

Tax Updates December 2019

Vietnam Accounting & Taxation Changes

This December 2019 publication of our Tax and Accounting Updates looks at proposals to adjust the deductible interest rate cap, formal adoption by the Government of increases to the Minimum Monthly Wage, new regulations on customs procedures, tax management for cross border import and export of goods, new regulations on penalties in the foreign currency and banking sector, and our regular review of recent Official Letters released by the Tax Authorities.

PROPOSAL TO ADJUST DEDUCTIBLE INTEREST RATE CAPS DETAILED IN TRANSFER PRICING DECREE

On 29 November 2019, Deputy Prime Minister Vuong Dinh Hue chaired a meeting on amending regulations for interest expense management for related party transactions which are currently stipulated in Decree 20/2017/ND-CP.

Some significant changes proposed in the meeting include:

- Adjusting the deductible interest rate cap from 20% to 30% of EBITDA;
- Allow net interest expenses to be fully and consecutively carried forward against income for the next five years; and
- Widen the scope of related party transactions (involving in the public sector) that are to be excluded from Decree 20.

After the meeting, the Government issued Notification 407/TB-VPCP on the conclusions of Deputy Prime Minister and requested the Ministry of Finance draft a decree amending and supplementing Decree 20/2017/ND-CP on tax management for related party transactions.

The Notification requested the Ministry of Finance to:

- Complete reporting on the development of a Decree amending Decree 20/2017/ND-CP on tax management of related enterprises, particularly focusing on the amendment of Clause 3, Article 8 related to the cap of deductible interest expenses, the scope of adjustment, applicable entities, and to report back to the Government, and;

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- Urgently submit to the Government the Decree guiding the Tax Administration Law 38/2019/QH14 on tax administration for related party transactions according to the schedule (December 2019) in Decision 936/QD-TTg.

DECREE 90/2019/ND-CP INCREASING THE MINIMUM MONTHLY WAGE EFFECTIVE FROM 1 JANUARY 2020

On 15 November 2019, the Government formally approved the proposed increase of Minimum Monthly Wage by issuing Decree 90/2019/ND-CP detailing the increase and listing the geographical areas applicable to each Minimum Monthly Wage level. For further information regarding the increased levels for 2020, refer to our November Tax Update or our Annual Salary Quick Guide, available for download from vietnam.acclime.com.

NEW REGULATIONS ON CUSTOMS PROCEDURES AND TAX MANAGEMENT FOR CROSS BORDER IMPORT AND EXPORT OF GOODS

On 15 November 2019, the General Department of Finance issued Circular 80/2019/TT-BTC providing guidance on customs procedures and tax management for the import and export goods under Decree 14/2018/ND-CP dated 23 January 2018 on cross border trading activities.

Under the new provisions of this Circular, all entities conducting activities of trading or exchanging goods across borders are required to have a tax code before carrying out import/export procedures (Clause 3, Article 3).

Details of customs procedures and tax management are indicated in Article 6 of the Circular.

The Circular is effective from 1 January 2020, and repeals Circular 217/2015/TT-BTC dated 31 December 2015.

NEW PENALTIES FOR FOREIGN CURRENCIES AND BANKING

On 14 November 2019, the Government issued Decree 88/2019/ND-CP regarding administrative infringements in the currency and banking sector.

The maximum penalties for foreign currencies and the banking sector under this Decree remains at VND 2 billion (for organizations) and VND 1 billion (for individuals).

The penalties have generally been increased for certain infringements, and the Decree has introduced new violations, focusing on foreign currency infringements. This includes payments of goods in foreign currencies which are not in accordance with the law, which are subject to a penalty of VND 10 - 20 million where the payment value is between USD 1,000 and USD 10,000 (or less than USD 1,000 for repeated infringements); and penalties from VND 20 - 30 million if the payment value is between USD 10,000 and USD 100,000.

The Decree is effective from 31 December 2019 and replaces Decree 96/2014/ND-CP dated 17 October 2014.

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OFFICIAL LETTERS RELEASED

Guidance for Applying New Minimum Monthly Wages from 1 January 2020 in Ho Chi Minh City

On 20 November 2019, Ho Chi Minh City Department of Labour, War Invalids and Social Affairs ("DoLISA") issued Official Letter 39986/SLDTBXH-LD providing guidance for implementing Decree 90/2019/ND-CP on the Minimum Monthly Wage in Ho Chi Minh City.

Specifically, there are 2 Minimum Monthly Wage levels in Ho Chi Minh City:

- VND 4,420,000/month, applicable to enterprises in Zone 1, which includes all Ho Chi Minh City Districts except for Can Gio District.
- VND 3,920,000/month, applicable to enterprises in Can Gio District, which is in Zone 2.

For branches and affiliated units located in Provinces with different minimum wages, they will apply the respective minimum wage of the Province of the employee.

The minimum wage described above is for employees doing simple jobs, and for those with qualifications and skills, the minimum salary must be higher at least 7% greater.

Enterprises should proactively update their internal salary scales following the release of the new Minimum Monthly Wage and make it available to employees. They are also required to submit the updated scale to

the DoLISA office where their head office is located before 31 December 2019 for monitoring purposes.

Work Permits and Temporary Residence Cards when Companies Merge

On 5 November 2019, the Ministry of Public Security issued Official Letter 3341/BCA-V03 providing guidance for Work Permits and Temporary Residence Cards when companies merge. According to the Official Letter, the merging of companies will result in a change in the employer for foreign employees at the merged company. Therefore, after merging, the company needs to re-apply for Work Permits and Temporary Residence Cards for foreign employees (however, this is not for immigration purposes as there is no change of purpose of entry and residence).

Foreign Contractor Withholding Tax ("FCWT") for Software Purchased Online

On 29 October 2019, Hanoi Department of Taxation issued Official Letter 81365/CT-TTHT guiding requirements for FCWT for software purchased online.

Where a foreign vendor provides software to Vietnamese enterprises through online downloads, and receives payment for the software, then the foreign vendor is subject to FCWT in Vietnam. Specifically:

- The income received by the foreign vendor is not subject to Value Added Tax under Clause 21 Article 4 of Circular 219/2013/TT-BTC, and Clause 1, Article 6, Section 1, Chapter 2 of Circular 103/2014/TT-BTC.
- The income is subject to Corporate Income Tax at 10% on the taxable income, under Clause 2, Article 13, Circular 103/2014/TT-BTC.

Where the foreign vendor is not eligible to directly declare and pay FCWT, the Vietnamese enterprise will be responsible for withholding taxes, undertake tax declarations and making payment on behalf of the foreign vendor.

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Foreign Contractor Tax ("FCT") for Software Purchased Online

On 20 August 2019, the General Department of Taxation issued Official Letter 3308/TCT-KK regarding requirements for tax payment when adjusting capital transfer price.

Where the foreign party has additional income generated through signing the appendix adjusting the value of the capital transfer, the foreign party (or Vietnamese party to pay on behalf) is required to make an additional declaration of additional tax arise (according to Article 16 of Circular 151/2014/TT-BTC).

The deadline for additional tax payment is 10 days from the signing date of the appendix to adjust the value of the capital transfer. Where the deadline is not met, a penalty for late payment will apply according to the Tax Management Law.

Foreign Constructor Tax ("FCT") Policy for Distributing Goods for Foreign Vendor

On 10 September 2019, the General Department of Taxation issued Official Letter 70832/CT-TTHT on Foreign Constructor Tax policy for distributing goods for foreign vendor.

According to Clause 3, Article 1 of Circular 103/2014/TT-BTC, where a foreign company incurs income from selling goods in Vietnam through an authorized Vietnamese company to provide part of distribution services and other services related to the sale of goods, the foreign company will be subject to FCT.

If the foreign company fails to meet the conditions for direct tax declaration and payment in Vietnam, the Vietnam company shall deduct the amount of FCT (VAT and CIT) before payments to the foreign party and is responsible for declaring and paying the FCT on behalf of the foreign vendor in accordance with Article 12 and Article 13 of Circular 103/2014/TT-BTC.

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