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The background image is an aerial night view of a city skyline. Several tall skyscrapers are illuminated with lights, and their reflections are visible on the water in the foreground. The sky is dark with some clouds. The overall scene is vibrant and modern.

LEGAL UPDATES

August 2021

TAX

Circular No. 40/2021/TT-BTC dated 1 June 2021 of the Ministry of Finance Providing Guidance on Value - Added Tax, Personal Income Tax and Tax Management for Business Households and Individuals (“Circular 40”)

Effective date: 01 August 2021

Circular 40 provides for detailed guidelines on value - added tax (“VAT”), personal income tax (“PIT”) and tax management for business households and individuals, with new remarkable points as highlighted below.

1. New Tax Calculation Method

Circular 40 supplements two new methods for tax calculation, including:

- (i) Method for tax calculation applied to household businesses and individual businesses selecting to declare tax monthly/quarterly; and
- (ii) Method for tax declaration applied to organizations and individuals declaring and paying tax on behalf of other individuals monthly, quarterly, annually or upon each occasion of the tax obligation arising as prescribed by tax administration laws, depending on the specific circumstances.

2. Supplementing Certain Types of Incomes being subject to VAT, PIT

Circular 40 introduces a few more types of incomes that are subject to VAT and PIT. The previous guidance did not mention the following types of incomes as incomes being subject to VAT and PIT.

- (i) Bonuses, sales compensation, promotions, commercial discounts, payment discounts, assistance in cash or not in cash for presumptive tax payers, to which the applied VAT rate and PIT rate are 1% and 0.5% respectively;
- (ii) Compensation for breach of contract, other compensations, to which no VAT is applied and the applied PIT rate is 0.5%; and
- (iii) Advertising on digital information products and/or services, to which the applied VAT rate and PIT rate are 5% and 2% respectively.

3. Supplementing Organizations that are Responsible for Tax Declaration and Payment on behalf of Individuals

Under Circular 40, the following organisations shall also be responsible for declaring and paying tax on behalf of relevant individuals:

- (i) Organisation doing business in cooperation with individuals;
- (ii) Organisation paying bonuses, sales compensation, promotions, commercial discounts, payment discounts, assistance in cash or not in cash, compensations for breach of contract, other compensations for presumptive tax payers;
- (iii) Organisation in Vietnam that is a partner of an overseas digital platform provider (without presence in Vietnam); and
- (iv) Organisation that is the owner of an e-commerce platform shall declare and pay tax on behalf of the individuals according to the tax authority’s roadmap.

BANKING

Decree No. 58/2021/ND-CP dated 10 June 2021 on Provision of Credit Information Service (“Decree 58”)

Effective date: 15 August 2021

The Government has recently issued new Decree 58 guiding credit information-related activities. The relevant matters were previously governed and guided by Decree No. 10/2010/ND-CP dated 12 February 2010, as amended by Decree No. 57/2016/ND-CP and Decree No. 16/2019/ND-CP (“Decree 10”).

Below are notable new regulations of Decree 58.

1. Conditions for Credit Information Operation

Under provisions of Decree 58 and Decree 10, a credit information company is entitled to provide credit information services if being granted a Certificate of Eligibility for Providing Credit Information Service (“**Certificate**”) by the State Bank of Vietnam (“**SBV**”). The SBV shall consider granting the Certificate to the credit information company if it satisfies six mandatory conditions including:

- (i) having infrastructure satisfying conditions on data transmission lines, information infrastructure capable of integrating and connecting to information systems of participating credit/banking organizations, computer software systems and technical solutions, etc.;
- (ii) having at least VND30 billions of charter capital;
- (iii) having qualified personnel (i.e. Chairman of Board of Management/Members’ Council or Chairman of company having bachelor degree or higher and at least 03-year experience in financial, banking, accounting, auditing, or information technology sectors);
- (iv) having proper business plan;
- (v) having at least 15 credit/banking organisations jointly providing credit information; and
- (vi) having written agreement between the credit information company and participating credit/banking organization.

In addition to the above, there is a new condition set out under Decree 58 which is the location of the server of credit information companies. In particular, Decree 58 requires the credit information companies to have at least one server located in Vietnam.

In terms of condition on qualified personnel, Decree 58 additionally requires that managers, members of the Inspector Board of credit information companies have not been sentenced for any serious crime or worse, sentenced for possession charges and their criminal records have not been expunged; and were not managers, members of the Inspector Board of credit information companies which have Certificate revoked (except where the revocation is made as per requirements of the laws).

2. Commencement of Credit Information Provision Service

Decree 58 requires the credit information companies to commence providing credit information services within 12 months (instead of 24 months as stated in Decree 10) from the date of issuance of the Certificate and notify the SBV on their provision of service within five working days from the commencement date.

In case of non-compliance with the aforesaid deadline, the SBV could revoke the Certificate.

3. Form on Providing Credit Information Service

A new requirement set out in Decree 58 is relating to the agreements and commitments on provision of credit information services.

In particular, the collection and provision of credit information by credit information companies to clients or the participating credit/banking organisations must be agreed in writing and the agreements and commitments on provision of credit information services must be made in writing or in analogous form in accordance with the laws.

4. Processing Credit Information

As provided in Decree 10, credit information companies are permitted to use all credit information of borrowers in the latest five years to create credit information products. Decree 58 is different from Decree 10 when stating that only negative information of borrowers is subject to such time-limit. Negative information of borrowers includes credit information about bad debt, violations of payment obligations, violations of the laws, information of borrowers being sued or charged with a crime, and other negative information affecting assessment result of borrowers' credit.

5. Refusing to Provide Credit Information

According to Decree 58, credit information companies are entitled to refuse to provide credit information to user if they detect the user's violation of the signed agreement or the laws. The credit information companies must clarify the cases where the provision of information to the user shall be refused.

In case of suspension of providing credit information to the user, the credit information companies must provide a written notice specifying the reason of refusal at least 20 working days in advance.

SECURITIES

Circular No. 51/2021/TT-BTC dated 30 June 2021 of the Ministry of Finance on Providing Guidance on Obligations of Organisations and Individuals Arising from Foreign Investment in Vietnam's Securities Market (“Circular 51”)

Effective date: 16 August 2021

To update with new changes in the 2019 Law on Securities, the Ministry of Finance recently issued Circular 51 to provide guidance on a few matters on foreign investment activities in Vietnam's securities market regulated in that new Law on Securities. Circular 51 shall come into effect from 16 August 2021 and replace the old Circular No. 123/2015/TT-BTC dated 18 August 2015 of the Ministry of Finance guiding the old Law on Securities on the same matters (“**Circular 123**”).

Below are some new and worth noted contents of Circular 51.

1. Opening Depository Accounts

Under previous Circular 123, foreign investors are only permitted to open one depository account at only one custodian bank (of the whole banking system).

Meanwhile, new Circular 51 allows foreign investors to open depository accounts at multiple securities companies however with a limitation of one investor – one depository account at each securities company.

2. Obligations of Groups of Affiliated Foreign Investors on Ownership Report and Public Information Announcement

In addition to other reporting duties as already set out under previous Circular 123, Circular 51 also requires groups of affiliated foreign investors to update the change in number of foreign investors in the groups even when there is no change to group's representatives, the person in charge of ownership reporting and information disclosure.

3. Provision of Services to Foreign Investors

According to Circular 51, not only securities trading organisations (i.e. securities companies and fund management companies) but also branches of foreign fund management companies in Vietnam and foreign owned companies (with foreign ownership ratio of more than 50%) are subject to certain responsibilities when rendering services to foreign investors. In particular:

- (i) ensuring conformity to legal regulations on securities and securities market;
- (ii) making a fair and reasonable allocation of assets to each client in accordance with signed contracts; and
- (iii) *[for securities companies, fund management companies and branches of foreign fund management companies in Vietnam providing services of securities auctions as authorized by foreign investors]* separating trading orders and investment instructions of foreign investors from those of domestic investors (if any) and their own and ensuring compliance with regulations on foreign ownership ratio in Vietnamese enterprises.

4. Clearing Members

Circular 51 clarifies the obligations of clearing members, a notion introduced for the first time in the 2019 Law on Securities.

Clearing members under the 2019 Law on Securities and Circular 51 are licensed securities companies, commercial banks, branches of foreign banks engaging in clearing activities (*margin trading, reconciliation, confirmation of trading results, handling errors, trading positions, clearing, settlement of payment obligations and risk management related to securities trading*) and payment services for securities transactions, who have duties to:

- (i) [*when rendering services for foreign investors*] keep confidential information about foreign investors;
- (ii) retain adequate documents about clearing and settlement of securities transactions of the entities granted securities trading codes;
- (iii) adequately, promptly and accurately provide information for competent authorities at their request; and
- (iv) directly submit reports and provide lists, data, figures and other documents related to activities of foreign investors if requested by the State Securities Commission of Vietnam (SSC).

5. Issuers of Depository Receipts in Foreign Countries

Issuer of depository receipts in foreign country is a service provider of issuance depository certificates in foreign countries on the basis of shares listed on Vietnam's stock market, which is newly supplemented in Decree No. 155/2020/ND-CP dated 31 December 2020 of the Government guiding the Law on Securities.

Under Circular 51, the issuer of depository receipts in foreign country is:

- (i) entitled to open indirect investment capital accounts and depository accounts under the same rule applied to foreign investors; and
- (ii) concurrently obliged to declare, pay and finalize taxes, fees, charges and service prices related to securities trading activities in Vietnam in accordance with the Vietnamese laws.

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