



# Update on new regulations and important tax policies

December 2022



In this newsletter, Grant Thornton Vietnam would like to update our valued customers on important tax and banking policies which have just been issued recently.

- 1 Decree No. 91/2022/ND-CP of the Government amending and supplementing of Decree 126/2020/ND-CP stipulating articles of the Law on Tax Administration.
- 2 Circular 12/2022/TT-NHNN issued by the State Bank of Vietnam on 30 September 2022 taking effect since 15 November 2022
- 3 Circular No. 67/2022/TT-BTC of Minister of Finance guiding on Tax obligations when enterprises set up and use their science and technology development funds (“STDF”)
- 4 Official Letter No. 3870/TCT-DNNCN of General Department of Taxation stipulating tax declaration and payment on behalf of business households and individuals regarding bonuses and commercial discounts
- 5 Official Letter No. 3300/CTHPH-TTHT of Hai Phong Tax Department guiding on PIT policies for Lunar New Year gifts, transportation expense of personal belongings
- 6 Official Letter No. 3734/CTBNI/TTHT of Bac Ninh Tax Department issued on 14 November 2022 guiding on tax policies in the case of moving the business location and the obligation to declare and pay tax for individuals when they lease property to a company
- 7 Official Letter No. 52118/CT-TTHT of Hanoi Tax Department dated 28 October 2022 guiding on the application for registration of PIT dependents
- 8 Official Letter No. 2812/CTBDI - TTHT of Binh Dinh Tax Department dated 28 September 2022 and Official Letter No. 3776/CTBNI-TTHT of Bac Ninh Tax Department dated 17 November 2022 guiding on the guiding the tax finalization declaration of dependent accounting branches entitled to CIT incentives





# 1. Decree No. 91/2022/ND-CP of the Government amending and supplementing of Decree 126/2020/ND-CP stipulating articles of the Law on Tax Administration.

On 30 October 2022, the Government issued Decree No. 91/2022/ND-CP which amending some highlight articles, specifically as follows:

## a. Supplementing on deadline for tax declaration submission and tax payment, the handling dossiers by the tax authority and the validity of decisions on enforcement of administrative decisions on tax administration:

In case the deadline for submission of tax declaration and tax payment, the handling dossiers by the tax authority and the validity of decisions on enforcement of administrative decisions on tax administration is a statutory day off, the deadline shall be moved to the working day succeeding the day off.

## b. Supplementing on regulations where the taxpayer is not required to submit personal income tax (“PIT”) return:

In case the income payer is subject to quarterly/ monthly PIT return but there is no PIT withheld in such quarter/ month, PIT return is no longer required for such quarter/ month (previously stipulated in Official Letter No. 2393/TCT-DNNCN issued on 01 July 2021 by the General Department of Taxation).

## c. Amendment on provisional Corporate Income Tax (“CIT”) payment

The total amount of provisional CIT payment for four quarters must not be less than 80% of total CIT payable upon finalization. *(Previously: CIT provisional payment for the first 03 quarters must not be less than 75% of total CIT payable at finalization time).*

If there is an underpaid provisional CIT liability, the late payment interest would be applied on the outstanding amount counting from the next day after the deadline of the 4th quarter CIT payment. *(Previously: In case there is an underpaid provisional CIT liability compared to the first 03 quarters provisional CIT payment amount, penalties on late payment would accordingly be imposed from the following date after the deadline of 3<sup>rd</sup> quarter CIT payment to actual payment to State Budget).*

Accordingly, this regulation shall apply from the tax period of 2021 as follows:

- By 30 October 2022, in case the provisional tax paid by the taxpayer in the first 03 quarters of 2021 is not lower than 75% of the tax payable under the annual finalization dossier, the minimum ratio of provisional corporate income tax of 04 quarters shall not apply.
- By 30 October 2022, in case the provisional tax paid by the taxpayer in the first 03 quarters of 2021 is lower than 75% of the tax payable under the annual finalization dossier, the minimum ratio of provisional tax of 04 quarters as regulated above may be applied if it does not lead to an increase in late payment interest.



# 1. Decree No. 91/2022/ND-CP of the Government amending and supplementing of Decree 126/2020/ND-CP stipulating articles of the Law on Tax Administration (cont.)

## d. Supplement on the disclosure of information from e-commerce platforms.

The organizations operating e-commerce platforms established and operating under Vietnamese regulations are responsible for providing the information of e-commerce transactions conducted on their platforms, including seller's name, tax identification number or personal identification number or ID/passport number, address, phone number, and sales revenue through virtual order function.

The information is required to report to the tax authorities on a quarterly basis no later than the last day of the first month of the following quarter via the Portal of the General Department of Taxation under the data format announced by the General Department of Taxation.

## e. Supplement on PIT declaration and payment for individuals who receive dividends or bonus shares.

Securities enterprises (including securities companies, issuers of securities, commercial banks where individuals open depository accounts, fund management companies where individuals entrust their portfolios) must declare and pay tax for individuals that receive dividends or bonus shares, which will be effective from 01 January 2023 onward.

In case on or prior to 31 December 2022, individuals who have not yet declared tax on these dividends and bonus shares are required to make self-declaration but will not be subject to administrative penalties or interest on late payment (if any) since 5 December 2020 to 31 December 2022.

Decree No. 91 takes effect from 30 October 2022. Particularly, the new regulations on provisional CIT payment mentioned above will take effect from tax year 2021.



## 2. Circular 12/2022/TT-NHNN issued by the State Bank of Vietnam on 30 September 2022 taking effect since 15 November 2022

- a. From the effective date of this circular, enterprises are obliged to prepare loan report on a monthly basis, instead of quarterly basis as previously prescribed.
- b. Amendment and details of subjects to be registered for a loan, specifically on short-term loans which are not covered by any renewal contract but remain the outstanding principal owed (including outstanding interest included in principal) on the date that the first withdrawal of loan proceeds is for a full 01 (one) calendar year, except to the extent that borrowers have already paid their principal debt within a permitted duration of 30 (ten) working days on the date that the first withdrawal of loan proceeds is for a full 01 (one) calendar year. (*Previously: except for the case that the borrower completes payment of the principal balance within 10 working days from the date of 1 year from the date of the first withdrawal.*)
- c. Amending and supplementing regulations on deadlines for loan registration submission, specifically as follows:

- 30 working days from the date of signing the medium or long-term foreign loan agreement;
- 30 working days from the date of signing the agreement to convert the foreign loan agreement from short-term to medium- or long-term for the loans have the signing date of extension is within 01 year from the date of first withdrawal of loan proceeds;
- 30 working days from the date on which the borrower is granted the Certificate of Business Registration, the License for establishment and operation under special laws, the date of signing the public-private partnership (PPP) investment contract, the date on which the parties sign the foreign loan agreement to convert the investment preparation amount into loans (whichever is later), applicable to foreign loans arising from the transfer of the investment preparation amount of the projects that have been granted an investment registration certificate into foreign loans;
- 60 working days since the date that first withdrawal of loan proceeds is for a full 01 (one) year:
- + Short-term loans with an extension agreement that the date of signing the agreement is extended after 01 year from the date of the first capital withdrawal; and
- + Short-term loans without an extension agreement but with outstanding principal balance (including principally entered interest debt) at the full date of 01 year from the date of first capital withdrawal, except to the extent that borrowers have already paid their principal debt within a permitted duration of 30 (ten) working days after the date that first withdrawal of loan proceeds is for a full 01 (one) year.

### 3. Circular No. 67/2022/TT-BTC of Minister of Finance guiding on Tax obligations when enterprises set up and use their science and technology development funds (“STDF”)

On 07 November 2022, the Ministry of Finance issued Circular 67/2022/TT-BTC to address enquiries and recovery production and business activities of enterprises after the Covid-19 pandemic.

Specifically, although the STDF can only be used for scientific and technological research activities of enterprises. However, this circular has promptly clarify for enterprises by adding cases which enterprises can use the fund to purchase machinery and equipment for technological innovation, directly serving the production and business activities of the enterprise for 2 years (in 2022 and 2023).

At the same time, this Circular also supplements the guidance for monitoring and management of fixed assets formed from the fund that has not been fully depreciated and are used in scientific and technological research activities, as well as in production and business activities. Accordingly, it is only necessary to keep track of this fixed asset according to regulations without having to calculate the depreciation of fixed assets into deductible expenses when determining taxable income. This regulation gives favorable conditions for enterprises when fixed assets are formed from the fund could be used for business purpose and helps enterprises to avoid wasting resources of the business.



In addition, this Circular also clarifies the determination of Corporate Income Tax (“CIT”) for the case of setting up the Fund while the enterprise is enjoying CIT incentives and receives the Fund transfer from another enterprise (transferring enterprises):

In particular, if the enterprises do not use all 70% of the funds which have already being accrued and transferred, the CIT rate used to calculate the additional CIT obligation will be the tax rate applicable to the enterprises at the time the fund was accrued. Accordingly, the determination of additional CIT obligation from accrued funds in the enterprises and the amount received by the enterprises from other enterprises is as follows:

- The following applies to CIT on the portion of the funds accrued by the company that have been used, unused or not used up to 70% of the total fund (including accrual fund amount and transferred amount) is:

$$\text{CIT amount recollected} = \frac{(\text{Total fund amount} - \text{Used fund being less than 70\%})}{\text{Total fund amount in tax period (including Accrual fund amount and transferred amount)}} \times \frac{\text{Accrual Fund Amount}}{\text{Total fund amount in tax period (including Accrual fund amount and transferred amount)}} \times \text{Preferential CIT rates apply}$$

- For the corporate income tax on the amount transferred by the enterprise, which is used for improper purposes or does not use or uses less than 70% of the amount of the total Fund accrued and transferred, there are determined by two cases as follows:

+ If the transferring enterprise is not entitled to CIT incentives at the time of transferring the fund:

$$\text{The amount of CIT recollected} = \frac{(\text{Total fund amount} - \text{Used fund being less than 70\%})}{\text{Total fund amount in tax period (including accrual fund amount and transferred amount)}} \times \frac{\text{Amount of fund transferred}}{\text{Total fund amount in tax period (including accrual fund amount and transferred amount)}} \times \text{Normal CIT rate}$$

+ If the transferring enterprise is entitled to CIT incentives at the time of fund transfer::

$$\text{The amount of CIT recollected} = \frac{(\text{Total fund amount} - \text{Used fund being less than 70\%})}{\text{Total fund amount in tax period (including accrual fund amount and transferred amount)}} \times \frac{\text{Amount of fund transferred}}{\text{Total fund amount in tax period (including accrual fund amount and transferred amount)}} \times \text{Preferential CIT rates apply}$$

Circular No. 67/2022/TT-BTC takes effect from 23 December 2022.



## 4. Official Letter No. 3870/TCT-DNNCN of General Department of Taxation stipulating tax declaration and payment on behalf of business households and individuals regarding bonuses and commercial discounts

On 19 October 2022, the General Department of Taxation issued Official Letter 3870/TCT-DNNCN guiding the tax declaration and payment on behalf of business households and individuals. Accordingly, this official letter mentioned some notable points as below:



### a. For gifts from promotion programs:

When the Company gifts assets subject to registration of right to ownership and right to enjoyment to customers without accompanied purchase or sale of goods, the gifts received by the customers are subject to personal income tax on gifts. In case the Company pays in cash or in kind to household businesses that meet revenue targets, the Company is responsible for declaring tax on behalf of and paying tax on behalf of the individual according to current regulations.

### b. For bonuses and trade discounts

The trade discount on bulk order for business households under the direct method, including the case of households doing business in production lines (purchase livestock and poultry feed for livestock, not resell and are not eligible for tax exemption as prescribed for households directly engaged in agricultural production) the Company is only required to declare and pay PIT on behalf of households with the rate of 0,5% PIT.

Business households and individuals are responsible for providing information of the tax calculation methods to declare and pay on their behalves. The tax authority shall base itself on the database of taxpayers' tax declarations, invoices and documents to manage risks.

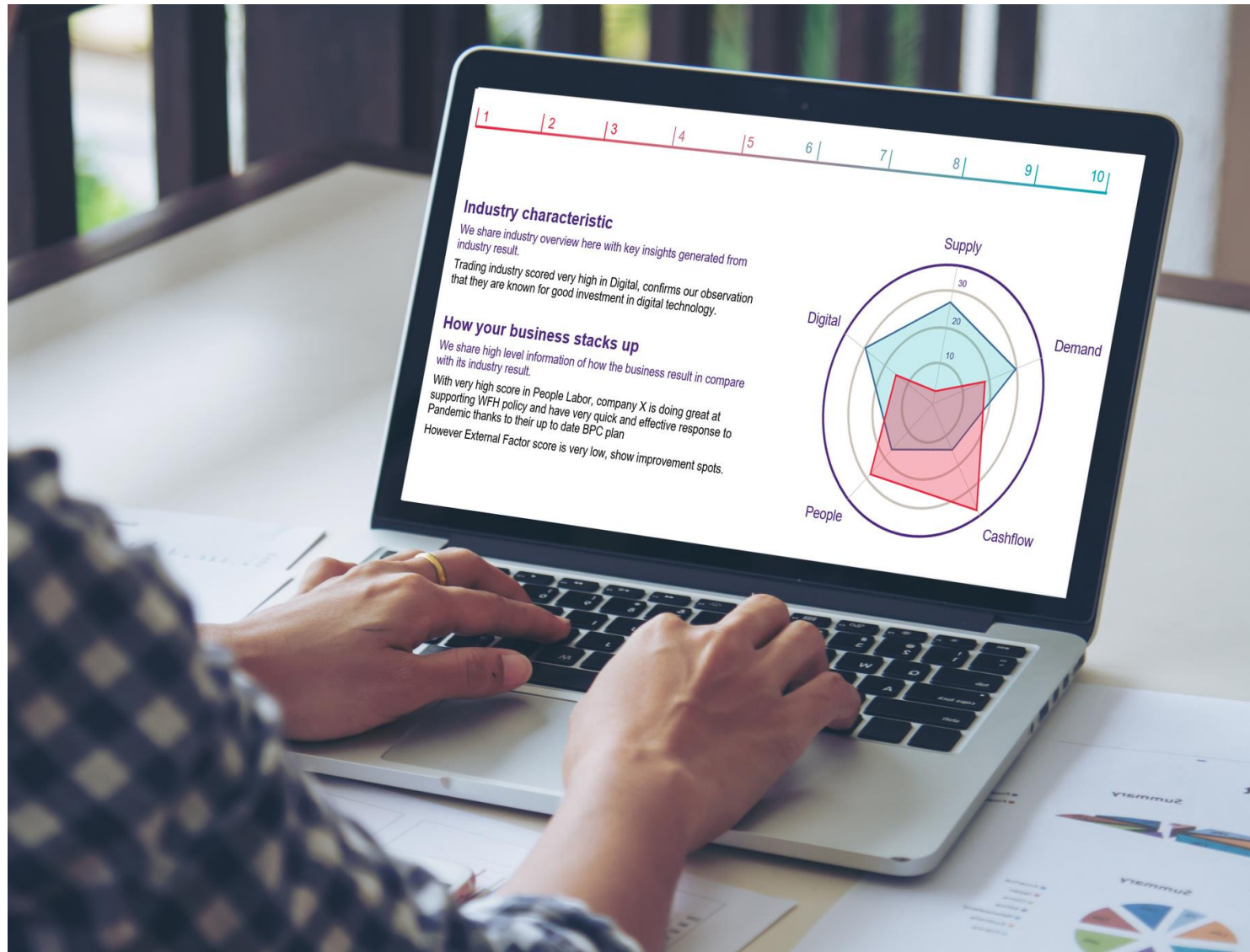
The declaration and payment of tax on behalf of the household as prescribed shall take effect from 01 August 2021 (the date of Circular No. 40/2021/TT-BTC has been effective).

In case the promotion program is organized in accordance with current regulation, the amount paid in cash and in-kind exceeding 10 million dong which subject to PIT from winning prizes. PIT will be withheld by organizations paying bonuses from promotions before paying bonus for individuals.

### c. For the tax paid on behalf of customers who receive promotional gifts, trade discounts.

For the payment of promotional gifts, trade discounts,... on behalf of individuals, the Company must not deduct input VAT and must not record them as deductible expenditures when determining income subject to corporate income tax.

## 5. Official Letter No. 3300/CTHPH-TTHT of Hai Phong Tax Department guiding on PIT policies for Lunar New Year gifts, transportation expense of personal belongings



In case the Company purchases Lunar New Year gift for employees and gives them to employees, these benefits are treated as the taxable income when calculating PIT based on the gift receipt date.

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The company incurs the transportation expenses for personal belongings of the expert who terminates the contract to return expert's country, these expense are billed by the transportation company after period of terminating the contract with the expert. Accordingly, these expense are considered as the individual purpose and included in PIT taxable income of the expert.

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The employee of the Company is a foreign expert who terminates the contract and returns home-country on 30 November. It is required to directly declare PIT finalization to Tax Authority or authorize the Company to finalize PIT before exiting Vietnam's territory with tax finalization period from 01 January 2022 to 30 November 2022 for all their incomes received in such period.

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**6. Official Letter No. 3734/CTBNI/TTHT of Bac Ninh Tax Department issued on 14 November 2022 guiding on tax policies in the case of moving the business location and the obligation to declare and pay tax for individuals when they lease property to a company**

Enterprises implementing location-based investment projects have obtained investment certificates and are eligible for location-based tax incentives, and thus enjoy CIT incentives. However, if the company subsequently changes the location of the investment project (beyond the location registered according to the Investment Registration Certificate), the company does not meet the requirements and is not eligible for CIT incentives from the time the project was relocated.

The Company separately monitors, and accordingly declares and pays taxes on income from business activities that are eligible or not eligible for CIT incentives.

If operating income (including taxable income whether or not subject to corporate tax incentives) cannot be calculated separately, it is calculated as follows:

$$\begin{array}{r}
 \text{Income from business} \\
 \text{activities enjoy} \\
 \text{incentives}
 \end{array}
 =
 \begin{array}{r}
 \text{Total taxable income} \\
 \text{subject to CIT}
 \end{array}
 \times
 \frac{\begin{array}{r}
 \text{Revenue or deductible} \\
 \text{expenses of business activities} \\
 \text{entitled to tax incentives}
 \end{array}}{\begin{array}{r}
 \text{Total revenue or deductible} \\
 \text{expenses of the business in the} \\
 \text{tax period}
 \end{array}}$$



## 7. Official Letter No. 52118/CT-TTHT of Hanoi Tax Department dated 28 October 2022 guiding on the application for registration of PIT dependents

In case the taxpayer registers for family circumstance deduction for dependents who are birth fathers or mothers and over working age and have no income or average annual monthly income from all income sources not exceeding VND 1 million, there is no requirement to make the application form 07/XN-NPT-TNCN of Circular No. 80/2021/TT-BTC, only other regulated supporting documents (i.e: identity card, legal documents proving the relationship, etc.) are required. For other individuals (i.e: siblings, grandparents, niece, etc.), the above application form 07/XN-NPT-TNCN should be prepared.





## 8. Official Letter No. 2812/CTBDI - TTHT of Binh Dinh Tax Department dated 28 September 2022 and Official Letter No. 3776/CTBNI-TTHT of Bac Ninh Tax Department dated 17 November 2022 guiding on the guiding the tax finalization declaration of dependent accounting branches entitled to CIT incentives

In case an enterprise has a branch that is a dependent cost-accounting production and business establishment located in another province or city with its head office and has incomes eligible for CIT incentives. The specific guidance for CIT finalization declaration are as below:



- **Per the guidance from Binh Dinh's tax department:**

Branches make separate declaration for incomes eligible for CIT incentives in accordance with form 03/TNDN issued together with Appendix II of Circular No. 80/2021/TT-BTC (in which only declaring the entitled-incentive business activities in the item "payable CIT obligations of business activities") and are not required to declare the allocation of payable CIT obligations (form No. 03- 8/TNDN issued together with this Appendix).

Accordingly, in case of arising the overpaid CIT amount in the province/city where the branch is located, it cannot be offset against the underpaid CIT amount in the province/city where the head office is located because it is different from the budget collection area.

- **Per the guidance from Bac Ninh's tax department:**

However, the implementation of tax declaration and payment for branches as instructed by the Bac Ninh's tax department is different. Specifically, the head office declares CIT finalization according to the Form 03/TNDN promulgated together with Appendix II of Circular No. 80/2021/TT-BTC and submits to the directly managing tax authority of head office, meanwhile determines the payable CIT of activities entitled to CIT incentives according to the Form No. 03 -3A/TNDN promulgated together with Appendix II of Circular No. 80/2021/TT-BTC and submits to the managing tax authority of both head office and branch.

Currently, the tax authority's tax management system (TMS) has supported the transmission and reception of information in Appendix 03-3A/TNDN. Therefore, when the company submits the CIT finalization dossier according to form 03/TNDN enclosed with Appendix 03-3A/TNDN at the Tax Department of the province where the head office is located, the TMS of the tax authority will automatically transmit data to the tax office where the branch enjoys incentives other than the province, whereby the company does not have to send Appendix 03-3A/TNDN to the tax office of the province where the branch is located.

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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.

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

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