



UPDATE NEW LETTER AUGUST 2023

1. BANK

❖ Important notes on Conditions of Foreign Loans applicable to borrowers who are not credit institutions, branches of foreign banks in Vietnam

Circular 08/2023/TT-NHNN (“TT08”) dated 30 June 2023 issued by The State Bank of Vietnam stipulates the conditions for foreign loans not guaranteed by the Government (effective from 15 August 2023) as follows:

i. Foreign loan agreement (“NN”):

The foreign loan agreement must be signed before the foreign loan capital is withdrawn. The case of the Loan Agreements are signed on the day foreign loan capital is withdrawn is only applied for a short-term loan or a foreign loan arising from transfer funds for investment preparations of projects granted investment registration certificate according to the provisions of article 9.3.

ii. Short-term offshore loan:

Eligible loan purpose (Article 17.1)	Evidence for loan, filing, storing	Limit of offshore loan amount (Article 18)
Payment of short-term payables in cash	Plan of offshore loan fund usage (Article 7), including:	Not applicable
Serving business operations within a maximum duration of 12 months from the day the foreign loan fund is withdrawn (only when assuring to achieve the minimum levels of prudential indicators as prescribed by specialized laws)	Statement of loan funds usage as prescribed (form attached in Appendix of Circular 08).	

Restructuring the offshore debts	Plan for restructuring of offshore debts (Article 8)	The maximum new offshore loan amount ≤ outstanding principal + unpaid interest + relevant expenses of the existing offshore debts + associated expenses of the new loan determined at the time of restructuring.
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iii. Medium and long-term offshore loan:

Eligible loan purpose (Article 17.2)	Evidence for loan, filing and storing	Limit of offshore loan amount (Article 18)
Implementing borrower’s investment projects	Investment registration certificate or written approval for investment guidelines (Article 17.4.a)	The sum of outstanding principal amount of onshore and offshore medium/long-term loans (including extended and overdue short-term loans treated as medium/long-term loans) ≤ Total investment capital of the project – Contributed capital of investors.

Implementing business, production plans or other projects	Plan of offshore loan fund usage (Article 7)	The sum of outstanding principal amount of onshore and offshore medium/long-term loans (including extended and overdue short-term loans treated as medium/long-term loan) \leq Total demand for borrowed fund defined in the Plan for offshore loan usage
Restructuring the other offshore debts	Plan for restructuring of offshore debts (Article 8)	The maximum new offshore loan amount \leq outstanding principal + unpaid interest + relevant expenses of the existing offshore loans + associated expenses of the new loan determined at the time of restructuring - Within 05 working days from the date of new offshore loan fund is withdrawn, the borrower should repay its existing offshore loan to ensure offshore loan limit requirements.

iv. Rules for using foreign loan capital

According to the provisions of Article 6.2, a foreign loan amount that has been withdrawn but has not yet been used for lawful loan purposes as mentioned above (wholly or

partially) in credit institutions, and foreign bank branches in Vietnam.

Term of each deposit does not exceed 01 month.

The Borrower must make tracking sheet for each deposit and present this tracking sheet together with supporting documents for inspection and examination by the competent authority.

v. Foreign loans granted by deferral of payment for imported goods:

Unrestricted by the eligibility requirements for foreign loans as stipulated in the Circular (Article 5.1). However, the foreign loans granted in the form of import of goods with deferred payment should comply with regulations and guidelines on the management of foreign exchange in borrowing and repaying foreign debts and other relevant law provisions.

Conclude: To ensure compliance when having a foreign loan, the Company should refer to the entire contents of Circular 08 and please contact and advise the Bank providing loan account services.

2. CORPORATE INCOME TAX

❖ Deductible expenses when determining taxable income

OL No. 51950/CTHN-TTHT dated 18 July 2023 issued by the Tax Department of Ha Noi specifically as follows:

In case, the Company determines the expenses for the service of declaring and calculating PIT, the purchase of a health care membership card for the individual who is a foreigner working at the Company as the nature expense of wages and salaries, the expenses should be included in reasonable expenses when determining CIT if meeting the specified conditions in Clause 1, Article 4 of Circular No. 96/2015/TT-BTC, specifying in one of the following documents: Labor contract; Collective labor Agreement; Financial regulations of the Company and not in the case of non-deductible CIT expenses specified in Clause 2, Article 4 of Circular No. 96/2015/TT- BTC dated 22 June 2015 of the MOF.

3. VALUE ADDED TAX

❖ VAT declaration for factory leasing activities

OL No. 47362/CTHN-TTHT dated 05 July 2023 issued by the Tax Department of Ha Noi specifically as follows:

- In case, the enterprise has factory leasing activities in a province other than where the

headquarters is located and are not the cases specified in Clause 1, Article 11 of Decree No. 126/2020/ND-CP; Clause 1, Article 13 of Circular No. 80/2021/TT-BTC, the enterprise should not declare VAT separately to the tax authority where the factory leasing activities have arisen but together with other production and business activities of the enterprise and submits VAT declaration dossiers to directly managing tax authorities without allocating VAT payable by the provinces.

- In case, the Branch is not the lessor of the factory as prescribed by law, the Branch is not the taxpayer for income arising from the factory leasing activities.

❖ **VAT declaration for investment projects**

OL No. 54965/CTHN-TTHT dated 31 July 2023 issued by the Tax Department of Ha Noi specifically as follows:

- In case, the Project Investors assign the provincial Branch other than where the headquarters is located to directly manage on their behalf one or more investment projects in one or many localities, the investment project is eligible for VAT refund, the Branch should prepare a separate tax declaration for each investment project and submit to the local tax authority where the investment project is located as prescribed in Point d Clause 2 Article 7 and Point a, Clause 1, Article 11 of Decree No. 126/2020/ND-CP.
- In case the Branch performs VAT refund for an investment project, the tax reimbursement records sent to the tax authority must contain the investor's decision on assignment of investment project management, the regulations on organization and operation of the Branch as prescribed in Point a.6 Clause 2 Article 28 of Circular No. 80/2021/TT-BTC.

4. PERSONAL INCOME TAX

❖ **The implementation of tax obligations on income from abroad**

OL No. 56955/CTHN-TTHT date 04 August 2023 issued by the Tax Department of Ha Noi stipulated as follows:

In case, individuals do not register a business and sign a contract with a client to perform consulting services, the remuneration received from the contract is considered as salaries or wages nature according to the provisions of point c, Clause 2, Article 2, Circular No.111/2013/TT-BTC dated 15 August 2013 of the MOF.

Resident individuals who generate incomes from salaries or wages abroad are subject to declare

PIT directly to the tax authority as prescribed in Item a.2), point a, and clause 3. Article 19 Circular No.80/2021/TT-BTC.

PIT declaration dossiers for individuals who have incomes from salaries and wages directly and declare tax with tax authorities should comply with the provisions of Point 9.2, Section 9, Appendix I by the List of tax declaration dossiers (Attached to Decree No.126/2020/ND-CP dated 19 October 2020 of the Government).

The period of PIT declaration is implemented according to the instructions in Article 8, Decree 126/2020/ND-CP dated 19 October 2020.

Places to submit PIT finalization dossiers comply with specific instructions in Clause 8, Article 11, Decree No. 126/2020/ND-CP dated 19 October 2020.

5. OTHER TAXES

❖ **IMPORT TAX REFUND**

OL No 3249/TCHQ-TXNK dated 26 June 2023 issued by the General Department of Customs guides as follows:

- In case, the enterprises import raw materials and supplies for production, the business has paid import tax but does not directly produce the whole goods but delivers a part or all of these raw materials and supplies to another enterprise for processing one or several stages, then received the processed products to continue producing and exporting the products, the progress does not satisfy the regulations on import tax refund. Therefore, import tax will not be refunded for raw materials and supplies sent for processing.
- Products are manufactured from imported raw materials and supplies have been processed at export processing enterprises, then when imported back to Vietnam for production and export, they must pay import tax according to the provisions of the Export Tariff according to the List of taxable good. Products are manufactured from imported raw materials and supplies are transferred to the EPEs for processing and then imported back to Vietnam for production and export must pay import tax according to the provisions of the Export Tariff by the List of taxable goods.

6. INVOICE

❖ Invoice related to commercial discount

OL No. 3292/TCT-CS dated 02 August 2023 of the General Department of Taxation guidance on the invoice related to commercial discount as follows:

In case a business establishment applies the commercial discount to customers (if any), the VAT price is the discounted selling price. In case the commercial discount is based on the quantity and sales of goods or services, the discount amount shall be adjusted on the goods and service sale invoice of the last purchase or next period. In case the discount amount is made at the end of the sales discount program (period), an adjusted invoice should be issued with a list of the invoice numbers to be adjusted, the adjusted amount, and the tax amount. Based on the adjusted invoice, the seller and the buyer declare the adjustment of revenue and expenses, output and input taxes.

7. LABOR

❖ Payment of pension, monthly allowance by the new rate

The Government issued Decree No. 42/2023/ND-CP on 29 June 2023 amended to increase the pension, social insurance allowance and monthly allowance from July 2023, specifically as follows:

- Increase the benefit rate in June 2023 by 12.5% for ones who HAVE BEEN INCREASED by 7.4% from 01 January 2022 according to Decree No. 108/2021/ND-CP.
- Increase the benefit rate in June 2023 by 20.8% for ones who have NOT been increased by 7.4% from 01 January 2022 according to Decree No. 108/2021/ND-CP.

The Decree takes effect from 14 August 2023. Thus, the Social Insurance Authorities shall temporarily pay the pension and SI allowances in July at the old rate. Implementing the additional return of July 2023 difference in the payment period of August 2023 (according to OL No. 451/CSXH-HT dated 17 July 2023)

Ký hiệu viết tắt

MOF	OL
Ministry of Finance	Official Letter
CIT	SI
Corporate Income Tax	Social insurance
PIT	HI
Personal Income Tax	Health insurance
VAT	UI
Value Added Tax	Unemployee Insurance

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This newsletter aims to update and summarize the general provisions related to Taxation, Accounting, Investment and Labor in Vietnam. You should seek professional advice before making a decision..