

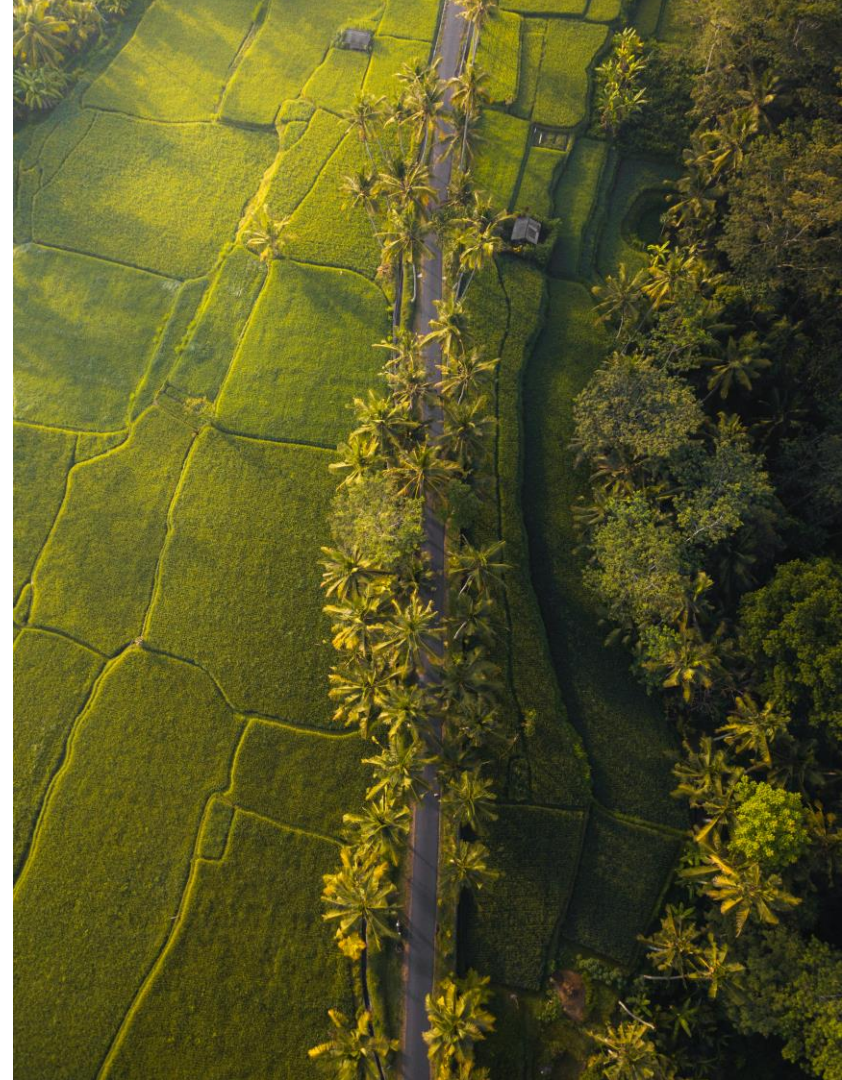


Update new legal documents and some important tax policies

August 2023

In this newsletter, Grant Thornton Vietnam would like to update to our valued customers the relevant legal policies and guidelines in the field of Foreign control policy, Tax, Social Insurance and Labor recently issued.

- 1 Circular 08/2023/TT-NHNN dated June 30, 2023 of the State Bank of Vietnam providing for the eligibility requirements of foreign loans without government's guarantee
- 2 Circular 05/2023/TT-BKHDT regulating on reporting form, the implementation of quarterly report on investment activities and report on investment supervision and assessment
- 3 Proposal and draft resolution on the application of additional CIT in accordance with Global Anti-Base Erosion Model Rules (*GloBE*)
- 4 Official Letter No. 1995/BHXH-TCKT for payment instruction through the banking system
- 5 Official Letter No. 46974/CTHN-TTHT guiding the conditions and documents proving dependent relief
- 6 Official Letter No. 8999/CTTPHCM-TTHT dated July 19, 2023 of the Tax Department of Ho Chi Minh City instruct on preparing e-invoices for returned goods and commercial discount activities
- 7 Official Letter No. 11680/CTHDU-TTHT dated July 12 2023 of the Hai Duong Tax Department guiding the procedures of Export Processing Enterprises ("EPEs") for leasing machines, equipment to domestic enterprises, branches and subsidiaries.



1. Circular 08/2023/TT-NHNN dated June 30, 2023 of the State Bank of Vietnam providing for the eligibility requirements of foreign loans without government's guarantee

On June 30, 2023, the State Bank of Vietnam (SBV) issued Circular 08/2023/TT-NHNN stipulating eligibility requirements for foreign loans not guaranteed by the Government. This Circular takes effect from August 15, 2023 and will annul Circular 12/2014/TT-BTC dated March 31, 2014.



i. General provision

- ✓ Supplementing provisions on application of relevant legal regulations related to borrowers of foreign loan in the form of international bond issuance and borrowers being state-owned enterprises;
- ✓ Supplementing a provision for foreign loans in the form of import of goods with deferred payment which are not subject to the foreign loan conditions specified in Circular 08/2023/TT-NHNN;
- ✓ Supplementing the principle of using foreign loans, which allows borrowers to deposit a foreign loan (which is withdrawn but has not yet used for the lawful loan purposes as defined in this Circular) at credit institutions or foreign bank branches operating in Vietnam. The term of each deposit does not exceed 01 month.
- ✓ Supplementing specific concepts and regulations related to the plan on using foreign loans and the plan on restructuring foreign debts. For the case of short-term foreign loans of enterprises, it is necessary to draw the attention to the preparation of the statement of demands for use of the short-term foreign loan attached to the plan for using foreign loans.

ii. Supplementary conditions for enterprises

- ✓ Specific regulations on short-term and medium/long-term foreign borrowing purposes, the use of loan capital and documents proving the foreign borrowing purposes. In which, Circular 08/2023/TT-NHNN abolished the provisions on the restructuring of foreign debts of the Borrower without increasing borrowing costs.
- ✓ Specific regulations on foreign borrowing limits for different purposes and exchange rates used to calculate loan limits.

iii. Supplementing regulations on responsibilities of each related party including borrower and bank providing account services.

2. Circular 05/2023/TT-BKHDT regulating on reporting form, the implementation of quarterly report on investment activities and report on investment supervision and assessment

Circular 05/2023/TT-BKHDT (effective from September 1, 2023), replacing Circular No. 22/2015/TT-BKHDT dated December 18, 2015 and Circular No. 13/2016/TT-BKHDT September 29, 2016 of the Ministry of Planning and Investment. Circular 05/2023/TT-BKHDT supplements the detailed regulations on online reporting, updating information and managing online reporting accounts for organizations and individuals involved in the preparation and report on investment supervision and assessment.

Before the effective date of this Circular, the investor is required to comply with report on the investment under Official Letter No. 1445/KH&DT-DTTD dated March 28, 2023 of the Department of Planning and Investment.



3. Proposal and draft resolution on the application of additional CIT in accordance with Global Anti-Base Erosion Model Rules (*GloBE*)

On October 8, 2021, the Organization for Economic Cooperation and Development (OECD) released a two-pillar framework statement, in which the second pillar sets a global minimum tax rate of 15% for multinational companies to prevent profit shifting to low-tax countries for tax avoidance purposes. Regarding the implementation of Pillar 2 (Global Minimum Tax), for countries with offshore investment, the Global Minimum Tax will be applied from 2024 onwards to collect the difference between the actual tax and global minimum tax (15%).

In order to ensure the legitimate rights of Vietnam, the Ministry of Finance has submitted a proposal for developing a Resolution of the National Assembly on the application of additional corporate income tax in accordance with Global Anti-Base Erosion Model Rules for a member company, the ultimate parent company of a multinational corporation with revenue in consolidated financial statements of the ultimate Parent Company at least 2 years in the 4 consecutive years preceding the tax year equivalent to EUR 750 million or more (otherwise specified). Simultaneously, the National Assembly also issued an outline of the draft Resolution.

The major contents of the Resolution include:

- ✓ Regulations on the standard minimum additional domestic CIT (deadline for tax declaration and payment: 12 months after the end of the tax year;
- ✓ Regulations on the sum of the minimum taxable income (deadline for tax declaration and payment: 15 months after the end of the tax year.

4. Official Letter No. 1995/BHXH-TCKT for payment instruction through the banking system

Regarding assisting social insurance agency in reconciliation and recognition of payment information promptly and accurately to serve the timely settlement of contributor's benefits, on June 30, 2023 the social insurance agency issued instruction for payment through the banking system, as below:

- a) In case the enterprise uses the Mobile banking application: Enter and select payment information.
- b) In case the enterprise creates payment order via other methods: Payment structure: **+BHXH+103+00+Unit code+Social Insurance Agency code+dong BHXH+**

Details of the social insurance agency code will be guided in written form by the local social insurance agency.





5. Official Letter No. 46974/CTHN-TTHT guiding the conditions and documents proving dependent relief

On July 4, 2023, the Hanoi Tax Department issued Official Letter No. 46974/CTHN-TTHT stipulating that taxpayers register dependents as fathers and mothers; father-in-law, mother-in-law, stepfather, stepmother; the lawful adoptive father or mother meeting the conditions which are considered as dependents as prescribed at Point dd, Clause 1, Article 9 of Circular No. 111/2013/TT-BTC, and has sufficient documents to prove the dependent under the provisions of Point g3, Clause 1, Article 9 of Circular No. 111/2013/TT-BTC **does not require documents to prove income** of the Ministry of Finance, taxpayers may declare dependent relief when determining taxable income under the current regulations.

6. Official Letter No. 8999/CTTPHCM-TTHT dated July 19, 2023 of the Tax Department of Ho Chi Minh City instruct on preparing e-invoices for returned goods and commercial discount activities

Accordingly, to ensure the consistent implementation of the guidance of the General Department of Taxation (in Official Letter No. 2121/TCT-CS) on the use of e-invoices, Tax Department of Ho Chi Minh City guides the following contents:

- ✓ In case the buyer returns the goods due to improper specifications and quality, the seller shall issue an invoice to refund the goods with the VAT rate of 8% when the goods sold before January 1, 2023 are subject to a VAT reduction at the rate of 8%.
- ✓ For the issuance of commercial discount invoices for goods which are eligible for VAT reduction according to Decree No. 15/2022/ND-CP, the instructions are agreed in Official Letter No. 2121/TCT-CS of the General Department of Taxation. In which, if the business applies the commercial discount for customers and for goods eligible for VAT reduction at the rate of 8% sold in 2022, but discount content is only shown on the invoice issued on and after 1 January 2023:
 - In case the discount amount is made on the last purchase or the following period after 31 December 2022, the discount amount of the goods sold shall be adjusted on the content of the taxable price and the applicable tax rate prescribed at the date of issuing invoice.
 - In case the discount amount is made at the end of the discount program (period) after 31 December 2022, the seller shall issue the adjusted invoice and apply the VAT rate of 8% at the selling date.



7. Official Letter No. 11680/CTHDU-TTHT dated July 12 2023 of the Hai Duong Tax Department guiding the procedures of Export Processing Enterprises (“EPEs”) for leasing machines, equipment to domestic enterprises, branches and subsidiaries.

On July 12, 2023, Hai Duong Tax Department issued an Official Letter guiding the procedures of Export Processing Enterprises (“EPEs”) for leasing machines, equipment to domestic enterprises, branches and subsidiaries.

- ✓ In case an EPEs is permitted by a competent state agency to use machinery and equipment for leasing activities to domestic enterprise, the EPEs is required to refund the exempted or reduced of tax incentives for processing activities under the provisions of regulation. Simultaneously, it is necessary for EPEs to recognize separately revenues and expenses related to domestic leasing of machinery and equipment, which cannot be collectively accounted for in production activities. In addition, EPEs must register tax procedures with competent authorities and fulfill tax obligations for this leasing activity.
- ✓ In case the EPEs use an VAT e-invoice according to Decree No. 123/2020/ND-CP for the rental of machinery and equipment, the EPEs shall declare VAT under the deduction method for the above activities.
- ✓ For depreciation expenses for machinery and equipment, EPEs shall comply with the provisions of Article 38 of Circular No. 200/2014/TT-BTC dated December 22, 2014 of the Ministry of Finance. Besides, machinery and equipment that has been registered for conversion of usage purposes with the Customs authorities and recognized separately, the depreciation expense of this machinery shall not be included in deductible expenses when determining CIT taxable income for of export processing activities according to the provisions of Article 4 of Circular No. 96/2015/TTBTC dated June 22, 2015 of the Ministry of Finance.



Contact

Please study the newly issued regulations and review the internal compliance procedures in order to comply with the regulations on customs tax as well as reduce errors in the process of filing and preparing documents that could lead to additional tax obligations or administrative penalty.
Please contact the experts of Grant Thornton Vietnam for in-depth advice if you have any inquiries during the implementation of tax and customs compliance.

Please visit our [Tax Hub](#) to view more information

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