

# LEGAL UPDATES

## SEPTEMBER 2017

- Circular No. 41/2017/TT-BTC
- Circular No. 93/2017/TT-BTC
- Circular No. 23/2017/TT-BLĐTBXH

- Official letter No. 3978/TCT-KK
- Official letter No. 4253/TCT-CS
- Official letter No. 4278/TCT-KK
- Official letter No. 3977/TCT-DNL

## New guidance on transfer pricing method

Circular No. 41/2017/TT-BTC ("Circular No. 41") dated April 28, 2017 of the Ministry of Finance provides guidance on the implementation of certain articles of the Government's Decree No. 20/2017/ND-CP dated February 24, 2017 on tax administration for enterprises engaged in transfer pricing.

Circular No. 41 provides detailed guidance on subjects as well as the implementation order of transfer pricing methods including: Determining the nature of related-party transactions; comparability factors between related-party transactions and uncontrolled transaction; the comparability process of determining the price of related-party transactions based on the profit margin.

Accordingly, the nature of related-party transaction prescribed by legally binding agreements, documents or arrangements on transactions of related parties shall be determined and compared to the reality of execution of these transactions by such parties (as the reality of business operations and functions of each party).

The comparison between the related-party transaction with the uncontrolled transaction shall depend on the following factors: Characteristics of the property, goods and service having the influence to the price of the product; operation functions of each party; contractual terms; economic conditions of transactions and market conditions at the date and time of these transactions and so on.

Besides, the Circular also provides specific guidance on the declaration forms of information about related relationships; related-party transactions and preparation method of the determination of the price of the related-party transaction (refer to the detail at attached appendices).

The Circular takes effect from the effective enforcement date of Decree No. 20/2017/ND-CP (i.e. May 01, 2017).

Circular No. 66/2010/TT-BTC and Form No. 03-7/TNDN accompanied with Circular No. 156/2013/TT-BTC dated November 06, 2013 is abolished.



**Value added tax (VAT) arising in the investment period, which has been transferred to Declaration 01/GTGT, shall not be entitled to the VAT refund**

Official letter No. 4278/TCT-KK dated September 20, 2017 of the General Department of Taxation on the supplementary declaration for the application of tax refund in respect of the investment project.

According to this Official Letter, in cases where the company has an investment project which has been put into operation and generated revenue and concurrently the input VAT which has not yet been reimbursed of the project has been transferred into the tax declaration form 01/GTGT in respect of the production and business activities, the company then is no longer eligible for tax refund under investment projects as stipulated in Clause 3, Article 1 of Circular No. 130/2016/TT-BTC.

However, if this project serves the production and trading of goods and services for export and has an input VAT amount not yet deducted from 300 million dong or more, it shall be considered for tax refund under Clause 4, Article 1 of the Circular No. 130/2016/TT-BTC.



## **Payment of goods made by personal credit card is still acceptable**

Official letter No. 3977/TCT-DNL dated September 05, 2017 of the General Department of Taxation on the tax policies with regard to non-cash payments.

For the case that the company authorizes for employees to directly make the payment of goods by personal credit card, after which the company pays back to such employees, it is still considered for tax deduction and recognition of expenses if having the full following documents:

1. Sales invoices with the name of the company;
2. Documents showing the authorization of the company to the employees to settle the payment with the sellers and then the company settles the payment to the employees;
3. The vouchers of money transfer from the account of the company to the individual's and the vouchers of money transfer from the personal card to the seller.





## New Regulations on VIETNAM WORK PERMIT



### New regulations on the online submission of the explanation about demand for employment of foreign workers

This is the featured content stipulated in Circular No. 23/2017/TT-BLDTBXH (taking effect from October 02, 2017) regarding on guidance on online issuance of work permit to foreign workers in Vietnam.

Accordingly, at least 20 days before the planned date of employing foreign workers, the employer must submit the declaration and explanation about his/her demand for employment of foreign workers to the approving authority through the website.

Currently, the submission of declaration and explanation about demand for employment of foreign workers is performed in advance of 30 days since the planned date of employing foreign workers (according to Circular No. 40/2016/TT-BLDTBXH dated October 25, 2016).

Therefore, compared with the regulation on submission of the written explanation as presently, the online submission has dramatically shortened the time required to do for the employer.



### Some procedures on the online issuance of the work permit for the foreign workers in Vietnam



#### GIẤY PHÉP LAO ĐỘNG WORK PERMIT

- 1- At least 7 working days before the planned date on which foreign workers start working for the employer, the employer must electronically submit the declaration and application for work permits for foreign workers to the work permit issuing authority through the website.
- 2- Within 05 working days from the receipt of the declaration and application for work permits, the work permit issuing authority shall give a response by sending an email to the employer. If the declaration and application for work permits are not conformable with the law regulations, the work permit issuing authority shall suggest for the supplement.
- 3- After receiving a response indicating that the application for work permits is conformable, the employer shall by hand or by post submit the original application for work permits to the work permit issuing authority for verification and retention as regulated by law.
- 4- Not later than 8 working hours from the receipt of the original application for work permits, the work permit issuing authority must give processing results to the employer.



## The application of VAT refund which is eligible for partial refund shall still be considered for immediate refund

Official letter No. 3978/TCT-KK dated September 4, 2017 of the General Department of Taxation provides the settlement of VAT refund.

According to this Official letter, if the application of VAT refund of the enterprise partially meets the conditions and still has the part which has not yet satisfied the conditions for refund, the enterprise is still considered for refund of the VAT amount which satisfies the conditions immediately.

With regard to the amount of VAT which is not yet eligible for refund, and awaiting for verification or inspection or verification results, the enterprise shall not be required to re-submit the tax refund application when it satisfies the conditions for refund. The tax office will create a tax refund file based on the initial application of the enterprise.

## Abolishing the form of registration of VAT deduction method (Form No. 06/GTGT) since November 05, 2017

After many acceptance for the exceptions regarding to the late submission of Form No. 06/GTGT, which are still considered for tax deduction, the Ministry of Finance officially abolishes Form No. 06/GTGT by Circular No. 93/2017/TT-BTC.

Accordingly, the enterprise – regardless of newly established or having the revenue less than 1 billion per year – is allowed to select whether the tax deduction calculation method or direct tax calculation method by selecting monthly/quarterly VAT declaration under the form reserved for the deduction or direct tax calculation.

Specifically, if the enterprise wants to make tax deduction declaration, then declares by Form 01/GTGT and 02/GTGT. On the contrary, if the enterprise wants to calculate tax directly, then declares by Form No. 03/GTGT and 04/GTGT. These forms are issued at Circular No. 156/2013/TT-BTC.

With the tax declaration method mentioned above, if the enterprise is calculating tax directly, the enterprise can self-switch to declare tax deduction by declaring by Form 01/GTGT and 02/GTGT. However, the enterprise needs to ensure that the use of invoices must be in accordance with the tax declaration method that the enterprise wants to apply. In this case, if switching to tax deduction declaration, the enterprise must firstly use VAT invoices instead of sales invoices.

Another notable point on the application time is that Circular No. 93/2017/TT-BTC does not mention cases incurring before November 05, 2017 (the day that this Circular takes effect), so the issues related to Form No. 06/GTGT shall still remain effective at that time.



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