



VIETNAM TAX ALERT

Circular No. 06/2019/TT-NHNN: New regulations on operation of the Direct Investment Account

24 September 2019

New regulation on operation of the Direct Investment Account

The State Bank of Vietnam has recently issued Circular No. 06/2019/TT-NHNN ("Circular 06") guiding the foreign exchange management for the foreign direct investment in Vietnam. Circular 06 will take effect from 06 September 2019.

Below are some notable points for your reference:

1. Regulation on subjects that are required to open the Direct Investment Account ("DICA")

Subjects required to open and use the DICA include:

- (i) Enterprises with foreign direct investment capital ("FDI enterprise");
- (ii) Foreign investors participating in BCC contract; and
- (iii) Foreign investors directly execute PPP projects without forming project enterprises.

The above subjects are only allowed to open 01 (one) DICA in the currency corresponding to the type of foreign currency registered to make investment capital contribution, and 01 (one) DICA in VND (in case registration for capital contribution is in VND) at a bank permitted to operate in Vietnam ("permitted bank"). If a foreign investor participates in many BCC contracts or directly implements multiple PPP projects, the foreign investor shall have to open separate DICA for each BCC contract or PPP project.

In case a FDI enterprise makes overseas loans for which the currency does not correspond to the currency that such enterprise uses to open DICA, then such enterprise is allowed to open an additional account for borrowing and making loans repayment in the currency of the loan at the permitted bank where the DICA was opened.

In case of changing the permitted bank where the DICA is opened, the subjects (which open and use DICA) are required to: (i) open a DICA at the new bank; and (ii) transfer all the balances on previously opened DICA to the new DICA, then close the previously opened DICA.

2. Pre-establishment expense: Loosened regulations on money transfer to carry out investment preparation activities

Before being granted the Investment Registration Certificate ("IRC") by the competent authority/ or Notify on meeting the conditions for capital contribution, share purchase, redemption of foreign investor's capital contribution/ or being granted the Enterprise Registration Certificate ("ERC") to operate under specialized law, or sign PPP contracts; Foreign investors may choose to transfer money to settle payment, for legitimate expenses during the pre-investment stage, in one of two following options:

- (i) Transfer money directly from the Investor's overseas accounts; or
- (ii) Transfer money from the settlement account in foreign currency, VND of that foreign investor opened at a permitted bank in Vietnam.

(Previous regulation only allowed Option ii).

The money already transferred into Vietnam for the pre-establishment activities can later:

- (i) Convert a part or the whole into contributed capital to form the FDI enterprise; or
- (ii) Converting a part or the whole into a foreign loan of a FDI enterprise; or
- (iii) Re-pay the transferred amount to the foreign investor in foreign currency or VND.

3. Merger and Acquisition: Regulation on currency used in valuation, settlement and payment method for transactions of transferring investment capital, investment projects in FDI enterprises

Circular 06 has specified the currency of valuation, settlement of capital transfer, contribution transactions between resident or non-resident being individual or organization. In detail:

- Transaction between **02 non - residents**:
 - Foreign currency **is allowed**;
 - Transferring through DICA is **not required**.
- Transaction between **02 residents**:
 - Must be made in **VND**;
 - Transferring through DICA is **not required**.
- Transaction between **a non – resident and a resident**:
 - Must be made in VND;
 - Transferring through DICA **is required**.

4. Transitional provisions

Within 12 months from the effective date of this Circular, enterprises and foreign investors who are non-residents owning shares or contributed capital in such enterprises shall have to change accounts.

In case a FDI enterprise has opened and used an Indirect Investment Capital Account for capital contribution, shares/ capital purchase leading to share-holding portion of foreign investors being more than 51%, a DICA must be opened.

The following cases would require to close the existing DICA; and a non-resident investor owning shares or having contributed capital in that enterprise being required to open an Indirect Investment Capital Account:

- (i) FDI enterprises with foreign investors owning less than 51% of the charter capital of the enterprise (except for enterprises established under establishment of economic organizations implementing the project which the foreign investor is a member or a shareholder and having to carry out the procedures for the grant of IRC according to the Law on Investment);

- (ii) The enterprise is not required to carry out the procedures for IRC issuance, but still wants to obtain IRC and has been granted IRC by the competent authority in accordance with the Law on Investment;
- (iii) Listed FDI enterprises on the stock exchange or registered for stock trading on the Stock Exchange;
- (iv) Enterprises specified in (i), (ii) and (iii) above and currently borrowing and repaying foreign loans via DICA are entitled to continue maintaining these accounts for foreign borrowing and repayment purposes according to the regulations on foreign borrowing and repayment of enterprises.

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