

Update on new regulations and important tax policies

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Content

Vietnam is implementing a series of important changes in terms of policies to alleviate post-COVID-19 difficulties as well as enhance the business environment, unfold social power to attract and take advantage of available opportunities when major markets in the world are gradually reopening and expanding their supply chains to minimize risks and disruptions.

In this month Tax Newsletter, Grant Thornton Vietnam would like to update several recently issued legal policies.



Resolution No.116/2020/QH14 on reducing 30% of CIT payable in 2020



Law on Investment 2020 No.61/2020/QH14



Law on Enterprise 2020 No.59/2020/QH14



Circular No.13/2020/TT-BTTTT on the identification of software product production



Official Letter No. 2835/TCT-TTKT guiding several contents of Decree No. 68/2020/ND-CP on interest expenses of enterprises having related-party transactions



Official Letter No. 2014/TCT-DNNCN of General Department of Taxation responding to EUROCHAM on PIT for visa and temporary residence card application expense for employees



Official Letter No. 3552/CT-TTHT on PIT of income from gifts of employees

1. Resolution No.116/2020/QH14 on reducing 30% of CIT payable in 2020

Resolution 116/2020/QH14 ("Resolution 116") was approved on the reduction of the CIT payable of 2020 for enterprises, households, service agencies and other organizations established as prescribed in the Vietnam law specifically as follows:

- Reduce 30% of the amount of CIT payable of 2020 for enterprises whose total revenue in 2020 does not exceed VND 200 billion.
- Enterprises determine by themselves the reduced tax amount for temporary quarterly CIT payments and CIT finalization of 2020.

The Resolution takes effect 45 days after the date of signing and applies only to the tax period of 2020. The Government is in the process of drafting and seeking opinion contributions on the Decree regulating the implementation of the Resolution 116.



2. Law on Investment 2020 No. 61/2020/QH14

The Law on Investment No. 61/2020/QH14 (Law on Investment 2020), which was issued on 17 June 2020 replacing the Law on Investment 2014, will take effects on 1 January 2021. Several notable contents of the new Law on Investment are as follows:

- Adding "debt collection agency business" to the list of banned business investment lines.
- Reducing a number of conditional business lines such as Franchising, Logistics, Shipping agency services, etc.
- Adding some conditional business lines such as Clean water business (daily-life water); Architectural services business, etc.
- Amending business lines eligible for investment incentives, conditions for implementing investment projects in order to increase investment attraction such as Higher Education, projects with investment capital of over VND6,000 billion, innovative start-up projects, investment projects in the distribution chain for products of small and medium-sized enterprises, etc.
- Adding the regulations on valuation of investment capital value, machinery, equipment and technological lines in several necessary cases to determine tax bases, contributing to restriction of transfer pricing, tax evasion and raising the quality of investment projects in Vietnam.
- Adding regulations on termination of investment projects such as in case the land of investors is withdrawn due to being unused, delayed use; investors carry out investment activities on the basis of artificial transactions; etc. in order to improve the legal basis for the authorities to handle the suspended projects issue completely.

3. Law on Enterprise 2020 No. 59/2020/QH14

Law on Enterprise No. 59/2020/QH14 (Law on Enterprise 2020) issued on 17 June 2020 replacing the Law on Enterprise 2014 No.68/2014/QH13, with effective from 1 January 2021. Several notable adjustments in the Law on Enterprise 2020 are as follows:

Eliminating the procedure of notifying the seal design to the business registration authority. Amending regulation that businesses can use the seal in the form of digital signatures in accordance with regulations on electronic transactions

Expanding the definition of state-owned enterprises which includes enterprises with more than 50% of charter capital owned by the State, and the total number of shares with voting rights instead of 100% of the charter capital as prescribed in the Law on Enterprise 2014.

Amending provisions on Non-Voting Depository Receipts

Reducing timeline that requires enterprises to notify in writing to the business registration authority to at least 3 working days before the date of business suspension or resumption before the notified date.

4. Circular No.13/2020/TT-BTTTT on the identification of software product production

On 3 July 2020, the Ministry of Information and Communications issued Circular No.13/2020/TT-BTTTT ("Circular 13") replacing Circular No. 16/2014/TT-BTTTT ("Circular 16") to provide guidance on identification of software production, with effective from 19 August 2020 with several notable contents as follows:



Circular 13 clarifies several contents including:

- Scope of amendment: identifying software production that meets the requirements for enjoying CIT incentives purpose.
- Subjects of application: organizations and enterprises involved in the production of software products on the List of software products as prescribed by the Ministry of Information and Communications.



Although Circular 13 maintains 7 software production processes as prescribed in Circular 16, however, in the description, Circular 13 clarifies the specific details of each task in each process.



In addition, in comparison with the contents specified at Points a, b and c, Clause 2, Article 6 of the previous Circular 16, the provisions on determination of software production is prescribed in simpler manner in the Circular 13.

Specifically, the activity of producing a software product by an organization or an enterprise is defined as a software production that satisfies the requirements when the organization or the enterprise performs at least one of two stages: Determination of requirements or Analysis and design. At the same time, the software production should be expressed by one or several documents as prescribed in this Circular, corresponding to each task of the stages performed by the enterprise.



Software production that have been determined to satisfy the requirements prescribed before the effective date of this Circular will still be considered as meeting the requirements of software production until the expiry of the approved investment projects.

5. Official Letter No. 2835/TCT-TTKT guiding several contents of Decree No. 68/2020/ND-CP on interest expenses of enterprises having related-party transactions

On 14 July 2020, the General Department of Taxation issued Official Letter No. 2835/TCT-TTKT guiding several contents of Decree No.68/2020/ND-CP on related-party transactions as follows:

For the 2019 tax finalization

- For enterprises that have declared their tax finalization in 2019 with deadline before 31 March 2020, enterprises shall supplement CIT finalization declaration in accordance with Decree 68.
- Enterprises that have not yet completed the 2019 tax finalization will implement in accordance with Decree 68.

For retroactive application for the tax period 2017 and 2018

- Retrospective application of controlled interest expenses under Clause 3, Article 8 of Decree 20 for 2017 and 2018 applies only to the following regulations:
 - Cap of deductible interest expense: increase from 20% to 30%; and
 - Formula of net interest expense: loan interest minus (-) deposit interest, lending interest
- No retrospective application with respect to the amended provisions at Point (b) (carry forward expenses) and (c) (expansion of the subjects of application) in Decree 68 for 2017 and 2018

6. Official Letter No. 2014/TCT-DNNCN of General Department of Taxation responding to EUROCHAM on PIT for visa and temporary residence card application expense for employees

On 18 May 2020, the General Department of Taxation issued Official Letter No. 2014/TCT-DNNCN to answer the European Chamber of Commerce in Vietnam (EUROCHAM) on the PIT policy for the costs of obtaining temporary residence cards and visas for employees:



6. Official Letter No. 2014/TCT-DNNCN of General Department of Taxation responding to EUROCHAM on PIT for visa and temporary residence card application expense for employees



In case employers pay the expenses for applying and extending temporary residence cards and visas for foreign workers in order for them to be eligible to work at organizations in Vietnam and this is the responsibility of employers, these expenses are not included in the taxable income from salaries and wages of the employees.



In case the visa application fee for employees working in organizations in Vietnam to go on overseas business trips as required by the work is per diem in accordance with the organization financial regulations or internal regulations, it shall not be included in PIT taxable income. The expenses in excess of the prescribed threshold shall be taken into taxable income for PIT calculation purpose.



In case the expenses for temporary residence cards, visas application paid by the employers on behalf of the foreign workers are the employee's benefits, these expenses shall be included in the taxable income from salaries and wages of the foreign employees.

Therefore, in this Official Letter, General Department of Taxation has clarified further the PIT treatment on expenses for temporary residence cards and visas application for foreign workers paid by the company on behalf of employees compared to several previous guidance (as in Official Letter No. 3867/TCT-TNCN on 25 August 2017 issued by the General Department of Taxation).

7. Official Letter No. 3552/CT-TTHT on PIT of income from gifts of employees

On 8 April 2020, Ho Chi Minh City Tax Department issued the Official Letter No. 3552/CT-TTHT to answer about PIT regulations. Accordingly, in case an individual who is an employee receives gifts in kind from the Company, in form of a lucky draw, or gift vouchers, then this payment is considered as the employee's benefit and shall be included in the taxable personal income from salaries and wages of the employee.

However, please note that several local tax authorities might have different points of view in this regard according to which an individual who is an employee of the company receiving gifts in kind from the Company which is not taxable incomes from gifts as prescribed in Clause 10, Article 2 of Circular No. 111/2013/TT-BTC and may not be required to declare and pay PIT on these gifts.

Therefore, businesses should pay attention and discuss directly with the tax authority about this issue before implementation to mitigate tax risks.



Contact

Please contact our professional advisors at Grant Thornton Vietnam for assistance with taxation, accounting, transfer pricing, labour, investment and customs as well as other legal issues you may have during your business operation.

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