



ClientAlert

Introduction

Dear Reader,

This month saw a handful of new regulations that affect business in Vietnam. We've briefed them and outlined the most important changes from each new regulation. They cover topics ranging from social security payments to gold business registration and VAT refunds to vocational school registration requirements.

As always we hope you find this Client Alert helpful and wish you prosperity in the coming month. We look forward to working with you.

Kind regards,
Indochine Counsel

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Social safety payments by employers

On 30 June 2017 the Government issued Decree No. 76/2017/ND-CP (“**Decree 76**”) on adjustments of pensions, social insurance benefits and monthly benefits. This Decree provides for an adjustment of pensions, social insurance benefits and monthly benefits for the following entities:

- Cadres, civil servants, workers, public employees and employees (including persons participating in voluntary social insurance, retired persons who are receiving monthly benefits of Nghe An Farmers’ Social Insurance Fund in accordance with Decision No. 41/2009/QD-TTg issued on 16 March 2009 by the Prime Minister); soldiers, policemen and cipher officers who are entitled to get monthly pensions.
- Officials of communes, wards and commune-level towns who are entitled to receive pensions and monthly benefits as regulated in the following legislation: Decree No. 92/2009/ND-CP dated 22 October 2009, Decree No. 121/2003/ND-CP dated 21 October 2003, and Decree No. 09/1998/ND-CP dated 23 January 1998 issued by the Government.
- Persons who are entitled to receive monthly disability benefits as prescribed by the prevailing laws; persons who are entitled to receive monthly benefits as prescribed in Decision No. 91/2000/QD-TTg dated 4 August 2000, and Decision No. 613/QD-TTg dated 6 May 2010 issued by the Prime Minister; rubber workers who are entitled to receive monthly benefits.
- Officials of communes, wards and commune-level towns who are entitled to receive monthly benefits under regulations in Decision No. 130/CP dated 20 June 1975 of the Government Council and Decision No. 111-HDBT dated 13 October 1981 of the Council of Ministers.
- Soldiers who are entitled to receive monthly benefits under regulations in Decision No. 142/2008/QD-TTg dated 27 October 2008, and Decision No. 38/2010/QD-TTg dated 6 May 2010 issued by the Prime Minister.
- Policemen who are entitled to receive monthly benefits under regulations of Decision No. 53/2010/QD-TTg of the Prime Minister dated 20 August 2010.
- Soldiers, policemen and cipher officers who are entitled to receive monthly benefits under Decision No. 62/2011/QD-TTg dated 9 November 2011 issued by the Prime Minister.
- Persons who are entitled to get monthly occupational accident or disease benefits.

Accordingly, pensions, social insurance benefits and monthly benefits paid in June 2017 to the entities prescribed above will be increased by 7.44% as of 1 July 2017.

Decree 76 took effect as from 15 August 2017. Regulations in this Decree shall be implemented as from 1 July 2017.

New procedures for gold establishments

On 6 June 2017 the State Bank of Vietnam (“**SBV**”) issued Circular No.03/2017/TT-NHNN (“**Circular 03**”) on amending and supplementing a number of articles of Circular No. 16/2012/TT-NHNN (“**Circular 16**”) guiding a number of articles of Decree No. 24/2012/ND-CP on the management of gold business activities.

First, to make a request for a certificate of eligibility for the manufacture of gold jewelry and art crafts, enterprises or financial institutions (“**Applicant**”) must submit their enterprise registration certificate (“**ERC**”) and documents proving that the enterprise has registered for the manufacture of gold jewelry and goldsmiths’ wares under effective regulations of law instead of an ERC with the business line of gold trading as prescribed in Circular 16.

Second, to make a request for a gold bar trading license (“**License**”), an Applicant must additionally submit the list of locations registered as gold bar trading locations (head office, branches or business locations). In addition, instead of submitting an ERC with the business line of gold trading and operation registration certificates of its branches (“**ORCB**”), an Applicant must submit an ERC, an ORCB and documents proving that locations registered as gold bar trading locations according to the list of locations registered as gold bar trading locations have been registered with or reported to the competent business registration agency under effective regulations of law.

Third, an Applicant does not need to submit certificates of eligibility for the manufacture of gold jewelry and art crafts for granting a gold material import license for a manufacturer of gold jewelry and art crafts.

Fourth, Circular 03 supplements the new article on application for modification of licenses. Accordingly, in the event of change of an enterprise’s information specified in the license, change of names and addresses of gold bar trading locations or the addition of gold bullion trading locations, the Applicant must submit a dossier as stipulated by Article 9(a) of Circular 03.

Finally, Circular 03 supplements and amends responsibility on the report of SBV municipal and provincial branches.

Circular 03 shall take effect as from 22 July 2017 as a supplement and amendment of Circular 16.

Vocational education quality assessment

On 08 June 2017 the Ministry of Labour, War invalids and Social Affairs issued Circular No. 15/2017/TT-BLDTBXH regulating criteria and standards for vocational education quality assessment (“**Circular 15**”).

This Circular provides detailed regulations on the criteria and standards for quality assessment of:

- Colleges, intermediate schools and vocational education centers; and
- Training programs for elementary, intermediate and college levels.

The regulations in this Circular are to be applied to vocational education centers, universities registering vocational education programs at the college level, enterprises registering vocational education program at the elementary level, vocational education assessment organizations and related units, individuals.

There are nine criteria for quality assessment of colleges, in which each criterion includes different assessment standards. For satisfactory performance in a certain criteria the establishment will receive one point and unsatisfactory performance will receive zero points.

The college shall be assessed to meet the standards of quality upon meeting the following requirements:

- (a) Total points of assessed criteria received from 80 points and over;
- (b) Assessed points of each assessed criteria must be from 60% and over; and
- (c) Assessed points of criteria on training activities, teachers, administrators, officials and employees, programs, textbooks, infrastructure, educational equipment and the library) must be from 80% and over.

Circular 15 took effect as from 24 July 2017 and shall not apply to teacher training colleges and teacher training programs managed by Government.

Changes in social insurance contributions by employers

On 14 April 2017 the Government issued Decree No. 44/2017/ND-CP ("**Decree 44**") regulating compulsory social insurance premium rates payable to the insurance fund for work-related accidents and occupational disease (the "Fund"), effective from 1 June 2017.

According to Decree 44, the level of monthly contribution by the employer to the Fund, as provided for in Article 44.3 of the Law on Labour, Safety and Hygiene is reduced from 1% to 0.5% of the monthly salary fund for employees participating in unemployment insurance.

Participating employees (except maids) include: (i) Persons working under indefinite-term labour contracts, definite-term labor contracts and/or labour contracts for a seasonal or specific job that has a duration of from 3 full months to less than 12 months, including the labor contract signed between the employer and the legal representative of the persons under 15 years old, in accordance with labour legislations; (ii) Persons working under definite-term labour contracts with a term ranging from

full 1 month to less than 3 months; (iii) Cadres, civil servants and public employees; (iv) National defense workers, police workers, other working persons in cipher organizations; (v) Officers, professional servicemen of the People's Army; professional-level officers non-commissioned officers, the People's Public Security Forces technically-qualified officers, non-commissioned officers; cipher officers salaried as servicemen; (vi) Enterprise managers, executive managers of cooperatives enjoying salaries; and (vii) Non-commissioned officers and soldiers of the People's Army; the People's Public Security Forces definite-term non-commissioned officers, men; army, security force, cipher practitioners who enjoy living expenses.

In the case of employees working under a labour contract with a duration of from one to less than 3 months, the contribution to the Fund applies from 1 January 2018.

Based on the capacity for ensuring balancing of the Fund, the Government may consider amending the premium rates payable to the Fund from 1 January 2020.

VAT refund management

On 18 April 2017 the Ministry of Finance issued Circular No. 31/2017/TT-BTC ("**Circular 31**") amending and supplementing a number of articles of Circular No. 99/2016/TT-BTC of the Ministry of Finance dated 29 June 2016, which provides for the management of value-added tax refunds. The key points of Circular 31 are as follows:

Issuance of decisions on tax refund

Circular 31 supplements the obligations of the Tax Department in relation to the issuance of decisions on tax refunds and the time-line for such obligations. Accordingly, the Tax Department shall fully update and enter into account all tax refund decisions or decisions on tax refund cum state budget revenue clearing into the tax administration application system on the working day these decisions are issued.

After being entered into account, the above-mentioned decision shall be circulated by the Tax Department together with the tax refund order or order on tax refund and state budget revenue clearing to the State Treasury on the working day of the decision or on the subsequent working day at the latest.

The time-limit for issuance of tax refund decisions or decisions on tax refund cum state budget revenue clearing shall remain unchanged and in force as stipulated under Circular No. 99/2016/TT-BTC of the Ministry of Finance dated 29 June 2016, whereby such decision shall be issued within 6 working days in case of tax refunds before inspection, or within 40 days in case of inspection before tax refunds from the date on which the sufficient dossier for such claim is filed by a taxpayer.

Time limit for refunding VAT

Another important point of Circular 31 is the regulation on shortening the time of tax refunds to taxpayers. Specifically, the State Treasury is required to refund VAT to taxpayers within one working day upon receipt of a tax refund order or order on tax refund and state budget revenue clearing from the Tax Department, and such time-limit is two working days shorter than the previous regulation under Circular No. 99/2016/TT-BTC of the Ministry of Finance dated 29 June 2016.

Disclosure requirements

In comparison with Circular No. 99/2016/TT-BTC of the Ministry of Finance dated 29 June 2016, more information in relation to the tax refund shall be published by the Tax Department, as follows:

- Time of receiving tax refund dossiers; time of receiving written explanations or additional information and documents from taxpayers.
- Time of issuing tax authorities' notices and decisions on settlement of tax refund requests.
- Time of the State Treasury's payment of tax refunds to taxpayers.

Circular 31 took effect on 2 June 2017.

A bit of a review

Vietnam has survived centuries, even millennia, of foreign oppression. Starting with the Chinese, and then the French, the United States and Japan. One of my favorite movies as a youth was *Princess Bride*, and that Rob Reiner film relates an unconventional romance. But perhaps most memorable is a scene in which one character relates to the main character that one of the cardinal sins is starting a land war in Asia.

Indochina has suffered greatly from these invasions and occupations, losing millions of people to the bombs and guns. From the Menu bombing of Cambodia and Laos, to the ridiculous number of munitions dropped on the tunnels near Cu Chi. Then there was Tet 1968, an event which arguably changed the public perception of the United States concerning the Second Indochina War.

But Vietnam has rebounded from the chaos of war and oppression by foreign "devils". It has grown to become one of the new Asian Tigers with a 2016 GDP of over two hundred billion dollars and a 6.2% annual growth rate. It's a booming place, where development projects are welcome, but also where the goals of jumping from its place in least developed country into a higher bracket by 2020 look well possible to meet. Vietnam is alight.

With the attractiveness of Asia, and Indochina in particular (Laos is currently the fastest growing country in the world), to investment, it's important to understand that Asia is a different place from Europe and the West. None of the countries of Indochina have more than one political party and are essentially run by a small group of individuals, or one (in the case of Hun Sen in Cambodia). But as China is a growth predecessor during its conversion from pure Communism to a Socialist system,

Vietnam too has shown great promise in its development.

Energy, infrastructure, Public-Private Partnerships, all of these things are growth industries. The National Assembly has carefully worked through the necessary laws to invite investment in more difficult, larger scale projects.

Just the other day I learned that a skyscraper in District 1 was seized in bankruptcy and will hopefully be completed post haste. Vietnam is serious about law and order, and about progress, at least in business. I won't comment on human rights or political freedoms except to point out that many view Vietnam as only behind Taiwan in its treatment of LGBT persons.

It's warm, humid, welcoming. Some may balk at the traffic, but that's easily navigable. Downtown Ho Chi Minh City you'll find green clad tourist police to help you cross if you're too scared. But just like much of the metaphorical state, you just close your eyes and march at a solid and stately pace and hope all the motorbikes will swerve to avoid you.

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 35 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

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- International Trade
- Dispute Resolution

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