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Highlights of Vietnam's technical updates in July 2023

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Please refer to our following edition for further details.



CORPORATE TAX

▶ Tax Administration

1. Official Letter No. 46972/CTHN-TTHT dated 4 July 2023 by the Hanoi Tax Department on VAT declaration for head office and branches.

If a company uses centralised accounting at its main office and has a dependent branch in another province, the company needs to report, compute taxes, and send the VAT return to the tax authority overseeing the main office. Additionally, the company should distribute the taxes appropriately for each province where its branch is situated. These actions related to declaring, computing, allocating, and paying VAT must follow the guidelines in Article 13 of Circular No. 80/2021/TT-BTC issued by the Ministry of Finance on 29 September 2021.

2. Official Letter No. 47362/CTHN-TTHT dated 5 July 2023 by the Hanoi Tax Department guiding on VAT declaration for factory leasing activities.

If a company leases factories in a province other than where its main office is located, it does not need to distribute VAT payments to the province with those leasing activities. The company is not obligated to separately report VAT to the tax authority in the province of the leasing activities. Instead, the company can combine the VAT declaration for these leasing activities with its other business operations and submit the VAT returns to the tax authority that directly manages the company.

3. Official Letter No. 47359/CTHN-TTHT dated 5 July 2023 by the Hanoi Tax Department on tax policy for foreign contractors.

When a foreign contractor earns income through an agreement with a Vietnamese partner to provide products and associated services, including the use of copyrighted products within Vietnam, it will be liable for Foreign Contractor Withholding Tax (FCWT) as outlined. Here are the conditions:

- If the contract distinctly separates the value of goods and the value of the copyright, the following rules apply: (i) the value of goods is subject to Value Added Tax (VAT) during the import phase; and (ii) the value of the copyright is either not subject to VAT according to the situations specified in Clause 21, Article 4 of Circular No. 219/2013/TT-BTC or is subject to a 5% VAT on VATable income. Corporate Income Tax (CIT) is calculated at a rate of 10% based on the assessable revenue.
- If the contract doesn't distinctly allocate the values of goods and copyright, both VAT and CIT will be computed at 3% and 2% respectively, based on the entire contract value.

4. Official Letter No. 49215/CTHN-TTHT dated 10 July 2023 by the Hanoi Tax Department regarding VAT policy on revenue from medicines out of medical service package.

As per the regulations, if medicines are included in a medical service package, the revenue generated from these medicines is not subject to VAT. However, if the medicines are not part of the medical service package, any revenue earned from them will be liable for VAT through the direct method.

5. Official Letter No. 2879/TCT-CS dated 12 July 2023 on tax incentives for hi-tech application projects.

When an enterprise benefits from CIT incentives or has fully utilised such incentives according to CIT regulations, and it is subsequently granted a certificate for a high-tech application project, the CIT incentives for that enterprise will be determined based on the preferential rate applied to high-tech application projects, as outlined in Clauses 7 and 8, Article 1 of Law No. 32/2013/QH13, along with related implementation guidelines. The duration for which the enterprise has already enjoyed the prior CIT incentives, including any tax rate reductions and exemption periods, if applicable, will be subtracted from the period of the additional incentives granted for the high-tech application project.

6. Decision No. 970/QD-TCT dated 14 July 2023 by the General Department of Taxation (“GDT”) on the promulgation of the tax audit process.

Some key changes from 14 July 2023 on the tax audit process include:

- Tax authorities prioritise conducting inspections at the tax office's premises for enterprises with a high risk level and those that have not undergone inspections or examinations for over 5 years, except in situations of unplanned inspections at the enterprise's main office where advance scheduling is not needed.
- Enterprises are chosen for inspections at their main headquarters based on a combination of factors. This includes ranking them according to risk level, with higher risk ranked enterprises being selected first, followed by those with progressively lower risk. Additionally, consideration is given to enterprises that have not undergone inspections or examinations for a period exceeding 5 years.

7. Official Letter No. 51950/CTHN-TTHT dated 18 July 2023 by the Hanoi Tax Department regarding deductible expenses when determining taxable income for CIT purpose.

If a company categorises the costs incurred for availing Personal Income Tax (PIT) declaration services and purchasing health care membership cards for foreign employees as expenses related to salaries and wages, these expenses will be considered reasonable when calculating the company's taxable income. This is applicable if the expenses satisfy the criteria for deductible expenses and do not fall under the categories of non-deductible expenses outlined in CIT regulations. Additionally, the eligibility must be supported by one of the following documents: a labour contract, a collective labour agreement, or the financial regulations of the company. If the company classifies the aforementioned expenditures as employee welfare costs, these expenses will be accepted as deductible for CIT calculations, provided that the total welfare spending remains within the limit of one average monthly salary. Additionally, adherence to the criteria stipulated in CIT regulations concerning payment documentation is necessary for these expenses to be eligible for deduction.

8. Official Letter No. 52180/CTHN-TTHT dated 19 July 2023 by the Hanoi Tax Department on CIT incentives for software manufacturing enterprises.

If a company's primary operations involve software product production but it lacks the required investment certificate for a software production project, as mandated by law, it will be regarded as failing to fulfil the prerequisites for CIT incentives applicable to new projects in accordance with the established regulations.

9. Official Letter No. 52182/CTHN-TTHT dated 19 July 2023 by the Hanoi Tax Department on VAT rate applicable to software services.

When a company offers software services directly to entities and individuals located abroad, and these services are utilised outside of Vietnam, satisfying the criteria for service export as defined by VAT law, a tax rate of 0% will be implemented.

E-INVOICE

1. Official Letter No. 2812/TCT-TTKT dated 7 July 2023 by the GDT on the implementation of measures to prevent and combat invoice trading in cyberspace.

In order to further improve the effectiveness of preventing and addressing instances of trading invoices, particularly the advertising and sale of invoices online, the GDT has instructed the Tax Departments of various provinces and cities to designate a specific division as the central unit responsible for examining, studying, and executing strategies to enhance the management of purchasing and selling invoices in the digital realm.

Simultaneously, the GDT is taking initiative in devising a strategy to collaborate with pertinent departments such as the Police and Information & Communications authority. This coordinated effort aims to systematically execute preventive measures against invoice trading conducted by providers of invoice services online.

Moreover, the GDT emphasises the importance of actively gathering data from websites that facilitate the sale of invoices. This is done to identify potentially dubious cases of invoice sales and to detect any suspicious indications of invoice transactions.

2. Official Letter No. 51359/CTHN-TTHT dated 17 July 2023 by the Hanoi Tax Department on the use of electronic invoices (“e-invoice”) in export processing zones upon asset liquidation.

If an export processing enterprise, which has enrolled for e-invoice usage as per Decree No. 123/2020/ND-CP, sells and disposes assets within the country, it is required to generate an e-invoice classified as a sales invoice type. The company will then perform tax declaration through the direct method, as specified in the Value Added Tax (“VAT”) regulations, and proceed to submit the VAT return as stipulated by the legislation on tax administration.

3. Official Letter No. 52405/CTHN-TTHT dated 19 July 2023 by the Hanoi Tax Department on handling invoices issued with errors according to Decree No. 15/2022/ND-CP.

In situations where the Company engages in construction and installation activities that fulfill the criteria for applying a VAT reduction from 10% to 8%, as outlined in Decree No. 15/2022/ND-CP, but has already issued an invoice with a tax rate of 10% (prior to the reduction), it can rectify this by creating a minute that explicitly outlines the mistake. Simultaneously, the Company can generate a corrected invoice with the adjusted tax rate to rectify the error.

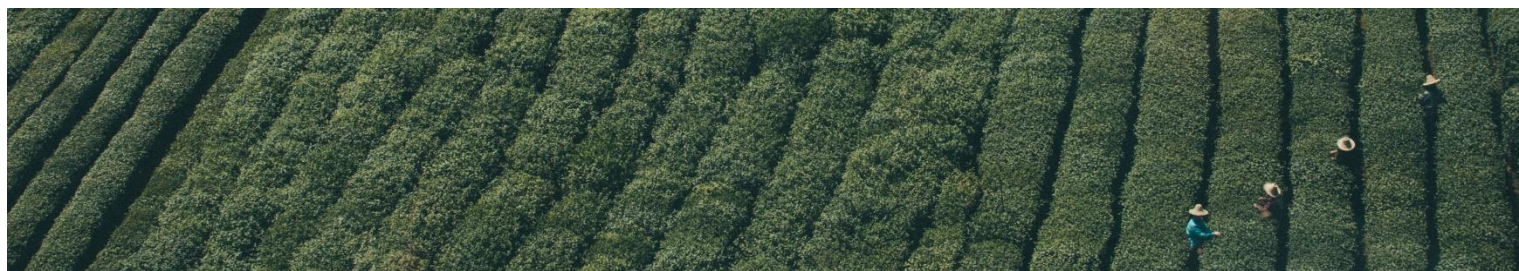
4. Official Letter No. 8999/CTTPHCM-TTHT dated 19 July 2023 by the Tax Department of Ho Chi Minh City providing on guidance on e-invoice issuance for goods returns and trade discounts.

Regarding invoice issuance in the event of goods being returned due to improper specifications and quality by the buyer:

- When an individual or organisation purchases goods and receives an invoice from the seller, but subsequently realises that the goods do not meet the required specifications and quality, resulting in the return of either the entire or a portion of the goods, the seller is obligated to release a goods return invoice. This invoice serves as an adjustment or replacement for the original invoice, in line with an agreement clearly outlining the returned goods between the seller and the buyer.
- For goods purchased prior to 1 January 2023, which are eligible for a reduced VAT rate of 8%, if the buyer returns these goods due to inadequate specifications and quality after 31 December 2022, the seller must issue a goods return invoice applying the VAT rate of 8%.

Regarding the issuance of trade discount invoices when business establishments apply trade discounts to customers and for goods eligible for a reduced VAT of 8%, which were sold in 2022 but had their related invoices specifying the trade discount issued only from 1 January 2023:

- If the discount amount is determined based on the last purchase or the subsequent purchase after 31 December 2022, the discount amount for the goods sold should be modified within the taxable price. The relevant tax rates applicable under the prevailing regulations during the invoice issuance time should also be considered.
- In the scenario where the discount amount is computed at the conclusion of the discount program or period after 31 December 2022, the seller is required to release a new invoice to accommodate the adjustment. This new invoice should apply the VAT rate of 8% corresponding to the time of the sale.



CUSTOMS

1. Official Letter No. 3446/TCHQ-GSQL dated 3 July 2023 by the General Department of Customs on determining the time to declare export revenue.

The export process for a shipment is officially concluded and can proceed with further customs-related procedures once the goods have been cleared and confirmed to have been physically exported in accordance with Article 53 of Circular No. 38/2015/TT-BTC, with amendments and supplements stipulated in Clause 33, Article 1 of Circular No. 39/2018/TT-BTC.

2. Official Letter No. 3735/TCHQ-TXNK dated 18 July 2023 by the General Department of Customs on goods imported from bonded warehouses for export production.

In line with the given information, in the case of goods that were exported and underwent full customs procedures before being placed in a bonded warehouse for export, if these goods are later transferred and brought back to the domestic territory, an import declaration for these goods must be filed using the appropriate category. Furthermore, the requisite import procedures must be conducted as per the established regulations.



PERSONAL INCOME TAX (“PIT”)

1. Official Letter No. 42366/CTHN-TTHT dated 19 June 2023 by the Hanoi Tax Department regarding withholding PIT when paying compensation of under VND 2,000,000 per payment to tax residents.

As outlined in the Official Letter, if a company provides compensation, wages, or other payments (including tips) that are categorised as employment income to tax residents who either lack a labour contract or possess a labour contract lasting less than 3 months, and the overall payment does not exceed VND 2,000,000 per payment, the company is not required to withhold a 10% Personal Income Tax (PIT) before disbursing the payments to these individuals.

2. Official Letter No. 45192/CTHN-TTHT dated 30 June 2023 by the Hanoi Tax Department regarding withholding PIT from royalties.

Royalties provided to collaborators as per the established royalty regulations are classified as employment income. Enterprises have the responsibility to deduct a tax at a rate of 10% for any income surpassing VND 2 million per payment.

3. Official Letter No. 49223/CTHN-TTHT dated 10 July 2023 by the Hanoi Tax Department regarding tax filing via electronic means.

Companies operating in regions with adequate information technology infrastructure are obligated to carry out tax-related activities, including tax declaration and payment, through electronic methods. In particular, when engaging in electronic tax transactions, these enterprises must utilise valid digital certificates issued by authorised public digital signature certification service providers or by relevant state agencies, or acknowledged by competent authorities who are eligible for recognising digital signatures on tax records and electronic tax documents.

4. Official Letter No. 45194/CTHN-TTHT dated 30 June 2023 by the Hanoi Tax Department providing that branches are not required to allocate PIT for employees working at business locations in different provinces.

If a company's branch is directly responsible for entering into labour contracts, disbursing salaries and wages, and withholding PIT for employees based at business locations situated in different provinces, the branch does not need to allocate PIT. Instead, the branch should consolidate and centrally declare and pay the PIT for these employees to the tax authority that directly oversees the branch's operations.

5. Taxpayers shall not need to prove their parents' income when registering dependants in pursuant with Official Letter No. 46974/CTHN-TTHT dated 4 July 2023 by the Hanoi Tax Department.

Taxpayers are not required to provide income-related documents when registering their parents as dependants. Instead, taxpayers are responsible for declaring and ensuring the accuracy, truthfulness, and completeness of the information they provide about their parents.

6. Official Letter No. 41573/CTHN-TTHT dated 14 June 2023 by the Hanoi Tax Department regarding authorisation for income payers to conduct tax finalisation if an individual has irregular income.

Individuals who earn income from two or more sources, with one being a primary source and the other being an irregular source, can follow a simplified process for the irregular income. If the average monthly irregular income throughout the year remains below VND 10 million and a 10% PIT rate has already been deducted from this income, individuals may authorise their income-paying agency to finalise the PIT on their behalf. This means that individuals do not have to go through the formal process of finalising PIT for this particular irregular income themselves.



SOCIAL SECURITIES (“SI”)

1. Circular No. 06/2023/TT-BLĐTBXH dated 29 June 2023 by the Ministry of Labour, War Invalids and Social Affairs (“MOLISA”) guiding the amendment of pension, social insurance (“SI”) allowance and monthly allowance.

As per the regulations outlined in Decree No. 108/2021/ND-CP dated 7 December 2021 (“Decree 108”), individuals subject to adjustments under this decree will witness a 12.5% increase in their pension, SI allowance, and monthly allowance. This increase is applicable starting from July 2023, as compared to their levels in June 2023.

For individuals not covered by the adjustments under Decree 108, the increase in pension, SI allowance, and monthly allowance will be 20.8% relative to their levels in June 2023.

The Circular is enforceable from 14 August 2023, with the regulations contained within it becoming applicable from 1 July 2023.

2. Notification No. 3205/TB-BHXH dated 5 July 2023 by the Social Insurance Department (“SID”) of Ho Chi Minh City (“HCMC”) regarding the structure of payment content prescribed by the SI agencies.

When utilising the Social Insurance (SI) payment feature within mobile banking applications, companies are required to input and select payment details within those applications. However, if payments are conducted through alternative methods, companies must adhere to the subsequent structure when preparing the payment voucher: +BHXH+103+00+Company’s Code+SID code+dong BHXH+

3. Official Letter No. 1927/BHXH-TST dated 26 June 2023 by the Vietnam Social Security (“VSS”) guiding the collection of SI, health insurance (“HI”), unemployment insurance (“UI”), labour accident & occupational disease insurance (“LAODI”) in pursuant with the statutory base salary of VND1,800,000 per month from 1 July 2023.

Accordingly, the maximum limit for voluntary SI contributions has been increased to VND 36,000,000 per month, which is equivalent to 20 times the statutory base salary.

Furthermore, the HI contribution levels for households and individuals whose HI contributions are subsidised by the Government have also been elevated in line with the statutory payment rate of VND 1,800,000 per month. This change is effective from 1 July 2023.

4. Notification No. 3347/TB-BHXH dated 11 July 2023 by the SID of HCMC guiding the amendment of pension, SI allowance and monthly allowance in accordance with Decree No. 42/2023/ND-CP.

The disbursement of pension, SI allowances, and monthly allowances based on the updated entitlement levels, as well as the reimbursement of the discrepancies for July and August 2023, will be carried out concurrently during the payment period of September 2023.

5. Official Letter No. 2048/BHXH-VP dated 5 July 2023 by the VSS regarding the usage of information and documents integrated on VNeID in receiving applications, returning the result of administrative process. If individuals opt to utilise their level 2 identification account for administrative processes at SI agencies, the identity verification process proceeds as outlined below: upon receiving SI applications from an applicant, SI officials from the One-Stop Department will access their VNeID application to scan the QR code labelled as the "Online Identification Code," which is generated on the applicant's VNeID application. This step is taken to validate the accuracy of the applicant's personal information. Subsequently, the officials will review the image of the applicant's ID card through the mobile application used by the applicant.

LABOUR

1. Decision No. 15233/QD-SLDTBXH dated 7 July 2023 by the HCMC Department of Labours, War Invalids and Social Affairs ("DOLISA") issuing the procedure for notifying termination of employment due to restructuring, technological changes, or economic reasons.

In situations where an employee's job is terminated due to changes in the employer's structure, technological shifts, or economic factors, the employer is obligated to formulate and execute a labour usage plan according to the established guidelines.

When implementing job terminations under the aforementioned circumstances, the employer is required to engage in consultation with the organisation that represents the employees within the company. Furthermore, the employer must notify the DOLISA at least 30 days prior to the planned termination.

2. Decision No. 2813/QD-UBND dated 7 July 2023 by the People's Committee of HCMC regarding the amendment procedures of work permit ("WP") extension and exemption for expatriates working in HCMC.

The Decision has been released, outlining the amendment and guidance of two administrative procedures within the employment domain, which will be applicable in Ho Chi Minh City from 7 July 2023. These procedures are as follows:

- Extension of WP for foreign nationals working in Vietnam (administrative charge is VND 450,000).
- Confirmation of WP exemption for foreign nationals (free of charge).

OTHERS

1. Law on Bidding No. 22/2023/QH15 dated 23 June 2023 by the National Assembly ("Law on Bidding 2023"), effective from 1 January 2024.

The Law on Bidding 2023 establishes regulations for the oversight of bidding activities, outlines the roles and obligations of government entities, organisations, and individuals engaged in bidding processes. It encompasses the selection of investors for bidding packages and business investment projects.

Law on Bidding 2023 introduces various new prohibited actions within bidding activities, which include:



- The term "Tendering" encompasses the subsequent actions:
 - ✓ Facilitating, negotiating, or coercing either party or parties to prepare or withdraw bids with the aim of favouring a particular party to win the bid;
 - ✓ Organising negotiations that lead to refusal to provide goods or services, declining to sign sub-contracts, or engaging in other forms of negotiation aimed at limiting competition, thus ensuring the victory of a specific party;
 - ✓ Competent and experienced bidders or investors who have participated in the bid, fulfilled the bidding dossier criteria, yet intentionally withhold documents verifying their capabilities and experience upon request by the bid initiator to make clear offers, or when asked to compare documents, all with the intention of creating a favourable situation for a particular party to secure the bid.
- Similarly, the term "Obstruction" comprises the ensuing actions:
 - ✓ Hindering the authority, investors, bid initiators, bidders, and investors in their selection of bidders and investors;
 - ✓ Hampering competent authorities from overseeing, scrutinising, inspecting, or auditing bidding activities;
 - ✓ Intentionally lodging false complaints, accusations, or suggestions to hinder bidding processes;
 - ✓ Committing actions that violate network safety and security laws in order to interfere with or obstruct online bidding.

In the instance of bid cancellation, there are fresh regulations that pertain to certain conditions, which include:

- When all documents such as expressions of interest, pre-qualification applications, bids, or proposal dossiers do not comply with the stipulated requirements mentioned in the request for expressions of interest, pre-qualification invitations, bidding dossiers, or requirement documents.
- Adjustments in the approved investment decision that result in changes to the investment objectives and scope. These modifications lead to corresponding changes in the evaluation criteria and workload detailed in the request for expressions of interest, pre-qualification invitations, bidding dossiers, and requirement documents.

2. Circular No. 30/2023/TT-BTC dated 17 May 2023 by the Ministry of Finance guiding registration, depository, corporate actions, transfer of ownership, settlement for transactions and organisation of trading market for corporate bonds privately placed in domestic market, effective from 1 July 2023.

This Circular provides guidance on the registration, depository, corporate actions, transfer of ownership, and settlement for transactions involving privately placed corporate bonds within the domestic market. These bonds have been issued since the implementation of Decree No. 153/2020/ND-CP dated 31 December 2020 by the Government, which pertains to the offering and trading of private corporate bonds in the domestic market and offering corporate bonds to the international market.

Particularly, Circular No. 30/2023/TT-BTC offers guidance on various aspects concerning private corporate bonds, including:

- Instructions for registering, depositing, managing corporate actions, and transferring ownership for private corporate bonds.
- Guidelines for structuring transactions and the procedures for cancelling registration of private bond transactions.
- Details on how payments are handled for private corporate bond transactions.
- Procedures for addressing cases involving errors during the trading of private corporate bonds.
- Guidelines for handling instances of insolvency within private bond transactions.
- Identification of scenarios where the ownership of corporate bonds cannot be transferred via the trading system.

3. Circular No. 09/2023/TT-NHNN dated 28 July 2023 of the State Bank of Vietnam guiding implementation of a number of articles of the Law on Anti-Money Laundering, effective from 28 July 2023.

This Circular outlines the criteria and methodologies for evaluating the risks of money laundering that reporting entities face; guidelines for managing these money laundering risks and for categorising customers based on their respective levels of money laundering risk. The Circular also mandates internal policies for anti-money laundering efforts, stipulates the reporting of large transactions and suspicious transactions, as well as the reporting of electronic funds transfers. Additionally, it defines the format and deadlines for electronic data reporting.

Furthermore, the Circular specifically addresses cases that necessitate reporting to authorities responsible for preventing money laundering when electronic fund transfers are conducted. These include:

- Domestic electronic funds transfers, where all participating financial institutions are situated within Vietnam, and the transaction value is VND 500 million or more, or the equivalent value in foreign currency.
- International electronic funds transfers, where at least one participating financial institution is located outside Vietnam, and the transaction value is USD 1,000 or more, or the equivalent value in a different foreign currency.

On top of that, electronic fund transfers that are not mandated to be reported comprise:

- Transactions originating from services that involve debit cards, credit cards, or prepaid cards for payments related to goods and services.
- Transactions and payments taking place between financial institutions, where both the sender and beneficiary are financial institutions themselves.

4. Law No. 23/2023/QH13 dated 24 June 2023 by the National Assembly amending and supplementing a number of regulations on immigration, effective from 15 August 2023.

The newly promulgated Law introduces amendments and additions to various articles within Law on Exit and Entry of Vietnamese Citizens No. 49/2019/QH14, as well as Law on Entry, Exit, Transit, and Residence of Foreigners in Vietnam No. 47/2014/QH13.

A few noteworthy regulations include:

- The inclusion of the "Place of Birth" information in passports.
- Vietnamese citizens can now submit applications for ordinary passports via the electronic platforms available at the national public service portal or the public service portal of the Ministry of Public Security.
- The introduction of regulations related to the cancellation of passport validity if over 12 months have elapsed since the designated return date by the competent authority, but the applicant has not collected the passport.
- Extension of the duration for electronic visas (EV codes) from 30 days to 90 days.

5. Amendment, supplement forms for visa, temporary residence card and permanent residence card issuance for expatriates in pursuant with Circular No. 22/2023/TT-BCA dated 30 June 2023 by the Ministry of Public Security, effective from 15 August 2023.

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