



LEGAL, LABOR AND TAX UPDATES

August & September 2021

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A. NEW LEGAL INSTRUMENT

❖ GOVERNMENT

26/08/2021 | Decree No. 80/2021/NĐ-CP on elaboration of some articles of the law on provision of assistance for small and medium enterprises

Scope

This Decree elaborates some Articles of the Law on Provision of Assistance for Small and Medium Enterprises regarding criteria for identification of small and medium enterprises, provision of assistance in terms of technology, information, consultancy, development of human resources, provision of assistance for small and medium enterprises that are converted from household businesses, startups, small and medium enterprises that recently participate in industry clusters and the value chain; responsibilities of agencies and organizations for provision of assistance for small and medium enterprises.

Regulated entities

1. Enterprises that are established, organized and run in accordance with regulations of law on enterprises, satisfy criteria for identification of small and medium enterprises (SMEs) specified in Article 5 of this Decree.
2. Agencies, organizations and individuals relevant to provision of assistance for SMEs.

(This Decree shall take effect on 15 October 2021)

❖ MINISTRY OF FINANCE

17/8/2021 | Circular No. 71/2021/TT-BTC guidance on corporate income tax arrears not yet retrospectively collected from societalized entities

Accordingly, societalized entities established before the effective date of the Prime Minister's Decision No. 1470/QĐ-TTg dated July 22, 2016, earning income from societalization activities, being held liable to fulfill corporate income tax obligations and be entitled to corporate income tax incentives if they meet the preferential conditions for societalization process in such sectors as education – training, vocational education, health, culture, sports and environment.

If societalized entities fail to satisfy the conditions specified in the Prime Minister's Decisions, they shall make additional declarations of the amount of corporate income tax underpayment (if any), self-assess payable CIT amount, or the Tax Authority will retrospectively collect CIT arrears.

Societalized entities incurring corporate income tax Societalized entities incurring corporate income tax shall not be fined for any violations against laws on taxes and shall not be charged late payment interest on the corporate income tax arrears that are not retrospectively collected till the effective date of this Circular (01 November 2021). As from the day following the effective date of this Circular (02 November 2021), if societalized entities have not yet paid corporate income tax arrears that have not yet been collected retrospectively for the time being, they must pay late payment interest on amounts of tax arrears and fines for violations against laws on taxes (if any).

17/9/2021 | Circular No. 78/2021/TT-BTC guiding the implementation of a number of articles of the Law on Tax Administration, and Decree No. 123/2020/ND-CP on invoices and documents

According to this document, business households and individuals will have access to e-invoices as from July 1, 2022 in the following cases:

- If paying taxes according to the tax declaration method, they will be required to issue e-invoices;
- If declaring taxes as they arise need to issue invoices, the Tax Authority might provide them with e-invoices separately on an on-demand basis;
- If declaring taxes as they arise need to issue invoices, the Tax Authority might provide them with e-invoices separately on an on-demand basis.

Except in the following cases where paper invoices provided by the Tax Authority might be used within the maximum period of 12 months as prescribed in clause 1 of Article 14 in the Decree No. 123/2020/ND-CP:

Having no electronic transactions with tax authorities; no IT infrastructure; no accounting software systems; no e-invoicing software enabling use of e-invoices and transmitting e-invoice data to buyers and tax authorities.

This maximum 12-month period existing in a one-off manner starts from:

- July 1, 2022 with regard to business households or individuals that carry on business before July 1, 2022;
- Or the date of registration for use of invoices with regard to business households and individuals that set up in business from July 1, 2022.

(This Circular shall take effect on 01 July 2022)

❖ **STATE BANK OF VIETNAM**

07/09/2021| Circular No. 14/2021/TT-NHNN amendments to Circular No.01/2020/TT-NHNN on providing instructions for credit institutions and foreign branch banks (FBB) on debt rescheduling, exemption or reduction of interest and fees, retention of debt category to assist borrowers affected by the Covid-19 pandemic.

Remarkable issues

- **Debt rescheduling:** An outstanding debt, including the principal and/or interest may be rescheduled by the credit institution or FBB if it fully satisfies the following conditions:
 - ✓ The debt is a loan or finance lease that is granted before 01/8/2021;
 - ✓ The principal and/or interest occur during the period from 23/01/2020 to 30/6/2022;
 - ✓ The outstanding debt may be rescheduled in one of the following cases:
 - a) The outstanding debt is undue or has been overdue for not more than 10 days according to the concluded agreement, except the cases specified in Point b, Point c, Point d of this Clause;

- b) The outstanding debt belongs to a debt that occurs before 23/01/2020 and becomes overdue during the period from 23/01/2020 to 30/6/2020;
 - c) The outstanding debt belongs to a debt that occurs during the period from 23/01/2020 to before 10/6/2020 and becomes overdue before 17/5/2021;
 - d) The outstanding debt belongs to a debt that occurs during the period from 10/6/2020 to before 01/8/2021 and becomes overdue during the period from 17/7/2021 to before 07/9/2021.
- ✓ The borrower is assessed by the credit institution or FBB as incapable of paying the principal and/or interest on schedule under the agreement due to decrease in revenue or income caused by COVID-19 pandemic.
 - ✓ The borrower applies for rescheduling of the debt and is assessed by the credit institution or FBB as capable of fully paying the principal and/or interest after the debt is rescheduled.
 - ✓ Credit institutions and FBBs shall not reschedule debts that violate regulations of law.
 - ✓ The rescheduling period (including debt deferral) shall be appropriate for the impacts of Covid-19 pandemic on the borrower and shall not exceed 12 months from the day on which rescheduling is granted by the credit institution/FBB, or from the original deadline for payment of the outstanding debt.
 - ✓ Debt rescheduling shall be carried out until 30/6/2022.
- **Reduction and exemption of interest and/or fees**
- ✓ Credit institutions and FBBs shall, according to their own rules and regulations, decide reduction and exemption of interest and/or outstanding debts of the debts that arise before 01/8/2021 from extend credit (except purchases of corporate bonds) whose principal and/or interest are due during the period from 23/01/2020 to 30/6/2022 but the borrowers are not capable of fully paying the principal and/or interest by the deadline specified in the original agreement due to decrease in revenue or income caused by the COVID-19 pandemic.
 - ✓ Reduction and exemption of interest and/or fees shall be carried out until 30/6/2022.

(This Circular took effect on 07 September 2021)

B. OFFICIAL INSTRUCTIONS

OFFICIAL DISPATCH ON LABOR

25/8/2021 | Official Dispatch No. 2844/LDTBXH-PC on difficulties in policy implementation

For enterprises organizing operation according to “3 on-the-spot” principle where several workers do not agree with accommodation solutions which satisfy “3 on-the-spot” principle of the enterprises, workers and enterprises shall agree with any of the following solutions:

- Enterprises allow workers to suspend working and pay workers with employment suspension pay as per Clause 3 Article 99 of the Labor Code. In this case, workers shall benefit from employment suspension policies when they satisfy all requirements under Chapter V (Article 17 through Article 20) of Decision No. 23/2021/QĐ-TTg dated July 7, 2021 of Prime Minister.
- Enterprises agree with workers to allow workers to delay employment contracts as per Point h Clause 1 Article 30 of the Labor Code or both parties agree on temporary non-paid leave as per Clause 3 Article 115 of the Labor Code.
- Other cases according to labor laws namely: agreement on termination of employment contract according to Clause 3 Article 34 of the Labor Code; implementation of unilateral termination of employment contract with workers according to Point c Clause 1 Article 36 of the Labor Code, etc.

OFFICIAL DISPATCH ON TESTING SARS-CoV-2

30/09/2021 | Official Dispatch No. 8228/BYT-MT guidelines for testing SARS-CoV-2 at production and business facilities

Accordingly, the Ministry of Health requested ministries, branches and provincial People's Committees to urgently implement regulations on testing SARS-CoV-2 at production and business facilities as follows:

- Perform screening tests for all employees with signs or symptoms of COVID-19 such as cough, fever, shortness of breath, etc. or relevant epidemiological factors.
- Perform periodic tests for employees:
 - + Extremely high-risk provinces, cities: Testing at least 20% of employees (High-risk employees) every week; Testing all employees (Direct suppliers of services to businesses) every week.
 - + High-risk and medium-risk provinces, cities: Testing at least 5-10% of employees (High-risk employees) every two weeks; Testing all employees (Direct suppliers of services to businesses) every two weeks.

Notes: Do not test fully vaccinated people (those who have received their last dose at least 14 days before and within 12 months), or people who have fully recovered from COVID-19 in the past 6 months.

- RT-PCR tests or rapid antigen tests are used.

- The test results shall be promptly reported to the medical center of district where the business is located (*within 2 hours after the end of the testing date and immediately reported if there is any case testing positive for SARS- CoV-2*).

OFFICIAL DISPATCH ON TAXATION

27/7/2021 | Official Dispatch No. 2816/TCT-CS on determination of seafood processing activities entitled to investment incentives and land rent exemption

Regarding the determination whether processing from fresh products that have been frozen to -18 degrees Celsius and processing from fresh products into cooked products are seafood processing activities, the Ministry of Planning and Investment Planning and Investment has commented in Official Dispatch No. 1274/TCTK-PPCD dated September 22, 2020 and the Ministry of Agriculture and Rural Development has stated in Official Dispatch No. 7365/BNN-CBTTNS dated October 23, 2020 (attached photocopies). If there are still problems with determining whether the seafood processing industry is entitled to investment incentives, the Department of Taxation of Soc Trang Province is requested to contact the Ministry of Planning and Investment and the Ministry of Agriculture and Rural Development to receive specific instructions according to their competence, on that basis, to settle incentives for land rent exemption in line with the provisions of the land law and tax administration.

6/8/2021 | Official Dispatch No. 2953/TCT-TTKT on determining loan interest expenses of enterprises engaging in associated transactions

- If the Company A only has associated transactions with corporate income tax (CIT) payers in Vietnam, the same CIT rate is applied to the Company A and neither party enjoys CIT incentives in the period, the Company A will be exempt from declaration and determination of the arm's length prices in Sections III and IV, but shall declare the grounds for the exemption in Sections I and II on Form No. 01 of the Appendix issued together with Decree No. 20/2017/ND-CP dated February 24, 2017 and Decree No. 68/2020/ND-CP dated June 24, 2020 of the Government.

- The Company A is a CIT payer according to the declaration method and has associated transactions with the Company B in the tax periods from 2017 to 2019, the Company A shall apply Decree No. 20/2017/ND-CP dated February 24, 2017 and Decree No. 68/2020/ND-CP dated June 24, 2020 of the Government. Accordingly, if the Company A has incurred loan interest expenses in the period of 2017-2019, the Company A's interest expenses shall be determined according to the provisions of Decree No. 20/2017/ND-CP; Decree No. 68/2020/ND-CP and relevant regulations of law on CIT.

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- Finalized investment accounts.
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- Report funding project.

❖ **Accounting.**

❖ **Financial inspection.**

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❖ **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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