

LEGAL NEWSLETTER**No. 9 – October 2023 – Capable Counsel****I. Corporate sector****1.1. Dispatch No. 4480/TCT- CS dated October 10, 2023 of the General Department of Taxation guiding the transfer of profits abroad**

According to tax regulations, Korean investors may transfer profits abroad at the end of the fiscal year or the end of direct investment activities in Vietnam after the enterprise in which the foreign investor invests has fulfilled its financial obligations to the Vietnamese State following the law, have submitted audited financial statements and corporate income tax finalization declarations to tax administration agencies directly and at the same time fulfilling their obligations as prescribed by the Law on Tax Administration and implementation guiding documents.

The confirmation of the fulfillment of tax obligations shall comply with the provisions of Article 70 of Circular No. 80/2021/TT-BTC dated September 29, 09 of the Ministry of Finance.

1.2. Dispatch 74364/CTHN-TTHT dated October 18, 2023 on deductible expenses when determining corporate income tax and personal income tax deduction issued by Hanoi Tax Department

In case the Company has a service contract with an individual who does not do business, does not sign a labor contract or signs a labor contract of less than three (03) months, the income that individual receives from this service contract is subject to personal income tax from salaries and wages. The company is responsible for deducting tax at the rate of 10% for income from two million (2,000,000) VND/time or more before paying to individuals as prescribed in Point i, Clause 1, Article 25 of Circular No. 111/ 2013/TT-BTC dated August 15, 2013 of the Ministry of Finance.

1.3. Dispatch 76785/CTHN-TTHT dated October 27, 2023 on tax policy for assets transferred when separating a company issued by the Hanoi Tax Department



For VAT declaration and payment: In case of asset transfer between dependent accounting member units in the business establishment; When transferring assets when separating an enterprise, the business establishment that has the transferred assets must have an asset transfer order, accompanied by a set of documents on the origin of the assets and does not have to issue an invoice.

In case assets are transferred between independent accounting units or between member units with full legal status within the same organization or individual, the organization or individual: if the fixed assets are being used, depreciation has been deducted when transferring according to the value recorded in accounting books between the business establishment and member units 100% owned by a business establishment to serve production activities. If you sell goods and services subject to VAT, you do not have to make invoices, declare and pay VAT; If transferred to an establishment that produces and sells goods and services not subject to VAT, they must prepare a VAT invoice, declare and pay VAT according to regulations.

II. Commercial sector

2.1. Consolidated document No. 4716/VBHN-BTP dated October 05, 2023 of the Ministry of Justice consolidating Decree No. 62/2017/ND-CP detailing several articles and measures to implement the Law on Property Auction and amended Decree No. 47/2023/ND-CP dated July 03, 2023, supplementing several articles of Decree No. 62/2017/ND-CP

This Decree applies to property auction organizations, auctioneers, auctioneers, property auction councils, organizations in which the State owns 100% of charter capital established by the Government to handle bad debts of credit institutions, state management agencies in charge of asset auctions, etc relevant individuals and organizations.

Traders and organizations that are not asset auction organizations that establish websites for online auction by the law on e-commerce are not subject to this Decree.

Decree No. 47/2023/ND-CP takes effect from September 01, 2023.

III. Taxes, fees, charges sector

3.1. Circular No. 62/2023/TT-BTC dated October 03, 2023 of the Ministry of Finance amending and supplementing some articles of Circular No. 25/2021/TT-BTC dated April 07, 2021 of



the Minister of Finance stipulating the collection rate, regime of collection, payment, management and use of fees in the field of exit, entry, transit, residence in Vietnam

This Circular amends Article 7 and Points a, b, c and d Section 2 of Part II of the Schedule of fees and charges of Circular No. 25/2021/TT-BTC stipulating the collection rate, the regime of collection, payment, management and use of fees and charges in the fields of exit, entry, transit and residence in Vietnam.

Accordingly, from October 3, 2023, the fee for issuing visas and other documents valid for exit, entry and residence for foreigners is:

No.	Content	Fees
2	Issuance of visas valid for multiple visits:	
a	Type valid for no more than 90 days	50 USD/unit
b	Types valid for more than 90 days to 180 days	95 USD/unit
c	Type valid for more than 180 days to 01 year	135 USD/unit
d	Type valid for more than 01 year to 02 years	145 USD/unit

3.2. Circular No. 63/2023/TT-BTC dated October 16, 2023 amending the Circular regulating fees and charges to encourage the use of online public services issued by the Minister of Finance

This Circular has amended and supplemented some provisions of the following documents:

- Amending and supplementing Article 3 of Circular No. 148/2016/TT-BTC dated October 14, 2016 of the Minister of Finance regulating the collection rates, collection, payment, management and use of appraisal fees permission to use industrial explosives;
- Amending and supplementing Article 4 of Circular No. 245/2016/TT-BTC dated November 11, 2016 of the Minister of Finance regulating the collection rates, collection, payment, management and use of article appraisal fees business

conditions in the technical inspection of labor safety; occupational safety and hygiene training;

- Amending and supplementing Article 4 of Circular No. 263/2016/TT-BTC dated November 14, 2016 of the Minister of Finance regulating collection rates, collection, payment, management and use of fees and charges Industrial property;
- Amending and supplementing Article 4 of Circular No. 287/2016/TT-BTC dated November 15, 2016 of the Minister of Finance regulating collection rates, collection, payment, management and use of fees and charges in the field of atomic energy;
- Amending and supplementing Article 4 of Circular No. 25/2021/TT-BTC dated April 7, 2021 of the Minister of Finance regulating collection rates, collection, payment, management and use of fees and charges in the fields of exit, entry, transit, and residence in Vietnam;
- Amending and supplementing Article 4 of Circular No. 38/2022/TT-BTC dated June 24, 2022 of the Minister of Finance stipulating the collection rates, collection and payment regime of fees for granting construction licenses, Fees for issuance of architect practice certificates;
- Amending and supplementing Clause 1, Article 4 of Circular No. 48/2022/TT-BTC dated August 3, 2022 of the Minister of Finance regulating collection rates, collection, payment, management and use of declaration fees exploit and use information in the National Population Database;
- Amending and supplementing Article 3 of Circular No. 37/2023/TT-BTC dated June 7, 2023 of the Minister of Finance regulating the collection rates, collection, payment, management and use of driving test fees car; Fees for issuing licenses and certificates to operate on all types of vehicles and fees for registration and issuance of plates for specialized motorbikes.

This Circular takes effect from December 1, 2023.

3.3. Circular 65/2023/TT-BTC dated October 31, 2023 regulating collection rates, collection, payment, management and use of fees for exploiting and using environmental data issued by the Minister of Finance

This Circular regulates the rates, collection, payment, management and use of fees for exploiting and using environmental data, applicable to fee payers; organizing fee collection; Other organizations and individuals involved in the collection, payment, management and use of fees for exploiting and using environmental data.

This Circular does not regulate the exploitation and use of environmental data by state agencies for the purposes specified in Clause 5, Article 32 of the Law on Hydrometeorology, Article 23 of Decree No. 38/2016 /ND-CP dated May 15, 2016 of the Government detailing some articles of the Law on Hydrometeorology.

This Circular takes effect from December 15, 2023 and replaces Circular No. 22/2020/TT-BTC dated April 10, 2020 of the Minister of Finance regulating collection rates, collection and payment regimes, management and use of fees for exploiting and using environmental data.

Other contents related to collection, payment, management, use, collection documents, and publicization of fee collection regime not mentioned in this Circular are implemented under the provisions of the following documents: Law on Fees and Charges. fee; Decree No. 120/2016/ND-CP; Tax management Law; Decree No. 126/2020/ND-CP; 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.

3.4. Dispatch No. 70779/CTHN-TTHT dated October 02, 2023 of Hanoi Department of Taxation guiding invoices.

According to tax laws, from July 1st, 2022, when selling goods or providing services, sellers must issue invoices for delivery to buyers, including in case of exporting goods in the form of loans, loans or refunds of goods as prescribed in Article 4 of the Government's Decree No. 123/2020/ND-CP dated October 19, 2020.

3.5. Dispatch No. 70784/CTHN-TTHT dated October 02, 2023 of Hanoi Department of Taxation on tax policy for non-resident individuals.

In case Bank A (Head Office in Korea) sends senior staff to visit a branch in Vietnam for 02 days, these employees during their stay in Vietnam shall be identified as non-resident individuals as prescribed in Clause 3, Article 2 of the Law on Personal Income Tax. PIT taxable income in Vietnam for non-resident individuals is income arising in Vietnam

irrespective of where income is paid and received as prescribed in Article 2 of Circular No. 119/2014/TT-BTC dated 25/08/2014 of the Ministry of Finance.

- In case non-resident individuals receive housing benefits and other benefits in cash or non-cash paid by Bank A - Hanoi branch in Vietnam, this benefit shall be determined as income from wages and wages subject to PIT in Vietnam as prescribed in Clause 2 Article 2 of Circular No. 111/2013/TT-BTC dated 15/08/2013 of the Ministry of Finance. Branches are responsible for withholding PIT at the tax rate of 20% before paying income to individuals as guided in Article 18 of Circular No. 111/2013/TT-BTC dated 15/08/2013 of the Ministry of Finance.
- If the dispatch of experts of the Head Office to work at the Branch in Vietnam for work purposes and to serve the operation of the Branch, the expenses paid by the Branch to these experts shall be included in the deductible expenses when determining income subject to CIT as prescribed in Article 4 of Circular No. 96/2015/TT-BTC dated 22/06/2015 of the Ministry of Finance and input VAT deduction as prescribed in Article 14 of Circular No. 219/2013/TT-BTC dated 31/12/2013 of the Ministry of Finance.

3.6. Dispatch No. 71228/CT HN-TTHT dated October 04, 2023 of Hanoi City Tax Department answering about contractor tax

Pursuant to tax regulations, in case a foreign organization has income from services (surcharges other than the price of services transported by sea) provided and consumed outside Vietnam, it is not subject to tax obligations to foreign contractors as prescribed in Clause 3 Article 2 of Circular No. 103/2014/TT-BTC 06/8/2014 of the Ministry of Finance. In case the above-mentioned services are performed in Vietnam, they are subject to tax obligations for foreign contractors.

3.7. Dispatch No. 71495/CTHN-TTHT dated October 05, 2023 of Hanoi Department of Taxation on VAT invoicing

Based on tax regulations, in case the contract for delivery of restaurants of enterprises to individuals complies with the provisions of law and law, when providing services, the enterprise must issue invoices for delivery to buyers as prescribed in Article 4 of Decree No.

123/2020/ND-CP. Services provided by enterprises are real estate leasing activities subject to the value-added tax rate of 10%.

3.8. Dispatch No. 71494/CTHN-TTHT dated October 05, 2023 of Hanoi City Tax Department on software VAT rates

In case the Company provides software services in accordance with the law on Information Technology, it is not subject to VAT as guided in Clause 21 Article 4 of Circular No. 219/2013/TT-BTC dated 31/12/2013.

In case the service provider is not specified in Article 3 and Article 9 of Decree No. 71/2007/ND-CP dated 03/5/2007, the VAT rate of 10% shall be applied as prescribed in Article 11 of Circular No. 219/2013/TT-BTC dated 31/12/2013.

3.9. Dispatch No. 72027/CTHN-TTHT dated October 09, 2023 of Hanoi Department of Taxation answering questions about tax policy

Based on tax regulations, for household revenues not related to the sale of goods and services of the Company, VAT is not required to be declared and calculated according to the provisions of Clause 7 Article 5 of Circular 219/2013/TT-BTC. On the VAT invoice, at the "tax rate" indicator, the Company is shown as "KKKNT" (Not declaring and calculating VAT payment) according to the instructions in Decision No. 1510/QD-TCT.

3.10. Dispatch No. 72571/CTHN-TTHT dated October 10, 2023 of Hanoi Department of Taxation answering questions about VAT rates

Pursuant to tax regulations, clean water for production and daily life is subject to the VAT rate of 5% as prescribed in Clause 1, Article 10, Circular No. 219/2013/TT-BTC and not eligible for VAT reduction according to Decree Decree 44/2023/ND-CP. Clean water for production and daily life is subject to environmental protection tax, the VAT calculation price for clean water for production and daily life is the selling price with environmental protection tax but no VAT as prescribed in Clause 1, Article 7, Circular No. 219/2013/TT-BTC.

3.11. Dispatch No. 4512/TCT-CS dated October 11, 2023 of the General Department of Taxation on VAT

In case Pharmaceutical A Joint Stock Company (Company A) signs a contract to distribute drug products and functional foods to the Branch of Pharmaceutical B Joint Stock Company in Thai Nguyen, for the sales cost support that Company A receives from the Branch of Pharmaceutical B Joint Stock Company in Thai Nguyen to perform promotion services, For customers, Company A must issue VAT invoices, declare and pay VAT according to regulations.

3.12. Dispatch 74048/CTHN-TTHT dated October 17, 2023 on the value-added invoice issued by the Hanoi Tax Department

In case the Company is an agent of a foreign logistics or delivery company operating in Vietnam, when the Company collects revenue from the foreign company, the Company issues invoices to the customer and the Company. The company clearly states on the invoice that the money is collected on behalf of the foreign company, the cash flow records the value of the service paid to the foreign company, and the tax rate line of the company shall comply with the provisions in Appendix V of the provisions in Decision No. 1450. /QD-TCT dated October 7, 2021 has been amended and supplemented in Decision No. 1510/QD-TCT dated September 21, 2022, the VAT line records the correct VAT amount that the company deducts and pays on behalf of the foreign company according to guidance in Circular No. 103/2014/TT-BTC.

3.13. Dispatch 4626/TCT-CS dated October 19, 2023 on responding to tax policies issued by the General Department of Taxation

Corporate income tax law does not provide for corporate income tax incentives for investment projects in industrial parks at the rate applicable to areas with difficult socio-economic conditions. Therefore, the income of businesses from implementing investment projects in Industrial parks and Industrial clusters is not eligible for corporate income tax incentives in difficult socio-economic areas.

For income from deposit interest, loan interest, exchange rate differences not related to production and business activities eligible for tax incentives, the corporate income tax incentives specified in Article 15 and Article 16 of the Decree do not apply. 218/2013/ND-CP dated December 26, 2013 of the Government.

For the Company's income from investment projects in the field of commercial business and services arising outside tax incentive areas, income is not eligible for corporate income tax incentives according to investment incentive areas. private

IV. Real estate consulting sector

4.1. Decision No. 25/2023/QĐ-TTg dated October 03, 2023 of the Prime Minister on reducing land rent

This decision provides for the reduction of land rent in 2023 for the following entities:

- Organizations, units, enterprises, households and individuals that are being directly leased land by the State under decisions or contracts or certificates of land use rights, ownership of houses and other assets attached to land by competent state agencies in the form of annual land lease.
- This provision applies both to cases where the tenant is not subject to land rent exemption or reduction, expiry of the time limit for land rent exemption or reduction and cases where the tenant is receiving land rent reduction in accordance with the land law (Land Law and documents detailing the Land Law) and other relevant laws.

This decision is effective from November 20, 2023.

4.2. Dispatch No. 4382/TCT-CS dated October 04, 2023 of the General Department of Taxation on exemption and reduction of non-agricultural land using fees

Based on tax regulations, the principle of exemption and reduction of non-agricultural land use tax in Circular No. 153/2011/TT-BTC shall comply with the provisions of the law on investment. In case Company A has problems in determining the beneficiaries of incentives when the law on investment changes and provides for the implementation of investment incentives, the Company is requested to enclose the dossier to the state management agency in charge of investment for answers according to its competence.

In addition, according to tax laws, one of the documents required in the dossier of exemption from collection and reduction of non-agricultural land use of an enterprise is a

copy of the certificate proving that it is subject to non-agricultural land use tax exemption or reduction (proving that the enterprise belongs to the field, geographical areas preferential for investment).

V. Labor - salary sector

5.1. Decision 1549/QĐ-LĐTBXH dated October 16, 2023 announcing amended and supplemented administrative procedures in the field of occupational safety and hygiene within the scope of State management functions of the Ministry of Labor and War Invalids and Society

List of administrative procedures amended and supplemented in the field of occupational safety and health within the scope of state management functions of the Ministry of Labor, War Invalids and Social Affairs

No.	File number	Name of administrative procedure	The name of legal documents stipulates the contents of amendments and supplements	Field	Implementing Agency
A. Central-level administrative procedures					
1	1.000354	Issuance of the Certificate of eligibility for technical labor safety inspection activities	The Government's Decree 4/2023/ND-CP dated February 13, 2023 amends and supplementing some articles of Decrees related to business investment and administrative procedures under state	Occupational safety and health	Ministry of Labor, War Invalids and Social Affairs
2	2.000199	Renewal of the Certificate of eligibility for technical labor safety inspection activities			Ministry of Labor, War Invalids and Social Affairs
3	1.000137	Re-issuance of the Certificate of eligibility for technical occupational safety inspection in case of supplementation or modification of the Certificate			Ministry of Labor, War Invalids and Social Affairs



4	1.000131	Re-issuance of the Certificate of eligibility for technical labor safety inspection activities for lost or damaged certificates	management of the Ministry of Labor, War Invalids and Social Affairs		Ministry of Labor, War Invalids and Social Affairs
5	1.000148	Issuance of Inspector Certificate			Department of Occupational Safety, Ministry of Labor, War Invalids and Social Affairs
6	2.000037	Re-issuance of the inspector's certificate in case of addition or modification of the contents of the inspector's certificate			Department of Occupational Safety, Ministry of Labor, War Invalids and Social Affairs
7	1.000187	Re-issuance of the Inspector's Certificate in case of expiration			Department of Occupational Safety, Ministry of Labor, War Invalids and Social Affairs
8	1.000183	Re-issuance of Inspector's Certificate in case of damage or loss			Department of Occupational Safety, Ministry of Labor, War Invalids and Social Affairs
9	1.000180	Re-issuance of the Inspector's Certificate in case of revocation			Department of Occupational Safety, Ministry of Labor, War Invalids and Social Affairs
B. Provincial administrative procedures					
1	2.000134	Declare to the local Department of Labor, War Invalids and Social Affairs when putting into use machines, equipment and	The field of technical inspection of occupational safety for machines, equipment	Occupational safety and health	Department of Labor, War Invalids and Social Affairs



		supplies with strict requirements on occupational safety	and supplies with strict requirements on occupational safety falls under the management of the Ministry of Labor, War Invalids and Social Affairs		
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VI. Accounting, auditing sector

6.1. Dispatch 73894/CTHN-TTHT dated October 16, 2023 on converting electronic invoices issued by the Hanoi Tax Department

In case the Hospital converts electronic invoices into paper invoices, the conversion of electronic invoices into paper invoices must ensure the correct match between the content of the electronic invoice and the paper invoice after conversion. The conversion of electronic invoices into hospital paper invoices is carried out in accordance with the provisions of Article 7 of Decree No. 123/2020/ND-CP dated October 19, 2020 of the Government.

If electronic invoices and electronic documents are converted into paper invoices and documents, the invoices and paper documents are only valid for record keeping and monitoring according to the provisions of accounting and law. regarding electronic transactions, not valid for transactions or payments. Whether or not the Hospital stamps the paper invoice conversion is not under the authority of the Tax authority.

6.2. Dispatch 73896/CTHN-TTHT dated October 16, 2023 regulating invoices issued by the Hanoi Tax Department

In case the Company the buyer, purchases goods from the supplier (seller), the seller has issued an invoice, the buyer has received the goods, but later the buyer discovers that the goods do not comply with specifications, quality must return the goods, the seller shall issue a goods return invoice according to the provisions of Clause 1, Article 4 of Decree No. 123/2020/ND-CP dated October 19, 2020 of the Government, the seller and the buyer.



There is an agreement clearly stating the return of goods (the buyer does not have to issue an invoice when returning the goods). The VAT rate shown on the invoice is the VAT rate corresponding to each type of goods according to the provisions of the law on value-added tax according to the instructions at Point b, Clause 6, Article 10 of Decree No. 123/2020/ND-CP.