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STREAMLINING PROMOTIONAL PROGRAM NOTIFICATIONS

On 10 October 2024, the Government issued Decree 128/2024/ND-CP, which introduces key amendments to Decree 81/2018/ND-CP, providing guidelines for the implementation of the Commercial Law regarding promotional activities. These changes will take effect on 1 December 2024. Under Decree 81, most of promotional activities were required to be notified to the provincial Department(s) of Industry and Trade (DOIT), with certain exceptions. Decree 128 relaxes these requirements by eliminating the need for DOIT notification for the following five activities:

1. Organizing cultural, artistic, entertainment events, and other promotional activities
2. Offering free product/service samples for customers to try
3. Providing products/services for free
4. Selling products or providing services at a price lower than the previous selling price during the promotion period (promotion in the form of discounts)
5. Selling products or providing services with attached vouchers for purchasing or using services

For the remaining activities that still require DOIT notification (such as contests and loyalty programs), Decree 128 mandates that notifications must now be submitted through the National Public Service Portal, rather than through the DOIT website as was previous required.

KEY CHANGES AND IMPACTS OF SOCIAL INSURANCE LAW (“LSI”) 2024 COMPARED TO LSI 2014

On 12 November 2024, the Prime Minister issued Decision 1370/QĐ-TTg on the plan to implement the Law on Social Insurance 2024 including directing relevant authorities compile legal documents detailing and guiding the implementation of this Law.

The Social Insurance Law 2024 (“new law”) which shall replace the Social Insurance Law 2014 (“current law”) was issued on 29 June 2024 and will take effect as of **1 July 2025**.

There are some key changes and impacts of Social insurance law 2024 on the enterprises as follows:

1. Compulsory social insurance participants:

In comparison with the current law, the new law adds several compulsory social insurance participants that employers should note as follows:

- Vietnamese citizens working under indefinite-term labor contracts or labor contracts with terms of at least 01 month, even if the contracts are signed under different contractual arrangement between the employers and employees, as long as the terms and condition of the contract specify the job, salary, remuneration, and the management of one party.

This expands to agreements with different names which have the nature of a labor contract is consistent with the definition of "employment contract" in Labor Code 2019 and practical application.

- Vietnamese employees who sign a part-time labor contract of one month or more, with a monthly salary equal to or higher than the minimum salary used as a basis for the compulsory SI payment.
- Vietnamese citizens acting as controllers, representatives of state capital, and representatives of enterprise capital who receive salaries.

- Vietnamese citizens being enterprise managers, controllers, state capital representatives, and enterprise capital representatives who do not receive salaries.

2. *Non-compulsory social insurance participants:*

In addition to adding subjects that must pay compulsory social insurance, the new law also specifies the case where foreign employees are exempt from compulsory social insurance contributions, including:

- Internal transfers within the enterprise, as stipulated by the law governing foreign employees in Vietnam.
- Foreign employees who have reached retirement age when signing the labor contract.
- Cases where international treaties to which Vietnam is a signatory have different provisions.

Hence, the participation of foreign citizens in compulsory social insurance has been specified in social insurance 2024(new law), rather than in decrees as it is under current law.

3. *Periodic posting of SI payment information:*

The new law eliminates the following requirements from Clause 7 and 8, Article 21 of the current law:

- Posting information on the payment of SI premiums for employees every six months.
- Providing information on employees’ payment of SI premiums at the request of employees or trade union organizations every six months.
- Annually posting information on employees’ payment of SI premiums provided by SI agencies under Clause 7, Article 23 of the current law.

Therefore, the enterprises are no longer required to periodically publicly disclose information on SI premiums.

4. *Changes to the minimum and maximum salary used as the basis for social insurance contribution:*

Under current law, for employees paying SI contribution based on the salary regime decided by employers, the minimum salary used as the basis for compulsory SI contribution is equal to the regional minimum salary and the maximum one is 20 times of the base salary level.

However, under new law, the salary used as a basis for paying compulsory SI at the time of payment must be at least equal to **the reference level** and the maximum one is 20 times of **the reference level**.

Therefore, there is a new term called “Reference level” under new law, in which definition of the “Reference Level” as follows:

- The reference level is the amount determined by the government for calculating payment and benefit levels for certain SI benefits. Please be noted that the government has not disclosed the amount yet.
- It is adjusted based on the increase in the consumer price index (CPI) and economic growth, considering the state budget’s capacity and the SI fund.

5. *Social insurance payment rates for non-salaried positions:*

As mentioned above, under new law, Vietnamese citizens being enterprise managers, controllers, representative of state capital portion, representative of enterprise capital portion who do not receive salaries shall be subject to compulsory insurance.

The monthly social insurance contribution for these subjects will be set as follows:

- For the sickness and maternity fund, 3% of the monthly income on which SI contribution are based; and
- For the retirement and death insurance fund, 22% of the monthly income on which SI contribution are based.

6. Compulsory Social insurance payment in case of sick leave for 14 working days or more

This is a new content stipulated in the Social Insurance Law 2024. Accordingly, the employee takes sick leave for at least 14 working days in the first working month or the first month the employee returns to work, the employee still has to pay social insurance for that month.

If an employee takes sick leave for 14 working days or more at any other time, they are not required to pay social insurance premiums for that month, unless the employer and the employee has an agreement to pay social insurance for the employee for that month on the latest salary on which social insurance premiums are paid.

7. Changes in late payment and payment evasion

While the current law does not contain official definitions of late payment and payment evasion for social insurance and unemployment insurance, the new law clearly identify the differences between them. Details as below:

Late payment of compulsory social insurance (SI)/Unemployment insurance (UI)	Evasion of compulsory SI/UI
<ul style="list-style-type: none"> - Failure to pay or not fully pay the amount payable according to the submitted applications for participation in compulsory SI/UI insurance after the payment deadline, except for the cases classified as evasion of compulsory SI/UI. - Failure to register or not fully register compulsory SI/UI participants within 60 days from the registration deadline. - Fall into exceptions not considered as evasion of compulsory SI/UI, upon having legitimate reason(s) as specified by the Government. 	<ul style="list-style-type: none"> - Failure to pay or not fully pay the amount payable according to the submitted applications for participation in compulsory SI/UI insurance after 60 days as of the payment deadline and have been reminded by competent authority. - Failure to register or not fully register compulsory SI/UI participants after 60 days from the registration deadline. - Registers lower salary as the basis for compulsory SI/UI contribution than that specified by regulations. - Other cases considered evasion of compulsory social insurance and unemployment insurance payment defined by the Government

Besides, there is also a change in interest rates in these cases. Details are as follows:

Current law	2024 Law on Social Insurance
<p>If employers are late in payment, evading payment, or misappropriating SI contributions for 30 days or more, they are subject to:</p> <ul style="list-style-type: none"> - Pay the total amount of unpaid or late payment; and - Pay an interest amount equaling twice the average interest rate of investment from the social insurance fund in the preceding year, calculated based on the late paid amount and late payment period. <p>If they fail to do so, at the request of competent personnel, related banks, credit institutions, or state treasuries shall deduct money from the employer's deposit accounts to the accounts of social insurance agencies to pay the unpaid or late payment and interest.</p>	<p>Actions against late payments, payment evasion of compulsory SI or UI will be as follows:</p> <ul style="list-style-type: none"> - Paying the total amount of unpaid or late payment; and - Paying late payment interest at the rate of 0.03%/day, calculated based on the late paid amount and late payment period. <p>More detailed regulations on these clauses are expected from the government.</p>

8. Changes in mandatory social insurance payment deadline for employers

The new law has extended deadline for compulsory SI contributions in case of monthly payments, particularly, the employers can make payments at the latest by the last day of the following month, instead of the last day of the current month as per current regulations. In case of payment term of every 3 or 6 months, payments can be paid at the latest by the last day of the month following right after the payment cycle. Compared to the current law, enterprises are now allowed to make SI contribution 1 month later than the current regulations, without being considered falling into the late SI contribution.

9. Shortened time period to issue the first compulsory SI book

The new law stipulates that the time for issuing the first compulsory social insurance book is reduced to five working days from the receipt of a complete application, down from the 20-day mandate of the current law.

If the social insurance book is not issued within this period, a written response must be provided explaining the reason for the delay.

NEWS ON CORPORATE INCOME TAX (“CIT”)

OFFICIAL LETTERS

Official Letter No. 2840/TCT-CS dated 3 July 2024 and Official Letter No. 2721/TCT-CS dated 26 June 2024 by General Department of Taxation on CIT incentives for investment expansion projects in industrial zones

According to the OLs, CIT incentives for “Difficult socio-economic conditions area” is different with CIT incentives for industrial zones and the law on corporate income tax distinguishes between industrial zones and areas with difficult socio-economic conditions. In case, an enterprise implements an expansion investment project in an industrial park or EPEs and industrial clusters then enterprise does not apply the CIT incentives like projects in difficult social-economic conditions areas. In summary:

- For new investment projects: The current CIT law does not provide for CIT incentives for investment projects in an industrial park, EPEs, and industrial clusters according to the level applicable to investment projects in difficult social-economic conditions areas.
- For expansion investment projects: Expansion investment projects in industrial parks, EPEs, and industrial clusters are not eligible for CIT incentives in areas with difficult socio-economic conditions.

Furthermore, criteria of expansion projects under the Circular 96/2015/TT-BTC as below:

“- The increase in cost of fixed assets when the project is finished and put into operation is at least VND 20 billion (if the expansion project is in a field eligible for CIT incentives according to Decree No. 218/2013/ND-CP) or VND 10 billion (if the expansion project is located in a disadvantaged area or extremely disadvantaged area according to Decree No. 218/2013/ND-CP .

- *The ratio of the increase in cost of fixed assets is at least 20% of total cost of fixed assets before investment.*
- *The designed capacity after expansion increases by at least 20% compared to the designed capacity mentioned in the technical and economic feasibility study done before initial investment.*

Based on the OLs and the criteria of expansion project, thus we understand that criteria 1 (the increase in the cost of fixed assets) will not apply for expansion project in industrial zones but not in difficult areas. The company must prove for expansion project via the increase ratio of fixed assets or capacity to enjoy CIT incentive for the expansion project.

Official Letter No. 1792/TCT-CS dated 2 May 2024 by General Department of Taxation on offsetting and transferring losses between independent investment projects

The OL mentions the case of Cocreation Grass Corporation Co., Ltd. The company has 3 independent investment projects (2 investment projects are simultaneously registered as business locations) in which Project 1 and Project 2 have taxable income and are enjoying tax incentives, while Project 3 has not yet

gone into production and incurred losses. The loss of Project 3 is less than the taxable income of Project 1 and Project 2.

According to the General Department of Taxation: Current tax regulations on CIT do not have Tax regulations for offsetting and transferring losses among independent investment projects under the same enterprise.

On May 9, 2024, the Department of Tax, Fee and Charge Policy Management and Supervision under the Ministry of Finance has issued Official Dispatch No. 867/CST-TN also confirming that there are no regulations on offsetting profits and losses between projects suffer losses with projects that enjoy CIT incentives.

Official Letter No. 2326/TCT-CS dated 3 June 2024 by the General Department of Taxation on inheriting CIT incentives

According to the OL, in case an enterprise meets many different kind of CIT incentives at the same period for the same amount of income, the most beneficial preferential kind can be chosen.

Therefore, in case an enterprise has an investment project currently enjoying tax incentives conditions for new investment projects in industrial parks (IPs) that are granted a Certificate of supporting industrial products incentives, the enterprises will select to switch to incentives according to the conditions of supporting industrial products for income arising from this project.

However, income arising from non-supporting industrial products will not continue to enjoy tax incentives under the conditions of new investment projects in industrial park.

Official Letter No. 6187/CTBGI-TTHT issued by the Bac Giang Tax Department on 30 August 2024 on CIT incentives for other income being free of charge fixed assets received

The company is enjoying CIT incentives based on the location in an industrial zone which is not in an area with favorable socio-economic conditions, if the Company imports a batch of machinery and equipment forming fixed assets of a Chinese company with the same group relationship with the non-payment clause and the Company determines that this other income arises in the location where the Company's new investment project is implemented, this other income will also enjoy CIT incentives based on the location in an industrial zone according to regulations.

NEWS ON VALUE ADDED TAX (“VAT”) RESOLUTION

Resolution No. 218/NQ-CP issued by the Government on November 15, 2024, on the regular Government meeting in October 2024. Accordingly, the Ministry of Finance proposed to continue reducing VAT by 2% in the first six (06) months of 2025 for the same groups of goods and services as previous times.

OFFICIAL LETTERS

Official Letter No. 4781/TCT-CS dated October 24, 2024, issued by the General Department of Taxation on deductible input VAT

According to OL 4781, in case the construction works of an enterprise have not been granted a construction permit and are not eligible for exemption from construction permit according to Article 89 of the 2014 Construction Law, and have not been granted a certificate of ownership of assets attached to land, the fixed assets (works) built on leased land of the enterprise are not eligible for input VAT deduction and depreciation expenses are not deductible when calculating corporate income tax.

Official Letter No. 1511/TCT-KK dated April 11, 2024 issued by the General Department of Taxation (“GDT”) on instruction for using invoices business locations

According to the OL, Langfarm Company Limited has its headquarters in Lam Dong province and has established business locations in Hai Phong city. These business locations are dependent accounting unit and shall use electronic invoices of the head office and do not declare or pay taxes in Hai Phong. The Company declares VAT at the tax authority directly managing the head office according to the provisions of Clause 2, Article 1 of Decree No. 126/2020/ND-CP dated October 19, 2020 of the Government.

In case the Company establishes branches in other provinces to manage business locations that are dependent accounting of the Branch and directly sell goods, use invoices registered by the branch or registered by the Company with the tax authority, Branches are dependent units that fully record for output and input value-added tax of the business locations, and the dependent unit declares and pays value-added tax to the **tax authority directly managing the dependent branch**.

OTHERS

Official Letter No. 4062/TCT-CS dated September 13, 2024, issued by the General Department of Taxation on tax incentives for business affected by natural disasters

According to the OL and the summary of Binh Dinh tax department, significant solutions to support organizations, individuals, and businesses affected by Storm No. 3 and the post-storm floods are as follows:

- Tax payment extension

The duration of tax payments extension due to natural disasters shall not exceed 02 years from the tax payment deadline according to the Article 62 of the Tax Administration Law 38/2019

Document procedures shall be implemented in accordance with Article 24 of Circular 80/2021.

- Late payment exemption

Taxpayers may be exempt from paying the late payment interest in case of natural disasters according to the Clause 8, Article 59 of the Tax Administration Law 38/2019.

Document procedures shall be implemented in accordance with Article 23 of Circular 80/2021.

- Exemption from administrative penalties for tax violations

Taxpayers will be exempt from administrative penalties for tax violations caused by natural disasters, not exceeding the value of damaged assets and goods, according to the Article 140 of the Law on Tax Administration 38/2019.

Document procedures are implemented according to Clause 6, Article 1, Decree 102/2021.

- Deductible VAT

Input VAT on goods and services used for production and business subject to VAT is fully deductible, including non-compensated input VAT of goods subject to VAT that are lost due to natural disasters according to Clause 1, Article 14 of Circular 219/2013

- Corporate Income Tax

The following expenses are considered deductible expenses when calculating taxable corporate income:

- Value of non-compensated losses due to natural disasters.
- Funding for overcoming the consequences of natural disasters.
- The allowance is only for families of workers affected by natural disasters. The total expenditure incurred in the tax year must not exceed the practical average 1 month's salary in the tax year.

The procedures and documents are implemented according to Article 4, Circular 96/2015.

- Special Consumption Tax

The special consumption tax can be reduced by no more than 30% of the tax payable in the year of damage caused by natural disasters, and not exceeding the value of damaged assets after compensation (if any) according to Article 9 of the Law on Special Consumption Tax 27/2008

The documents are specified in Article 55 of Circular 80/2021.

- Natural Resources Tax

Taxpayers can be exempted or reduced for natural resources lost due to natural disasters according to the Clause 1, Article 9 of the Law on Natural Resources Tax 45/2009

The procedures are implemented according to Article 56 of Circular 80/2021.

- Non-agricultural Land Use Tax

In case of natural disasters, tax exemption is granted if the value of damage to land and houses is over 50% of the taxable price; a 50% reduction of tax payable is granted if the damage to land and houses is from 20% to 50% of the taxable price according to the Clause 9, Article 9 and Clause 4, Article 10 of the Law on Non-agricultural Land Use Tax 48/2010

The implementation procedures shall follow the Article 57 of Circular 80/2021.

Official Letter No. 3468/TCT-CS issued by the General Department of Taxation on 07 August 2024 and Official Letter No. 25781/CTBDU-TTHT issued by the Binh Duong Tax Department on 23 September 2024 about assignment letter and labor contract for assignees

Under the OL 3468/TCT-CS, based on the provisions of the law on corporate income tax, the recommendation to amend the regulations on corporate income tax to add the appointment letter as a document to prove the deduction of salary and wages of the enterprise is not appropriate.

Under the OL 25782, the salary expenses paid to expatriates working under assignment letter must be supported by labor contract. In the case where the Company receives foreign employees from the parent company in Japan to work in Vietnam through an assignment letter, if the assignment letter shows an agreement between the employee and the employer regarding the rights and obligations of each party in the labor relationship during the working period in Vietnam and the employee is assigned according to regulations, the salary expenses and other payments of the nature of salaries and wages paid by the Company will be included in deductible expenses when determining taxable income subject to CIT, provided that there is a labor contract and the conditions specified in Article 4 of Circular No. 96/2015/TT-BTC mentioned above are met.

Official Letter No. 25581/CTBDU-TTHT issued by the Binh Duong Tax Department on 18 September 2024 about foreign contractor tax for purchase software license with software-containing equipment

In case the Company signs a contract with a foreign contractor to purchase a software license with software-containing equipment, the income from software license and the transfer of the software-containing equipment by the foreign contractor is subject to FCT in Vietnam. Specifically:

- VAT: The software license is not subject to VAT; VAT on the transfer of software-containing equipment is subject to 2% VAT.
- CIT: In case the contract separates the value of software license and the value of transferring the equipment containing the software, CIT applied to taxable revenue for the supply of goods (equipment containing the software) is 1% and CIT applied to the value of software license is 10%.

*The above information is for reference only, not specific consulting advice.
For more detailed guidance, please do not hesitate to contact our Office.*

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