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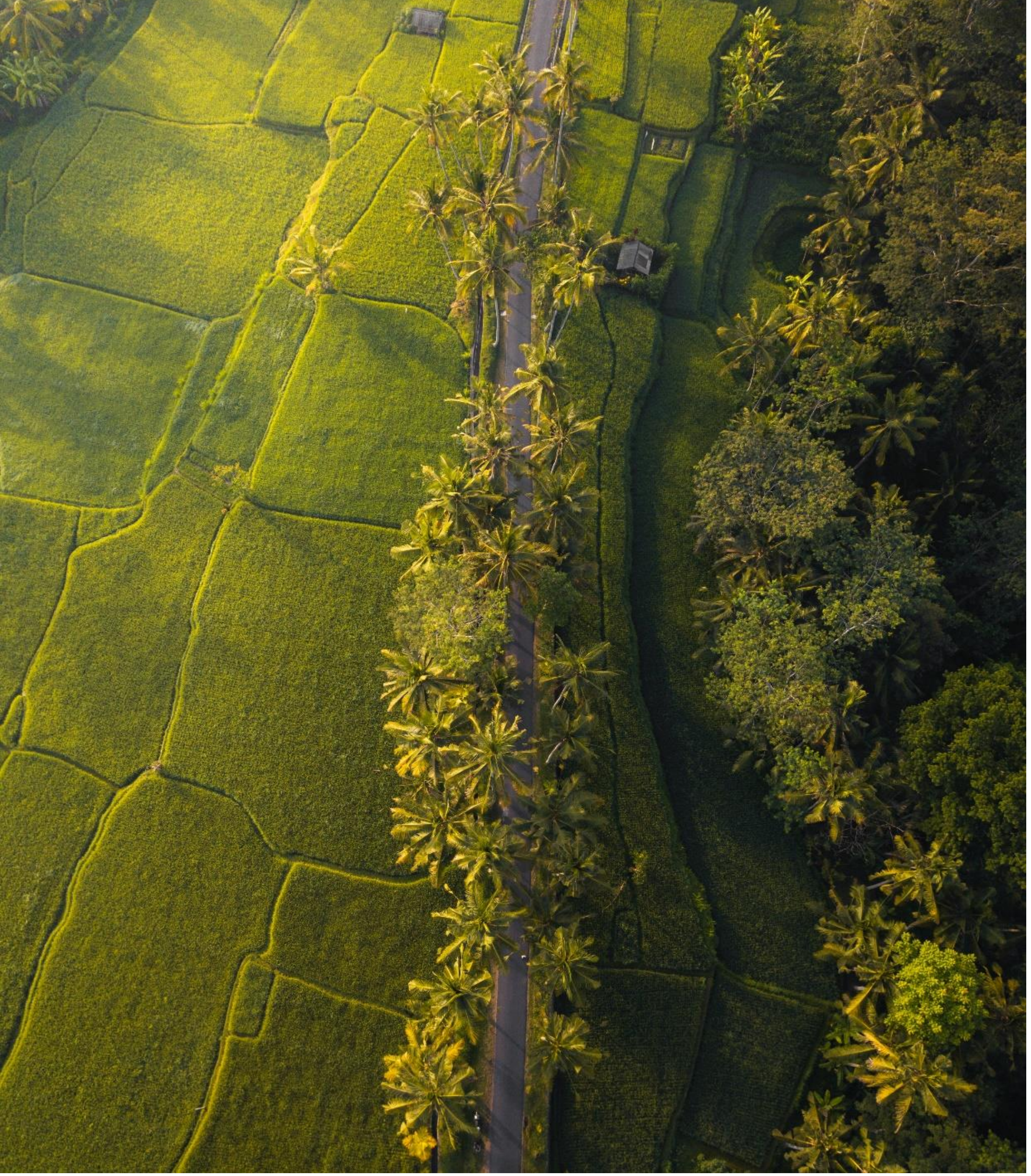
Update new legal documents and some important tax policies

October 2023



Contents:

In this newsletter, Grant Thornton Vietnam would like to update our valued customers the relevant legal policies and guidelines in the field of Social Insurance and Labor, Invoices, Land rental fee, Taxes, and Cyber Security recently issued.

1. Decree No. 70/2023/ND-CP dated 18 September 2023 of the Government on amendments, supplements to the Decree No. 152/2020/ND-CP regulating foreign employees working in Vietnam

On 18 September 2023, the Government issued Decree No. 70/2023/ND-CP amending and supplementing several articles of Decree No. 152/2020/ND-CP of the Government, which regulates foreign employees working in Vietnam, and recruitment and management of Vietnamese employees working for foreign employers in Vietnam. In particular, several notable points of Decree No. 70/2023/ND-CP compared to Decree No. 152/2020/ND-CP are as follows:

✓ **Ease the requirements for foreign experts, executives and technical employees**

Starting from 18 September 2023**, foreign experts** are only required to have a bachelor’s degree or equivalent and at least 3 years of work experience relevant to the job position that foreign experts plan to work in Vietnam without being required to have a university degree in that field as guided in the Decree No. 152/2020/ND-CP.

Executive director means any of the following persons: The head of a branch, representative office, or business place of the enterprise. The head person who directly administers at least one field of the agency, organization, or enterprise and reports directly to the head of the agency, organization, or enterprise.

Technical employees are required to be trained for at least 1 year and have at least 3 years of working experience relevant to the job position that they are planning to work in Vietnam.

An issued work permit or confirmation of not subject to work permit is also considered one of the documents proving the work experience of foreign experts and technical employees.

The easing of requirements for foreign experts, executives, and technical employees under Decree 70/2023/ND-CP is a positive step toward attracting foreign talent and facilitating foreign enterprises' operations in Vietnam.

✓ **Reduce the time limit for reporting demand for using foreign employees**

Regarding the determination of demand to use foreign employees, Decree No. 70/2023/ND-CP stipulates that the deadline is **at least 15 days** before the date on which foreign employees are expected to be employed. This is shorter than the time limit stipulated in the old regulation, which was 30 days. In addition, reporting changes in demand of position, title, working form, amount, location must also be sent to the Ministry of Labor, War Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs at least 15 days in advance from the expected date of employing foreign workers (it was 30 days under old regulations).

1. Decree No. 70/2023/ND-CP dated 18 September 2023 of the Government on amendments, supplements to the Decree No. 152/2020/ND-CP regulating foreign employees working in Vietnam (cont.)

✓ **Change the competent authority to issue documents approving the use of foreign workers**

Pursuant to Clause 2, Article 1 of Decree No. 70/2023/ND-CP, the Department of Labor, War Invalids and Social Affairs has replaced the Provincial People's Committee to issue documents approving or disapproving the use of foreign workers. In accordance with the new regulations, competent authorities to issue documents approving or disapproving the use of foreign workers are the Ministry of Labor, War Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs.

✓ **Announcement of recruitment of Vietnamese employees for positions expected to recruit foreign employees on the website of the Ministry of Labor, War Invalids and Social Affairs (Department of Employment)**

Accordingly, from 01 January 2024, the announcement of recruitment of Vietnamese employees to positions expected to recruit foreign employees shall be made on the website of the Ministry of Labor, War Invalids and Social Affairs (Department of Employment), or on the website of the Employment Service Center established by the President of the People's Committee of province or centrally governed city (hereinafter referred to as province), within at least 15 days from the expected date of reporting to the Ministry of Labor, War Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs where the foreign worker is expected to work.

In case of failing to find Vietnamese employees to positions for recruiting foreign employees, the employer can explore the foreign expertise for employing.

2. Draft amendment to the Law on VAT

Ministry of Finance has made some proposals to amend the current VAT law. Notable contents expected to be researched and revised are as follows:

- **Tax rate:**
  - ✓ Amend and supplement regulations related to export services, taxable prices, tax rates, and VAT refund for some goods and services to comply with international practices.
  - ✓ Narrow the list of goods and services not subject to VAT and subject to 5% VAT, supplementing principles for determining tax rates, amending VAT rates.
- **Creditable VAT input:**
  - ✓ Amend and supplement regulations on declaration and additional creditable VAT input in case tax declaration documents contain errors.
  - ✓ Reduce the limit for non-cash payment documents from less than 20 million VND to an appropriate level.
- **VAT refund**
  - ✓ Amend and supplement regulations on VAT refund for some goods and services.
  - ✓ Abolish/amend regulations related to VAT refund in cases of business reorganization (including ownership conversion, business type conversion, merger, consolidation, division, separation, and termination of operations according to the provisions of the Law on Enterprises)

Overall, the proposed modifications to the VAT Law indicate a shift toward greater alignment with global standards, compliance simplification, and improved tax administration efficiency.

3. Draft Decree amending Decree No. 123/2020/ND-CP regulating invoices and documents

In the process of using e-invoices according to Decree No. 123/2020/ND-CP, there were several practical issues that have arisen, causing difficulties for enterprises and tax authorities. Therefore, the Ministry of Finance has submitted the draft Decree to the Government proposing to amend and supplement Decree No. 123/2020/ND-CP with some outstanding points as follows:

- Supplement cases requiring invoices specified in Clause 1, Article 4 (temporary export - re-import, temporary import - re-export raw materials, finished products, machinery, tools, instruments; receiving goods returned from buyer; termination or cancellation of service provision, goods export in the form of lending, borrowing or receiving refunds);
- Supplement regulations on issuing invoices integrated with receipts for fees and charges in case of collecting fees and charges with service fees (Clause 9, Article 4);
- Supplement regulations on the timing of invoice issuance for exported goods specified in Clause 1, Article 9 (accordingly, exported goods must be invoiced within 24 hours from the time of confirming completion of customs procedures stated on customs declaration);
- Supplement regulations on timing of tax declaration: For sellers, it is the time of invoice issuance, for buyers, it is when the invoice fully meets the prescribed content;
- Supplement regulations on handling erroneous invoices: In case the buyer returns part of the goods, the seller will issue an adjusted e-invoice. The seller is allowed to issue one adjustment invoice for multiple incorrectly generated e-invoices.

Overall, the proposed amendments to Decree No. 123/2020/ND-CP demonstrate a commitment to addressing practical challenges faced by businesses and tax authorities in implementing e-invoicing which will improve compliance.

4. Draft amendment on the Law on Social Insurance

Regarding the draft amendment on the Law on Social Insurance, the Government has submitted to the National Assembly for approval of some issues at the July 2023 session. It is expected that the Social Insurance Law 2024 will be approved by the National Assembly and take effect from 01 January 2025. The Social Insurance Law 2024 will include 09 Chapters and 135 Articles.

Some outstanding new points of the Social Insurance Law 2024 include:

- ✓ Increase beneficiaries of monthly benefits;
- ✓ Reduce the minimum period of social insurance contribution to receive pension from 20 years to 15 years;
- ✓ Reduce the age to receive social pension benefits from 80 years old to 75 years old;
- ✓ Expand the group of participants in compulsory social insurance; and
- ✓ Amend and supplement many measures and sanctions to handle social insurance evasion.

The following documents will expire from the effective date of the Social Insurance Law 2024:

- Law on Social Insurance 2014, except for regulations of the Social Insurance Management Council related to unemployment insurance, health insurance will continue to be implemented until the Health Insurance Law and Employment Law are amended.
- Clause 1, Article 219 of the Law on Labor 2019.
- Resolution 93/2015/QH13 dated 22 June 2015 of the National Assembly on implementing the one-time social insurance policy for employees.
- Clause 2, Article 17 of the Law on the Elderly 2009.

These changes aim to enhance social protection for a broader segment of the population.

5. Draft Decree guiding on administrative penalties in the field of cybersecurity

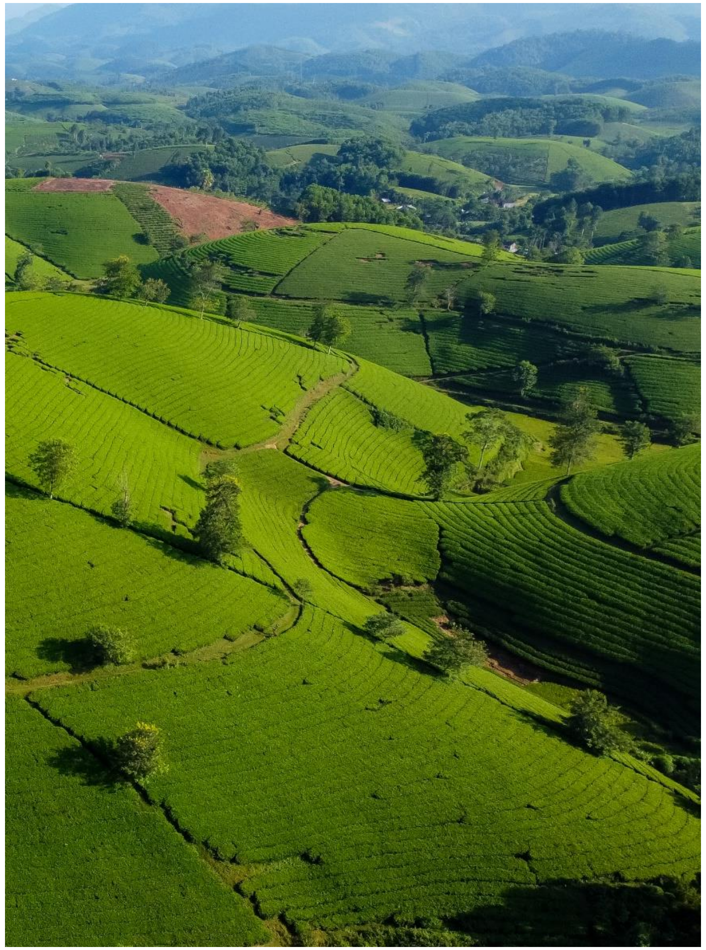
In the last two years, the Government has respectively issued two new decrees in cybersecurity and protection of personal data: Decree No. 53/2022/ND-CP and Decree No. 13/2023/ND-CP. To ensure the implementation of the above decrees, on 31 May 2023, the Ministry of Public Security issued the 3rd draft Decree on administrative penalties in the field of cybersecurity. Below are some important highlights in the draft Decree:

- ✓ **Subjects:** The Decree applies to all domestic and foreign individuals and organizations related to the processing of personal data in Vietnam.
- ✓ **Scope of application:** Regulations on administrative penalties related to 5 main areas including: (i) ensuring information security; (ii) personal data protection; (iii) preventing cyber-attacks; (iv) deploy network security protection activities; and (v) preventing acts of using cyberspace, information technology, and electronic media to violate the law on social order and safety.
- ✓ **Form of sanction and level of sanction:** The main form of sanction is warning or monetary fine. The fine amounts specified in Chapter II of the Draft Decree apply to administrative violations committed by individuals. For organizations that commit the same violation, the fine is 2 times the individual fine. In addition, businesses that violate administrative regulations can be fined up to 5 times the fine imposed on individuals.
- ✓ **Statute of limitations for sanctions:** The statute of limitations for sanctioning administrative violations in cybersecurity is 01 year; cases of administrative violations related to production, purchase, sale, import, supply, exploitation, and export of cybersecurity products and services, the statute of limitations for sanctioning administrative violations is 02 years.

The proposed draft Decree guiding on administrative penalties in the field of cybersecurity in Vietnam is a significant step towards strengthening cybersecurity and data protection in the country. In addition, the draft Decree specifically stipulates violations as well as corresponding fines to deter any cybersecurity violations. It is notable that the sanctions framework for administrative violations of cybersecurity is relatively high compared to other administrative penalties to serve as a deterrent, prevent violations, and create a healthy cyberspace environment.

6. Decision No. 25/2023/QD-TTg guiding on reducing 30% of land rental fee in 2023

To support organizations, businesses and individuals in the difficult economic situation, on 03 October 2023, the Government issued a decision on reducing land rental fee for 2023, effective from 20 November 2023 as follows:



- **Subjects:**
  - ✓ Organizations, entities, businesses, and individuals directly leasing land from the State according to Decisions or Contracts or Certificates of land use rights, ownership of houses and other land-attached assets in the form of land lease with annual payments.
  - ✓ Land tenants who are not eligible for land rental fee exemption or reduction, or whose land rental fee exemption or reduction period has expired, and in cases where the land tenants are receiving land rent reduction according to the provisions of land law.
- **Reduction:** 30% reduction in land rent payable in 2023 but excluding outstanding land rent for years before 2023 and late payment interest (if any).

  In case the land tenant is receiving land rent reduction according to regulations or offsetting with compensation for site clearance, the 30% reduction is calculated on the amount payable (if any) after the reduction and/or offsetting under current regulations.
- **Procedures:** The land tenant submits 01 dossier on requesting land rent reduction (by one of the following methods: Direct, electronic, postal) to the Tax authorities manage land rent collection, the Economic Zone Authority, the Board of Management of Hi-tech Park, other agencies according to the law on tax administration from the date Decision No. 25/2023/QD-TTg takes effect until 31 March 2024.

Land rent reduction as prescribed in Decision No. 25/2023/QD-TTg is not applicable for cases where land tenants submit applications after 31 March 2024.

Decision No. 25/2023/QD-TTg on reducing land rental fees by 30% in 2023 is a positive step taken by the Vietnamese government to support organizations, businesses, and individuals during challenging economic times.

7. Official Letter No. 3782/TCT-CS of the General Department of Taxation guiding tax policies on income from loan interest

On 25 August 2023, the General Department of Taxation issued an official letter guiding tax policies for income from loan interest as follows:

- ✓ In case the enterprise is not an organization operating as credit institutions with irregular lending activities, if it lends to other organizations (including branches of the enterprise that pay separate corporate income tax) that does not charge interest or has an interest rate lower than the normal interest rate of the same term and scale in the market is subject to tax imposition according to the provisions of tax administration law.
- ✓ In the case of a loan with a specific interest payment term according to the loan contract, the enterprise must record in financial revenue the period in which interest receivable incurs, regardless of whether the lending enterprise has collected interest or not.

8. Official Letter No. 23467/CTBDU-TTHT of Binh Duong Tax Department guiding the reduction of VAT tax rates according to Decree No. 44/2023/ND-CP

After receiving the taxpayer’s concerns regarding the application of VAT rates for asset liquidation and factory leasing activities according to Decree 44/2023/ND-CP, on 05 October 2023, Binh Duong Tax Department has issued guidance documents as follows:

- ✓ In case the Company liquidates assets that are machinery and equipment (including in the group of goods and services subject to the 10% VAT rate) but was not included in Appendix I issued with the Decree No. 44/2023/ND-CP, the VAT rate of 8% will be applied from 01 July 2023 to 31 December 2023 according to the provisions of Clause 2, Article 1 of Decree No. 44/2023/ ND-CP.
- ✓ In case the Company leases excess factories, this activity is not eligible for VAT reduction as prescribed in Clause 1, Article 1 of Decree No. 44/2023/ND-CP.

9. Official Letter No. 23468/CTBDU-TTHT of Binh Duong Tax Department guiding on tax policies when transferring contracts to third parties

On 05 October 2023, Binh Duong Tax Department issued an official letter guiding on tax policies when transferring contracts to third parties as follows:

- ✓ Under prevailing law, the transfer of service contract to a third party is not prohibited. However, if the Company wants to transfer an ongoing contract to a third party, it is required to first obtain the customer's consent.
- ✓ In case the Company enters into a contract to purchase and sell goods or provide services, in which payment is made to a designated third party or the Company authorizes a third party to pay the partner via bank, to be considered as non-cash payment, these forms of payment must be specifically stipulated in the contract in written form and the third party is a legal person or entity operating under the provisions of the Law.
- ✓ In case the Company simultaneously incurs a receivable and payable to the same entity under the contract signed between the two parties, if offsetting payment method is specified and allowed in the contract or contract appendix between the two parties, and there is a reconciliation minutes between the parties and confirmation of offsetting payment mentioned above, the payment can be considered as non-cash payment.
- ✓ In case the Company sells a customer's debt to a third party that is not a debt selling service in the fields of finance, banking, or securities trading, the Company shall prepare a VAT invoice at the VAT rate of 10% and declare and pay tax according to regulations.

The Official Letter issued by Binh Duong Tax Department provides clear guidance on tax policies related to the transfer of contracts to third parties. It clarifies the conditions for contract transfer, payment methods, and VAT implications, ensuring consistency and transparency in tax treatment for such transactions.

10. Official Letter No. 23683/CTBDU-TTHT of Binh Duong Tax Department guiding tax policies on delivering sample goods for quality inspection.

To answer taxpayer's concerns regarding delivery of sample goods for product quality inspection, on 10 October 2023, the Binh Duong Tax Department guides the following content:

- ✓ In case due to business characteristics, the Company has to self-deliver sample goods for quality inspection to either (i) receive a quality certificate and send to results to customer, or (ii) to self-inspect upon customer's complaints, the Company must issue an invoice according to the provisions of Clause 1, Article 4 of Decree No. 123/2020/ND-CP when exporting sample goods.
- ✓ However, if the sample is shipped to a competent authority to check product quality according to the provisions of law to serve production and business activities and does not collect payment, then on the invoice, the Company must clearly state the description of the sample and send it to check product quality, no payment will be collected. The company does not have to declare or calculate VAT on the value of sample goods sent for inspection or self-check quality.
- ✓ The company shall include in deductible expenses when determining income subject to CIT for the value of goods sent for quality inspection that meet the conditions prescribed in Article 4 of Circular No. 96/2015/TT-BTC. dated 22 June 2015 of the Ministry of Finance.

The Official Letter issued by the Binh Duong Tax Department provides clear guidance on tax policies related to delivery of sample goods for quality inspection in Vietnam. The letter addresses common concerns raised by taxpayers and outlines specific requirements for issuing invoices, declaring VAT, and determining deductible expenses.

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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