

LEGAL NEWSLETTER

No. 10 – November 2023 – Capable Counsel

I. Corporate sector

1.1. Circular No. 67/2023/TT-BTC dated November 02, 2023 of the Ministry of Finance guiding several articles of the Law on Insurance Business, Decree No. 46/2023/ND-CP dated July 01, 2023 of the Government detailing the implementation of several articles of the Law on Insurance Business

This Circular applies to:

- Non-life insurance enterprises, life insurance enterprises, health insurance enterprises (hereinafter referred to as insurance enterprises), reinsurance enterprises, insurance agents, insurance brokerage enterprises, organizations and individuals providing insurance ancillary services, mutual organizations providing microinsurance.
- Branches of foreign non-life insurance enterprises, branches of foreign reinsurance enterprises (hereinafter referred to as foreign branches in Vietnam).
- Representative offices of foreign insurance enterprises, foreign reinsurance enterprises, foreign insurance brokerage enterprises, foreign financial and insurance groups in Vietnam (hereinafter referred to as foreign representative offices in Vietnam).
- The policyholder, the insured, the beneficiary.
- State management agency in charge of insurance business activities.
- Organizations and individuals involved in the insurance business

This circular takes effect from November 2, 2023.

1.2. Dispatch No. 5115/TCT-CS dated November 15, 2023 of the General Department of Taxation on tax incentives for expansion investment projects



- Pursuant to the provisions of law, in case the Company implements an investment project based on acquiring an investment project but after the ownership conversion there is an expanded investment if it satisfies one of the three criteria specified in Clause 4 Article 10 of Circular No. 96/2015/TT-BTC dated 22/6/2015 of the Ministry of Finance and the conditions for corporate income tax incentives, The additional income due to expanded investment activities is entitled to incentives according to regulations.
- Regarding CIT incentives for projects producing goods subject to excise tax: In case the expansion investment project of Brewery A Co., Ltd. with the production of goods subject to SCT is granted an investment certificate after 01/07/2015 (the effective date of the Investment Law), CIT incentives for the part additional income from investment projects expands to income from the production of goods subject to SCT.

II. Commercial sector

2.1. Consolidated document No. 10/VBHN-BYT dated November 02, 2023 of the Ministry of Health consolidating Circular No. 48/2015/TT-BYT dated December 01, 2015 and Circular No. 17/2023/TT-BYT dated September 25, 2023

- This Circular stipulates responsibilities for food safety inspection; contents and forms of examination; order of inspection and handling of food safety inspection results in food production and trading under the management of the Ministry of Health.
- This Circular shall not apply to:
 - a) State inspection of food safety for imported and exported foods by designated state inspection agencies.
 - b) Inspect food conformity certification activities by designated conformity certification bodies.

2.2. Decree 80/2023/ND-CP amending Decree 95/2021/ND-CP and 83/2014/ND-CP on petroleum business dated November 17, 2023

Amending and supplementing several articles of Decree No. 95/2021/ND-CP dated November 1, 2021 and Decree No. 83/2014/ND-CP dated September 3, 2014 of the Government on petroleum business.

For traders who have been granted a Certificate of eligibility to act as a general petroleum trading agent, they may continue to operate according to the regulations on general petroleum trading agents in Decree No. 95/2021/ND-CP and Decree No. 83/2014/ND-CP until the Certificate of eligibility to act as a general agent for petroleum trading expires.

2.3. Decision No. 2941/QD-BCT dated November 08, 2023 regulating electricity selling prices issued by the Minister of Industry and Trade

- Promulgate retail electricity prices for groups of electricity users and electricity selling prices for electricity retailers in the Appendix attached to this Decision. The electricity selling price specified in the Appendix attached to this Decision does not include value-added tax.
- The average retail price of electricity is 2,006.79 VND/kWh (excluding value-added tax).

This Decision takes effect from November 09, 2023, replacing Decision No. 1062/QD-BCT dated May 04, 2023 of the Minister of Industry and Trade.

2.4. Consolidated document No. 25/VBHN-BCT dated November 09, 2023 of the Ministry of Industry and Trade consolidating Circular No. 11/2020/TT-BCT dated June 15, 6, 2020 and Circular No. 41/2022/TT-BCT dated December 30, 2022 amending and supplementing a number of articles of Circular No. 11/2020/TT-BCT June 15, 2020 stipulating the rules of origin of goods in the Free Trade Agreement between Vietnam and the European Union.

- This Circular stipulates the Rules of Origin in the Free Trade Agreement between Vietnam and the European Union (EVFTA).
- This Circular applies to:
 1. Agencies and organizations issuing Certificates of Origin (C/O).
 2. Traders.
 3. Agencies, organizations and individuals related to the origin of exported and imported goods.

III. Taxes, fees, charges sector

3.1. Decree 82/2023/ND-CP amending Decree 120/2016/ND-CP guiding the Law on Fees and Charges dated November 28, 2023

Amending and supplementing a number of articles of Decree No. 120/2016/ND-CP dated August 23, 2016 of the Government detailing and guiding the implementation of a number of articles of the Law on Fees and Charges

Abolish Article 7 of Decree No. 120/2016/ND-CP dated August 23, 2016 of the Government detailing and guiding the implementation of a number of articles of the Law on Fees and Charges.

This Decree takes effect from January 12, 2024.

3.2. Decision No. 5005/QD-UBND dated November 04, 2023 of the People's Committee of Ho Chi Minh City on the publication of the list of administrative procedures amending and supplementing fees according to Circular No. 41/2023/TT-BTC dated June 12, 2023 and Circular No. 59/2023/TT-BTC August 30, 2023 of the Minister of Finance falls within the scope of the regulatory functions of the Department of Health.

Announce together with this Decision a list of 16 administrative procedures in the field of pharmaceuticals and cosmetics; Medical examination and treatment are amended and supplemented according to Circular No. 41/2023/TT-BTC dated June 12, 6, 2023 of the Ministry of Finance on regulating the collection rate, regime of collection, payment, management and use of fees in the field of pharmaceuticals and cosmetics and Circular No. 59/2023/TT-BTC dated August 30, 2023 of the Ministry of Finance on regulating collection rates, regimes of collection, payment, management and use of fees in the health sector within the scope of management functions of provincial-level Health Departments.

This decision is effective as of November 4, 2023.

3.3. Dispatch No. 4954/TCT-KK dated November 06, 2023 of the General Department of Taxation supplementing tax returns for missed input invoices.

Based on tax laws, in case A Co., Ltd. detects that some VAT invoices of purchased goods and services are omitted arising from 04/2023 in the tax period of 06/2023, after the Ben

Tre Tax Department has issued a conclusion on the pre-refund inspection of the period 04/2023 (22/6/2023), it shall comply with the provisions of the point dd, Clause 6, Article 1 of Law No. 31/2013/QH13 and Clause 3, Article 47 of the Law on Tax Administration No. 38/2019/QH14.

3.4. Dispatch No. 4980/TCT-CS dated November 07, 2023 of the General Department of Taxation on VAT.

Based on the provisions of tax law, in case the Tax Department determines that investor A (foreign investor) is the owner of 100% of charter capital in Company B transferring all contributed capital to Company C for production and business in accordance with the law on enterprises, the law on investment and defined as capital transfer activities are not subject to VAT.

3.5. Dispatch No. 5001/TCT-DNNCN dated November 08, 2023 of the General Department of Taxation on determining the basis for calculating personal income tax for income from inheritance as shares

Based on tax regulations, shares traded on the Upcom trading system are shares traded on the Stock Exchange. Therefore, the value of assets admitted to inheritance as shares traded on the Upcom trading system is determined according to the provisions of Point a.1, Clause 1, Article 16 of Circular No. 111/2013/TT-BTC dated 15/8/2013 (amended by Clause 1, Article 19 of Circular 92/2015/TT-BTC dated 15/6/2015 of the Ministry of Finance).

3.6. Dispatch No. 81181/CTHN-TTHT on tax declaration and payment procedures for real estate transfer activities issued by Hanoi Tax Department on November 17, 2023

In case Company A is applying the withholding VAT calculation method and has real estate transfer activities that are apartments (real estate transferred in the same province or city as the head office), then do so. Submit tax declaration documents to the directly managing tax agency according to the provisions of Article 45 of the Law on Tax Administration No. 38/2019/QH148 of the Government. The Company declares VAT and CIT on this real estate transfer activity as follows:

- Regarding corporate income tax: the company does not have to submit quarterly tax declarations but must determine the amount of tax temporarily paid quarterly

for this real estate transfer activity according to the provisions of Point b, Clause 2, Article 17 of Circular No. 80 /2021/TT-BTC of the Ministry of Finance. The company performs tax finalization for real estate transfer activities according to the instructions in Point b, Clause 3, Article 17 of Circular No. 80/2021/TT-BTC of the Ministry of Finance.

- Regarding VAT: The Company declares VAT monthly according to the provisions of Clause 1, Article 8 of Decree 126/2020/ND-CP; In case the Company meets the criteria specified in Point a, Clause 1, Article 9 of Decree 126/2020/ND-CP, it will declare VAT quarterly. The company submits VAT declaration documents for real estate transfer activities along with other production and business activities of the unit according to form 01/GTGT issued with Circular 80/2021/TT-BTC.

3.7. Dispatch 6068/TCHQ-TXNK 2023 on value-added tax issued by the General Department of Customs on November 23, 2023

In case an enterprise has paid value-added tax on imported goods but then has to export them back to the foreign owner, the export declaration must be registered from February 1, 2018 (date of Decree No. 146/2017). /ND-CP dated December 15, 2017 of the Government takes effect), the customs authority will handle the overpaid tax. The handling of refunded tax, late payment interest, and overpaid fines shall comply with the provisions of Article 132 of Circular No. 38/2015/TT-BTC amended and supplemented in Clause 65, Article 1 of Circular No. 39/ 2018/TT-BTC of the Ministry of Finance. The overpaid value-added tax amount is processed at the same time as the import tax (if any).

3.8. Dispatch 5303/TCT-DNNCN 2023 on personal income tax policy issued by the General Department of Taxation on November 27, 2023

Pursuant to Clause b, Point 2, Article 2, Circular No. 111/2013/TT-BTC dated August 15, 2013 of the Ministry of Finance, in case the judicial expert's compensation is paid to the judicial expert, the person's Judicial appraisal based on case/workday is an industry-specific allowance prescribed by a competent State agency and is not included in personal income taxable income. In case the industry-specific allowance received is higher than the prescribed industry-specific allowance, the excess must be included in taxable income. Other economic sectors and other business establishments are calculated based on the

industry-specific allowance levels prescribed by competent State agencies for the State sector.

IV. Export, import sector

4.1. Dispatch No. 4890/TCT-KK dated November 02, 2023 of the General Department of Taxation on the time of issuing invoices and determining the turnover of exported goods

Based on tax regulations, from 01/07/2022, apply electronic invoices according to Decree No. 123/2020/ND-CP, according to which when exporting goods and providing services abroad, taxpayers use invoices as prescribed in Article 8 of Decree No. 123/2020/ND-CP. The time of e-invoicing for exported goods for business establishments declaring and paying tax according to the method of deduction (including export goods processing establishments) shall comply with the provisions of Point c, Clause 3, Article 13 of Decree No. 123/2020/ND-CP dated October 19, 2020.

4.2. Dispatch No. 79873/CTHN-TTHT dated November 13, 2023 of Hanoi City Tax Department on invoices for export activities

In case the Company is specified in Clause 6 Article 86 of Circular No. 38/2015/TT-BTC of the Ministry of Finance, declares and pays value-added tax according to the method of deduction, has goods and services for export (including export goods processing establishments) when exporting goods, services using electronic value-added invoices. When exporting goods for transportation to the border gate or the place of export procedures, the establishment shall use the warehouse cum internal transport slip as prescribed as documents for goods circulation on the market. After completing the procedures for exported goods, the establishment shall issue value-added invoices for exported goods as prescribed at Point c, Clause 3, Article 13 of the Government's Decree No. 123/2020/ND-CP.

V. Intellectual property sector

5.1. Decree No. 79/2023/ND-CP dated November 15, 2023 details a number of articles and measures to implement the Law on Intellectual Property on rights to plant varieties.

- This Decree stipulates a number of contents of the Law on Intellectual Property for plant varieties, including:
 - + Order and procedures for establishing rights to plant varieties;
 - + Rights to plant varieties as a result of state-funded science and technology tasks;
 - + Rights and obligations of owners of protection certificates and plant variety authors;
 - + Assignment or transfer of rights to protected plant varieties;
 - + Representing rights to plant varieties.
- This Decree applies:
 - + Vietnamese organizations and individuals.
 - + Foreign organizations and individuals that are citizens of member states of the International Association for the Protection of New Plant Varieties (hereinafter referred to as UPOV) or countries that have international agreements with the Socialist Republic of Vietnam on the protection of plant varieties; foreign individuals permanently residing in Vietnam or having plant seed production and trading establishments in Vietnam; foreign organizations having plant seed production and trading establishments in Vietnam; organizations and individuals permanently residing or having establishments producing and trading plant varieties in the territory of UPOV member states.
 - + Organizations and individuals engaged in activities related to plant variety protection.

This Decree takes effect from November 15, 2023

VI. Labor and employment sector

6.1. Circular No. 20/2023/TT-BCT dated November 08, 11 of the Ministry of Industry and Trade stipulating working time and rest time for employees doing jobs of special nature in the field of oil and gas exploration and exploitation at sea



- This Circular stipulates working time and rest time for employees doing jobs of a special nature in the field of oil and gas exploration and exploitation at sea.
- This Circular applies to:
 - + Employer means an enterprise, organization or individual that hires or employs labor operating in the field of oil and gas exploration and exploitation at sea;
 - + Employees working in the field of oil and gas exploration and exploitation at sea at oil and gas projects.
- This Circular shall not apply to employees of seafarer titles.

This circular takes effect from December 25, 2023.

6.2. Dispatch 4674/SLDTBXH-VLATLD dated November 16, 2023 amending licensing procedures for foreign workers working in Hanoi (2nd time) issued by the Department of Labor, War Invalids and Social Affairs of Hanoi City promulgate

Instruct:

“For the position of Technical Laborer: Documents proving that the documents are suitable to ensure the conditions in one of the following cases: “Trained for at least 1 year and have at least 3 years experience suitable to the job position that the foreign worker plans to work in Vietnam.” Or "Have at least 5 years of experience in a job suitable to the job position that the foreign employee plans to work in Vietnam". Specifically:

- Diploma or certificate or certificate; (in case: Be trained for at least 1 year and have at least 3 years of experience suitable to the job position that the foreign employee plans to work in Vietnam.)
- Written confirmation from an agency, organization, or enterprise abroad regarding the number of years of experience of the expert, technical worker, or work permit that has been issued or confirmation that the work permit is not required. granted.”

Edited into:

“For the position of Technical Laborer: Proof documents include the following documents:

- Diploma or certificate or certificate;

- Written confirmation from an agency, organization, or enterprise abroad regarding the number of years of experience of the expert, technical worker, or work permit that has been issued or Confirmation of not being eligible for a work permit has been issued.

VII. Currency - banking sector

7.1. Resolution 192/NQ-CP of 2023 on extending the time for pilot implementation of using telecommunications accounts to pay for goods and services of small value issued by the Government on November 18, 2023

Extension of time for pilot implementation of using telecommunications accounts to pay for small-value goods and services in Decision No. 316/QĐ-TTg dated March 9, 2021 of the Prime Minister on approval Piloting the use of telecommunications accounts to pay for small-value goods and services as follows: "Enterprises approved by the State Bank of Vietnam to pilot the use of telecommunications accounts to pay for Small value goods and services will be piloted until December 31, 2024.