

LEGAL NEWSLETTER

No. 1 – February 2023 – Capable Counsel

I. Enterprise sector

1.1. **Decision No. 204/QĐ-BCT issued by the Ministry of Industry and Trade on 09 February 2023 about the promulgation of the legal support plan for small and medium enterprises in 2023 of the Ministry of Industry and Trade**

According to this Decision, the purpose is to unify in the direction, administration, implementation and effective coordination of legal support activities for small and medium-sized enterprises under the management of Industry and Trade. Forms and contents of support include: provision of information; legal advice for small and medium-sized enterprises; receiving problems and answering laws for enterprises; propagating, disseminating, training and fostering legal knowledge and legal consultancy for enterprises.

II. Tax sector

2.1. **Official Dispatch 3468/CTHN-TTHT on 01 February 2023 issued by The Hanoi City Tax Department about tax declaration, deduction and payment on behalf of overseas suppliers**

In case the overseas supplier has made tax registration, tax declaration and tax payment in Vietnam, the service purchasing organization of the overseas supplier is not required to declare, withhold and pay tax on behalf of the overseas supplier.

Input VAT of goods and services used for production and trading of goods and services subject to VAT is fully deductible if the conditions for input VAT deduction are met.

2.2. **Official Dispatch 3469/CTHN-TTHT on 01 February 2023 issued by The Hanoi City Tax Department about PIT on gifts and bonuses for employees**

In case the Company organizes contests for employees and their relatives, if the prize value exceeds VND 10 million received by the winning individual, the Company shall deduct PIT.

In case an individual employee is given gifts in kind by the Company, it is "Gift by purchase card (voucher, giftcard) or in-kind (gift basket, confectionery, cup, shirt,...)" if this gift is not in the nature of salary or wage and does not fall into the clauses specified in Clause 10 Article 2 of Circular No. 111/2013/TT-BTC dated 15/8/2013 of the Ministry of Finance, individuals receiving the above gifts are not required to declare and pay PIT for this gift.

2.3. Official Dispatch 3473/CTHN-TTHT on 01 February 2023 issued by The Hanoi City Tax Department about VAT refund policy for investment projects

In case an enterprise has an investment project eligible for value-added tax refund, it must make a separate value-added tax declaration for each investment project according to Form No. 02/VAT issued together with Circular No. 80/2021/TT-BTC of the Ministry of Finance according to the provisions of Point d, Clause 2, Article 7 of Decree No. 126/2020/ND-CP.

2.4. Official Dispatch 3871/CTHN-TTHT on 06 February 2023 issued by The Hanoi City Tax Department about tax policy according to Decree 15/2022/ND-CP

The time of invoicing for construction and installation activities is the time of acceptance and handover of works, work items, construction volume, completed installation, regardless of whether money has been collected or not yet collected.

In case the company providing construction and installation services is subject to VAT reduction according to the Government's Decree No. 15/2022/ND-CP but invoices after December 31, 2022, the 8% VAT rate as prescribed in Article 3 of Decree No. 15/2022/ND-CP is not applied.

In case the Company makes an invoice when selling goods and/or services at the wrong time as prescribed by law, the tax authority shall impose penalties for violations of regulations on invoicing when selling goods and/or services as prescribed in Article 24 of the Government's Decree No. 125/2020/ND-CP.

2.5. Official Dispatch 4035/CTHN-TTHT issued by The Hanoi City Tax Department on 07 February 2023 about tax obligations of foreign contractors

In case a foreign contractor generates income in Vietnam on the basis of a contract, agreement, or commitment between the foreign contractor and the company in Vietnam, it is subject to tax obligations as prescribed in Circular No. 103/2014/TT-BTC.

In case the foreign contractor fails to register tax, declare or pay tax in Vietnam, the Vietnamese company is obliged to declare, withhold and pay tax on behalf of the overseas supplier the tax payable as prescribed in Circular No. 103/2014/TT-BTC. Concrete:

+ Regarding CIT: Income arising in Vietnam of foreign contractors received due to providing the right to use utilities on available technology platforms is determined as royalty income; the rate (%) of CIT charged on taxable turnover is 10%.

+ Regarding VAT: Income arising in Vietnam of foreign contractors received by providing the right to use utilities on available technology platforms if it is not a software service, not

technology transfer, transfer of intellectual property rights subject to VAT; the percentage rate for calculating VAT on sales for services is 5%.

2.6. Official Dispatch 4423/CTHN-TTHT issued by The Hanoi Department of Taxation on 09 February 2023 about value-added tax obligations when implementing projects abroad

In case the Company has construction and installation activities abroad for foreign organizations (without permanent establishments in Vietnam), if meeting the conditions specified in Clause 2 Article 9 of Circular No. 219/2013/TT-BTC, the VAT rate of 0% shall be applied.

In case of provision of services where the provision takes place both in Vietnam and outside Vietnam but the service contract is signed between two taxpayers in Vietnam or has a permanent establishment in Vietnam, the tax rate of 0% only applies to the value of services performed outside Vietnam. In case the contract does not specify separately the value of services performed in Vietnam, the taxable price shall be determined according to the ratio (%) of costs incurred in Vietnam to the total cost. The company in Vietnam must have documents proving that the service is performed outside Vietnam.

2.7. Official Dispatch 6096/CTHN-TTHT issued by The Hanoi Department of Taxation on 16 February 2023 about corporate income tax, receivable profit;

The CIT law does not provide for the determination of the amount of income expected to be collected but not actually incurred to be included in the income subject to CIT in the tax period. In case the Company actually incurs income from interest on bank deposits, this income shall be included in the taxable income of the tax period in which the income actually arises.

2.8. Official Dispatch 6867/CTHN-TTHT issued by the Hanoi City Tax Department on 21 February 2023 about value-added tax rate

Where an equipment company provides schools with specialized equipment and instruments for teaching, research and scientific experiments such as *"Teaching and learning materials including models, drawings, boards, chalk, rulers, com- pa and other types of equipment, specialized instruments for teaching, research and scientific experiments"* according to Clause 12 Article 10 of Circular No. 219/2013/TT-BTC is subject to the VAT rate of 5%.

2.9. Official Dispatch 7969/CTHN-TTHT issued by the Hanoi Department of Taxation on 27 February 2023 about value-added tax declaration for real estate transfer activities of infrastructure investment projects

In case a company implements an infrastructure construction investment project other than the province or city where the head office is located, the Company shall declare VAT for the infrastructure investment project at the place where real estate transfer activities take place according to Form No. 01/VAT issued together with Appendix II of Circular No. 80/2021/TT-BTC.

For normal production and business activities at the head office, the Company declares according to Form 01/VAT excluding real estate transfer activities outside the province.

2.10. Official Dispatch 7973/CT-TTHT issued by the Hanoi Department of Taxation on 27 February 2023 about whether employee collections and expenses are included in deductible expenses when calculating CIT

In case the Company incurs revenues and expenses for relatives of employees, not related to production and business activities of the Company, it shall not be included in the deductible expenses when determining the Company's CIT calculation revenue.

2.11. Official Dispatch 575/TCT-QLN on 28 February 2023 issued by the General Department of Taxation about invoicing in lieu of erroneous invoices for taxpayers who are being forcibly stopped using invoices

In case a taxpayer chooses to make an adjustment invoice or replace an erroneously prepared invoice, a new invoice must be issued.

In case the Company is being subjected to measures to forcibly stop using invoices, the Company needs to issue invoices to replace or adjust the prepared invoices, the Company may use electronic invoices according to each occurrence and must immediately pay at least 18% of the revenue on the used invoices to the state budget as prescribed at Point d Clause 4, Article 34 of the Government's Decree No. 126/2020/ND-CP dated October 19, 2020.

2.12. Official Letter 8204/CTHN-TTHT issued by Hanoi Department of Taxation on 28 February 2023 about personal income tax policy for foreigners

In case the company has a foreign employee who does not meet the conditions specified in Clause 1 Article 1 of Circular 111/2013/TT-BTC, it is determined to be a non-resident individual in Vietnam. For non-resident individuals, taxable income from wages and wages is income arising in Vietnam, regardless of where income is paid and received.

Non-resident individuals with income from wages and wages arising in Vietnam but paid from abroad are required to declare taxes directly with tax authorities. The basis for calculating PIT for non-resident individuals is carried out according to the provisions of

Article 18 of Circular 111/2013/TT-BTC of the Ministry of Finance and the PIT declaration period is carried out according to the guidance in Article 8 of the Government's Decree 126/2020/ND-CP.

2.13. Official Dispatch 8205/CTHN-TTHT on 28 February 2023 issued by The Hanoi City Tax Department about PIT policy

In case an individual fails to register a business or sign a contract with the Company to perform advertising services for the Company's products, the remuneration received from the above-mentioned contract shall be of the nature of salary and wage as prescribed at Point c, Clause 2, Article 2 of Circular 111/2013/TT-BTC. PIT for individuals in this case is as follows:

- In case a resident individual receives a salary or wage from signing a labor contract for 03 months or more, the income-paying company shall make tax deductions according to the Partial Progressive Tariff;
- In case the resident does not sign a labor contract or signs a labor contract for less than three (03) months, the income-paying company is responsible for deducting 10% of the income from VND 2,000,000/time or more before paying income to the individual.

In case an individual has business registration, signs a contract with the Company to perform advertising services for the Company's products, the income received by the individual from the contract shall be determined as income from business activities. Individuals need to determine the amount of tax payable according to the guidance in Article 10 and Appendix I of Circular 40/2021/TT-BTC dated 01/06/2021 of the Ministry of Finance guiding VAT, PIT and tax administration for business households and individuals.

III. Legal Services

3.1. Consolidated Document 301/VBHN-BTP issued by the Minister of Justice on 03 February 2023 incorporates the Circular guiding the Law on Legal Aid and guiding documents in legal aid activities

This consolidated document is a Circular detailing the contract for the implementation of legal aid; register to participate in the implementation of legal aid; probation, examination of legal aid probationary results and guidance on paperwork in legal aid activities. Applicable to legal assistants, legal aid collaborators, lawyers, legal consultants providing legal aid; legal aid apprentices; legal aid recipients; legal practice organizations,



CAPABLE COUNSEL
Always on your side



capablecounsel.com

legal consultancy organizations engaged in legal aid; State legal aid centers, the Department of Justice and other relevant agencies, organizations and individuals.