

LEGAL NEWSLETTER

No. 6 – July 2023 – Capable Counsel

I. Commercial sector

1.1. Decree 47/2023/ND-CP amending Decree 62/2017/ND-CP guiding the Law on Property Auction promulgated by the Government on July 3, 2023

Amending and supplementing a number of articles of the Government's Decree No. 62/2017/ND-CP dated May 16, 2017 detailing a number of articles and measures to implement the Law on Property Auction, including:

- Article 9 on organization of auctions by online auction
- Article 10 on the order of organizing auctions by online auction
- Article 13 Requirements for Online Auction Information Sites
- Article 14 on appraisal of conditions for online auction information pages of property auction organizations
- Article 15 on approval of online auction information sites, stopping the implementation of online auctions
- Article 16 on responsibilities of the Ministry of Justice, property auction organizations and organizations in which the State owns 100% of the charter capital established by the Government to handle bad debts of credit institutions in building, managing and operating online auction information sites
- Articles 16a and 16b are also added after Article 16

This Decree takes effect from September 1, 2023.

II. Taxes, fees and charges sector

2.1. Dispatch 46974/CTHN-TTHT dated July 04, 2023 on conditions and documents proving family deduction for dependents issued by Hanoi City Tax Department

In case the taxpayer registers dependents as natural fathers or natural mothers; father-in-law, mother-in-law (or father-in-law, mother-in-law); stepfather, stepmother; legal adoptive parents who meet the conditions to be counted as dependents as prescribed at Point đ, Clause 1, Article 9 of Circular No. 111/2013/TT-BTC, and at the same time have sufficient documents proving dependents as prescribed at Point G3, Clause 1, Article 9 of Circular No. 111/2013/TT-BTC (not required to have income proof documents) of the Ministry of Finance mainly, taxpayers are entitled to deduct family circumstances when determining income subject to PIT as prescribed.

Taxpayers must self-declare and take responsibility before law for the accuracy, truthfulness and completeness of the declared data as prescribed in Clause 2, Article 17 of the Law on Tax Administration No. 38/2019 dated June 13, 2019 of the National Assembly.

2.2. Dispatch 46972/CTHN-TTHT July 4, 2023 on VAT declaration for head office and branches issued by Hanoi Tax Department

In case the Company has another dependent accounting branch where the Company is headquartered and conducts centralized accounting at the head office according to the provisions of Clause 2, Article 11 of Decree No. 126/2020/ND-CP, implement tax declaration, tax calculation and centralized tax filing to the tax agency managing the Company (headquarters) and allocating the payable tax amount to each province where the business operates as prescribed in Clause 1, Article 12 Circular No. 80/2021/TT-BTC dated September 29, 2021 of the Ministry of Finance. Tax declaration, tax calculation, distribution and payment of value-added tax shall comply with the provisions of Article 13 of Circular No. 80/2021/TT-BTC dated September 29, 2021 of the Ministry of Finance.

2.3. Dispatch 47362/CTHN-TTHT July 5, 2023 guidance on VAT declaration for factory leasing issued by Hanoi Tax Department

In case the enterprise has factory leasing activities in another province-level area where the taxpayer's head office is located, other than the cases specified in Clause 1, Article 11 of Decree No. 126/2020/ND-CP, Clause 1 of this Article. 13 Circular No. 80/2021/TT-BTC, enterprises do not have to declare VAT separately to the tax authority where the factory leasing activities are located, but declare VAT together with other production and business activities of the enterprise. and submit VAT declaration dossiers to tax authorities directly

managing them, without allocating VAT payable to the province where this business is located.

In case the Branch is not the lessor of the factory as prescribed by law, it is not a taxpayer for income arising from the leasing of this factory. It is recommended that the branch base itself on the actual arising situation and contact the tax agency directly managing the branch for specific instructions.

2.4. Dispatch 47359/CTHN-TTHT July 5, 2023 on tax policy for foreign contractors issued by Hanoi Tax Department

In case Company A - a foreign contractor has income generated in Vietnam on the basis of a contract signed with Company B to provide health care products with copyright services products in Vietnam, Company A is subject to tax on foreign contractors as prescribed in Clause 1, Article 1 of Circular 103/2014/TT-BTC. In case the foreign contractor fails to satisfy one of the conditions to declare tax directly in Vietnam mentioned in Article 8, Section 2, Chapter II of Circular No. 103/2014/TT-BTC, Company B is responsible for responsible for declaring and paying tax on behalf of foreign partners under the guidance in Articles 12 and 13, Section 3, Chapter II of Circular No. 103/2014/TT-BTC.

In case if the value of royalties and the value of goods can be separated:

- VAT: In case goods are supplied under a contract in the form of: the delivery point is located in the territory of Vietnam; or the supply of goods with services carried out in Vietnam, the value of the goods is only subject to VAT at the stage of importation according to regulations, the value of the service is subject to VAT as guided in Article 6. Circular 103/2014/TT-BTC. If the copyright service falls into the cases specified in Clause 21, Article 4 of Circular No. 219/2013/TT-BTC, it is not subject to VAT. If not falling into the cases specified in Clause 21, Article 4 of Circular No. 219/2013/TT-BTC, the rate of 5% of taxable revenue for services as prescribed in Clause 2, Article 12 of Circular No. 103/2014/TT-BTC.
- CIT: apply the rate of 10% to calculate CIT on income from royalties as prescribed in Clause 2, Article 13 of Circular No. 103/2014/TT-BTC.

In case it is not possible to separate the copyright value and the goods value:

- VAT: apply the rate of 3% to calculate the VAT calculation revenue of the contract;
- CIT: 2% of the contract's taxable revenue.

2.5. Dispatch 3538/TCHQ-TXNK July 7, 2023 on the classification and application of the tax rate of CKD auto parts promulgated by the General Department of Customs

In case the enterprise does not participate in the tax incentive program, imports a set of CKD components for automobile production and assembly if it meets the conditions specified at Point b.5.1, Clause 2, Section II, Appendix II of the Decree. No. 26/2023/ND-CP shall be classified and applied preferential import tax rates for each component and spare part specified in 97 chapters of Section I, Appendix II of Decree No. 26/2023/ND-CP. CP.

2.6. Dispatch 49215/CTHN-TTHT July 10, 2023 on the value-added tax policy issued by the Hanoi Tax Department

In case the package of medical treatment services (according to regulations of the Ministry of Health) includes curative drugs, the revenue from medical treatment is not subject to VAT according to the provisions of Article 1 of Circular No. 130/2016. /TT-BTC dated 12/8/2016 of the Ministry of Finance. The unit providing goods and services is not subject to VAT, on the VAT invoice at the item "tax rate", the unit shown is KCT (not subject to VAT) according to the instructions in Decision No. 1450/QD-TCT October 7, 2021.

In case the revenue from the drug money is not included in the treatment service package (according to the regulations of the Ministry of Health), the unit declares and calculates VAT by the direct method on the revenue from the drug money, the VAT amount. The added value payable by the method of direct calculation on the added value is equal to the percentage multiplied by the turnover as prescribed in Clause 2, Article 13 of Circular No. 219/2013/TT-BTC.

In case of detecting errors in the VAT declaration dossiers submitted to the tax authorities, the unit shall make additional declarations for each tax declaration dossier with errors according to the provisions of Article 47 of the Law on Tax Administration No. 38/2019/QH14 dated June 13, 2019 of the National Assembly and Clause 4, Article 7 of Decree No. 126/2020/ND-CP dated October 19, 2020 of the Government.

2.7. Dispatch 49223/CTHN-TTHT July 10, 2023 on tax returns via electronic means issued by Hanoi Tax Department

In case A and associates carry out business activities in Hanoi City - an area with information technology infrastructure, they must declare, pay taxes, and transact with tax authorities through information technology. through electronic means. When conducting electronic tax transactions, the Company must use a valid digital certificate issued by a public digital signature certification service provider, or a competent state agency, or a competent authority. The state has the authority to recognize digital signatures on tax records and electronic tax documents.

2.8. Dispatch 51359/CTHN-TTHT July 17, 2023 on the use of electronic invoices in export processing zones when liquidating assets issued by Hanoi Tax Department

In case the company is an export processing enterprise liquidating fixed assets in the form of selling to the domestic market, at the time of sale or liquidation to the domestic market, the policy on management of exported and imported goods shall not be applied. import, except for goods subject to management according to conditions, standards, and specialized inspection that have not yet been carried out upon import; goods under the management of a license must be approved in writing by the import licensing agency as prescribed in Article 26 of Decree 35/2022/ND-CP. The company declares tax by the direct method on added value as prescribed in Clause 2, Article 13 of Circular No. 219/2013/TT-BTC. Regarding the submission of VAT declaration dossiers, the Company complies with the provisions of Article 44 of the Law on Tax Administration No. 38/2019/QH14, Articles 8 and 9 of Decree 126/2020/ND-CP.

In case the Company is an export processing enterprise liquidating fixed assets in the form of selling to the domestic market, the Company shall use the Sales Invoice according to the provisions of Clause 2, Article 8 of Decree No. 123/2020/ND-CP, October 19, 2020 of the Government.

2.9. Dispatch 51950/CTHN-TTHT dated July 18, 2023 on deductible expenses when determining corporate income taxable income issued by Hanoi Tax Department

In case Company A determines the expenses for the service of declaring and calculating PIT on behalf of the individual, the expenditure for purchasing health care membership cards for individuals who are foreign workers working at the Company is a If this expense is calculated from the salary and wages, this expense shall be included in reasonable expenses when determining the company's taxable income if the conditions specified in Clause 1, Article 4 of Circular No. 96/2015/TT-BTC are satisfied. BTC , specified in one of the following documents: Labor contract; Collective labor agreement; Financial regulations of the Company and not in the case of non-deductible expenses when determining taxable income specified in Clause 2, Article 4 of Circular No. 96/2015/TT-BTC dated June 22, 2015 of the Ministry of Finance.

In case the Company determines that the above expenses are expenses of welfare nature for employees, if these expenditures ensure that the total expenditure does not exceed 01 month's average salary, it meets the regulations on payment documents. The payment is specified in Article 4 of Circular No. 96/2015/TT-BTC dated June 22, 2015 of the Ministry of Finance (amended and supplemented with Article 3 of Circular No. 25/2018/TT-BTC dated 16 March 2018 of the Ministry of Finance) is included in deductible expenses when determining taxable income.

In case the Company incurs input VAT to serve production and business activities of goods and services subject to VAT, it will be fully deducted if it meets the conditions for input VAT deduction as prescribed. in Clause 10, Article 1 of Circular No. 26/2015/TT-BTC dated February 27, 2015 of the Ministry of Finance and strictly follow the principle of deduction of input VAT specified in Article 14 of Circular No. 219/2013/ TT-BTC dated December 31, 2013 of the Ministry of Finance.

2.10. Dispatch 52405/CTHN-TTHT July 19, 2023 on handling invoices made with errors according to Decree 15/2022/ND-CP issued by Hanoi Tax Department

In case the Company calculates VAT by the credit method, construction and installation activities are subject to the VAT rate of 10% and are not on the list of goods and services specified in Appendix I, II, III promulgated together with the Government's Decree No. 15/2022/ND-CP, the VAT rate of 8% from February 1, 2022 to December 31, 2022 according to the provisions of Clause 2, Article 1. and Clause 1, Article 3 of Decree No. 15/2022/ND-CP of the Government.

In case the Company incurs construction and installation activities and is applying the VAT rate of 10% and is entitled to a reduction in VAT according to the provisions of Decree No. 15/2022/ND-CP, but the Company has issued an invoice and has issued an invoice declared at the tax rate or percentage to calculate the VAT that has not been reduced under this Decree, the seller and the buyer must make a record or have a written agreement clearly stating the error, and at the same time, the seller shall make a error correction invoice and delivery of the correcting invoice to the buyer. Based on the adjusted invoice, the seller declares the adjustment of output tax, the buyer declares the adjustment of input tax (if any) according to the provisions of Clause 5, Article 1 of Decree No. 15/2022/ND-CP, Clause 2, Article 19 of Decree No. 123/2020/ND-CP.

2.11. Dispatch 52182/CTHN-TTHT on July 19, 2023 on the value-added tax rate issued by the Hanoi Tax Department

In case the company provides software services directly to organizations and individuals abroad and consumes them outside Vietnam, satisfying the conditions specified at Point b, Clause 2, Article 9 of Circular No. 219/2013/ TT-BTC applies the tax rate of 0%.

2.12. Dispatch 53492/CTHN-TTHT on July 24, 2023 tax policy guidelines issued by the Hanoi Tax Department

In case the Contractor is behind schedule, the investor extends the time and pays for the related costs incurred in the contract specified in the contract price, the costs incurred due to the extension of time is determined to be subject to VAT, the VAT calculation price shall comply with the provisions of Clause 9, Article 7 of Circular No. 219/2013/TT-BTC, revenue for calculating CIT shall comply with the provisions of Item m, Clause 2, Article 5 of Circular No. 78/2014/TT-BTC.

In case the Contractor is behind schedule, the investor shall extend the time and pay for the related expenses incurred in the contract determined as compensation for damage according to the provisions of Article 292 of the Commercial Law and Article 146 of the Construction Law, when receiving the money received for compensation and support, the receipt of receipts shall be made according to the provisions of Clause 1, Article 5 of Circular No. 219/2013/TT-BTC.

The enterprise has the collection of fines and compensation calculated by the partner in breach of the contract as other income as prescribed in Clause 13, Article 7 of Circular No. 78/2014/TT-BTC.

2.13. Dispatch 8345/QLD-VP on July 28, 2023 on the notice of fee collection in the field of pharmaceuticals and cosmetics issued by the Drug Administration of Vietnam

Implementation of Circular No. 41/2023/TT-BTC dated June 12, 2023 of the Ministry of Finance stipulating the collection rate, mode of collection, payment, management and use of fees in the field of pharmaceuticals and cosmetics, the Department of Management Pharmacy is pleased to announce: from August 1, 2023, the fee schedule in the field of pharmaceuticals and cosmetics is implemented as follows:

- Verification and confirmation of the content of information, advertising drugs, cosmetics: VND 1,600/document
- Appraisal and grant of drug registration certificate: VND 11,000/document
- Appraisal and issuance of circulation registration certificate of medicinal ingredients and traditional herbs: VND 5,500/ document;
- Appraisal and extension of circulation registration papers of drugs, medicinal ingredients and traditional herbs: VND 4,500/document
- Evaluation of changes/additions to the circulation registration papers of drugs, medicinal ingredients, and traditional medicinal herbs: VND 1,500/ document
- Appraisal and grant of licenses to import drugs without circulation registration certificates in Vietnam (except for cases of import according to the provisions of Articles 67, 72, 73, 74, 75 of Decree No. 54/2017/NĐ-CP dated May 8, 2017 of the Government detailing a number of articles and measures to implement the Law on Pharmacy): VND1,200/item;
- Appraisal of cosmetic product announcement, announcement of standards and quality of medicinal herbs: VND 500/document;
- Appraisal of cosmetic production conditions to issue a certificate of facility meeting CGMP - ASEAN standards (GMP) (response assessment, maintenance assessment, change control assessment at the facility), Condition assessment and assessment of

compliance with good manufacturing practices for pharmaceutical packaging at the facility: VND 30,000/place

- Evaluation of conditions and assessment of response to good storage practices for drugs, medicinal ingredients, herbal ingredients and traditional herbs (GSP) (response assessment, maintenance assessment, change control assessment at facility), Condition assessment and good laboratory practice (GLP) response assessment (response assessment, maintenance assessment, change control assessment at the facility): VND 21,000/place
- Evaluation of conditions and assessment of satisfaction of drug distribution practices for wholesalers (GDP) (response assessment, maintenance assessment, change control assessment at the establishment): VND 4,000/place

III. Labor sector

3.1. Decision 2813/QD-UBND dated July 7, 2023 issued by the People's Committee of Ho Chi Minh City on announcing the List of administrative procedures in the field of employment under the receiving competence of the Management Board of the Industrial Zones. City of Industry and Trade, Management Board of City Hi-Tech Park, Department of Labor, War Invalids and Social Affairs of Ho Chi Minh City

The revised administrative procedures fall under the receiving authority of the Department of Labor - Invalids and Social Affairs, the Management Board of Industrial and Export Processing Zones of the City, the Management Board of the City Hi-Tech Park: Renewal of the license labor for foreign workers working in Vietnam.

Amended administrative procedures under the receiving authority of the City's Management Board of Export Processing Zones and Industrial Parks: Confirming that foreign workers are not subject to work permits

IV. Accounting, auditing sector

4.1. Dispatch 51356/CTHN-TTHT on July 17, 2023 on valid documents when paying income to employees via e-wallets issued by Hanoi Tax Department

In case Company A is a savings delivery company, it plans to pay income to employees in the form of payment to the employee's e-wallet, the payment has enough legal documents according to regulations of the Law, meeting the provisions of Clause 1, Article 4 of Circular No. 96/2015/TT-BTC and not falling into the cases of paying salaries, wages and other payables to employees that are not deductible specified in Clause 2 of Article 2. 4 Circular No. 96/2015/TT-BTC shall be determined as deductible expenses when determining taxable income.

4.2. Dispatch 8999/CTTPHCM-TTHT on July 19, 2023 on e-invoices issued by Ho Chi Minh City Tax Department

Make an invoice in case the buyer returns the goods due to improper specifications and quality:

- When selling goods or providing services, the seller must issue an invoice to deliver to the buyer (including cases of goods and services used for promotion, advertising, samples; goods and services). used for giving, giving, giving, exchanging, paying wages for employees and internal consumption (except for goods circulated internally to continue the production process); exporting goods in the form of loans, lending or returning goods) and must have all contents written on the invoice as prescribed, e-invoices must follow the standard data format of the tax authorities.
- In case an organization or individual buys goods, the seller has issued an invoice, the buyer has received the goods, but then the buyer discovers that the goods are not conforming to specifications or quality, they must return all or part of the goods. goods, the seller issues an invoice to return the goods to reduce or replace the invoice already made, the seller and the buyer have an agreement to clearly state the returned goods.
- For goods purchased before January 1, 2023 subject to VAT reduction at the rate of 8%, after December 31, 2022, the buyer returns the goods due to improper specifications and quality, then The seller issues an invoice to return the goods at the VAT rate of 8%.

Making commercial discount invoices of goods eligible for VAT reduction according to Decree No. 15/2022/ND-CP: In case a business establishment applies the form of

commercial discount for customers and for Commercial discount of goods eligible for VAT reduction at the rate of 8% sold in 2022 but from January 1, 2023, an invoice showing the content of the trade discount will be issued:

- In case the discount amount is made on the last purchase or the next period after December 31, 2022, the discount amount of the sold goods shall be adjusted according to the content of the taxable price, the actual tax rate in accordance with applicable law at the time of invoice.
- In case the discount amount is made at the end of the discount program (period) after December 31, 2022, the seller shall issue a new invoice to adjust and apply the VAT rate of 8% at the time of sale.

As for the instructions on using electronic invoices of the Ho Chi Minh City Tax Department which are different from the instructions at Dispatch No. 2121/TCT-CS dated May 29, 2023 of the General Department of Taxation, from May 29, 2023 onwards, business establishments comply with Dispatch No. 2121/TCT-CS.

V. Insurance sector

5.1. Decree 46/2023/ND-CP issued by the Government on July 1, 2023 guiding the Law on Insurance Business

Apply to the following target groups:

- Non-life insurance enterprises, life insurance enterprises, health insurance enterprises (hereinafter referred to as insurance enterprises), reinsurance enterprises, insurance agents, insurance broker enterprises, organizations and individuals providing auxiliary insurance 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 representative offices) Foreigners in Vietnam).
- Policyholder, Insured, Beneficiary.

- State management agency in charge of insurance business activities.
- Organizations and individuals involved in insurance business activities.

In case an insurance enterprise, reinsurance enterprise, or foreign branch in Vietnam has invested in corporate bonds issued for the purpose of restructuring the debts of the issuing enterprise before the date of January 1, 2023 is not allowed to extend this investment.

5.2. Notice 3347/TB-BHXH dated 11 July 2023 on adjustment of pension, social insurance allowance and monthly allowance according to Decree 42/2023/ND-CP issued by Social Insurance of Ho Chi Minh City

On June 29, 2023, the Government issued Decree No. 42/2023/ND-CP on adjustment of pensions, social insurance allowances and monthly allowances, effective from July 1, 2023, effective from August 14, 2023. Therefore, the monthly pension and social insurance allowance of July 2023 and August 2023, the social insurance agency shall pay according to the level of enjoyment in June 2023. The payment according to the new benefit rate and the repayment of the additional difference of July 2023 and August 2023 to the beneficiaries will be made at the payment period of September 2023.

According to Decree 42, the adjustment levels of pension, social insurance allowance and monthly allowance are specified as follows:

- An increase of 12.5% on the pension, social insurance allowance and monthly allowance of June 2023 for the subjects specified in this Decree has been adjusted according to Decree No. 108/2021/ND-CP dated December 7, 2021 of the Government on the adjustment of pension, social insurance allowance and monthly allowance.
- An increase of 20.8% on the monthly pension, social insurance allowance and allowance of June 2023 for the subjects specified in this Decree that have not been adjusted under Decree No. 108/2021/ND-CP.

Persons who are enjoying pensions, social insurance allowances or monthly allowances as prescribed in Clause 2, Article 1 of this Decree, and after being adjusted according to the above provisions, whose enjoyment level is lower than VND 3,000,000/person/month, shall be entitled to: Additional adjustments are as follows:

- Increase by VND 300,000/person/month for those with less than VND 2,700,000/person/month.
- Increase to VND 3,000,000/person/month for those who earn from VND 2,700,000/person/month to less than VND 3,000,000/person/month.

5.3. Dispatch 3095/BHXH-TST dated July 3, 2023 regulations on foreign exchange rates for the last 6 months of 2023 issued by Ho Chi Minh City Social Insurance

Pursuant to Clause 1, Article 26 of Decree No. 115/2015/ND-CP dated November 11, 2015 of the Government detailing a number of articles of the Law on Social Insurance on compulsory social insurance;

Pursuant to the Notice No. 201/TB-NHNN dated June 30, 2023 of the State Bank of Vietnam on the announcement of the average exchange rate on the interbank foreign currency market of the Vietnamese Dong to the US Dollar, applicable valid for July 1, 2023.

The Social Security Administration of Ho Chi Minh City announces the conversion rate of foreign currency in Vietnam dong from July 1, 2023 for the last 6 months of 2023, for employees whose salaries and wages are stated in the labor contract. Foreign currency transactions are: VND/USD 23,800 (Twenty three thousand eight hundred dong).

VI. Currency-banking sector

6.1. Decision 1367/QD-NHNN dated July 14, 2023 announcing the amended and supplemented administrative procedures in the field of establishment and banking operations performed at the one-stop department under the management function the State Bank of Vietnam

Administrative procedures are carried out at the State Bank of Vietnam:

- Procedures for granting a license for the establishment and operation of a limited liability non-banking credit institution
- Procedures for granting establishment and operation license of joint-stock non-banking credit institutions
- Procedures for granting additional operational contents to the License of a non-banking credit institution



- Procedures for concurrently requesting the addition of operational contents, licenses and renewal of licenses of non-banking credit institutions
- Procedures for renewal of establishment and operation licenses of non-banking credit institutions

Administrative procedures performed at the State Bank of Vietnam and State Bank branches in provinces and cities: Procedures for reporting the opening of operations of non-banking credit institutions