

# Update on the latest regulations and important tax policies

*October 2018 – No.2*



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# Content

In this newsletter, Grant Thornton Vietnam would like to update the latest important regulations and tax policies as follows:

1.



Decree 121/2018/ND-CP amending Decree 49/2013/ND-CP providing guidelines in terms of wages

2.



Circular 81/2018/TT-BTC amending and supplementing Circular 83/2016/ TT-BTC providing guidelines for implementation of investment incentives

3.



Foreign Contractor Tax on intermediary payment services

4.



Export-processing enterprises must purchase invoices to issue in case of liquidating fixed assets

5.



Receipt of supporting fees allowance to perform service must be subject to VAT of 10%

6.



Re-using raw materials of re-import products which have already be changed their use purposes shall not be entitled for tax refund

7.



Refund on Personal Income Tax of expatriates who have already returned their home countries

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# 1. Decree No. 121/2018/ND-CP amending Decree No. 49/2013/ND-CP providing guidelines in terms of wages

On 13 September 2018, the Government has issued Decree No. 121/2018 / ND-CP ("Decree 121") to amend and supplement certain articles of Decree No. 49/2013/ND-CP dated 14 May 2013 on guidelines for implementing Labor Code in terms of wages. Decree 121 will be effective from 01 November 2018.

Decree 121 supplements the regulations to clarify the purpose of setting the labor norms and supplements the cases of exemption from submission of wage scales, payrolls and labor norms to the labour department.

To be specific, the labor norms are set up and applied to the enterprises that determine the employees' salaries based on productivity. Additionally, according to this Decree, to minimize administrative procedures, the enterprises with less than ten (10) employees are exempt from submission of wage scales, payrolls, and labor norms to the labour department.



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## 2. Circular 81/2018/TT-BTC amending and supplementing Circular 83/2016/ TT-BTC on guidelines for implementation of investment incentives

The Ministry of Finance (“MOF”) issued Circular 81/2018/TT-BTC (“Circular 81”) to amend and supplement Circular 83/2016/TT-BTC dated 17 June 2016 issued by the MOF providing guidance on the implementation of investment incentives according to the Investment Law and Decree No.118/2015/ND-CP dated 12 November 2015 providing detailed guidelines on implementation of some articles of Investment Law. Circular 81 comes into effect from 12 October 2018.



Circular 81 supplemented the regulations relating to investment incentives. Accordingly, (i) the investment projects with granted Investment Licenses, Investment Registration Certificates or legal equivalent documents by competent authorities before 01 July 2015 and (ii) the domestic investment projects with an investment capital scale of less than VND15 billion established before 01 July 2015 are eligible for investment incentives under the Investment Law 2014 and other relevant documents. To be specific, these projects will be entitled to incentives in terms of Corporate Income Tax, Import duty, non-agricultural land use tax as stipulated in the latest legal documents or in legal documents issued before 01 July 2015, whichever optimize the enterprises’ benefit.

### 3. Foreign Contractor Tax (“FCT”) on intermediary payment services

The General Department of Taxation (“GDT”) issued Official Letter 3428/TCT-CS on 7 September 2018 to provide guidance on FCT on intermediary payment services (mobile/electronic wallet and payment application) (“e-wallet”). Accordingly, this Official Letter stipulated the FCT implication imposed on intermediary payment transaction as follows:

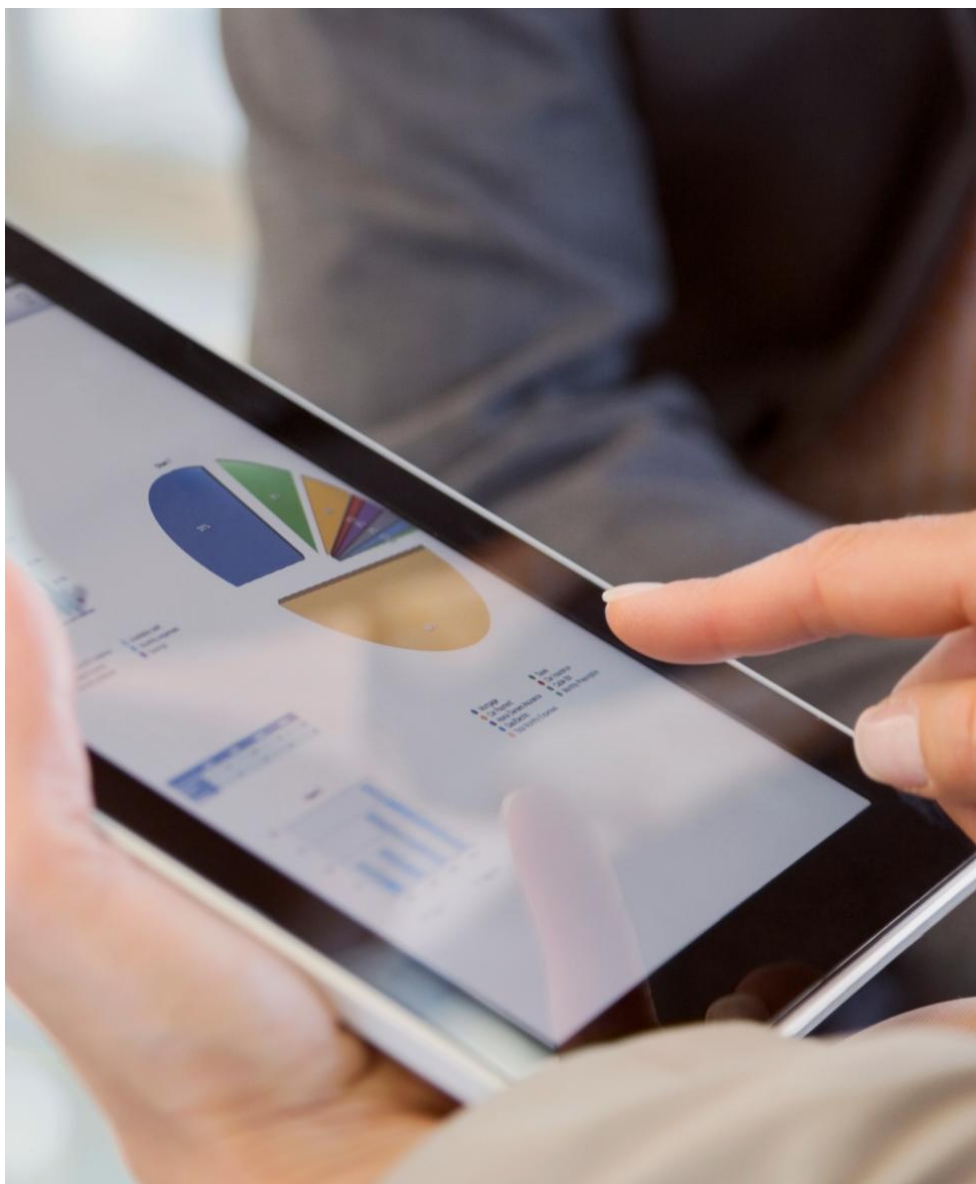


**Scenario 1:** the seller in Vietnam pays transaction processing fee to the overseas provider of intermediary payment services under service agreement signed between the Vietnamese seller and the overseas service provider. Accordingly, the seller in Vietnam takes responsibility for withholding, declaring and making payment for FCT levied on such transaction processing fee to the Vietnamese tax authorities on behalf of the overseas service provider.



**Scenario 2:** the overseas seller pays transaction processing fee to the overseas provider of intermediary payment services under service agreement signed between the overseas seller and the overseas service provider. In this regard, according to this Official Letter, the transaction processing fee is not subject to Vietnamese withholding FCT.

In addition, the Official Letter mentioned that the payment from the Vietnamese purchasers (who are organisations incorporated under Vietnamese regulations, individuals doing business) to the overseas seller (who is a foreign contractor applying direct method) under the sale contract providing goods/services will be subject to FCT. In this case, the purchasers are responsible for withholding FCT upon making payment to the overseas seller. Also, as mentioned in this Official Letter, the tax authorities requested the local suppliers of intermediary payment service in Vietnam (e-wallet) to cooperate with the tax authorities in providing documents to facilitate the tax authorities’ tax collection of the foreign contractors.



## 4. Export processing enterprises liquidate fixed assets have to buy retail invoices

Hanoi Tax Department issued Official Letter 54475/CT-TTHT dated 03 August 2018 on Value Added Tax (“VAT”) treatment applied to the case of the Export Processing Enterprise (“EPE”) liquidating fixed assets.

According to this Official Letter, when the EPE liquidates its fixed assets to a domestic entity and the EPE fulfilled the payment of import duty and VAT at import stage upon its change of use purpose with the customs authorities, the EPE can purchase a VAT invoice to issue to the domestic purchaser in accordance with Circular 39/2014/TT-BTC.

The VAT payable on the above sale of fixed assets is the exceeding amount between VAT amount on VAT invoice issued for liquidating fixed assets and the VAT amount at import stage paid upon transfer of use purpose.



## 5. The allowance received to perform services is subject to VAT of 10%

The General Department of Taxation (“GDT”) issued Official Letter No. 41662/ CT-TTHT on 19 June 2018 on VAT treatment on the allowances paid by the Insurer to the insurance agent, in particular:

- In case the insurance agent receives allowances, e.g. initial monetary allowances, annual sales bonus, and quarterly bonus from the Insurer for the purpose of providing repair, warranty, promotion and advertising services, the insurance agent is required to issue output VAT invoices, declare and pay VAT at the rate of 10% as prescribed.

- In contrast, in case the insurance agent receives the above allowances without the conditions to provide the above-mentioned services to the Insurer, these allowances are exempt from declaration and payment of VAT.
- Regarding the annual marketing and sale allowances that the agent receives to cover its expenses relating to the product and sale activities, the insurance agent is required to issue VAT invoices with VAT rate of 10% upon receipt of the allowances.

## 6. Import duty refund is not applied to the re-used raw materials of re-imported products whose use purpose has been changed

The General Department of Customs has issued an Official Letter No. 5269/ TXNK-CST dated 11 September 2018 on import duty refund of imported raw materials for producing goods for export. According to the case mentioned this Official Letter, the exported products are re-imported for repair due to unqualified standards but cannot be fixed and the Company has completed the procedures to change the use purpose of the products and paid taxes sufficiently. Thereafter, the Company re-uses some components of these products to install into other products for export. In this case, the re-used components are not entitled to import duty refund in accordance with the guidance in this Official Letter.

## 7. Personal Income Tax (“PIT”) refund for expatriates who already returned to their home countries

On 20 July 2018, the General Department of Taxation (“GDT”) issued an Official Letter No. 2848/TCT-TNCN on procedures of PIT refund for expatriates who have the overpaid PIT amount. Accordingly, an expatriate who returned to his home country, having an overpaid PIT amount and would like to receive the tax refund from the tax authorities, can authorize an organization to perform PIT finalization, application for PIT refund and receipt of PIT refund on his behalf. In this case, the Authorization Letter for the organization must be prepared and legalized by the expatriate in his home country for valid use in Vietnam.

Meanwhile, during the implementation of the tax refund procedure, the authorized organization is obligated to submit the tax authorities a written commitment letter stating that the organization will remit the refunded amount to the expatriate. Upon receipt of the tax refund, the authorized organization has obligation to remit the sufficient amount to the expatriate in accordance with the aforementioned Authorization Letter.



# Contact

Please contact professional advisors at Grant Thornton Vietnam for assistance with taxation, work permits for expatriate and legal issues you may have during the course of your business.

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