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Highlights of Vietnam's technical updates in September 2023

CORPORATE TAX

Page 1

INVOICES, ACCOUNTING VOUCHERS

Page 3

REGISTRATION FEE

Page 4

CUSTOMS

Page 4

PERSONAL INCOME TAX ("PIT")

Page 5

SOCIAL SECURITIES ("SHUI")

Page 5

LABOUR

Page 6

INVESTMENTS

Page 6

OTHERS

Page 7

CONTENT

- ▶ Corporate Tax;
- ▶ Invoices, Accounting vouchers;
- ▶ Registration fee;
- ▶ Customs;
- ▶ Personal Income Tax ("PIT");
- ▶ Social Securities ("SHUI");
- ▶ Labour;
- ▶ Investments;
- ▶ Other.

Please refer to our following edition for further details.



CORPORATE TAX

▶ Tax Administration

1. Official letter No. 3327/TCT-CS dated 04 August 2023 by the General Department of Taxation ("GDT") in response to the tax policies on income from transfer of emission rights.

- Value Added Tax ("VAT"): a Company is not obligated to declare or pay VAT for income from transfer of emission rights.
- Corporate Income Tax ("CIT"): Income from the initial transfer of Certified Emissions Reductions ("CERs") issued to an enterprise is exempt from CIT. In this case, the income is subject to tax exemption on the condition that the sale or transfer of CERs must be confirmed by the environmental authority in accordance with the prevailing regulations.

2. Official letter No. 65973/CTHN-TTHT dated 12 September 2023 by Ha Noi Tax Department on CIT finalisation for enterprises with hydroelectric plants located in a province different from their headquarters.

If a Company has a power plant in a province other than where its head office is located and uses centralised accounting, the Company shall file tax at the tax authority overseeing the head office.

If a Company has a hydroelectric plant in a province other than where its head office is located and subject to CIT allocation, the Company shall finalise its CIT for all business activities according to form No. 03/TNDN. In addition, the Company is required to submit the Appendix of CIT allocation tables which were submitted to the local authorities entitled to collection of the income from hydropower production activities as per form No. 03-8/TNDN and form No. 03-8B/TNDN issued together with Appendix II of Circular No. 80/2021/TT-BTC, to the tax department directly overseeing the Company. The Company must also settle the allocated tax amount with the local tax authority where the hydroelectric plant is located.

3. Official letter No. 3679/TCT-CS dated 21 August 2023 by the GDT on tax policy regarding aquatic product processing activities.

According to the official letter, the GDT provides guidance on the principles to determine CIT incentives for aquatic product processing activities and VAT policies on cultivation, livestock, aquatic and seafood products to Tax Departments of Kien Giang, Ba Ria Vung Tau, Bac Lieu, Ben Tre and Tra Vinh provinces.

4. Official letter No. 3680/TCT-CS dated 21 August 2023 by the GDT regarding agricultural processing in areas of particularly difficult socio-economic conditions.

From the tax period of 2015, incomes from agricultural processing in the areas having particularly difficult socio-economic conditions are exempted from CIT if the following conditions are met:

- The ratio of value of materials being agricultural, aquatic products, to production expenses (cost) is at least 30%; and
- The goods and products from agricultural and aquatic products processing are not subject to excise tax (special consumption tax).

5. Official letter No. 4083/TCT-CS dated 15 September 2023 by the GDT on CIT policy.

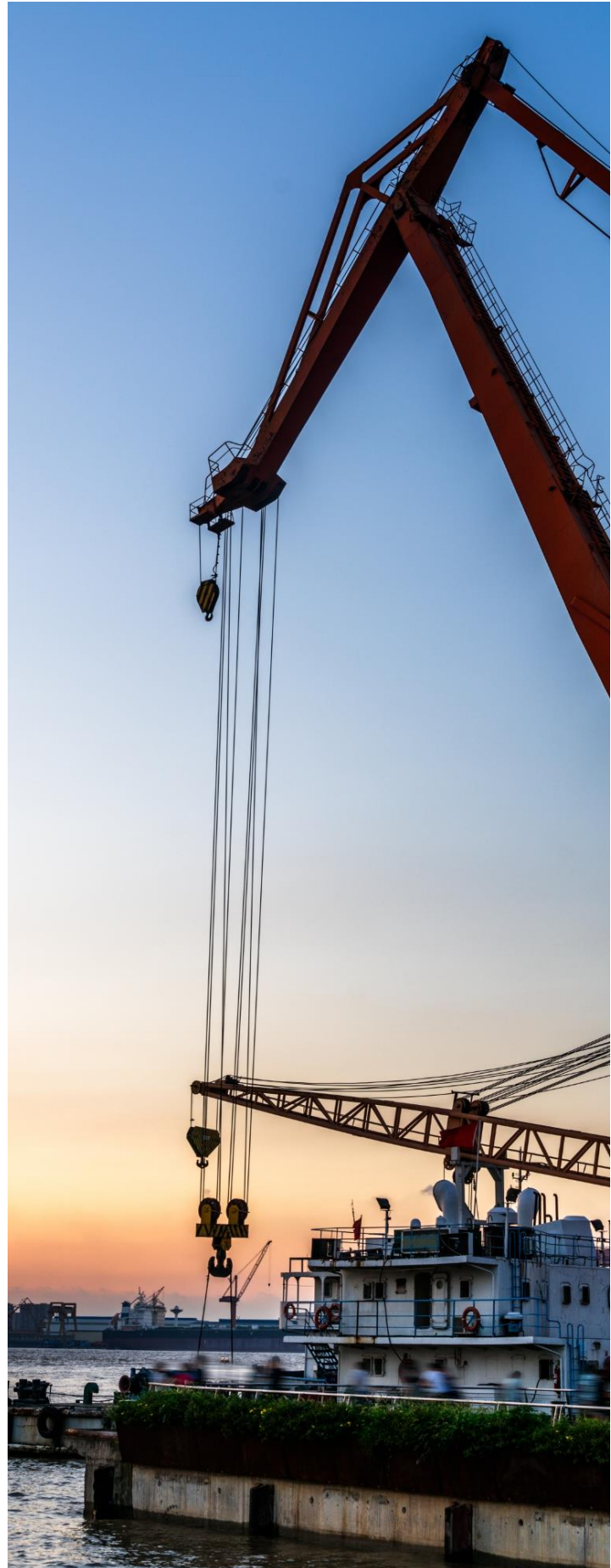
If a Company, with investment projects in an area eligible for CIT incentives, outsources to other company(ies) located in areas not eligible for CIT incentives, the corresponding income shall not be eligible for CIT incentives by area.

The Company is required to segregate income derived from business activities eligible for CIT incentives and income from business activities not eligible for CIT incentives for separate tax declaration and payment.

► Land rent

1. Official letter No. 4034/TCT-CS dated 13 September 2023 regarding land rent policy.

In cases where land users are initially granted exemption or deduction for land/water surface rent, but competent authorities subsequently determine that the conditions for rent exemption or reduction are not met due to actions by the land users or non-compliance with the specified land use purposes outlined in the land lease decision or contract, the previously exempted land rent will be subject to recovery. Land users are not required to return the exempted or reduced amount according to the investment incentive by area.



► Value-Added Tax (“VAT”)

1. Official letter No. 61191/CTHN-TTHT dated 21 August 2023 by Hanoi Tax Department regarding VAT declaration for infrastructure investment projects.

In a scenario where an enterprise has an infrastructure investment project or intends to transfer a house located in a province different from its head office location, VAT on the infrastructure investment project and the house for transfer is declared in the province where the real estate transfer takes place, in accordance with established regulations.

2. Official letter No. 4018/TCT-CS dated 13 September 2023 by the GTD regarding the tax policy on export goods.

If export goods meet all conditions as prescribed by laws, the export goods are subject to VAT at 0%.

If the buyer’s information changes after customs clearance and the goods were indeed exported, the exporter is responsible for maintaining documents and dossiers associated with the change of information declared in the customs declaration. These documents must be presented to customs authority and relevant authorities upon request.

3. Official letter No. 4205/TCT-CS dated 22 September 2023 by the GDT regarding VAT policy for export services.

Export services refer to services directly provided to organisations and individuals abroad or in non-tariff zones, consumed outside of Vietnam or in non-tariff zones. In cases where the Company provides services to foreign organisations or individuals, but the services are consumed in Vietnam, the VAT rate of 10% is applied according to regulations.

► Excise Tax

1. Official letter No. 4871/TCHQ-GSQL dated 20 September 2023 by the General Department of Customs regarding excise tax on imported cars for use in amusement, entertainment and sport areas.

If an enterprise imports cars with registrations intended for amusement, entertainment and sports activities but in reality, they are not used in amusement, entertainment and sport areas, they become subject to excise tax. In such cases, the enterprise is obligated to declare and pay the required excise tax.

INVOICES, ACCOUNTING VOUCHERS

1. Official letter No. 3116/TCT-CS dated 25 July 2023 by the GDT regarding handling of invoices issued.

If the termination of contract for transfer of land and assets on land is voluntarily agreed upon by both the buyer and seller, in accordance with the provisions of laws and permitted by the competent authority, the seller shall issue invoice for the return of goods in accordance with regulations.

2. Official letter No. 67048/CTHN-TTHT dated 15 September 2023 by Hanoi Tax Department regarding the authorisation to issue electronic invoices.

If a goods seller or service provider, headquartered at its main office, authorises a third party—such as its branch—to issue electronic invoices for the sale of goods or provision of services, the branch is permitted to issue invoices in accordance with regulations.

3. Official letter No. 4017/TCT-CS dated 13 September 2023 by the GDT regarding issuance of electronic VAT invoices for export products.

Businesses declaring and paying VAT under credit method are required to use electronic VAT invoices when exporting goods and services.

4. Official letter No. 67051/CTHN-TTHT dated 15 September 2023 by Hanoi Tax Department in response to questions about the regulations on invoices for manufacturing products used as fixed assets for branches.

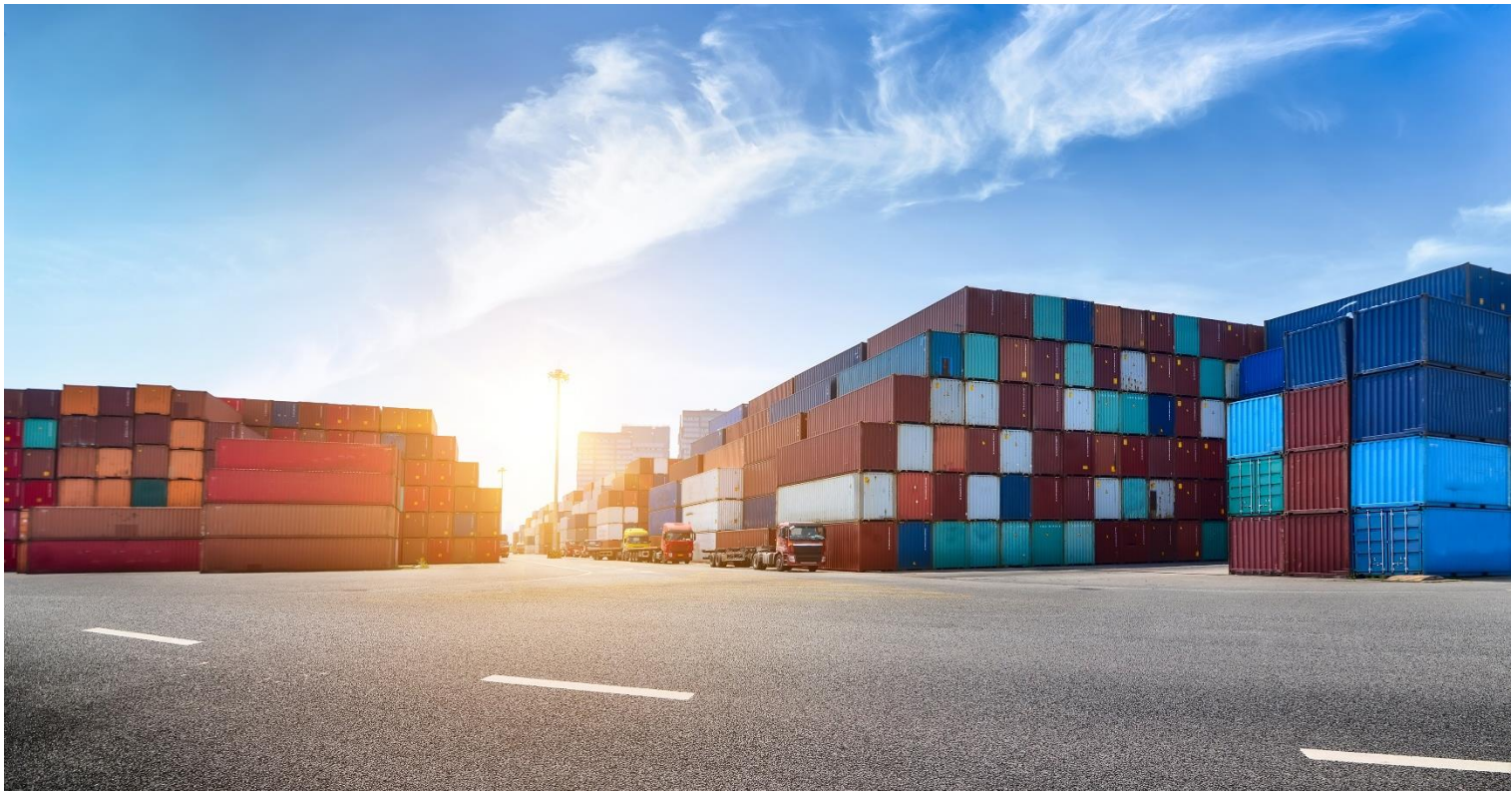
If an enterprise manufactures and constructs fixed assets by itself to serve the production and trading of VAT-able goods and services, it is not required to issue invoices upon completion, inspection, acceptance and during the handover process. Input VAT related to these internally produced fixed assets are claimable according to regulations.

If an enterprise internally transfers assets between dependent units, issuance of invoice is not required. However, the enterprise must have an asset transfer order, accompanied by a dossier of asset origin in place.

REGISTRATION FEE

1. Official letter No. 4303/TCT-CS dated 27 September 2023 by the GDT regarding the registration fee for assets acquired and subleased by financial leasing companies.

If a financial leasing company purchases assets for which registration fee is not paid (subject to registration fee exemption) from an entity and subsequently subleases those assets to the selling entity, the financial leasing company is not exempted from registration fee according to regulations.



CUSTOMS

1. Official letter No. 3848/TCHQ-TXNK dated 24 July 2023 by the General Department of Customs regarding importation of goods into bonded warehouses for sale to export processing enterprises.

In a scenario where an enterprise imports T-shirts from abroad, deposits them in a bonded warehouse, and then transfers ownership of the goods within the bonded warehouse to an Export Processing Enterprise (“EPE”) for the EPE’s employees to wear in the factory clean room at the EPE, there is no solid basis to conclude/affirm that these items are only used in the EPE. Therefore, the mentioned T-shirts do not fall under the category exempt from import duty and VAT.

2. Official letter No. 4625/TCHQ-GSQL dated 6 September 2023 by the General Department of Customs regarding goods subject to anti-dumping tax.

Enterprises that import “long fibre” products originating from China, India, Indonesia, and Malaysia on the spot shall apply anti-dumping tax in accordance with Decision No. 2302/QĐ-BCT by the Ministry of Industry and Trade.

If the customs declarant fails to submit documents certifying the origin of the goods for the customs authority to determine the applicability of anti-dumping tax, the anti-dumping tax of 54.9% will be applied.



PERSONAL INCOME TAX ("PIT")

1. Official Letter No. 3705/TCT-CS dated 22 August 2023 by the GDT on tax policy for income from transfer of capital invested in foreign enterprises.

If the investor is a non-resident individual who generates income from capital transfer abroad, he/she is not subject to PIT on capital transfer activities in Vietnam.

If the investor is a foreign organisation transferring its capital contributed in a company in Japan and that Japanese company indirectly owns the charter capital of a company in Vietnam, the income received by the investor is taxable income arising in Vietnam. The company in Vietnam is responsible for declaring and paying CIT from capital transfer activities on behalf of foreign organisational investors.

SOCIAL SECURITIES ("SHUI")

1. Decision No. 1318/QĐ-BHXH dated 19 September 2023 by Vietnam Social Security on announcing the amended and supplemented administrative procedures under the jurisdiction of Vietnam Social Security, effective from 19 September 2023.

Accordingly, this decision announces 04 amended and supplemented administrative procedures in social insurance ("SI"), health insurance ("HI"), and unemployment insurance ("UI"), including:

- Register and adjust payment of compulsory SI, HI, UI, labour accident and occupational disease insurance ("LAODI"); issue SI books and HI cards;
- Register, re-register, adjust voluntary SI contributions; issue SI books;
- Register to pay and issue HI cards for people who only participate in HI;
- Re-issue, change, and adjust information on SI books and HI cards.

2. Decision No. 7823/QĐ-TLĐ dated 31 August 2023 by Vietnam General Confederation of Labour on delaying paying trade union fee for businesses whose orders are cut down or reduced.

Accordingly, if businesses experience a reduction of 50% or more in the number of employees participating in SI compared to that as of 01 January 2023 (including employees who resigned, temporarily postponed their labour contracts, or agreed to take unpaid leave) due to a decrease in business orders, the payment of trade union fees will be deferred until 31 December 2023.

LABOUR

1. Decree No. 70/2023/ND-CP dated 18 September 2023 of the Government amending and supplementing a number of articles of Decree No. 152/2020/ND-CP dated 30 December 2020 by the Government on foreign employees working in Vietnam and recruitment and management of Vietnamese employees working for foreign employers in Vietnam, effective from 18 September 2023.

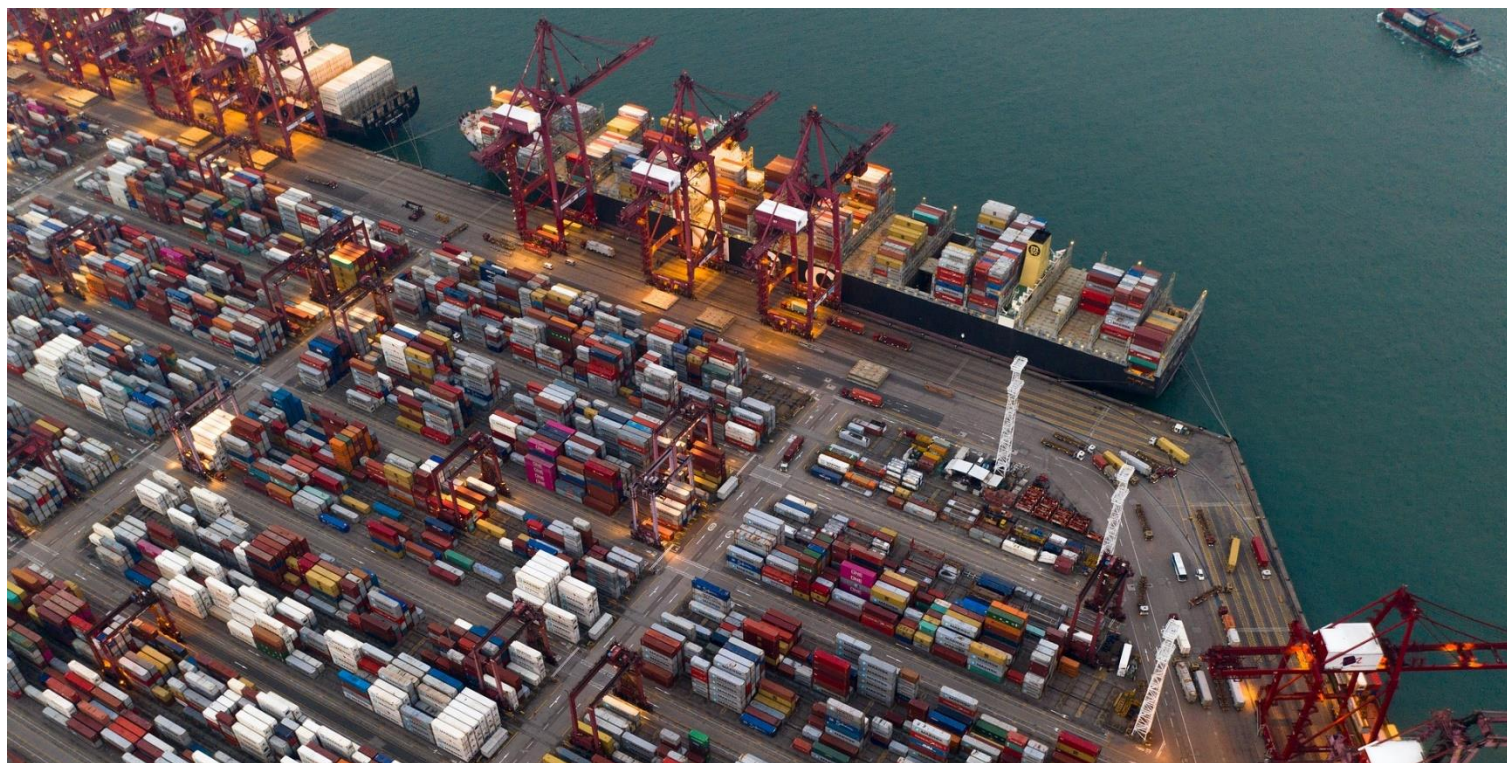
Some key points of Decree No. 70/2023/ND-CP include:

- To change the authority to issue approval letters for the use of foreign labour: The Ministry of Labour - Invalids and Social Affairs or the Department of Labour - Invalids and Social Affairs has the authority to issue approval or non-approval letters regarding the use of foreign employees for each specific job position as reported by the employer.
- To change requirements for experts, executive directors, and foreign technical employees.
- To shorten the reporting time to explain the need to use foreign employees: at least 15 days in advance from the expected date of using foreign employees.
- To change in cases where the need to use foreign employees must be reported.
- To announce the recruitment of Vietnamese employees for positions intended to be filled by foreign employees on the electronic portal <www.doe.gov.vn> at least 15 days in advance from the expected date explanatory report.

INVESTMENTS

1. Circular No. 05/2023/TT-BKHDT dated 30 June 2023 by the Ministry of Planning and Investment on investment monitoring and evaluation report forms; online reporting regime and management and operation of information systems on monitoring and evaluating investment in investment programs and projects using State capital, effective from 1 September 2023.

This Circular provides regulations on reporting forms for monitoring and evaluating investment activities according to Decree No. 29/2021/ND-CP dated 26 March 2021 of the Government which specifies the sequence, procedures for project appraisal of nationally important projects, and investment monitoring and evaluation, excluding projects invested abroad. This Circular applies to organisations and individuals involved in the preparation and reporting of monitoring and evaluation activities.



OTHERS

1. Official Letter No. 2916/BCA-A05 dated 22 August 2023 by the Ministry of Public Security regarding strengthening personal data protection.

In order to strengthen the protection of personal data according to the provisions of Decree No. 13/2023/ND-CP, the Ministry of Public Security recommended to implement the following contents:

- Direct units that collect and process personal data to conduct an overall review, classify personal data collected and processed, thereby determining corresponding protection responsibilities for each type of personal data.
- Review and evaluate the process of collecting and processing personal data, propose to promulgate management measures appropriate to the scale and level of personal data processing of your agency or unit; strictly handle acts of illegally transferring personal data, buying and selling personal data if detected.
- Designate a department with the function of protecting personal data, appoint personnel in charge of protecting personal data if an agency, organisation or individual processes sensitive personal data and exchange 01 original copy of the appointment document to the Agency in charge of personal data protection under the Department of Cyber Security.
- Notify violations of regulations on personal data protection in case of detection of violations to the Agency in charge of personal data protection no later than 72 hours after the violation occurs.
- Prepare a dossier on assessment of impact of personal data processing and a dossier on assessment of impact on transferring personal data abroad to send to the Agency in charge of personal data protection within 60 days from the date of data processing or transfer personal data abroad.

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