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TAX ALERT

New Decree No. 70/2023/ND-CP amending and supplementing Decree No. 152/2020/ND-CP on foreigners working in Vietnam

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MAKING AN
IMPACT THAT
MATTERS
since 1845

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Implementing Directive 14/CT-TTg dated 24 May 2023 on tasks and solutions to boost and attract foreign investment, the Vietnam Government recently issued Decree No. 70/2023/ND-CP on 18 September 2023 ("Decree 70") to amend Decree No.152/2020/ND-CP ("Decree 152") which governs foreign labor management and work permit ("WP") related procedures. Decree 70 will take effect from **18 September 2023** with several notable points as follows:

Decree 152	Decree 70
I. Updates for Foreign labor demand report ("FLDR") – Job position approval procedure	
1.1 Additional requirement of job posting to recruit Vietnamese for the position expected to use foreign workers	
<p>In regulations: Job posting before FLDR application is not required;</p> <p>In practice: Currently only adopted for Ho Chi Minh City applications and applicable for specific types of entities as determined by the Ministry of Labor, Invalids and Social Affairs (MOLISA). The employers need to provide proof showing that the Company has publicly posted the job advertisement to recruit Vietnamese but cannot find a qualified one.</p>	<p>From 1 January 2024, employers have to announce the recruitment of Vietnamese for positions expected to be held by foreign workers on the E-portal of MOLISA (the Employment Department) or the provincial/ municipal Employment Service Center at least 15 days before the FLDR submission to the Labor authorities.</p>
<i>Deloitte's view: This practice may be in line with the Government's stance to protect job opportunities for local employees. Expected impacts:</i>	
<ul style="list-style-type: none"> ✓ The preparation of FLDR may be more complicated and take longer time due to the additional job posting process; ✓ Proof/explanation of Vietnamese recruitment process and its result may impact the authority's assessment and approval for foreign employees' positions. 	
1.2 New timeline for FLDR submission	
At least 30 days prior to the expected start working date of the foreign worker	At least 15 days prior to the expected start working date of the foreign worker
<i>Deloitte's view: This change allows employers to utilize the shortened time (15 days) to carry out job postings for Vietnamese before seeking approval for FLDR.</i>	
1.3 FLDR is no longer required for foreign employees who are spouses of Vietnamese citizen	
<ul style="list-style-type: none"> • FLDR for job title approval and Report of not-subject to WP is required; • WP exemption certificate is not required. 	<ul style="list-style-type: none"> • FLDR and Report of non-subject to WP is not required; • WP exemption certificate is required to be conducted within at least 10 days before the foreign worker's start working date.
<i>Deloitte's view: This positive development is expected to ease administrative time and burdens, enabling such foreign workers to start with the company sooner as there is no need to wait for FLDR approval (previously this procedure needed to be conducted at least 30 days before the foreign worker's expected start working date).</i>	
II. Updates for WP application procedures	
2.1 Academic background is no longer required to be relevant to the Vietnam role	
Foreign employees are required to have experience in the training field relevant to the job in Vietnam	Remove the relevance of the training field to the Vietnam role. Only the relevant experience is required.
<i>Deloitte's view: This update is in response to global workforce trends that educational qualifications are no longer strictly tied to job positions in Vietnam. Instead, relevant experience takes precedence in WP eligibility assessments. The amendment is a significant positive change as it simplifies the WP process, expanding the candidate pool for companies' recruitment in Vietnam.</i>	

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Decree 152	Decree 70
II. Updates for WP application procedures (cont')	
2.2 Update on required documents for the WP application	
For Manager, Executive	
<p>Decree 152 does not specify clearly the required documents for these positions. In practice, local Labor Departments may request the following where applicable:</p> <ul style="list-style-type: none"> • Company charter/operating regulations of the employer; • Legal document to prove the employer entity's establishment (e.g., Enterprise Registration Certificate etc.); • Nomination decision letter; • Academic certificate and employment verification letter to prove the relevant experience: this is an additional requirement by some local Labor Departments. 	<p>The required documents are mentioned clearly, including the 03 documents:</p> <ul style="list-style-type: none"> • Company charter/ operating regulation of the employer; • Legal document to prove the employer entity's establishment • Resolution/ Nomination decision letter issued by an agency organization/ enterprise; <p>No requirement for academic certificate and employment verification letter.</p>
For Expert, Technician	
<ul style="list-style-type: none"> • Diplomas and degrees; and • A written certification from a foreign company verifying the number of years of experience. 	<p>The following 02 documents can be used where applicable:</p> <ul style="list-style-type: none"> • Degrees/ Diplomas/ Certificates; AND • A written certification from a foreign company verifying the number of years of experience in overseas country; OR a work permit/work permit exemption certificate issued in the past can be used to prove the candidate's qualifications.
<p><i>Deloitte's view: Although the substituted document as "Certificate" is not specified under the new Decree, per our experience, it could be interpreted that a certificate of graduation/ completion can be used in lieu of degree certificates (where applicable). The increased flexibility in the required documents now will bring a positive impact as it would ease the burden during WP procedures.</i></p>	
2.3 Requirement of listing all work locations in the Work permit application	
<p>Decree 152 does not clearly mention this point. As per the practice of certain provinces:</p> <ul style="list-style-type: none"> • It may be required to list all work locations in the same province/ municipality in the WP application form; • Various WPs may be required in case foreign employees work in different business locations of the same employers. 	<p>All foreign worker's work locations including branches, representative offices, or business locations of the same employer must be listed in the WP application form, applicable to the following cases:</p> <ul style="list-style-type: none"> • Work locations in the same province/municipality - subject to the approval of Provincial Department of Labor, Invalids and Social Affairs (DOLISA). • Work locations in different provinces/municipality - subject to the approval of the MOLISA. In addition, within 3 working days from the start working date, employers are required to report the employees' information and work status to the MOLISA and local DOLISA where the employees work via an online portal.
<p><i>Deloitte's view: Despite an additional reporting requirement, this update streamlines administrative procedures by enabling foreign employees to work for the same employer in various locations under a single WP.</i></p>	

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