

## LEGAL NEWSLETTER

### No. 3 – April 2023 – Capable Counsel

#### I. Enterprise sector

**1.1. Circular No. 02/2023/TT-BKHDT dated April 18, 2023, issued by the Ministry of Planning and Investment on amending and supplementing a number of articles of Circular No. 01/2021/TT-BKHDT dated March 16, 2021, by the Minister of Planning and Investment guiding business registration.**

According to the provisions of this circular, from July 1, 2023, when wishing to register for the establishment of a Business Household, the registrant should note the newly issued points such as:

- Receive and process business household registration documents on the business household registration information system;
- Business household code;
- Enter the line of business;
- Announce the business location of the household business;
- Issuing business household registration according to the backup process;
- Registration and application for business household registration via electronic information network;
- Converting data, updating, and adding business household registration information to the business household registration information system;
- Provide business household registration information on the business household registration information system;
- Payment method for business household registration fee

In addition to stipulating new points, the Ministry of Planning and Investment also changed the document templates used in business household registration issued together with the Circular No. 02/2023/TT-BKHDT dated April 18, 2023, of the Minister of Planning and Investment.

This Circular is effective from July 1, 2023

**1.2. Decision No. 345/QD-TTg issued by the Prime Minister on April 05, 2023, approving the Project "Improving the quality and efficiency of legal support for enterprises in the period 2021-2030"**

The Prime Minister approves the project with the goal of promoting the results achieved and overcoming shortcomings; continuing to innovate corporate legal support, strengthening interdisciplinary coordination mechanisms; creating significant changes in the quality and efficiency of legal support for enterprises; and contributing to raising awareness and a sense of legal compliance of enterprises. In addition, this Decision also sets out specific tasks to complete policies and laws on legal support for enterprises and effectively implement this work. Furthermore, assigning tasks to specific competent departments and proposing funding for the implementation of the Project will be guaranteed annually by the State budget.

**II. Tax sector**

**2.1. Decree No. 12/2023/ND-CP issued by the Government on April 14, 2023, on extending the deadline for payment of value-added tax, corporate income tax, personal income tax and land rent in 2023**

This Decree provides for the extension of the deadline for payment of VAT, CIT, tax officials; other relevant state agencies, organizations, and individuals.

Applicable to: Taxpayers; tax authorities; tax officials; other relevant state agencies, organizations, and individuals.

The Decree specifies the subjects to be extended in Article 3 and the extension period in Article 4. Accordingly, the direct taxpayer shall carry out the extension procedure according to the order instructed in this decision: (i) The taxpayer directly declares and pays tax with the tax authority and sends a written request for extension of tax payment according to the form promulgated together with the Decree; (ii) The taxpayer determines and is responsible for the application for extension to ensure that the right subjects are extended under the Decree; (iii) The tax authority is not required to notify the taxpayer of the acceptance of the extension; (iv) No late payment shall be charged for the amount of tax extended during the period for which the payment deadline is extended.

Effective from the date of signing until to the end of December 31, 2023

**2.2. Circular No. 19/2023/TT-BTC issued by the Ministry of Finance on April 03, 2023, repealing Circular 150/2010/TT-BTC guiding value-added tax and corporate income tax for press agencies issued by the Minister of Finance.**

According to this Circular, the entire Circular No. 150/210/TT-BTC dated September 27, 2010 of the Minister of Finance guiding value-added tax and corporate income tax for media agencies will be abolished.

This Circular is effective from May 18, 2023

**2.3. Public Power No. 01/CĐ-BTC issued by the Ministry of Finance on April 12, 2023, on strengthening the management and supervision of the issuance and use of electronic invoices issued by the Minister of Finance**

Implementing the current Law on Tax Administration, the General Department of Taxation has implemented an electronic invoicing system to serve taxpayers nationwide from July 1, 2022. Accordingly, businesses, organizations and business individuals make a synchronous transition to using electronic invoices instead of traditional paper invoices. The implementation of the electronic invoice system saves the cost of issuing and keeping invoices; convenient in the stage of collating, reviewing, checking tax declaration, tax refund ... contribute to improving the efficiency of tax administration.

In order to eliminate the phenomenon of enterprises, organizations and individuals deliberately taking advantage of the issuance and use of electronic invoices for export and profiteering, the Minister of Finance requests the General Department of Taxation to direct the Tax Department of the provinces, centrally-run cities shall step up propaganda work in order to raise awareness, strengthen inspection and supervision of issuance in order to promptly detect violations, review overall and strengthen work, coordinate with police agencies and relevant ministries to strictly verify violations of the law in publishing, manage and use e-invoices.

**2.4. Dispatch No. 19297/CTHN-TTHT on April 06, 2023, issued by Hanoi City Tax Department on personal income tax for certificate exam fees.**

In case the Company incurs an employee training expense to improve the employee's qualifications and work capacity specified in the Company's labor regulations and has

sufficient legal invoices and documents, it shall not be included in the employee's PIT taxable income as prescribed in dd.6 Point d Clause 2 Article 2 of Circular 111/2013/TT-BTC dated August 15, 2013 of the Ministry of Finance *"For the payment of household money for training to improve qualifications and skills for employees suitable to the professional work of the employee or according to the employer's plan, it is not included in the employee's income"*.

**2.5. Dispatch No. 19293/CTHN-TTHT on April 06, 2023, issued by Hanoi City Tax Department on guidance on tax policy for gifts**

When selling goods or providing services, the seller shall issue and send invoices to buyers, including cases where goods and services are gifted, donated, etc., as prescribed in Clause 1 Article 4 of the Government's Decree No. 123/2020/ND-CP.

In case the Company gives gifts to employees, but the gifts are not specified in Clause 10 Article 2 of Circular No. 111/2013/TT-BTC of the Ministry of Finance, the income from receiving gifts is not subject to PIT. Input VAT of goods and/or services is deducted if meeting the conditions specified in Clause 1 Article 10 of Circular No. 26/2015/TT-BTC of the Ministry of Finance.

In case the Company spends monetary or non-monetary benefits in addition to salary, other benefits for employees such as: spending on holidays, etc., this expenditure shall be included in the income subject to PIT from wages and wages for individual employees as prescribed in Clause 2 Article 2 of Circular 111/2013/TT-BTC. For actual expenditures of the company incurred by employees (if specified in the Company's regulations or specified in the labor contracts, in accordance with the provisions of the Labor Code and implementation guiding documents) are included in other welfare expenditures not exceeding one (01) month of actual average salary implemented in the tax year of the enterprise as prescribed in Clause 4 Article 3 of Circular No. 25/2018/TT-BTC of the Ministry of Finance, if satisfying the conditions specified in Article 4 of Circular No. 96/2015/TT-BTC of the Ministry of Finance, it shall be accounted for in deductible expenditures when determining income subject to CIT.

**2.6. Dispatch No. 20479/CT-TTHT dated April 10, 2023, issued by Hanoi City Tax Department about personal income tax calculation for labor outsourcing activities.**

In case an employee incurs income from commendation when establishing excellent achievements, monetary or non-monetary benefits in addition to salary and wages paid by the employer that taxpayers are entitled to in any form belong to the income subject to PIT as guided in Clause 2 Article 2 of Circular No. 111/2013/TT-BTC dated 15/08/2013 of the Ministry of Finance. The income-paying organization shall make tax deductions before paying income to employees and declare tax with the Tax Office as prescribed.

### **III. Accounting, auditing sector**

#### **3.1. Dispatch No. 17831/CTHN-TTHT dated April 04, 2023, issued by Hanoi Department of Taxation on e-invoices under Decree 123/2020/ND-CP**

According to the instructions in this Dispatch, in case an enterprise sells goods, this company must issue an invoice and send to buyers and record the contents of the invoice as prescribed in Article 4 and Article 10 of Decree No. 123/2020/ND-CP dated October 19, 2020.

In case issuing invoices for domestic exports in accordance with the provisions of law, the Company shall clearly state the name of the foreign buyer, the name of the receiving enterprise and the delivery location in Vietnam as prescribed at Point c Clause 2 Article 17 of Circular No. 219/2013/TT-BTC dated 31/12/2013 of the Ministry of Finance.

In case the company detects that the invoice has errors, needs to issue invoices for adjustment or replacement, the company shall handle erroneous invoices according to the provisions of Article 19 of Decree No. 123/2020/ND-CP dated October 19, 2020 of the Government and Clause 6 Article 12 of Circular No. 78/2021/TT-BTC dated September 17, 2021 of the Ministry of Finance.

#### **3.2. Dispatch 18553/CTHN-TTHT dated April 05, 2023, issued by Hanoi City Tax Department providing guidance on invoices when receiving grants**

In case an enterprise or organization receiving funding is specified in Clause 1 Article 5 of Circular No. 219/2013/TT-BTC of the Ministry of Finance, in case it is not required to declare and calculate tax payment, the enterprise or organization shall prepare collection documents according to regulations (without having to issue invoices).

In case an enterprise or organization receives grants from another organization or individual to perform services for organizations or individuals such as repair, warranty,

promotion or advertising, it must issue an invoice and send to the buyer as prescribed in Clause 1 Article 4 of Decree No. 123/2020/ND-CP and must fully record the contents as prescribed in Article 10 of Decree No. 123/2020/ ND-CP, in case of using e-invoices, must follow the standard data format of tax authorities as prescribed in Article 12 of Decree 123/2020/ND-CP, and at the same time must declare and pay tax according to regulations.

#### **IV. Commerce sector**

##### **4.1. Decree No. 18/2023/ND-CP issued by the Government on April 28, 2023, amending Decree No. 40/2018/ND-CP on management of business activities by multi-level method**

This Decree has amended and supplemented a number of articles of Decree 40/2018/ND-CP dated March 12, 2018, on the management of business activities by multi-level method. Accordingly, a total of 42 articles have been amended and supplemented:

- Amended in Decree 40/2018/ND-CP as follows: Clause 2, Article 3; Point c, Clause 1, Article 7; Clause 3 Article 9; Clause 7 Article 9; Point a, Clause 1, Article 10; Point b, Clause 3, Article 12; Point c, Clause 4, Article 14; Point c, Clause 1, Article 16; Article 18; Clause 2, Article 20; Clause 1 Article 21; Clause 3 Article 21; Point a, Clause 2, Article 24; Clause 2 Article 26; Article 27; Clause 1 Article 28; Point b, Clause 2, Article 28; Point a, Clause 1, Article 36; Point a, Clause 3, Article 37; Article 38; Article 39; Article 43; Point d Clause 2 Article 44; Clause 4 Article 49; Clause 1 Article 50; Article 53; Clause 4 Article 55; Point g, Clause 1, Article 56;
- Supplemented in Decree 40/2018/ND-CP as follows: Clause 8 Article 3; Point h, Clause 1, Article 7; Clause 10 Article 9; Clause 11 Article 9; Point D Clause 1 Article 23; Clause 3 Article 24; Clause 3a Article 36; Clause 13 Article 40; Clause 14 Article 40; Clause 5 Article 41; Article 49a.
- Amend the phrase "*directly or by post*" at Point a, Clause 3, Article 12, Clause 1 of Article 13, Clause 2 of Article 21, Clause 2 of Article 22, Clauses 1 and 2 of Article 25, Clause 1 of Article 52 and Point a, Clause 4, Article 52 into "*pay in person, online or via postal service*"; amend the phrase "*post office*" at Point a, Clause 5, Article 10 into the phrase "*postal service*".
- Amend the phrase "*representative of the multi-level marketing enterprise*" at Point b, Clause 1, Article 22 into the phrase "*the focal point of the enterprise*"; amending the

phrase “*local representative*” in Form No. 7, Form No. 8, Form No. 11, Form No. 15 and Form No. 16 into the phrase “*local focal point*”.

- Add Form No. 06a, Form No. 13a, Form No. 14a, Form No. 19, Form No. 20a, Form No. 20b, Form No. 21a and Form No. 21b promulgated together with this Decree.

This Decree takes effect from June 20, 2023.

#### **4.2. Dispatch 1684/TCHQ-TXNK on April 12, 2023, issued by the General Department of Customs on guiding procedures for imported goods for sale to export processing enterprises**

In case the Company (being a domestic enterprise) imports goods from abroad and then sells them to an export processing enterprise, such imported goods must declare and pay import tax and value-added tax as prescribed in Clause 1 Article 2 of the Law on Export and Import Tax No. 107/2016/QH13, Article 3 of the Law on Value Added Tax No. 13/2008/QH12. The import declaration form is A11 code.

After the goods have been exported to export processing enterprises or non-tariff zones and only for use in export processing enterprises or non-tariff zones, the Company is entitled to a refund of the import tax paid. The basis for refund of paid import duties is unused, processed, or processed export goods, and the re-export of goods must be carried out by the original importer, or a person authorized or entrusted by the original importer. The export declaration form is B13 code.

Tax refund dossiers and procedures comply with the provisions of Article 34 of Decree No. 134/2016/ND-CP dated 01/9/2016 amended and supplemented in Clause 17 Article 1 of Decree No. 18/2021/ND-CP on 11 March 2021.

### **V. Banking and finance sector**

#### **5.1. Decision No. 11/2023/QD-TTg dated April 27, 2023, issued by the Prime Minister on range of value of which transactions are subject to mandatory reporting**

As from December 1, 2023, financial institutions and relevant non-financial businesses and professions according to Clause 1 and Clause 2 Article 4 of the Law on Anti-Money Laundering, having any transactions valued from VND400,000,000 or higher subject to

mandatory reporting to the State Bank of Vietnam. Pursuant to the Law on Anti-Money Laundering, reporting entities are as follows:

- (a) Reporting entities are financial institutions licensed to conduct one or more of the following activities or operations:
  - (i) Acceptance of deposits;
  - (ii) Lending;
  - (iii) Financial leasing;
  - (iv) Payment services;
  - (v) Payment intermediary services;
  - (vi) Issuing negotiable instruments/transferable securities, bank cards, fund/money transfer/wire transfer orders;
  - (vii) Bank guarantees and financial commitments;
  - (viii) Providing foreign exchange services, money market instruments;
  - (ix) Securities brokerage; advice to security investment, provision of security for securities issues;
  - (x) Investment fund and portfolio management;
  - (xi) Life insurance business;
  - (xii) Money and currency changing.
  
- (b) Reporting entities are relevant non-financial businesses and professions subject to law that conduct one or more of the following activities or operations:
  - (i) Prize-awarding games, including electronic games; telecommunications network-based games, Internet-based games; casinos; lottery tickets; betting;
  - (ii) Real estate business, except leasing or subleasing of real property and real estate consulting;
  - (iii) Dealing in precious metals, jewels;
  - (iv) Supply of accounting services; provision of notarial services; provision of legal services rendered by lawyers, legal professional organizations;

- (v) Providing business formation, management, and administration services; services of acting as (or arranging for another person to act as) a director or secretary of a company to third parties; legal arrangement services.

This Decision replaces Decision No. 20/2013/QĐ-TTg dated April 18, 2013 of the Prime Minister of Vietnam on range of values of which transactions are subject to mandatory reporting.