 3 months or more and impose sanctions as prescribed; coerce payment of SHUI debts from enterprises that have been penalised but have not yet paid or deliberately failed to pay compulsory insurances; closely and promptly coordinate with the police authorities in investigating and handling enterprises that intentionally evade payment of compulsory insurances for their employees.

4. Decision No. 3511/QD-BHXH dated 21 November 2022 by the Vietnam Social Security promulgating the process of voluntary SI registration via the Public Service Portal according to Decision No. 422/QD-TTg dated 4 April 2022 by the Prime Minister, effective from 1 January 2023.

The Vietnam Social Security guides the process of handling registration applications for voluntary SI on the National Public Service Portal (including the following cases: first registration, change from compulsory SI to voluntary SI, continuing to participate in voluntary SI according to the registered contribution method and rate, re-register the payment method and monthly base salary used for voluntary SI contribution).

TRADE UNION

1. Use of trade unions’ assets for business purposes must be declared and tax must be paid according to the Official Letter No. 5099/TLD-TC dated 4 October 2022 of the Vietnam General Confederation of Labour.

The Official Letter requests that if enterprises or non-business units belonging to Trade Unions use assets, houses and lands, which are currently under their management for business purposes or the purposes of leasing, joint venture, association, etc., they must periodically review, declare and pay tax on time.

In addition, the use of Trade Unions’ property for business purposes or the purposes of leasing, joint venture, association, etc. must strictly follow the instructions in Document No. 3261/TLD-TC dated 15 December 2021 and Document No. 4300//TLD-TC dated 8 June 2022 by the General Confederation.

2. Official Letter No. 1213/LDLD-CSPL dated 9 November 2022 by the Confederation of Labour of HCMC regarding employees losing their jobs due to reduced sale orders.

In the context that several businesses in HCMC are shrinking, stopping production, or cutting labour force, causing a negative impact on the employees’ work and life, the Confederation of Labour of HCMC has directed sub-level federations and trade unions in the city to do the followings:

- Develop a plan to monitor the production situation, wages and Tet bonuses payment scheme at all enterprises in the locality.
- Make a list of businesses that are at risk of dissolution, bankruptcy, run-away business owners, salary debt, inability to pay bonuses, risk of job stoppage, strike or labour dispute in order to come up with suitable preventive plans or timely support.
- Announce the list of businesses having recruitment needs via various means to employees, who have lost their jobs or are looking for jobs, to support workers in their job search.

OTHERS

1. Resolution No. 76/2022/QH15 dated 15 November 2022 by the National Assembly on the approval of 6 laws and 13 resolutions.

Accordingly, at the fourth session, the 15th National Assembly passed 6 laws (Petroleum Law; the Law on Domestic Violence Prevention and Control; Anti-Money Laundering Law; the Law on inspection; the Law on the Implementation of Democracy at Grassroots Levels; the Law on amending and supplementing several articles of the Law on Radio Frequency) and 13 Resolutions.

In addition, the National Assembly has approved the addition of "place of birth" information to the new passport form for Vietnamese citizens. Thus, Clause 3, Article 6 of the Law on Entry and Exit of Vietnamese citizens shall be amended.

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