

LEGAL NEWSLETTER

No. 8 – September 2023 – Capable Counsel

I. Corporate sector

1.1. Decree No. 69/2023/NĐ-CP of Government dated September 14, 2023 amends and supplements several clauses of Decree No. 159/2020/NĐ-CP dated December 31, 2020 on the management of title-holders, positions and representatives of state capital in enterprises.

This Decree amends and supplements several main contents as follows:

- Adding conditions for the appointment of managers of state-owned enterprises
- Amending and supplementing principles and conditions for the planning of positions, titles of leaders and managers
- Revise the order and procedures for the appointment of on-site human resources and human resources from other places
- Amending and supplementing appointment dossiers
- Addition of Standards, conditions of rotation
- Amendments to contents on resignation and dismissal
- Amendments of the statute of limitations, durations, orders, disciplinary procedures

This decree takes effect from September 14, 2023.

1.2. Dispatch No. 65973/CTHN-TTHT dated September 12, 2023 of Hanoi Department of Taxation on CIT finalization declaration

Pursuant to the provisions of law, in case the Company has a power plant other than the provincial level where the head office is located (centralized accounting is carried out at the head office), the place to submit the tax return is the tax authority directly managing the head office as prescribed in Clause 2 Article 11 of the Government's Dispatch No. 126/2020/ND-CP.

In case the Company has a hydropower plant other than the province where the head office is located, in case of CIT allocation as prescribed in Clause 1, Article 17 of Circular No. the Ministry of Finance, the Company shall declare corporate income tax finalization for all business activities according to Form No. 03/TNDN, submit the appendix to the allocation of corporate income tax payable to localities where revenues for hydropower production activities are entitled according to Form No. 03-8/TNDN and Form No. 03-8B/TNDN issued together with Appendix II of Circular 80 tax authority directly managing it; pay the amount allocated to the locality where hydropower plants are located as prescribed in Clause 4, Article 12 of Circular No the Ministry of Finance.

1.3. Dispatch No. 7498/BKHĐT-DKKD dated September 12, 2023 of the Ministry of Planning and Investment amending Circular No. 02/2023/TT-BKHĐT

Due to technical negligence, the Ministry of Planning and Investment would like to correct 01 error in the form "Application for supplementation and update of business household registration information in the information system on business household registration" issued together with Circular No. 02/2023/TT-BKHDT dated April 18th, 2023 of the Minister of Planning and Investment amending, supplementing several articles of Circular No. 01/2021/TT-BKHDT dated 16/3/2021 guiding business registration as follows:

In Appendix III-7 issued together with Circular No. 02/2023/TT-BKHĐT:

Section 6:

"6. Entity establishing a business household (mark X in the appropriate box):

- Citizen identification card Identity card"

Now please correct this:

"6. Entity establishing a business household (mark X in the appropriate box):

- Individuals Household members"

1.4. Dispatch No. 69626/CTHN-TTHT dated September 27, 2023 on value-added tax deduction and deductible expenses when calculating corporate income tax for hospitality activities issued by the Hanoi Tax Department

In case the Company incurs input VAT on goods and services used for the production and sale of goods and services subject to VAT if it meets the conditions for input VAT deduction specified in Clause 10 of Article 1 Circular No. 26/2015/TT-BTC dated February 27, 2015 of the Ministry of Finance and comply with the principle of input VAT deduction specified in Article 14 of Circular No. 219/2013/TT-BTC dated December 31, 2013 of the Ministry of Finance is fully deductible.

Expenses serving the Company's production and business activities, if they meet the conditions in Article 4 of Circular No. 96/2015/TT-BTC dated June 22, 2015 of the Ministry of Finance, will be included in expenses. Fees are deductible when determining the Company's corporate income taxable income.

II. Taxes, fees, charges sector

2.1. Circular No. 60/2023/TT-BTC dated September 7, 2023, of the Ministry of Finance stipulates the collection level, system relative to the collection, payment, exemption and management of fees for registration and issuance of road motor vehicle plates

This Circular prescribes the collection level, system of collection, payment, exemption and management of fees for registration and issuance of road motor vehicle plates (hereinafter referred to as fees for issuance of registration certificates and number plates of vehicles).

Applicable to fee payers, fee collecting organizations and other organizations and individuals involved in collecting, submitting, exempting and managing fees for issuance of registration certificates and license plates of vehicles.

This Circular does not apply to the issuance of registration certificates, license plates of specialized motorcycles for road traffic (issued by the Department of Transport with registration certificates and number plates) and military motor vehicles used for defense purposes.

This circular takes effect from October 22, 2023.

2.2. Dispatch No. 4625/TCHQ-GSQL dated September 6, 2023 of the General Department of Vietnam Customs guiding goods subject to anti-dumping duty.

In response to the application for assistance from companies regarding problems in the implementation of the Decision on the imposition of anti-dumping duty (CBPG), the General Department of Vietnam Customs commented as follows:

Regarding the problem of CBPG tax for on-site imports, the General Department of Customs has issued Decree No. 944/TCHQ-TXNK dated March 22, 2022 instructing the Department of Customs Binh Duong to implement (attached to the letter). Accordingly, "in case enterprises import on the spot long fiber products originating from the People's Republic of China, the Republic of India, the Republic of Indonesia and Malaysia, CBPG tax shall be applied according to Decision 2302/QĐ-BCT of the Ministry of Industry and Trade. Customs authorities carry out C/O inspections to determine the subjects to apply CBPG. In case the customs declarant fails to submit the certificate of origin for inspection by the customs authority to determine the subject of CBPG, the CBPG tax as prescribed in Decision No. 2080/QĐ-BCT, Decision No. 2302/QĐ-BCT is 54.9%." In addition, the issuance of C/O for on-site import and export goods falls under the competence of the Ministry of Industry and Trade, not under the competence of the General Department of Customs.

2.3. Dispatch No. 64877/CTHN-TTHT dated September 7, 2023 of the Hanoi Department of Taxation on invoicing when selling goods and services

Pursuant to tax laws, Hanoi City Tax Department guides as follows:

When selling goods or providing services, the Company must make invoices for delivery to buyers as prescribed in Article 4 of Decree 123/2020/ND-CP by the Government.

In case goods are not subject to import VAT as prescribed in Article 4 of Circular No. 219/2013/TT-BTC (amended and supplemented according to Circular No. 26/2015/TT-BTC, Circular No. 130/2016/TT-BTC, Circular No. 25/2018/TT-BTC) if the using purpose is changed, entities must pay import VAT as prescribed to the customs office where the customs declaration is registered. Organizations selling goods to the domestic market must declare and pay VAT with the tax authority directly managing it as prescribed in Clause 26 Article 4 of Circular No. 219/2013/TT-BTC.

2.4. Dispatch No. 65210/CTHN-TTHT dated September 7, 2023 of Hanoi Department of Taxation on VAT policy

Pursuant to tax laws, in case the service provider must issue an invoice for delivery to the buyer as prescribed in Clause 1 Article 4 of Decree No. 123/2020/ND-CP.

In case the entity declares and pays VAT according to the deduction method and provides services to customers other than the subjects specified in Articles 4, 9, and 10, the VAT rate of 10% shall be applied as prescribed in Article 11 of Circular No. 219/2013/TT-BTC.

2.5. Dispatch No. 65202/CTHN-TTHT dated September 8, 2023 of the Hanoi Department of Taxation guiding VAT rates according to Decree No. 15/2022/NĐ-CP

Pursuant to tax laws, in case of repeated delivery or handover of each item or service stage, each delivery or handover must be invoiced corresponding to the volume and value of goods and/or services as prescribed in Clause 2 Article 9 of Decree 123/2020/NĐ-CP by the Government dated October 19th, 2020. The period of determination of VAT for service provision is the time of completion of services or the time of invoicing for services, regardless of whether money has been collected or not as prescribed in Article 8 of Circular No. 219/2013/TT-BTC dated 31/12/2013 of the Ministry of Finance.

In case the Company provides services (subject to entities benefiting from VAT reduction according to Decree No. 15/2022/NĐ-CP) but after 31/12/2022, the Company will invoice for completed service revenue and arising from 01/02/2022 to 31/12/2022, in case of an incorrect invoice, applied VAT reduction according to Decree No. 15/2022/NĐ-CP of the Government dated January 28, 2022 and handled relative to administrative violations for timely invoicing.

In case the Company performs electronic invoicing, sent to the buyer, then detects errors in the amount stated on the invoice, wrong tax rates and tax amounts, it shall comply with the provisions on invoice processing with errors in Clause 2 Article 19 of the Government's Decree 123/2020/NĐ-CP dated October 19, 2020.

2.6. Dispatch No. 65203/CTHN-TTHT dated September 8, 2023 of the Hanoi Department of Taxation on tax exemption and reduction under the Double Taxation Avoidance Agreement between Vietnam and Malaysia

Pursuant to tax laws, in case Bank A's revenue received under the Resource Sharing Agreement includes any services in a field of technology, management or consultation, except for employees of Bank A, it shall be considered as a technology fee incurred in Vietnam as prescribed in Clause 2, Article 13 of the Agreement between The government

of the Socialist Republic of Vietnam and the Government of Malaysia aims to avoid double taxation and to and prevent evasion avoid financial obligations for income taxes.

Regarding tax exemption and reduction under the Double Taxation Avoidance Agreement between Vietnam and Malaysia, Bank A is requested based on the actual situation, comparing with the provisions of Clause 2, Article 2, Article 7 and Article 13 of the Agreement between the Government of the Socialist Republic of Vietnam and the Government of Malaysia to avoid double taxation and prevent evasion avoid financial obligations for income taxes to apply appropriate and regulated tax policies.

2.7. Dispatch No. 67046/CTHN-TTHT dated September 15, 2023 of the Hanoi Department of Taxation on the criteria of names of goods and services on VAT invoices

Pursuant to the provisions of the law, the Hanoi City Tax Department has the following opinion:

A rightful invoice is an invoice that ensures the correct and complete form and content as prescribed. The invoice must show the name of goods and/or services in Vietnamese. In case goods and/or services are traded with regulations on codes of goods and/or services, both names and codes of goods and/or services must be written on the invoice as prescribed in Article 10 of Decree No. 123/2020/NĐ-CP by the Government dated October 19th, 2020.

2.8. Dispatch 4830/TCHQ-TXNK dated September 18, 2023 on temporarily exported and re-imported goods for lease to export processing enterprises issued by the General Department of Customs

The relationship of buying, selling and exchanging goods between EPEs (meeting the provisions of Clause 1, Article 4 of the Law on Export and Import Tax No. 107/2016/QH13) with outside parties is an export and import relationship.

In cases where machinery, equipment, and professional tools are temporarily exported and re-imported by an enterprise to perform a rental contract, not to serve the construction of projects of the enterprise abroad; Machinery, equipment, and professional tools that are not temporarily exported and re-imported to serve work within a certain period are not subject to tax exemption. When exporting, enterprises must pay export tax (if any), when importing, they must pay import tax according to regulations.

2.9. Dispatch 68332/CTHN-TTHT dated September 21, 2023 on value-added tax deduction declaration issued by the Hanoi Tax Department

In case the Company signs a contract to import goods with a foreign partner under the delivery conditions DDP (Delivery Duty Paid), the Seller will bear the cost of import tax and VAT payable on imported goods (if any) so the Company is not subject to import tax or VAT on imported goods.

2.10. Dispatch 69625/CTHN-TTHT dated September 27, 2023 on registration of family deductions for dependents whose tax codes have changed their status to taxpayers issued by the Hanoi Tax Department

In cases where the employee's child is studying at a university, college, vocational high school, or vocational school and has no income or has an average monthly income of the year from all sources of income, exceeding 1,000,000 VND, it will be determined as a dependent so that the taxpayer can register for family deductions according to the instructions in item d.1.3, point d, clause 1, Article 9, Circular 111/2013/TT-BTC dated December 15, 2013. August 2013 of the Ministry of Finance.

In case the employee has not yet completed the procedure to reduce dependents, he/she will continue to calculate family deductions for dependents who meet the above conditions to be identified as dependents.

III. Export and import sector

3.1. Decree No. 68/2023/ND-CP dated September 7, 2023 of the Government amending and supplementing a number of Articles of Decree No. 115/2022/ND-CP dated December 30, 2022 of the Government promulgating the schedule Vietnam's preferential export tariffs and special preferential import tariffs to implement the Comprehensive and Progressive Agreement for Trans-Pacific Partnership for the period 2022 - 2027

This Decree adds 03 countries applying Vietnam's preferential export tariffs to implement the CPTPP Agreement. The Government added Malaysia, the Republic of Chile and Brunei to the Preferential Export Tariff Table to implement the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership effective January 14, 2019; effective for

Malaysia from November 29, 2022; effective for the Republic of Chile from February 21, 2023; effective for Brunei Damascus from July 12, 2023.

This Decree takes effect from September 7, 2023.

3.2. Dispatch No. 4795/TCHQ-TXNK dated September 15, 2023 of the General Department of Vietnam Customs on import tax refunds for goods imported on-site and then exported

1. About on-site export and import procedures

Pursuant to the provisions of law, goods purchased and sold between Vietnamese enterprises and foreign organizations and individuals not present in Vietnam and appointed by foreign traders to deliver and receive goods with other enterprises in Vietnam in the case of export procedures, on-site import as prescribed at Point c, Clause 1, Article 35 of Decree No. 08/2015/ND-CP. In case a foreign trader fails to get the conditions that the foreign trader is not present in Vietnam specified in Clause 5, Article 3 of the Law on Foreign Trade Management, it shall not fall into the case of on-site import and export specified at Point c, Clause 1, Article 35 of Decree No. 08/2015/ND-CP, Enterprises are not allowed to register on-site import customs declaration.

2. Regarding customs procedures in case of goods sent to bonded warehouses

Pursuant to the provisions of law, goods from Vietnam that have completed customs procedures for export, goods from abroad waiting for import procedures into Vietnam or waiting for export to third countries of entities permitted to rent bonded warehouses shall be put into storage in bonded warehouses. Goods in/out-imported to bonded warehouses must go through customs procedures by the provisions of the law.

3. About tax refunds on on-site import declarations

Pursuant to the provisions of law, in case the goods imported on site have paid import tax for production and business, the products imported on site have been put into the production of goods for export and have exported the products abroad or into the non-tariff zone.

IV. Insurance sector

4.1. Decree No. 67/2023/NĐ-CP by the Government dated September 6, 2023 stipulates compulsory motor vehicle owners' civil liability insurance, compulsory fire-and-explosion insurance, and compulsory insurance in construction & investment activities

This Decree stipulates the following contents:

- Insurance conditions, insurance premiums, minimum insurance amount for compulsory motor vehicle owners' civil liability insurance, compulsory fire-and-explosion insurance, compulsory insurance in construction & investment activities.
- Mechanism for management and use of the Motor Vehicle Insurance Fund; level of fee receivables, management regime and use of fees from compulsory fire-and-explosion insurance for fire precautions and fire fighting activities.
- Responsibilities of relevant ministries, buyers of insurance and insurers in the implementation of compulsory motor vehicle owners' civil liability insurance, compulsory fire-and-explosion insurance and compulsory insurance in construction & investment activities.

Applicable to the following target groups:

- Owners of motor vehicles participating in traffic and operating in the territory of the Socialist Republic of Vietnam shall be subject to compulsory motor vehicle owners' civil liability insurance.
- Agencies, organizations and individuals having scope of operation/production in danger of fire and explosion by the law on fire precaution and fighting for compulsory fire and explosion insurance.
- Investors and contractors by the provisions of construction law for compulsory insurance in construction & investment activities.
- Non-life insurance enterprises, branches of foreign non-life insurance enterprises (hereinafter referred to as "insurance enterprises"); reinsurers, branches of foreign reinsurance enterprises (hereinafter referred to as "reinsurance enterprises").

This Decree takes effect from September 6, 2023.