

LEGAL NEWSLETTER**No. 7 – August 2023 – Capable Counsel****I. Commercial sector****1.1. Circular No. 16/2023/TT-BYT dated August 15, 2023 stipulates the circulation registration of processed drugs and technology transfer drugs in Vietnam.**

This Circular applies to domestic and foreign agencies, organizations and individuals involved in drug processing and drug technology transfer in Vietnam, stipulating the following contents:

- Registration of circulation of processed drugs and technology transfer drugs manufactured in Vietnam;
- Dossiers and procedures for granting, extending, changing, supplementing and revoking registration certificates for circulation of processed drugs and technology transfer drugs (pharmaceutical chemical drugs, vaccines, bio-products, medicinal drugs) in Vietnam.

This circular takes effect from October 01st, 2023.

1.2. Dispatch No. 6183/BKHDT-KTĐPLT dated August 02, 2023 guides several contents in the process of implementing the arrangement of administrative units at the district and commune level in the period of 2023-2030 of the Ministry of Planning and Investment.

Some main contents guiding the implementation of mechanisms and policies related to regulations on the arrangement of administrative units (wildlife) at the district and commune level in the period of 2023 - 2030 are as follows:

- **Procedures for adjustment of investment projects in case of arrangement of district- and commune-level administrative units:**

In case the arrangement of administrative units at the district or commune level as prescribed in Resolution No. 35/2023/UBTVQH15 changes information about the location of the investment project, the procedures for adjustment of the

investment project shall be carried out according to the provisions of Clause 2, Article 41 of the Law on Investment and Clause 2, Article 47 of Decree No. 31/2021/ND-CP.

- **Regarding the change of registration certificate information: enterprises, cooperatives, cooperative unions, business households; branches, representative offices, business locations of enterprises, cooperatives and cooperative unions due to changes in boundaries and names of district- and commune-level wildlife organizations shall make arrangements:**

Currently, the change of registration certificate information: enterprises, cooperatives, cooperative unions, business households; branches, representative offices, business locations of enterprises, cooperatives, cooperative unions due to changes in boundaries and names of district-level wildlife, Communes shall make arrangements according to the provisions of Decree No. 01/2021/ND-CP on business registration and Decree No. 193/2013/ND-CP detailing several articles of the Law on Cooperatives and implementation guiding documents.

Therefore, in case of changing information on the Registration certificate: enterprises, cooperatives, cooperative unions, business households; branches, representative offices, business locations of enterprises, cooperatives or cooperative unions due to changes in boundary boundaries and names of district- and commune-level wildlife, business registration agencies and cooperative registration agencies in provinces and centrally-run cities shall continue to comply with current regulations.

1.3. Dispatch No. 5344/BCT-KHCN dated August 11, 2023 of the Ministry of Industry and Trade guiding the implementation of legal regulations on food safety

The Ministry of Industry and Trade guides the legal regulations on food safety for nut poisoning materials imported into the Vietnamese market for production and trading of corn starch used in food processing as follows:

- Food production and trading establishments must comply with requirements on food safety conditions specified in Article 11 of the Government's Decree No. 15/2018/ND-CP dated February 02, 2018 detailing the implementation of several articles of the Law on Food Safety (hereinafter referred to as Decree No.



15/2018/ND-CP), except for the cases specified in Clause 1 Article 12 of Decree No. 15/2018/ND-CP;

- According to the provisions of Clause 1, Article 4 and Article 6 of Decree No. 15/2018/ND-CP, food production and trading organizations and individuals must self-announce products or register product announcements before trading, except for the cases specified in Clause 2, Article 4 of Decree No. 15/2018/ND-CP.

II. Corporate sector

2.1. Dispatch No. 3277/TCT-CS dated August 02, 2023 of the General Department of Taxation answering the corporate income tax policy.

Based on the provisions of the law on CIT, the tax exemption and reduction period for expanded investment projects is counted from the year the expansion investment project is completed and put into production and business with income. The selection of preferential benefits in case the first tax period does not exceed 12 months only applies to new investment projects.

2.2. Dispatch No. 59257/CTHN-TTHT dated August 15, 2023 of Hanoi City Tax Department on expenses before establishing a business.

Problems about assets contributed to capital are not under the jurisdiction of tax authorities, please contact the competent agency (Department of Planning and Investment of the province/city where the enterprise is headquartered) for instructions.

Problems with the transfer of the service contract between Company A and Company B:

- In case Company B authorizes Company A to carry out activities related to the establishment of the business (including the above consulting service contract), when Company B transfers the value of the consulting service contract to A, only collection transactions arise, household expenditures and not subject to related-party transactions governed by Decree 132/2020/ND-CP.
- In case Company A and Company B (100% capital contribution of the Company) have transactions of buying, selling or exchanging, these transactions are related-party transactions governed by Decree 132/2020/ND-CP.

III. Export and import sectors

3.1. Circular No. 09/2023/TT-BVHTTDL dated August 09, 2023 of the Ministry of Culture, Sports and Tourism promulgating the list of exported and imported goods under the scope of specialized cultural management of the Ministry of Culture, Sports and Tourism defining commodity codes according to the list of exported goods, Vietnam Import

The list of exported and imported goods includes the following Appendices:

- Appendix I. List of goods exported under licenses under specialized cultural management of the Ministry of Culture, Sports and Tourism determines commodity codes according to the List of goods exported and imported from Vietnam (HS code).
- Appendix II. The list of goods imported under licenses under the scope of specialized cultural management of the Ministry of Culture, Sports and Tourism is determined according to the HS code.
- Appendix III. The list of goods exported under the conditions under the specialized cultural management of the Ministry of Culture, Sports and Tourism is determined according to the HS code.
- Appendix IV. The list of goods imported under the conditions under the specialized cultural management of the Ministry of Culture, Sports and Tourism is determined according to the HS code.
- Appendix V. List of goods banned from export under the scope of specialized cultural management of the Ministry of Culture, Sports and Tourism determined by HS code.
- Appendix VI. The list of goods banned from import under the scope of specialized cultural management of the Ministry of Culture, Sports and Tourism is determined according to the HS code.

This circular takes effect from October 06th, 2023.

3.2. Consolidated document No. 20/VBHN-BCT dated August 08, 2023 of the Ministry of Industry and Trade regulating the import of passenger cars with less than 16 seats, new types (unused)

This document consolidates Circular No. 06/2019/TT-BCT regulating the import gate of passenger cars under 16 seats and Circular No. 25/2010/TTLT-BCT-BGTVT-BTC regulating the import of passenger cars under 16 seats, new types (unused) as follows:

- Customs authorities may only complete customs clearance procedures when passenger cars have been granted Certificates of quality, technical safety and environmental protection of imported motor vehicles by the Vietnam Register or issued Certificates of exemption from quality inspection of technical safety and environmental protection of imported motor vehicles.
- Procedures for quality inspection of technical safety and environmental protection of imported motor vehicles shall comply with the regulations of the Ministry of Transport.
- The time limit for issuance of the Certificate of Quality of Technical Safety and Environmental Protection of Imported Motor Vehicles or the Notification of Exemption from Quality Inspection of Technical Safety and Environmental Protection of Imported Motor Vehicles is 10 working days from the date of completion of the inspection of the imported motor vehicle at the registered inspection site stated in the Registration Certificate inspect the quality, technical safety and environmental protection of imported motor vehicles.

3.3. Consolidated document No. 21/VBHN-BCT dated August 08, 2023 of the Ministry of Industry and Trade guiding the import of used passenger cars under 16 seats according to the Government's Decree No. 12/2006/ND-CP dated January 23, 2006

This document consolidates Joint Circular No. 03/2006/TTLT-BTM-BGTVT-BTC-BCA, Circular No. 19/2009/TT-BCT and Circular No. 06/2019/TT-BCT regulating conditions for importing used cars, import procedures and circulation registration.

3.4. Dispatch No. 4099/TCHQ-TXNK dated August 04, 2023 of the General Department of Vietnam Customs on SCT on imported goods

The Special consumption tax (SCT) policy for gasoline-powered cars combined with electric energy has been specified in the Law on SCT and implementation guiding documents.



In the case of Company A, to identify cars subject to Point 4d, Clause 2, Article 2 of Law No. 106/2016/QH13 amending and supplementing Clause 4 Section I of the Excise Tariff specified in Article 7 of the Law on SCT No. 27/2008/QH12, request the Company based on the actual dossier of import of goods, current SCT laws and specific instructions in Official Letter No. 7109/BTC-CST dated 03/06/2010 of the Ministry of Finance, providing the manufacturer's documents on the fuel consumption of each vehicle as a basis for determining the SCT rate and taking responsibility for the accuracy of the documents provided to the customs office where registration of import declarations for consideration and settlement according to regulations.

IV. Taxes, fees and charges sector

4.1. Circular 59/2023/TT-BTC dated August 30, 2023 regulating the collection, payment, management and use of fees in the health sector issued by the Minister of Finance:

This Circular regulates the rates, collection, payment, management and use of fees in the health sector, including:

- 1) Appraisal fees for receiving, importing, exporting, and certifying in the field of insecticidal and antibacterial products in household and medical applications;
- 2) Fees for appraisal and issuance of licenses for circulation, import, export, and announcement of medical equipment;
- 3) Fees for appraisal of activities, standards, and conditions for practicing in the medical field.

This Circular applies to fee payers, fee collection organizations and other organizations and individuals involved in the collection, payment, management and use of fees in the health sector.

No later than the 5th of every month, the fee collection organization must deposit the fee amount collected from the previous month into the fee account awaiting budget payment opened at the State Treasury.

Other contents related to collection, payment, management, use, collection documents, and publicization of fee collection regime not mentioned in this Circular are implemented by the provisions of the following documents: Law on Fees and Charges. fee; Tax

management Law; Decree No. 120/2016/ND-CP; Decree No. 126/2020/ND-C; Decree No. 91/2022/ND-CP; Decree No. 11/2020/ND-CP; Decree No. 123/2020/ND-CP and Circular No. 78/2021/TT-BTC.

This Circular takes effect from October 16, 2023 and replaces Circular No. 278/2016/TT-BTC dated November 14, 2016 of the Minister of Finance.

4.2. Dispatch No. 55519/CTHN-TTHT dated August 01, 2023 on VAT policy for factory and office leasing to export processing enterprises issued by Hanoi Tax Department

Regarding VAT rates, in case a domestic enterprise leases houses to export processing enterprises for use as factories and offices:

- For office leasing activities, the 0% VAT rate as prescribed in Clause 2 Article 1 of Circular No. 130/2016/TT-BTC is applied, but the 10% VAT rate is applied as prescribed in Article 11 of Circular No. 219/2013/TT-BTC.
- For factory leasing activities, the VAT rate of 0% shall be applied if meeting the conditions specified in Point b, Clause 2, Article 9 of Circular No. 219/2013/TT-BTC.
- Enterprises must declare VAT at each tax rate specified for each of the above activities; if the enterprise does not determine according to each tax rate, it must calculate and pay tax according to the highest VAT rate of 10% as prescribed in Article 11 of Circular No. 219/2013 / TT-BTC.

Regarding VAT refund policy for investment projects: in principle, business establishments that have registered to pay value-added tax according to the deduction method have new investment projects, are in the investment stage with value-added tax amount of goods, services purchased and used for investment that have not been deducted and have the remaining tax amount of three hundred million VND or more shall be entitled to a refund of value-added tax according to the provisions of Clause 3 Article 1 of Law No. 106/2016/QH13 dated April 06, 2016 of the National Assembly.

4.3. Dispatch No. 55522/CTHN-TTHT dated August 01, 2023 on VAT reduction policy under Decree No. 44/2023/NĐ-CP issued by the Hanoi Tax Department

In case Company A calculates value-added tax according to the method of deduction and provision of mechanical processing services; metal processing and coating under industry code 2592 according to Decision No. 43/2018/QĐ-TTg dated 01/11/2018 of the Prime Minister is applying the VAT rate of 10% and does not belong to the list of goods, Services specified in Appendices I, II, III promulgated under the Government's Decree No. 44/2023/ND-CP dated June 30, 2023, the VAT rate of 8% as prescribed in Clause 2 Article 1 of Decree No. 44/2023/ND-CP from July 1, 2023 to December 31, 2023.

4.4. Dispatch No. 3292/TCT-CS dated August 02, 2023 on invoices of the General Department of Taxation

In case a business establishment applies commercial discounts to customers (if any), the VAT calculation price is the commercial discounted selling price for customers. In case the commercial discount is based on the quantity and sales of goods and/or services, the discounted amount of the goods sold shall be adjusted on the invoice for the sale of goods and/or services of the last purchase or subsequent period. In case the discount amount is made at the end of the sales discount program (period), an adjustment invoice shall be issued with a list of invoice numbers to be adjusted, the amount and the amount of adjusted tax. Based on the adjusted invoice, the seller and buyer declare adjustments to the revenue of buying, selling, output and input taxes.

4.5. Dispatch No. 56948/CTHN-TTHT dated August 04, 2023 of Hanoi City Tax Department stipulating invoices and tax policies for real estate transfer activities

In case the Company calculates VAT by the method directly on VAT, arising real estate transfer activities, the sales invoice shall be used according to the provisions of Clause 2 Article 8 of the Government's Decree No. 123/2020/ND-CP.

- Regarding VAT: The amount of VAT payable by the direct calculation method on VAT is equal to the percentage multiplied by the turnover; revenue for VAT calculation is the total amount of actual sales of goods and services stated on the sales invoice for goods and services subject to VAT as prescribed in Clause 2 Article 13 of Circular No. 219/2013/TT-BTC of the Ministry of Finance. The company declares and submits a VAT declaration each time arising according to form No.

04/VAT issued together with Circular No. 80/2021/TT-BTC of the Ministry of Finance.

- Regarding CIT: Income from the transfer of ownership or right to use housing is subject to CIT as prescribed in Clause 2 Article 16 of Circular No. 78/2014/TT-BTC of the Ministry of Finance. CIT for real estate transfer activities shall comply with the provisions of Article 17 of Circular No. 78/2014/TT-BTC of the Ministry of Finance. The company declares and submits CIT returns from real estate transfer according to form No. 02/CIT issued together with Circular No. 80/2021/TT-BTC.

4.6. Dispatch Letter No. 56951/CTHN-TTHT on VAT policy on insurance agent commissions dated August 04, 2023 of Hanoi Tax Department

Commission revenue is enjoyed from insurance sales agency activities at the right price as prescribed by the principal in case VAT is not required to be declared and paid according to the provisions of Clause 7 Article 5 of Circular No. 219/2013/TT-BTC.

Input VAT of goods and services used for activities in the case of not having to declare and calculate VAT payment mentioned above is fully deductible if meeting the conditions for input value-added tax deduction in Article 15 of Circular No. 219/2013/TT-BTC dated 31/12/2013 of the Ministry of Finance (amended, supplemented as prescribed in Clause 10 Article 1 of Circular No. 26/2015/TT-BTC, Article 1 of Circular No. 173/2016/TT-BTC).

In case an enterprise incurs input VAT of goods and/or services (including fixed assets) used simultaneously for the production and trading of goods and services subject to VAT and not subject to VAT, the deductible VAT amount shall be determined according to the guidance at Point a, Clause 9, Article 1 of Circular No. 26/2015/TT-BTC above.

When invoicing VAT for the commission revenue entitled above, the value-added tax rate line on the invoice stated "KKKNT" as guided in Decision No. 1510/QD-TCT dated September 21, 2022 of the General Department of Taxation.

When preparing VAT declaration form No. 01/VAT issued together with Circular No. 80/2021/TT-BTC dated September 29, 2021 of the Ministry of Finance, enterprises declare the commission mentioned above revenue in the target [32a] on the VAT return.

4.7. Dispatch No. 58596/CTHN-TTHT dated August 11, 2023 on Tax Policy for promotion and loan activities of Hanoi Tax Department

Tax policies for promotional activities:

In case the company sells goods (including goods used for promotion), the company must make an invoice to deliver to the buyer according to the provisions of Article 4 of the Government's Decree No. 123/2020/ND-CP.

In case products, goods and services are used for promotion by the provisions of commercial law, the VAT calculation price shall be determined at zero (0). In case goods and services are used for promotion but do not comply with the provisions of commercial law, they must declare and calculate tax payment as goods and services used for internal consumption, gift, donate or give according to the provisions of Clause 5 Article 7 of Circular 219/2013/TT-BTC of the Ministry of Finance.

The content of determining whether the return of promotional goods after the end of the promotion program of the Company is by the provisions of commercial law or not is not under the guidance competence of the Hanoi City Tax Department, please get in touch with the competent authority for instructions. On that basis, the Company determines the VAT calculation price for promotional goods by the provisions of Clause 5 Article 7 of Circular 219/2013/TT-BTC of the Ministry of Finance.

Promotional expenditures are deducted when determining income subject to corporate income tax if meeting the provisions of Article 4 of Circular No. 96/2015/TT-BTC of the Ministry of Finance.

Tax policies for loans from commercial banks:

In case the borrowing company incurs a loan accounting for at least 25% of the owner's contributed capital and accounting for more than 50% of the total value of medium and long-term debts of the Company, the Company is governed by the Government's Decree No. 132/2020/ND-CP on tax administration for enterprises with related-party transactions.

Total interest expense (after deducting interest on deposits and loan interest) incurred during the period of the Company shall be included in the deductible expenses when determining income subject to CIT, in addition to meeting the conditions specified in Clause 1, Article 4 of Circular 96/2015/TT-BTC, must also meet the conditions specified at Point a,

Clause 3, Article 16 of Decree No. 132/2020/ND-CP. The portion of interest expense not deducted to the next tax period shall comply with the provisions of Point b, Clause 3, Article 16 of Decree No. 132/2020/ND-CP.

4.8. Dispatch No. 58653/CTHN-TTHT guiding VAT reduction according to Decree 44/2023/ND-CP dated August 11, 2023 of the Hanoi Tax Department

In case the Company has a work item accepted in June 2023 but invoices in July 2023, it is an act of invoicing at the wrong time and the 8% value-added tax rate is not applied as prescribed in Clause 1 Article 2 of Decree No. 44/2023/ND-CP dated June 30, 2023.

4.9. Dispatch 60894/CTHN-TTHT dated August 21, 2023 on value-added tax calculation method issued by the Hanoi Tax Department

In case the Company has activities of buying and selling gold, silver, and gemstones, the Company must separately account for these activities to pay tax according to the method of calculating directly on added value according to the instructions in Article 13 of the Circular. No. 219/2013/TT-BTC dated December 31, 2013 of the Ministry of Finance.

For business activities of buying and selling other products and goods (not gold, silver, gemstones), the Company calculates and pays VAT according to the deduction method according to Article 12 of Circular No. 219/ 2013/TT-BTC instructions.

4.10. Dispatch 61182/CTHN-TTHT dated August 21, 2023 on personal income tax on income of foreign workers issued by the Hanoi Tax Department

In case the Company pays employees an amount of money like salary, wages or monetary benefits in addition to salary or wages as prescribed in Article 2 of Circular No. 111/2013/TT-BTC dated August 15, 2013 of the Ministry of Finance, the above income will be included in the employee's personal income taxable income.

The company deducts personal income tax for foreign workers who are resident individuals according to the provisions of Clause 1, Article 25 of Circular No. 111/2013/TT-BTC.

V. Accounting, auditing sector

5.1. Consolidated document No. 02/VBHN-KTNN dated August 09, 2023 decided to promulgate the audit file form system of the State Audit.

This document merges Decision No. 01/2023/QD-KTNN dated January 10, 2023 and Decision No. 09/2023/QD-KTNN dated June 02, 2023 of the State Auditor General.

This document prescribes forms of audit dossiers in the field of enterprise audit, audit of financial institutions, banks, state audit, audit of construction investment projects, audits of target programs, ...

VI. Civil Rights sector

6.1. The Government's Resolution No. 128/NQ-CP dated August 14, 2023 on amending the Government's Resolution No. 32/NQ-CP dated March 15, 2022 on visa exemption for citizens of the Federal Republic of Germany, French Republic, Republic of Italy, Kingdom of Spain, United Kingdom of Great Britain and Northern Ireland, Russian Federation, Japan, Republic of Korea, Kingdom of Denmark, Kingdom of Sweden, Kingdom of Norway, Republic of Finland and Republic of Belarus.

Article 1 of Resolution No. 32/NQ-CP dated March 15, 2022 is amended as follows:

Visa exemption for citizens of the Federal Republic of Germany, French Republic, Republic of Italy, Kingdom of Spain, United Kingdom of Great Britain and Northern Ireland, Russian Federation, Japan, Republic of Korea, Kingdom of Denmark, Kingdom of Sweden, Kingdom of Norway, Republic of Finland and Republic of Belarus with a temporary stay of 45 days from the date of entry, regardless of passport type, entry purpose, based on satisfying all entry conditions prescribed by Vietnamese law.

This resolution takes effect from August 15, 2023.

VII. Currency - banking sector

7.1. Circular 10/2023/TT-NHNN dated August 23, 2023 on suspending the implementation of several contents of Circular 39/2016/TT-NHNN regulating lending activities of credit institutions and branches foreign banks to customers (supplemented in Circular 06/2023/TT-NHNN) issued by the Governor of the State Bank of Vietnam

Stop taking effect of Clause 8, Clause 9 and Clause 10, Article 8 of Circular No. 39/2016/TT-NHNN dated December 30, 2016 (added according to Clause 2, Article 1 of Circular No. 06/2023/TT-SBV June 28, 2023) as follows:

"Article 8. Capital needs cannot be loaned

Credit institutions are not allowed to lend for capital needs:

...

8. To pay for capital contributions, purchase, and receive transfer of capital contributions of limited liability companies and partnerships; Contributing capital, purchasing, receiving transfer of shares of joint stock companies that are not listed on the stock market or not registered for trading on the Upcom trading system.

9. To pay capital contributions according to capital contribution contracts, investment cooperation contracts or business cooperation contracts to implement investment projects that do not meet the conditions for being put into business according to the provisions of law at the time The point where a credit institution decides to lend.

10. For financial compensation, unless the loan fully meets the following conditions:

a) The customer has advanced the customer's capital to pay and cover the costs of implementing the business project, but the costs of implementing this business project have arisen in less than 12 months up to the date credit institutions decide to lend;

b) Expenses paid and paid with the customer's capital to implement business projects are expenses that use loan capital from a credit institution according to the capital use plan submitted to the organization. credit institutions to be considered for medium and long-term loans to implement that business project."

The enforcement of these clauses will be suspended from September 1, 2023 until the effective date of new legal documents regulating these issues.

This Circular takes effect from September 1, 2023.