



**LEGAL, LABOR AND
TAX UPDATES
April & May 2021**

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A. NEW LEGAL INSTRUMENT

❖ GOVERNMENT

26/03/2021| Decree No. 31/2021/NĐ-CP on elaboration of some articles of the law on investment

Scope

1. This Decree elaborates and provides guidelines for some Articles of the Law on Investment on investment conditions; business lines and conditions for market access by foreign investors (hereinafter referred to as “market access”); guarantees for business investment; investment incentives and assistance; outward investment activities; investment promotion; state management of investment in Vietnam and outward investment.

2. Outward investment activities specified in Point d Clause 1 Article 52 of the Law on Investment; outward investment in the petroleum field; procedures for granting approval for investment guidelines by the National Assembly; investment supervision and assessment are prescribed in separate Decrees of the Government.

Regulated entities

This Decree applies to investors and competent authorities, organizations and individuals that are relevant to business investment activities in Vietnam and outward business investment activities.

Remarkable issues

Decree No. 31 consists of 9 chapters and 132 articles, guiding the Investment Law on issues related to investment and business sectors, investment incentives and support, implementation of investment projects, establishment of economic organization and conduct investment activities of foreign investors, investment activities abroad, investment promotion and state management on investment.

(The Decree took effect from 26 March 2021)

29/03/2021| Decree No. 35/2021/NĐ-CP on elaboration of some articles of the law on public - private partnership investment

Scope

This Decree elaborates the Law on Public - Private Partnership Investment ((hereinafter referred to as “PPP Law” regarding investment sectors, scales of PPP projects; PPP Project Assessment Boards; preparations for PPP projects; selection of investors executing PPP projects; confirmation of completion and transfer of works and infrastructure; termination of PPP project contracts; handling of various situations and violations during PPP investment.

Investment sectors, size of PPP projects

1. Transportation

a) Sectors: Road transport; railway transport, inland waterways transport; maritime transport; air transport;

b) Size: total investment of at least VND 1.500 billion.

2. Electrical grid, power plants

a) Sectors: renewable energy; coal-fired power; gas-fired power (including liquefied natural gas - LNG); nuclear power; electrical grid; except the cases of state monopoly prescribed by Law on Electricity;

b) Size: total investment of at least VND 1.500 billion; for renewable energy projects: total investment of at least VND 500 billion.

3. Irrigation; clear water supply, water drainage and wastewater treatment; waste treatment: total investment of at least VND 200 billion.

4. Healthcare

a) Sectors: Medical examination and treatment facilities; preventive healthcare; testing;

b) Size: total investment of at least VND 100 billion.

5. Education - training

a) Sectors: infrastructure, facilities, equipment serving education – training and vocational education;

b) Size: total investment of at least VND 100 billion.

6. Information technology (IT) infrastructure

a) Sectors: digital information and digital economy infrastructure; modernization of IT in Communist Party and State agencies; application and development of information technology, databases, data centers; common national platforms, applications, services; network security; system of applications and services serving the people and enterprises; information and communication technology (ITC) infrastructure for smart cities;

b) Size: total investment of at least VND 200 billion.

(The Decree took effect from 29 March 2021)

31/03/2021 | Decree No. 44/2021/NĐ-CP on guidelines for deductible expenses upon determination of income subject to corporate income tax regarding enterprise/organization's grants to prevention and control of covid-19 pandemic

Regulated entities and scope

This Decree applies to organizations and enterprises (hereinafter referred to as enterprises) which are corporate income taxpayers as prescribed in the Law on Corporate Income Tax and incur expenses being grants to prevention and control of COVID-19 pandemic in Vietnam.

Noteworthy issues

1. Deductible expenses upon determination of taxable corporate income:

- An enterprise may claim a deduction from taxable corporate income for any grant in cash or in kind given to the recipients as specified in clause 2 hereof for the prevention and control of COVID-19 pandemic in Vietnam.
- Recipients of grants include: The Committees of Vietnamese Fatherland Front at all levels; health facilities; the armed force units; units and organizations tasked by competent authorities to perform duties at centralized quarantine facilities; education institutions; press agencies; Ministries, ministerial-level agencies or Governmental agencies; Communist Party organizations, youth unions, central and local trade unions; agencies affiliated to local governments that have fund-raising function; funds for prevention and control of COVID-19 pandemic at all levels; national humanitarian fund web portals; charitable and humanitarian funds, and organizations incorporated and operating under law that have fund-raising function.

Recipients of grants are responsible for using and distributing the grants received for prevention and control of COVID-19 pandemic with proper purposes.

- Dossier of grants includes: A written confirmation of grants using the form hereto appended or a document (physical or electronic form) to confirm the grants with signatures and seals of the representative of the grant-giving enterprise and the representative of the grant recipient; enclosed with legal proof as required by law of the grants in cash or in kind.

2. This Decree applies to the taxable corporate income period of 2020 and 2021.

(The Decree took effect from 31 March 2021)

19/04/2021 | Decree No. 52/2021/NĐ-CP on deferral of value-added tax, corporate income tax, personal income tax and land rents in 2021

Scope

This Decree provides for deferral of payment of value-added tax, corporate income tax, personal income tax and land rents.

Regulated entities

This Decree applies to:

1. Enterprises, organizations, household businesses, individuals that have manufacturing activities in the following economic sectors:

a) Agriculture, forestry and aquaculture;

b) Production and processing of food; textiles; garments; manufacture of leather and leather products; wood treatment and manufacture of products from wood, bamboo, rattan (except furniture); manufacture of products from straw and plaiting materials; manufacture of paper products; manufacture of rubber and plastic products; manufacture of products from other non-metallic minerals; metal production; mechanical working; metal treating and coating; manufacture of electronics, computers and optical products; manufacture of automobiles and other motor vehicles; furniture production;

c) Construction;

d) Publishing; cinematography and production of TV programs, music recording and publishing;

dd) Extraction of crude oil and natural gas (except corporate income tax on crude oil, condensate, natural gas collected under international agreements or contracts);

e) Beverage production; printing, replication of recordings; production of coke, refined petroleum products; manufacture of chemicals and chemical products; manufacture of products from precast metals (except machinery and equipment); manufacture of motorcycles; repair, maintenance and installation of machinery and equipment;

g) Water drainage and wastewater treatment.

2. Enterprises, organizations, household businesses and individuals that operate in the following economic sectors:

a) Transport and warehousing; accommodation, food and drink; education and training; healthcare and social assistance; real estate trading;

b) Employment services; travel agencies, tourism services and auxiliary tourism services;

c) Composing, art and entertainment; library, archive, museum operation and other artistic activities; sports and entertainment; cinemas;

d) Radio and TV broadcasting; computer programming, counseling services and other computer-related services; information service provision;

dd) Mineral extraction auxiliary services.

3. Enterprises, organizations, household businesses and individuals that are manufacturers of prioritized ancillary industry products or key mechanical products.

4. Small enterprises and microenterprises

5. Credit institutions and foreign bank branches (FBB) shall provide assistance for enterprises, organizations and individuals affected by Covid-19 as prescribed by the State bank of Vietnam (SBV).

The economic sectors and business lines of enterprises, organizations, household businesses and individual businesses specified in Clause 1, Clause 2 and Clause 3 thereon are those they operate in and earn revenue from in 2020 or 2021.

Tax and land rent deferral is as follows:

Taxpayer's Obligations	Extension period	Extension time
VAT	March – June 2021 1 st and 2 nd quarter of 2021	5 months
	July 2021	4 months
	August 2021	3 months
CIT	1 st and 2 nd quarter of 2021	3 months
Land rent	First period of 2021	6 months from May 31, 2021

VAT and PIT of 2021 of household businesses and individual businesses will be deferred to December 31, 2021.

(The Decree took effect from 19 April 2021)

❖ **MINISTRY OF FINANCE**

17/05/2021 | Circular No. 31/2021/TT-BTC on prescribing application of risk management to tax administration

Scope

This Circular introduces regulations on application of risk management to tax administration by tax authorities at all levels, including:

1. Collection, processing, management and use of information related to taxpayers to serve risk management.
2. Assessment of the compliance with tax laws and classification of taxpayer risks.
3. Application of tax administration measures corresponding to levels of compliance with tax laws and levels of taxpayer risks.

Regulated entities

1. Taxpayers.
2. Tax authorities.
3. Tax officials.
4. Relevant regulatory authorities, organizations and individuals as prescribed in Article 2 of the Law on Tax Administration.

(The Circular shall take effect from 02 July 2021)

B. OFFICIAL INSTRUCTIONS

+ OFFICIAL DISPATCH ON TAXATION

9/4/2021 | Official Dispatch No. 1037/TCT-CS on problems in determining CIT incentives

If enterprises with investment projects entitled to CIT incentives because of meeting the conditions for geographical incentives, the incomes eligible for incentives are incomes from production and business activities of the investment project in preferential areas, except for incomes unentitled to incentives under the provisions of the Law on CIT (such as project transfer, real estate transfer, mineral exploitation, goods and services production and trading subject to excise tax).

Official Letter No. 940/CT-TTHT dated December 10, 2020 of the Tax Department states that Khanh Vy Co., Ltd. (the Company) is a commercial unit only earning income outside the preferential areas (only buys goods from Hai Trieu Production Trading & Service Co., Ltd in Ca Mau city and only sells goods to Ngan Phuc Trading & Service Co., Ltd in Ho Chi Minh City), so the General Department of Taxation agreed with the proposal of the Department of Taxation that the Company will not be entitled to CIT incentives for income generated outside the preferential areas.

15/4/2021 | Official Dispatch No. 1111/TCT-DNL on issues related to depreciation expense and VAT

The Ministry of Finance issued Official Letter No. 16661/BTC-QLCS dated December 8, 2017 requesting the Vietnam Social Insurance to coordinate with the Ministry of Health to direct: *"...the medical examination and treatment departments are not allowed to borrow machines or place machines to avoid dependence on the unit lending machines for selling supplies and chemicals..."* and Official Letter No. 6009/BTC-QLCS dated May 24, 2018 to the Ministry of Health states: *"The law on management and use of public property does not stipulate that agencies, organizations and units may "borrow" property for use."*

According to the report, Roche Vietnam Co., Ltd. is a foreign-invested enterprise doing business in the field of medical equipment distribution in the conditional business line. So, besides the rights and obligations stated at the Law on Tax Administration and guiding documents, the taxpayer is also obliged to strictly comply with relevant legal provisions.

Based on the above regulations, trading reagents and placing diagnostic machines for public medical facilities has not been stated by the specialized legal system in the field of health and public property management. Therefore, the request to deduct input VAT and calculate depreciation of fixed assets for the aforesaid machinery and equipment of the Company has no basis.

Contact information

For more information, please contact:

Head office

Nguyen Ngoc Thanh (Mr.)
Deputy General Director – Consulting and
Training Partner
Email: thanh.nn@a-c.com.vn
Mobile: +84 9 0366 0686
Tel: +84 28 3547 2972 - Ext: 203

Ha Noi Branch

Nguyen Hoang Duc (Mr.)
Deputy General Director
Director of Ha Noi Branch
Email: duc.nh@a-c.com.vn
Mobile: +84 9 1359 2929
Tel: +84 24 3736 7879 - Ext: 456

Nha Trang Branch

Nguyen Van Kien (Mr.)
Deputy General Director
Director of Nha Trang Branch
Email: kien.nv@a-c.com.vn
Mobile: +84 94 508 7979
Tel: +84 258 246 5151 - Ext: 202

Can Tho Branch

Nguyen Huu Danh (Mr.)
Director of Can Tho Branch
Email: danh.nh@a-c.com.vn
Mobile: +84 91 815 0488
Tel: +84 292 376 4995 - Ext: 106



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- Finalized investment accounts.
- Estimates and finalized accounts of construction projects.
- Report funding project.

❖ **Accounting.**

❖ **Financial inspection.**

❖ **Property appraisal.**

- ❖ **Consultancy** in respect of legality, investment, privatization, taxation, enterprise finance, business administration, transfer pricing, etc.

- ❖ **Training and improving** competency of workforce in auditing, accounting, finance, taxation and other topics in respect of market and economy.



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