

1. CORPORATE INCOME TAX

❖ Policy on invoices and tax obligations for capital transfer activities

OL No. 3634/CTBNI-TTHT dated 13 October 2021 guiding on the tax policy on invoices and tax obligations for capital transfer activities as follows:

In case the Company transfers its contributed capital to individuals, the Company must issue invoices according to the regulations. Capital transfer activities are not subject to VAT. Thus, when making invoices, the payment price is the selling price on the invoice, the tax rate and VAT amount crossed out and had not been written.

The Company determines income from capital transfer according to the guidance in Article 14 of Circular No. 78/2014/TT-BTC dated 18 June 2014 issued by the MOF. Income from the capital transfer of an enterprise is considered as other income. Enterprises have the responsibility for determining and declaring income from transferring capital into the CIT finalization declaration and remitting CIT payable.

In case the tax authority has evidence to determine that the transfer price of contributed capital in the investment company is not suitable to the market price, the tax authority has the right to inspect and fix the transfer price according to the provisions of this Law on Tax Administration No. 38/2019/QH14 dated 13 June 2019 of the National Assembly.

2. EXPORT TAX

❖ Amending the preferential import and export tax, the list of goods and the rate of absolute tax, mixed tax, import tax out of the tariff quota

Decree No. 101/2021/ND-CP takes effect on 30 December 2021 amended the Decree No. 57/2020/ND-CP and Decree No. 122/2016/ND-CP on Tariff of Export and Tariff of Preferential Import. Some of the notable points are as follows:

1. Adding 02 items to the preferential import tax rate of 0% are fruits and oilseeds for breeding and Engine ECU is used for motor vehicles
2. Accordingly, the export tax rates and preferential import tax rates are adjusted for some groups of goods specified in Appendix I - Export Tariff by the list of taxable goods and the Appendix. II - Preferential Import Tariff by the list of taxable goods

For example, adjusting export tax rates for a number of items such as:

- Natural sands whether or not colored, except for sand containing metals as of Chapter 26 (code 25.05) adjusted the rate from 0% to 10% and 30% (depending on the type).
- Jewelry and parts of jewelry by or clad with precious metal (item code 71.13) adjusted the rate from 25% and 30% down to 0% and 1%.
- Gold or silver industrial goods and parts of gold and silver industrial goods by or coated with precious metal (heading code 71.14); other products of precious metal or plating with precious metal (code 71.15); the adjusted tax rate is reduced from 30% to 0% and 1%.
- Unprocessed lead (item code 78.01) has a new export tax rate of 15% instead of 0% as prescribed in the current Decree No. 57/2020/ND-CP.

3. LABOR

❖ Working and resting time for employees doing jobs of seasonal production, processing by orders.

Circular No. 18/2021/TT-BLDTBXH dated 15 December 2021 issued by the MOLISA to stipulate working and resting time for employees doing jobs of seasonal production or processing by order as:

► Subjects of application:

Employees under the regime of definite-term labor contracts with a range from fully 12 months to 36 months and indefinite terms labor contracts working the following jobs:

- a. Seasonal production in the agriculture - forestry - fishery - salt industry which required immediately harvesting or processing after harvest and could not pending for long;
- b. Processing goods by orders depending on the required time of goods orders.

Employers under the provisions of Clause 2, Article 3 of the Labor Code employee labor for jobs mentioned in Clause 1 of this Article.

► **The standard limit of daily working time and overtime**

1. The total of standard working time and overtime must not exceed 12 hours per day.
2. The limit of standard working time and overtime per week and month are regulated as follows:
 - a. The total of standard working time and overtime must not exceed 72 hours per week.
 - b. Total overtime per month must not exceed 40 hours.
 - c. Employers choose to apply the provisions in Point a or Point b of this Clause, state in the plan of working and resting times in the year specified in Clause 2, Article 8 of this Circular.
3. The total overtime in a year for each employee must not exceed 300 hours.

► **Resting time:**

1. Every week, employees are entitled to take at least one day off (24 consecutive hours). In the seasonal months or when it is urgent to process export goods by orders, the employees should be ensured to take at least 04 days off per month if it is not possible to take off weekly.

2. Resting time during work and taking breaks in shifts for each employee comply with the provisions of the Labor Code and Decree No. 145/2020/ND-CP.
3. Employers should ensure that employees could take holidays, Tet's, annual leave and other paid leave; shorten working hours and ensure resting time for female employees, juvenile and elderly workers; decide on unpaid leave regime in accordance with the provisions of the Labor Code.

- ❖ According to the previous provisions of Circular No. 54/2015/TT-BLDTBXH, the total of standard working time and overtime per week for seasonal workers and processing by orders was not more than 64 hours; especially no more than 48 hours per week for employees working in particularly heavy, hazardous and dangerous occupations.

The total overtime per month must not exceed 32 hours. Especially no more than 24 hours for employees working in particularly heavy, hazardous and dangerous occupations.

Note:

This Circular takes effect from 01 February 2022.

Circular No. 54/2015/TT-BLDTBXH dated 16 December 2015 issued by the MOLISA stipulated on working and resting time for employees doing seasonal production and the processing by orders work will be expired from the effective date of this Circular.

Abbreviations

OL	CIT
Official Letter	Corporate Income Tax
GDT	PIT
General Department of Taxation	Personal Income Tax
MOF	VAT
Ministry of Finance	Value Added Tax
MOLISA	SI
Ministry of Labor, Invalids and Social Affairs	Social Insurance

Contact:

KHAI MINH CONSULTING COMPANY LIMITED

Unit 603, 6F, Citilight Tower, 45 Vo Thi Sau Street

Dakao Ward, District 1, Ho Chi Minh City, Vietnam

Tel: 84 28 3820 5731 / 2

Fax: 84 28 3820 0906

(English)

Tran Mai Tuong Vy

tran.mai.tuong.vy@kmc.vn

Nguyen Van Mui

nguyen.van.mui@kmc.vn

(Japanese)

Le Quoc Duy

le.quoc.duy@kmc.vn

Nguyen Thi Thao Uyen

nguyen.thi.thao.uyen@kmc.vn

This newsletter aims to update and summarize general regulations associated with tax, accounting, investment and labor in Vietnam. You should refer to expertise before making decision.