

LEGAL NEWSLETTER

No. 4 – May 2023 – Capable Counsel

I. Enterprise sector

1.1. Decree 16/2023/ND-CP issued by the Government dated April 25, 2023 on management and operation of enterprises directly serving national defence and security functions, and enterprises serving both business and national defence, security functions; amendments to point g of Clause 1 of Article 23 Decree 47/2021/ND-CP dated April 1, 2021, elaborating on implementation of several articles of Law on enterprises

This Decree provides for management and operation of enterprises directly serving national defence and security functions, and enterprises serving both business and national defence, security functions, that are state-owned enterprises, or limited liability companies of which charter capital is wholly owned by state enterprises defined in clause 2 of Article 88 in the Law on Enterprises; amendments to point g of clause 1 of Article 23 in the Government's Decree No. 47/2021/ND-CP dated April 1, 2021, elaborating on implementation of several Articles of the Law on Enterprises regarding disclosure of information by state enterprises.

Institution, merger, consolidation, split-up, split-off, dissolution, bankruptcy and other actions related to management and operation of enterprises directly serving national defense and security functions, and enterprises serving both business and national defense and security functions that are not specified in this Decree shall be subject to the regulatory provisions of the Law on Enterprises, the Law on Management and Use of State Capital invested in Production and Business at Enterprises, and other instructional documents on implementation thereof.

This Decree applies to the following subjects:

- State enterprises specified in Article 88 in the Law on Enterprises.
- Enterprises directly serving national defence and security functions that are specified in Article 3 Decree 16/2023/ND-CP
- Enterprises serving both business and national defence and security functions that are specified in Article 4 Decree 16/2023/ND-CP
- Entities and persons involved in the process of management, operation, inspection and supervision of enterprises directly serving national defence and

security functions, and enterprises serving both business and national defence and security functions; the procedure of disclosure of information by state enterprises.

1.2. Circular 30/2023/TT-BTC dated May 17, 2023 guiding the registration, depository, exercise of rights, transfer of ownership, settlement of transactions and organization of the market for trading of corporate bonds offered for private placement in the domestic market issued by the Ministry of Finance

This Circular guides the registration, depository, exercise of rights, transfer of ownership, settlement of transactions and organization of the market for trading of corporate bonds offered for private placement in the domestic market (hereinafter referred to as individual corporate bonds) issued since the Government's Decree No. 153/2020/ND-CP dated December 31, 2020 stipulates the offering and trading individual corporate bonds in the domestic market and offering corporate bonds for sale to the international market (hereinafter referred to as Decree No. 153/2020/ND-CP) take effect.

The depository and trading of individual corporate bonds issued before the effective date of Decree No. 153/2020/ND-CP and outstanding debts continue to be carried out according to the approved and approved bond issuance plan.

This Circular applies to:

- Enterprises issue individual corporate bonds since Decree No. 153/2020/ND-CP takes effect.
- Members of the Vietnam Stock Exchange, depository members, direct account opening organizations, except for direct account opening organizations specified at Point b, Clause 1, Article 165 of the Government's Decree No. 155/2020/ND-CP dated December 31, 2020 detailing the implementation of a number of articles of the Law on Securities (hereinafter referred to as Decree No. 155/2020/ ND-CP).
- Vietnam Stock Exchange, Hanoi Stock Exchange.
- Vietnam Securities Depository and Clearing Corporation.
- Payment banks.
- Individual corporate bond investors.

- Other agencies, organizations and individuals involved in registration, depository, exercise of rights, transfer of ownership, transaction and payment of individual corporate bond transactions.

In Circular 30/2023/TT-BTC guiding some of the following contents for individual corporate bonds:

- Guidance on registration, depository, exercise of rights, transfer of ownership rights for individual corporate bonds.
- Instructions for organizing transactions, canceling registration of individual bond transactions
- Instructions for settlement of individual corporate bond transactions
- Handling error cases that occur when trading individual corporate bonds.

In addition, Circular 30/2023/TT-BTC is also issued together with 02 Appendices related to:

- Individual corporate bond information (Appendix I)
- Additional information when registering an investor account to participate in individual corporate bond transactions (Appendix II)

This circular takes effect from July 1, 2023.

1.3. Circular 02/2023/TT-BKHDT issued by the Minister of Planning and Investment on April 18, 2023 on amendment to Circular 01/2021/TT-BKHDT dated march 16, 2021 of the Minister of planning and Investment guiding enterprise registration

In this Circular, new points in business household registration have been issued, including:

- Business household code is the tax code
- How to write business lines of household businesses
- Dossiers and procedures for online business household registration
- Change the form for business household registration
- Announcement of the business location of the household business
- Re-registration is not required

- Supplementing regulations on business household registration according to the backup process

II. Tax sector

2.1. Circular 11/2023/TT-BCT issued by the Minister of Industry and Trade on May 8th, 2023 providing for import tariff quotas for raw tobacco in 2023

Circular 11/2023/TT-BCT on regulations on the import tariff quota for raw tobacco (HS code 2401) in 2023 is 68,414 tons. Tariff quotas for import of raw tobacco are assigned to traders who have a license to produce cigarettes issued by the Ministry of Industry and Trade and have a need to use imported raw tobacco for cigarette production.

This Circular is effective as of June 23th, 2023.

2.2. Circular 27/2023/TT-BTC issued by the Minister Issued Finance on May 12th, 2023 stipulating the collection rate, mode of collection, payment, management and use of fees for appraisal of technical designs, fees for appraisal of construction estimates

This Circular stipulates the rate of collection, the mode of collection, payment, management and use of fees for appraisal of technical designs (charges for appraisal of construction designs implemented after basic design), fees for appraisal of construction estimates. when appraising designs and cost estimates of construction works in accordance with the Law on Construction, the Law amending and supplementing a number of articles of the Law on Construction, Decree No.15/2021/ND-CP March 3rd, 2021 of the Government detailing a number of contents on construction investment project management.

Applicable objects include:

- Fee payers;
- Toll collection organization;
- Other organizations and individuals involved in the collection, payment, management and use of construction design appraisal fees shall be deployed after the basic design and construction estimate appraisal fees.

This Circular is effective as of July 1st, 2023.

2.3. Circular 28/2023/TT-BTC promulgated by the Minister of Finance on May 12th, 2023 stipulating the collection rate, mode of collection, payment, management and use of fees for appraisal of construction investment projects

This Circular prescribes the rate of collection, the mode of collection, payment, management and use of fees for appraisal of construction investment projects, including:

- Appraisal of the construction investment feasibility study report;
- Appraisal of economic - technical reports on construction investment.

Accordingly, this Circular applies to:

- Fee payers.
- Toll collection organizations
- Other organizations and individuals involved in the collection, payment, management and use of fees for appraisal of construction investment projects.

This Circular is effective as of July 1st, 2023.

2.4. Decision 575/QĐ-TCT issued by the General Director of Taxation on May 10th, 2023 on the process of applying risk management to assess and identify taxpayers showing signs of risk in the management and use of invoices

This Decision promulgates the Process of applying risk management to assess and identify taxpayers showing signs of risk in the management and use of invoices in order to:

- To guide tax authorities to collect, analyze information, and classify taxpayers' risks in the management and use of invoices in accordance with law;
- Standardize the contents and work steps, create consistency and objectivity in the assessment of taxpayers showing signs of risk in the management and use of invoices;
- Contributing to modernizing the assessment of taxpayers showing signs of risk in the management and use of invoices, improving the ability to detect, prevent and promptly handle organizations and individuals that have the act of buying, selling, using illegal invoices or using illegal invoices to defraud tax money, contributing to improving the efficiency of tax administration.

This Decision is effective as of May 10th, 2023.

2.5. Dispatch 1586/TCT-CS issued by the General Department of Taxation on May 4th, 2023 on VAT declaration according to the seller's e-invoice

Regarding the VAT declaration for e-invoices with a different date of issuance than the signing date, in case the e-invoice for sale of goods or provision of services has been issued with a different time of digital signature on the invoice than the time of invoice issuance, if at the time of digital signing on invoices arising at the same time or after the time of invoice issuance, the e-invoices already made will still be determined as valid invoices:

- The seller shall declare and pay VAT according to the time of invoice;
- The buyer shall declare tax at the time of receipt of the invoice to ensure correct and complete form and content as prescribed in Article 10 of Decree No. 123/2020/ND-CP government.

This Dispatch is effective as of May 4th, 2023.

2.6. Dispatch 2093/TCHQ-TXNK issued by the General Department of Customs on May 4th, 2023 on refund of import tax and value added tax

In case the company imports raw materials for production for export and then delivers semi-finished products manufactured from all imported raw materials and outsourced processing, the export tax shall be exempted for imported or semi-finished products. production from all imported goods delivered for production and re-processing. Products hired for production or processing abroad and imported back into Vietnam must pay import tax as prescribed at Point d, Clause 1, Article 11 of the Decree.134/2016/TT-BTC (be exempted from import tax for the value of exported raw materials, supplies and components constituting the processed product and are subject to tax on the remaining value of the product at the import tax rate of Vietnam). imported processed products). Imported processed products that are further processed in Vietnam and then exported abroad are not eligible for import tax refund specified in Article 19 of the Import-Export Tax Law No. 107/2016/QH13.

This Dispatch is effective as of May 4th, 2023.

2.7. Dispatch 4695/BTC-CST issued by the Ministry of Finance on May 11th, 2023 on environmental protection tax policy for imported goods

Regarding the environmental protection tax policy for imported goods, based on the provisions of the law on environmental protection tax mentioned above, gasoline, oil and grease are named in Clause 1, Article 3 of the new Law on Environmental Protection Tax. subject to environmental protection tax; Goods not specified in Clause 1, Article 3 of the Law on Environmental Protection Tax are not subject to environmental protection tax; In the case of mixed fuel containing biofuels and gasoline, oil and grease named in Clause 1, Article 3 of the Law on Environmental Protection Tax, the environmental protection tax shall be collected only for fossil fuels, oils and greases.

The classification of imported goods based on the HS code must be based on the customs dossier and the technical characteristics of the imported goods of the enterprise.

This Dispatch is effective as of May 11th, 2023.

2.8. Dispatch 33037/CTHN-TTHT in 2023 on personal income tax policy for gifts for employees when leaving work issued by Hanoi Tax Department on May 15, 2023

In case the Company gives gifts to employees after the end of the labor contract, which is not included in the clauses specified in Clause 10, Article 2 of Circular No. 111/2013/TT-BTC dated August 15, 2013 of the Ministry of Industry and Trade. Finance is not subject to PIT from receiving gifts.

In case the Company gives gifts to employees, if they fall into the forms specified in Clause 10, Article 2 of Circular No. 111/2013/TT-BTC, they shall be subject to PIT from receiving gifts. The tax calculation bases comply with the provisions of Article 16 of Circular No. 111/2013/TT-BTC of the Ministry of Finance.

2.9. Dispatch 35708/CTHN-TTHT of 2023 on confirmation of taxable income from winning prizes issued by Hanoi Tax Department on May 24, 2023

In case Mr. A does not work at the Company but participates in a TV game show and wins a prize. When the Company pays the winning money to Mr. A, the Company is responsible for withholding tax and declaring PIT from the winning on behalf of the individual according to the Form No. 06/TNCN issued together with Circular No. 92/2015/ TT-BTC .

The basis for calculating PIT on income from winning prizes The Company follows the instructions in Article 15 of Circular No. 111/2013/TT-BTC dated August 15, 2013, in which taxable income from winning prizes is the The prize value exceeds 10 million VND that

taxpayers receive for each winning time, regardless of the number of times of receiving the bonus.

In case the Company discovers that the tax return submitted to the tax authority is incorrect or incorrect, it shall make an additional declaration according to the guidance in Article 47 of the Law on Tax Administration No. 38/2019/QH14 dated June 13. 2019 of the National Assembly.

2.10. Dispatch 37935/CTHN-TTHT in 2023 on granting password to login electronic invoices issued by Hanoi Tax Department on May 31, 2023

In case the company pays value-added tax by the deduction method and is forced by the tax authority by stopping the use of invoices, it will be granted an electronic invoice with the tax authority's code each time it is issued. The student sends an application for an electronic invoice with the tax authority's code using the Form No. 06/DN-PSĐT Appendix IA attached to the Government's Decree No. 123/2020/ND-CP to the tax authority and accesses it. e-invoicing system of tax authorities to make e-invoices as prescribed in Clause 2, Article 13 of Decree No. 123/2020/ND-CP.

The order and procedures for receipt, processing and issuance of codes for e-invoices according to each time they are generated shall comply with the guidance in Article 12 of Decision No. 1447/QĐ-TCT of the General Department of Taxation.

III. Commerce sector

3.1. Decree 22/2023/ND-CP May 12th, 2023 amending Decrees related to business activities in the field of natural resources and environment

This Decree Amending and supplementing the provisions of the Decrees as follows:

- Clause 3, Article 12 of Decree No. 43/2015/ND-CP dated May 6, 2015 of the Government regulating the establishment and management of security corridors water source protection;
- Decree No. 60/2016/ND-CP dated July 1, 2016 of the Government stipulating a number of business investment conditions in the field of natural resources and environment;



- Decree No. 22/2012/ND-CP dated March 26, 2012 of the Government on the auction of mining rights;
- Decree No. 158/2016/ND-CP November 29, 2016 of the Government detailing the implementation of a number of articles of the Mineral Law;
- Decree No. 59/2017/ND-CP May 12, 2017 of the Government on management of access to genetic resources and benefit sharing from the use of genetic resources;
- Decree No38/2016/ND-CP May 15, 2016 of the Government detailing a number of articles of the Law on Hydrometeorology;
- Decree No27/2019/ND-CP March 13, 2019 of the Government detailing a number of articles of the Law on Surveying and Mapping (amended and supplemented in Decree No.136/2021/ND-CP December 31, 2021 of the Government amending and supplementing a number of articles of Decree No27/2019/ND-CP dated March 13, 2019 of the Government detailing a number of articles of the Law on Surveying and Mapping);
- Replace the phrase “ID card number/ID card number” with the phrase “ID card number/Citizen identification card number/personal identification number”

This Decree is effective as of May 12th, 2023.

3.2. Decision 12/2023/QĐ-TTg issued by the Prime Minister on May 15th, 2023 on the issuance of the Certificate of technology transfer to encourage the transfer

This Decision stipulates the competence, dossiers, order, procedures and funding for the grant, re-grant, amendment, supplement and invalidation of the Certificate of technology transfer encouraged to be transferred.

This decision applies to:

- Investment projects involving technology transfer on the list of technologies encouraged for transfer specified at Point dd, Clause 2, Article 15 of the Law on Investment;
- Investment projects in which technology transfers are encouraged to be transferred to Vietnamese enterprises to receive special investment incentives and support specified in Article 20 of the Law on Investment;



- State agencies competent to grant Certificates and organizations and individuals involved in the grant, re-issuance, amendment, supplement or invalidation of Certificates. This Decision does not apply to technology transfer in the case of state secrets in the field of national defense and security or technology transfer in the case of asset procurement from special budget sources for national security and national security. room.

This Decree is effective as of July 1st, 2023.

3.3. Decision 500/QD-TTg promulgated by the Prime Minister on May 15th, 2023 to approve the national electricity development planning for the period of 2021-2030, with a vision to 2050

This Decision approves the national electricity development planning for the period of 2021 - 2030, with a vision to 2050 (referred to as the Electricity Master Plan VIII). Accordingly, qMaster plan on development of power source and transmission grid at voltage level from 220 kV or higher, industry and services in renewable energy, new energy in the territory of Vietnam in the period of 2021 - 2030, with a vision to 2050, including works to connect the grid with neighboring countries.

This Decision is effective as of July 1, 2023.

3.4. Decision 1062/QD-BCT issued by the Minister of Industry and Trade on May 4th, 2023 on electricity selling price

This decision promulgate electricity retail prices for groups of electricity users and electricity prices for electricity retailers in the Appendix attached to this Decision. The electricity price specified in the Appendix to this Decision does not include value-added tax. The average retail price of electricity is 1,920,3732 VND/kWh (excluding value added tax).

This Decision is effective as of May 4th, 2023.

3.5. Consolidation document No. 14/VBHN-BCT in 2023 consolidating the Decree on management of business activities under the multi-level method issued by the Ministry of Industry and Trade

This document consolidates Decree No. 40/2018/ND-CP dated March 12, 2018 on management of business activities by the multi-level method, effective since May 14, 2018. Amended and supplemented by: Decree No. 03/2023/ND-CP dated February 10, 2023 of the Government defining the functions, tasks, powers and organizational structure of the National Competition Commission. effective from April 1, 2023; Decree No. 18/2023/ND-CP dated April 28, 2023 of the Government amending and supplementing a number of articles of the Government's Decree No. 40/2018/ND-CP dated March 12, 2018 on management business activities under the multi-level method, effective from June 20, 2023.

IV. Banking and finance sector

4.1. Decision 950/QĐ-NHNN issued by the State Bank of Vietnam on May 23, 2023 on refinancing interest rate, rediscount interest rate, overnight loan interest rate in interbank electronic payment and Borrowing to cover the shortfall in capital in clearing by the State Bank of Vietnam for credit institutions, foreign bank branches.

This Decision replaces Decision No. 574/QĐ-NHNN dated March 31, 2023 of the Governor of the State Bank.

Adjustment of interest rates of the State Bank of Vietnam, as follows:

- Refinancing interest rate: 5.0%/year.
- Rediscount interest rate: 3.5%/year.
- Interest rates for overnight loans in inter-bank electronic payments and loans to cover capital shortfalls in clearing and settlement by the State Bank of Vietnam for credit institutions, foreign bank branches: 5.5%/year.

4.2. Decision No. 951/QĐ-NHNN dated May 23, 2023 on maximum interest rates of deposits in Vietnam Dong of organizations and individuals at credit institutions and foreign bank branches according to Circular No. 07/2014/TT-NHNN issued by the State Bank of Vietnam on May 23, 2023

This Decision supersedes Decision No. 575/QĐ-NHNN dated March 31, 2022 of Governor of State Bank of Vietnam on maximum interest rates of deposits in VND of organizations and individuals at credit institutions and foreign bank branches according to Circular No. 07/2014/TT-NHNN dated March 17, 2014.

Maximum interest rates of deposits in Vietnam Dong (VND) of organizations (except credit institutions and foreign bank branches) and individuals at credit institutions and foreign banks branches according to Circular No. 07/2014/TT-NHNN dated March 17, 2014 are as follows:

- The maximum interest rate of demand deposits and deposits with a term less than 1 month is 0,5%/year.
- The maximum interest rate of deposits with a term from 1 month to less than 6 months is 5,0%/year. Particularly, people's credit funds and microfinance institutions shall apply the maximum interest rate of 5,5%/year with respect to deposits with a term from 1 month to less than 6 months.

This Decision comes into force from May 25, 2023

V. Import and export sector

5.1. Decision No. 13/2023/QĐ-TTg dated May 22, 2023 on promulgation of the list of waste permitted for import as production materials on May 22, 2023

Organizations and individuals directly importing waste as production materials shall only be permitted to import waste as production materials of their facilities in accordance with the designed capacity for product and goods production.

List of waste permitted for import as production materials (Enclosed with Decision No. 13/2023/QĐ-TTg dated May 22, 2023 of the Prime Minister):

- Waste of iron, steel and cast iron
- Waste and scrap of plastics
- Waste of paper
- Waste of glass
- Waste of non-ferrous metal

This Decision comes into force from June 01, 2023 and replaces Decision No. 28/2020/QĐ-TTg dated September 24, 2020 of the Prime Minister on promulgation of the list of waste permitted for import as production materials.

5.2. Decision 15/2023/QĐ-TTg stipulating the application of normal tax rates to imported goods issued by the Prime Minister on May 31, 2023

This Decision annuls Decision No. 36/2016/QĐ-TTg dated September 1, 2016 of the Prime Minister's on the application of normal tax rates to imported goods; Decision No. 45/2017/QĐ-TTg dated November 16, 2017 of the Prime Minister amending and supplementing Decision No. 36/2016/QĐ-TTg; Decision No. 28/2019/QĐ-TTg dated September 16, 2019 of the Prime Minister amending and supplementing Article 2 of Decision No. 45/2017/QĐ-TTg.

This Decision prescribes the application of normal tax rates to imported goods as prescribed at Point c, Clause 3, Article 5 of the Law on Import Tax and Export Tax.

Applies to the following subjects:

- Owners of imported and exported goods.
- Organizations and individuals have rights and obligations related to goods import and export activities.
- Customs authorities, customs officers.
- Other agencies, organizations and individuals when implementing export tax and import tax policies in accordance with the Law on Import Tax and Export Tax.

The Decision takes effect from July 15, 2023.

5.3. Dispatch 37938/CTHN-TTHT in 2023 on VAT refund policy issued by Hanoi Tax Department on May 31, 2023

From May 1, 2018, business establishments are not entitled to a refund of value-added tax in the case of imported goods that are then exported but those exported goods are not exported in the area of operation. customs as prescribed in Clause 4, Article 2 of Circular No. 25/2018/TT-BTC.