

# VIETNAM BULLETIN

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## Highlights of Vietnam's technical updates in February 2023

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- ▶ Social Securities ("SHUI");
- ▶ Others.

Please refer to our following edition for further details.

## BUSINESS TAX

### ▶ Tax administration

**1. Official Letter No. 15616/CTTPHCM-TTHT dated 15 December 2022 by the Ho Chi Minh City Tax Department on the implementation of new provisions of Decree No. 91/2022/ND-CP.**

Accordingly, Decree No. 91/2022/ND-CP (which amends and supplements a number of articles of Decree No. 126/2020/ND-CP dated 19 October 2020 on the elaboration of some articles of the Law on Tax Administration) introduces some notable new points as follows:

- PIT declaration where organisations or individuals are not subject to PIT withholding obligations;
- The responsibility to provide tax authorities with information about traders, organisations, and individuals transacting on e-commerce platforms of the e-commerce platforms' owners that are organisations established and operating in accordance with the laws of Vietnam;
- Regulations on provisional CIT payment, provisional payment of after-tax profit that remains after making contributions to funds;
- Regulations on the declaration of environment protection tax for coal extracted and consumed domestically;

- Regulations on the case in which deadline falls on weekends or public holidays;
- Regulations on the time point when organisations declare and pay taxes on behalf of individuals who receive dividends, bonuses in form of securities;
- Amendment to the notice of ceasing to use invoices according to Form No. 04-1/CC issued with Decree No. 126/2020/ND-CP.

**2. Decision No. 2438/QD-BTC dated 22 November 2022 by the Ministry of Finance (“MOF”) on the Action Program to implement the Tax System Reform Strategy to 2030.**

**3. Official Letter No. 3468/CTHN-TTHT dated 1 February 2023 by the Hanoi Tax Department on foreign contractor withholding tax (“FCT”), corporate income tax (“CIT”), and value-added tax (“VAT”).**

Enterprises that purchase services from foreign suppliers who have registered, declared and paid taxes in Vietnam as prescribed by Article 76, Article 77, Article 78, and Article 79 of Circular No. 80/2021/TT-BTC are not required to declare, withhold and pay taxes on behalf of the foreign suppliers.

Input VAT on goods and services which are used for the production of goods, trading of goods, and provision of services subject to VAT is fully deductible if the requirements for deductible input VAT are met and the principles prescribed in the VAT law are complied with.

Enterprises are allowed to include deductible expenses when determining taxable income for CIT purposes if they meet the requirements prescribed in the CIT law.

**4. Decision No. 115/QD-BTC dated 6 February 2023 by the MOF on the announcement of revised administrative procedures in the field of taxation under the management of the MOF, effective from the signing date.**

The Decision is announced together with 1 (one) amended administrative procedures in the field of taxation - Tax payment extension.

**5. Official Letter No. 933/BTC-CST dated 2 February 2023 on Environmental Protection Tax (“EPT”) for oil products.**

Accordingly, gasoline, oil and grease regulated in Clause 1, Article 3 of the Law on EPT are subject to EPT. Goods are not subject to EPT if these are not specified in Clause 1, Article 3 of the Law on EPT. The taxonomy of imported goods based on HS code must be based on customs documentation, technical specifications of enterprises’ imported goods.

**6. Official Letter No. 862/BTC-CST dated 31 January 2023 on materials imported for the manufacture of medical equipment.**

For the case where an enterprise manufactures medical equipment and instruments for domestic consumption, if the input VAT on goods and raw materials has not been fully deducted and the manufacturing of medical equipment and instruments is subject to 5% VAT, the input VAT must be carried forward and deducted in the following periods instead of being refunded (except for cases where the enterprise has new investment projects and has VAT on goods and services purchased and used for such investments that has not yet been deducted valued from VND 300 million or above, the enterprise is entitled to tax refunds under Clause 3, Article 1 of the Law No. 106/2016/QH13).

**7. Official Letter No. 244/TCT-KK dated 31 January 2023 by the General Department of Taxation (“GDT”) regarding declaration of VAT, CIT incurred by foreign carriers.**

Accordingly, where the Company collects service charges on behalf of foreign carriers, it shall declare the VAT and CIT of foreign carriers on their behalves as follows:

- VAT: The Company declares VAT on a monthly basis or declare upon occurrence, following the forms specified in the relevant regulations; and
- CIT: The Company makes payment of provisional CIT on a quarterly basis and submit the annual tax finalisation for foreign carriers according to the regulations.



## ► Accounting

### 1. Official Letter No. 924/BTC-QLKT dated 2 February 2023 by the MOF regarding voluntary application of the International Financial Reporting Standards (“IFRS”) for the preparation of separate financial statements.

Accordingly, the MOF requires enterprises to continue applying the Vietnamese Accounting Standards and Regimes to prepare and present financial statements. They should not apply IFRS until official instructions are announced by the competent authorities.

## ► Corporate Income Tax (“CIT”)

### 1. Official Letter No. 4984/CTHN-TTHT dated 13 February 2023 by the Hanoi Tax Department on CIT incentives for investment projects that manufacture supporting industrial products.

Where an enterprise has investment (new or expansion) projects to manufacture products listed as supporting industrial products prioritised for development that were implemented before 1 January 2015 and meet the conditions prescribed in Law No. 71/2014/QH13, and has been granted an incentive certificate for the manufacture of supporting industrial products, if the projects have fully enjoyed tax incentives provided by other preferential conditions, the projects shall be eligible for CIT incentives under the conditions of supporting industrial products manufacturing for the remaining period (applicable from the CIT assessment year in which the incentive certificate was granted by the authority).

Where an enterprise has investment projects that are entitled to CIT incentives because of its satisfaction of the conditions on the encouraged sectors, the enterprise could apply CIT incentives to incomes from the encouraged sectors. Incomes such as liquidation of scrap and discarded products of products in the preferential sector, exchange rate differences directly related to revenue and expenses of the preferential sector, interest on demand deposits at banks, and other directly related incomes are also entitled to CIT incentives according to regulations.

### 2. Official Letter No. 6096/CTHN-TTHT dated 16 February 2023 by the Hanoi Tax Department on CIT for accrued interest.

Accordingly, the CIT law has no provisions that incomes which are expected to be collected but not actually incurred can be included in the taxable income in the tax period. Income from interest on bank deposits is included in the taxable income of the tax period in which the deposit interest is actually earned.

### 3. Official Letter No. 447/TCT-DNL dated 16 February 2023 by the GDT on deductible expenses when calculating CIT.

According to regulations, where an enterprise has goods and services used for promotion, advertising, donation, gift or internal consumption, the VAT paid under the deduction method shall not be included as deductible expenses when determining taxable income for CIT purposes.

## ► Value Added Tax (“VAT”)

### 1. Official Letter No. 6099/CTHN-TTHT dated 16 February 2023 by the Hanoi Tax Department on VAT rate guidance.

Where an enterprise adopting the VAT credit method incurs a refund of service fee as prescribed by law, the enterprise shall issue a VAT invoice upon the refund. The VAT rate of the service refunded shall correspond to the tax rate of that service stated on the invoice for the service provided.



## ► Invoice

### 1. Official Letter No. 4809/TCT-DNNCN dated 20 December 2022 by the GDT on the issuance of e-invoices with tax authority's code on each arising for property leasing activities.

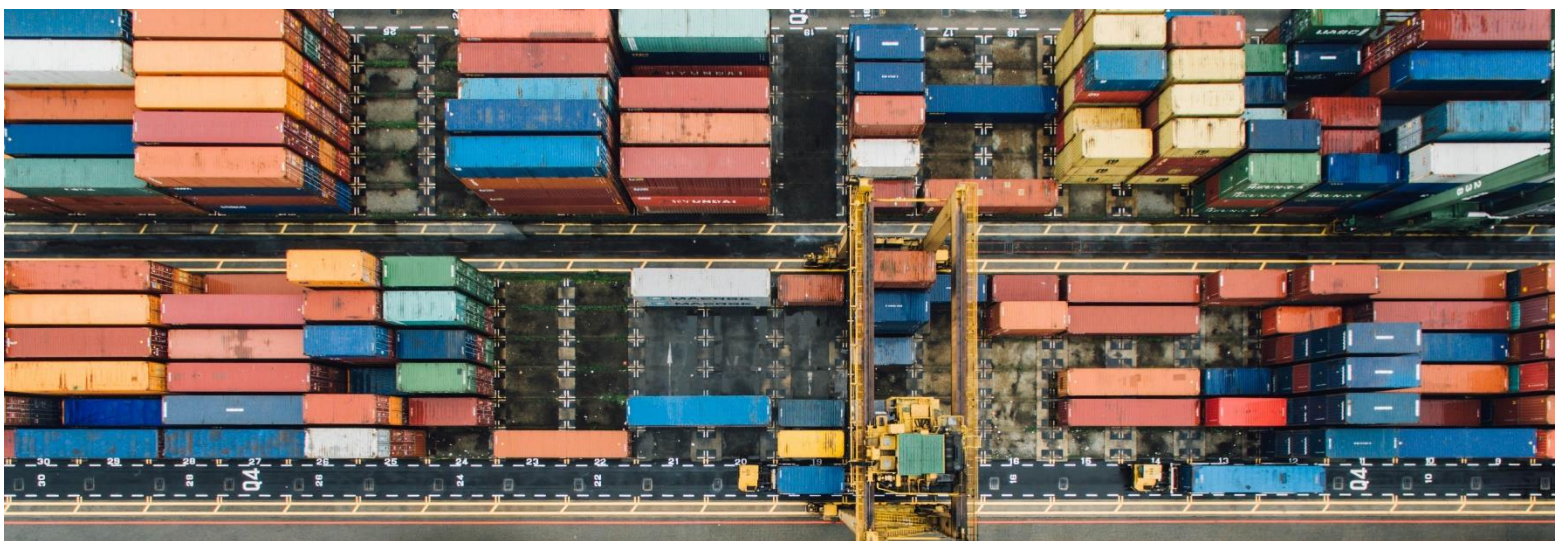
Where an individual leases property to agencies or units using state budget funds and an invoice is required by the lessee as a payment document as prescribed and the related tax was declared and paid, the tax authority shall issue an invoice for each time it is incurred.

### 2. Official Letter No. 3374/CTHN-TTHT dated 31 January 2023 by the Hanoi Tax Department provides guidance on the use of e-invoices with or without the tax authority's code in the sale of goods and provision of services.

### 3. Official Letter No. 4038/CTHN-TTHT dated 7 February 2023 by the Hanoi Tax Department provides guidance on the e-invoice format.

According to the regulations, e-invoices must use the XML document format and must fully and accurately display the contents of the invoices.

The authority to regulate the format of documents and electronic documents such as contracts and debt notes does not belong to the tax authorities



## PERSONAL INCOME TAX (“PIT”)

### 1. Official Letter No. 4190/TCT-DNNCN dated 11 November 2022 by the GDT on PIT allocation.

According to the GDT, where the branch located in Ho Chi Minh City (“HCMC”) directly signs labour contracts, pays salaries, wages for and withholds tax from employees working at business locations in other provinces, the branch is not subject to PIT allocation according to Article 19 Circular No. 80/2021/TT-BTC.

### 2. Transfer of the right to buy shares is subject to PIT in the same manner as transfer of securities according to Official Letter No. 4554/TCT-DNNCN dated 6 December 2022 by the GDT.

According to the provision of Clause 1 and Clause 7 of Article 4 of the Law on Securities No. 54/2019/QH14, “the right to buy shares” is a type of security. Therefore, individuals shall be subject to PIT on securities transfer when transferring the right to buy shares.

The transfer price used for PIT calculation is the price stated in the transfer contract, the actual transfer price, or the net book value of the entity whose shares are transferred at the time of the latest financial statements before the transfer time.

### 3. Official letter No. 3469/CTHN-TTHT dated 1 February 2023 by the Hanoi Tax Department regarding PIT treatment of gifts and bonus for employees.

Accordingly, when the company makes some payments to employees, PIT obligations are as follows:

- Payments made on behalf of employees for training courses that improve their qualifications and skills suitable for their job & professional are exempt from the PIT.

- For payments of winning prizes to employees and their relatives in the contests organised by the Company, if the prize value is more than VND 10 million, PIT must be withheld according to point g, Clause 1, Article 25 of Circular No. 111/2013/TT-BTC.
- PIT must be withheld if the company pays benefits (in cash or in kind) other than salary and wages to its employees.
- Gifts in kind to employees (such as vouchers, gift cards, confectionery gift baskets, mugs, shirts, etc.) that are not of salary or wage in nature and do not fall under the provisions of Clause 10, Article 2 of Circular 111/2013/TT-BTC are not subject to PIT.

#### 4. Official Letter No. 6097/CTHN-TTHT dated 16 February 2023 of the Hanoi Tax Department regarding PIT finalisation.

According to the provisions of Point a, Clause 3, Article 19 of Circular 80/2021/TT-BTC, where a Company pays salaries to employees working at branches located in different provinces, the Company must allocate PIT to each province. The allocated tax amount shall be paid to the state budget of each province where the employee works on a monthly or quarterly basis (corresponding to the Company's PIT declaration period) and not subject to re-determination upon PIT finalisation.

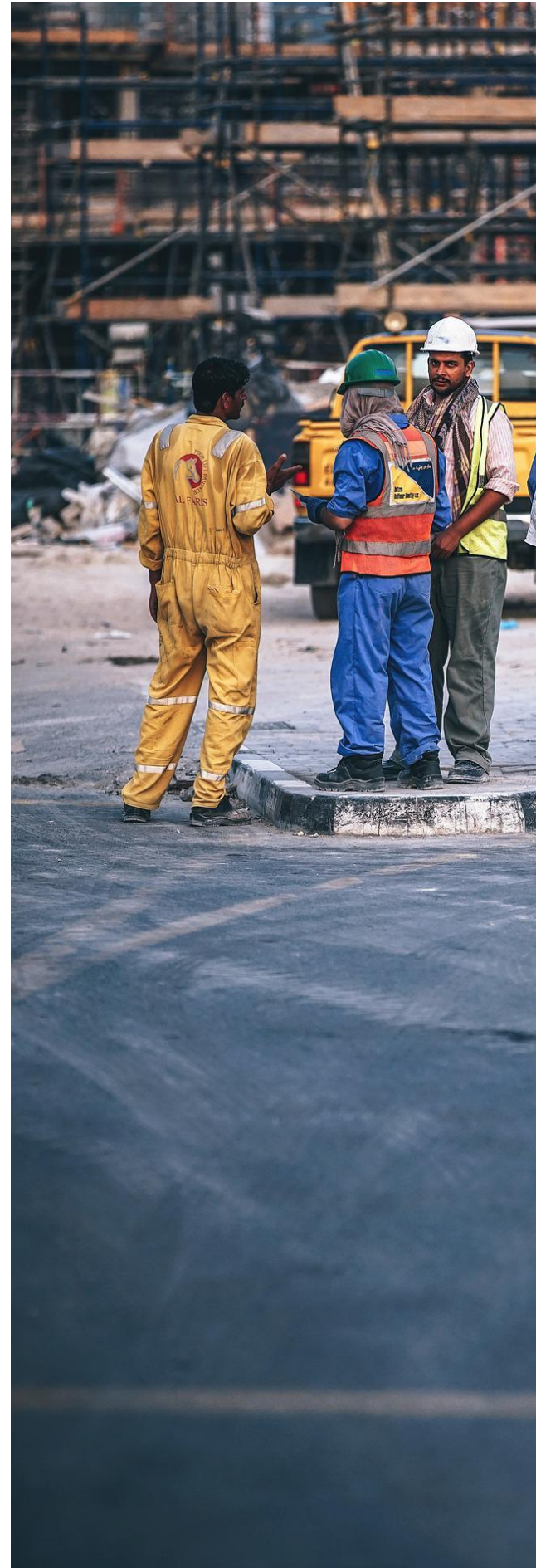
Additionally, for employees who are subject to direct PIT finalisation by themselves, they shall submit their annual tax returns to the tax department directly managing whichever income payer that they have applied circumstance deduction during the year.

Where a Company has foreign employees who generate employment income from the Company, the Company is responsible for withholding PIT before paying income. If a resident individual receives employment income paid from abroad, such an individual shall submit tax declaration returns by himself to the tax office where the Vietnam job arises. If the individual's place of employment is not in Vietnam, the tax dossiers shall be submitted to the tax office where he resides.

#### 5. Decision No. 40/QD-BTC dated 13 January 2023 by the MOF amending and supplementing the new dependants registration procedure under Circular No. 79/2022/TT-BTC, effective from 1 January 2023.

Some notes in dependant registration are as follows:

- If individual declares tax through the income-paying organisation, dependant registration documents must be sent to the organisation before the tax declaration deadline (or before the organisation submits the PIT finalisation declaration).
- If the individual is subject to direct tax declaration, the application for dependant registration (for groups 1, 2, 3) shall be submitted to the tax authorities simultaneously with the PIT declaration return of the respective tax period or with the PIT finalisation return. Particularly for dependants who are “others” (such as siblings, grandparents, aunts, uncles, etc.), the dependant registration must be made by 31 December of that tax year.
- Within 3 months from the date of the first-time dependant registration, taxpayers must submit supporting documents evidencing their registered dependant to the income payer or the tax authorities.





## CUSTOMS

1. Decision No. 199/QD-TCHQ dated 16 February 2023 by the General Department of Customs on the Action Plan of the General Department of Customs to implement Resolution No. 01/NQ-CP dated 8 January 2023 issued by the Government on the main tasks and solutions to implement the socio-economic development plan, the state budget estimate, and to improve the business environment and national competitiveness in 2023, Decision No. 33/QD-BTC dated 12 January 2023 promulgating the action plan of the MOF to implement Resolution No. 01/NQ-CP and the Program on developing legal documents in 2023 of the MOF.
2. Official Letter No. 346/TCHQ-TXNK dated 18 January 2023 by the General Department of Customs on the payment of export tax on goods exported on the spot.
3. Official Letter No. 07/TCHQ-TXNK dated 3 January 2023 by the General Department of Customs on consideration of import price reduction.
4. Official Letter No. 5578/TCHQ-TXNK dated 21 December 2022 by the General Department of Customs on conditions for exemption from import and export taxes for processed goods and goods manufactured for export of FDI enterprises.
5. Official Letter No. 339/TCHQ-TXNK dated 18 January 2023 by the General Department of Customs on tax exemption request.
6. Official Letter No. 595/TCHQ-TXNK dated 13 February 2023 by the General Department of Customs on anti-dumping tax.
7. Official Letter No. 7462/CTHN-TTHT dated 23 February 2023 by the Hanoi Tax Department on VAT on on-spot import and export goods.

## SOCIAL SECURITIES (“SHUI”)

1. Circular No. 02/2023/TT-BYT dated 9 February 2023 by the Ministry of Health amending and supplementing a number of articles of Circular No. 15/2016/TT-BYT dated 15 May 2016 by the Ministry of Health regarding the list of occupational diseases entitled to compensation under social insurance (“SI”), effective from 1 April 2023.

This Circular supplements “Occupational Covid-19 disease” to the list of occupational diseases entitled to SI benefits promulgated in Circular No. 15/2016/TT-BYT. Accordingly, occupations and jobs that are believed to have frequent contact with the SARS-CoV-2 virus include medical staff; people working in concentrated isolation areas; customs, diplomatic, immigration officers; police; army; etc.

## OTHERS

### 1. Resolution No.13/NQ-CP dated 7 February 2023 by the Government approves the proposal to develop a Decree on protection of personal data.

Accordingly, the Government regulates that personal data can be processed without the consent of the data subject in the following cases:

- To protect the life and health of the data owner or others in an emergency situation;
- The disclosure of personal data in accordance with the law;
- The processing of data by competent authorities in the event of a state of emergency on national defense, security, social order and safety, major disasters, or dangerous epidemics; when there is a risk of threatening security and national defense but not to the extent of declaring a state of emergency; to prevent and combat riots and terrorism, to prevent and combat crimes and law violations;
- To fulfill the contractual obligations of the data owners with relevant agencies, organisations, and individuals;
- To serve the activities of the government agencies as prescribed by specialised laws.

### 2. Official Letter No. 15769/CTTPHCM-TTHT dated 19 December 2022 by the HCMC Tax Department guiding the tax regime and tax administration for organisations and individuals engaged in e-commerce business.

- For organisations:
  - ✓ Organisations established in Vietnam shall perform tax registration, tax declaration and tax payment in accordance with the provisions of the Law on Tax Administration. The amount of VAT and CIT payable for e-commerce business activities is determined according to the provisions of the Law on VAT and CIT like traditional business activities.
  - ✓ Foreign suppliers who have directly registered for tax shall declare and pay tax quarterly. The tax returns shall be submitted online on the website of the GDT according to form No. 02/NCCNN issued with Circular No. 80/2021/TT-BTC. The VAT and CIT payable amounts shall be determined according to the provisions of Decree No. 209/2013/ND-CP and Decree No. 218/2013/ND-CP.
  - ✓ For foreign suppliers who do not register for tax or declare tax in Vietnam, organisations established and operating under Vietnamese law shall be responsible for withholding & paying tax on behalf of foreign suppliers when purchasing goods and services from them.
- For individuals:
  - ✓ Individuals residing in Vietnam (including business households, business individuals, and individuals without business registration) are subject to VAT & PIT if they generate income from selling goods or providing services in Vietnam (including e-commerce business activities) from VND100 million/year or more. The registration procedure, tax declaration documents, tax payment deadlines, and tax liability calculation methods are specifically guided in the Official Letter.
  - ✓ Individuals providing cross-border e-commerce services and generating income from abroad (for example, advertising services for Google, Facebook, Tiktok, etc.) are also subject to VAT and PIT at the tax rates of 5% and 2% respectively, if their income is VND100 million/year or more.

### 3. Circular No. 20/2022/TT-NHNN dated 30 December 2022 by the State Bank of Vietnam providing guidelines for one-way money transfer from Vietnam to abroad and payment, money transfer for other current transactions of residents being organisations or individuals, effective from 15 February 2023.

This Circular guides the following activities:

- a) Purchase, transfer and carrying of foreign currency abroad by resident organisations for one-way money transfer purposes specified in Clause 1 Article 7 of Decree No. 70/2014/ND-CP dated 17 July 2014 ("Decree 70"), by the Government:
  - ✓ Cases of purchasing, transferring and carrying of foreign currency abroad to serve the organisation's sponsorship and aid purposes;

- ✓ Cases of purchasing and one-way transferring of money abroad by organisations to serve other purposes.
- b) Purchase, transfer and carrying of foreign currency abroad of residents being Vietnamese citizens for one-way money transfer purposes specified in Clause 2, Article 7 of Decree 70;
- c) Payment, money transfer for other current transactions specified in Point g, Clause 6, Article 4 of the Foreign Exchange Ordinance (amended and supplemented).

**4. The Law on Insurance Business in 2022 No. 08/2022/QH15 was approved by the XV National Assembly at its 3rd session on 16 June 2022, effective from 1 January 2023 & replacing the Law on Insurance Business in 2000 (amended and supplemented in 2010).**

Some notable changes are as follows:

- Under the EU-Vietnam Free Trade Agreement (EVFTA) which was signed on 30 June 2019 and became effective from 1 August 2020, Vietnam has allowed EU reinsurers to establish reinsurance branches in Vietnam after 3 years from the effective date of the Trade Agreement.
- Therefore, in order to proactively implement international commitments, the Law on Insurance Business in 2022 has supplemented regulations on the establishment of branches of foreign reinsurance enterprises in Vietnam. Regarding the capital ownership ratio of foreign investors in insurance enterprises, according to Vietnam's commitments with the WTO and other trade agreements in the field of insurance services, Vietnam has no restrictions on the proportion of capital contributed by foreign parties. Therefore, the Law has supplemented regulations affirming that foreign investors are entitled to own shares and contributed capital up to 100% of the charter capital of insurance and reinsurance enterprises (Article 68).





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