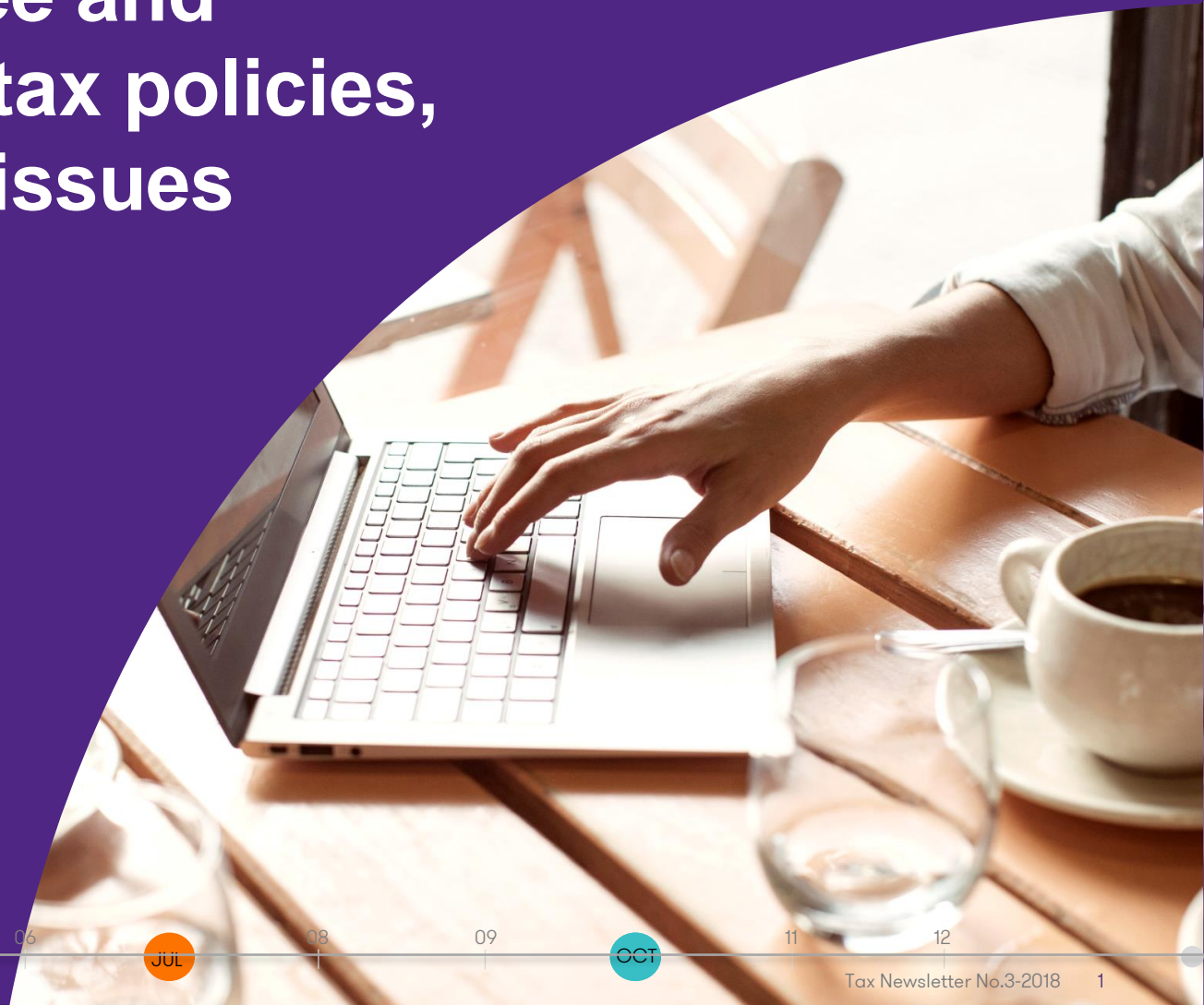


# Update on new decree and guidance relating to tax policies, customs and labour issues

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In this newsletter, Grant Thornton Vietnam would like to update new significant guidance as follows:



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Loan interest expenses incurred by enterprises having related party transactions



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Abolishing the regulations detailing the registration of the list of goods imported, temporarily imported for re-export of Foreign Contractors in the domain of construction in Vietnam



Expenditures on wages for expatriates working in Vietnam under an Appointment Letter



Announcement of interest rate for late payment of Social Insurance (“SI”), Health Insurance (“HI”), Unemployment Insurance (“UI”)



## 1. New regulations on trading activities applied for FIEs from 2018

On 15 January 2018, the Government issued Decree No. 09/2018/ND-CP (effective on the same day) to replace Decree No. 23/2007/ND-CP regulating the trading activities and other activities directly related to purchase and sale of goods by FIEs, including some significant points as follows:



Clarifying the definition of goods purchase and sale activities



Expanding the cases in which FIEs do not have to be granted with business licenses for their trading activities

- ❑ Expanding the cases in which business licenses are granted (i) to foreign investors not in the group of countries/ territories taking part in International Treaties which Vietnam has joined and (ii) for activities which Vietnam does not have commitments to open its market according to the International Treaties which Vietnam has joined. This Decree regulates the detailed conditions for these cases.
- ❑ Procedures for granting business licenses to FIEs will be carried out at Department of Industry and Trade (“DIT”), instead of local People's Committees as before. Simultaneously, the Decree also narrows the scope of seeking the Ministry of Industry and Trade's comments on some specific cases.

However, as this new Decree has just been issued, the application should be carefully considered by the enterprises.

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## 2. Loan interest expenses incurred by enterprises having related party transactions

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Ha Noi Tax Department issued Official Letter No. 1990/CT-TTHT, dated 15 January 2018 and No. 3966/CT-TTHT, dated 24 January 2018 guiding how to determine the deductible interest expenses for Corporate Income Tax (“CIT”) purposes and applied to enterprises having related party transactions. Accordingly, Ha Noi Tax Department reaffirm that:

- ❖ In case an enterprise has related party transactions and interest expenses, the total interest expense should not exceed 20% of its EBITDA to be deductible for CIT purpose according to Decree 20/2017/ND-CP. It is noted that the said total interest expense arise from loans with both related parties and independent parties . However, the official letters do not clarify if the said regulation is applied for the interest expenses incurred within the financial year (ending after 1 May 2017) or for the interest expenses incurred after 1 May 2017, the effective date of Decree 20/2017/ND-CP.
- ❖ In case EBITDA is less than zero, the total interest expenses are not deductible for CIT purposes.
- ❖ The said interest expenses do not exclude the ones eligible to be capitalized into the value of the investment project, in the period and the said interest expenses are not allowed to be offset against the interest incomes derived from deposits or lending.

However, it is worth noting that there are still some unclear points in applying this regulation but so far specific guidance from the General Department of Taxation has not been issued yet. Enterprises in the other provinces should seek guidance from in-charge tax authorities before applying.

### 3. Administrative penalty for failure to implement the procedures for investment project adjustment

Ha Noi Tax Department issued Official Letter No. 83647/CT-TTHT dated 29 December 2017 suggesting Hanoi Export Processing and Industrial Zones Authority to handle the cases of investment expansion projects (renovation of factory, expansion of production line, purchase of fixed assets) where the procedures for investment project adjustment, according to the applicable regulations are not carried out. An administrative fine of VND20,000,000 – VND30,000,000 shall be imposed for this violation.

### 4. Abolishing the regulations detailing the registration of the list of goods imported, temporarily imported for re-export of Foreign Contractors in the domain of construction in Vietnam

On 29 December 2017, the Ministry of Industry and Trade issued Circular No. 35/2017/TT-BCT abolishing Circular No. 53/2015/ TT-BCT dated 30 December 2015 detailing the registration of the list of goods imported, temporarily imported for re-export of foreign contractors in the domain of construction in Vietnam.

According to the previous Circular 53, foreign contractors, who have been granted a construction license and entered into a contract, must register a list of imported materials, fuels and integrated equipment serving the construction work, a list of imported and temporarily imported materials and building machinery. However, these regulations have been abolished according to Circular No. 35/2017/TT-BCT.

Therefore, from 12 February 2018 onwards, foreign contractors do not need to register a list of materials, machinery and equipment imported or temporarily imported serving the construction work in Vietnam.

## 5. Expenditures on wages for expatriates working in Vietnam under an appointment letter

According to Official Letter No.1198/CT-TTHT, dated 9 January 2018, on the conditions for recording the wages for expatriates working in Vietnam under an appointment letter, Ha Noi Tax department has guided that the wages, bonus and the other payables to expatriates working under an appointment letter will only be deductible for CIT purpose given these payments are specified in the appointment letter and one of the following documents including labour contract, collective labour agreement, financial policy, reward scheme of the company.



## 6. Announcement of interest rate for late payment of Social Insurance (“SI”), Health Insurance (“HI”) and Unemployment Insurance (“UI”)

On 10 January 2018, Vietnam Social Security issued Announcement No. 86/TB-BHXH on interest rates used for calculating interest on late payment of SI, HI and UI. Accordingly, the investment interest rate of the average SI fund (“interest rate 1”) in 2017 is 7.25%/year, and interbank interest rate for a 9-month term published by the State Bank of Vietnam (“interest rate 2”) is 4.5%/year. The provincial departments are requested to base on the said rates to calculate the interest on late payment of SI, HI and UI.

*Please contact our professional advisors at Grant Thornton Vietnam should you need our assistance with taxation, work permit for expatriates and any legal issues during the course of your business.*



# Contacts

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