



LEGAL, LABOR AND TAX UPDATES

September 2019

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A. NEW LEGAL INSTRUMENT

❖ GOVERNMENT

30 August 2019 | Decree No. 71/2019/NĐ-CP providing for penalties for administrative violations pertaining to chemicals and industrial explosives.

Scope of application

1. this Decree deals with the administrative violations, penalties, fines and remedial measures for administrative violation; the power to make records and impose administrative penalties by title on administrative violations pertaining to chemicals and industrial explosives.
2. For the administrative violations pertaining to chemicals and industrial explosives that are not mentioned in this Decree, the regulations in relevant Decrees shall be applied.

Applied entities

1. Vietnamese and foreign organizations and individuals (hereinafter referred to as “organizations and individuals”) that commit administrative violations as regulated at this Decree.
2. Organizations subject to sanctions under the provisions of this Decree include:
 - a) Business entities incorporated under the Law on Enterprises, including private enterprises, joint stock companies, limited liability companies, partnerships and affiliates (branches, representative offices);
 - b) Business entities incorporated under the Law on Cooperatives, including cooperatives and unions of cooperatives;
 - c) Entities incorporated under the provisions of the Investment Law, including domestic investors, foreign investors and foreign-invested business entities; representative offices and branches of foreign traders in Vietnam; representative offices of foreign trade promotion organizations in Vietnam;
 - d) Social organizations, socio-political organizations, professional social organizations;
 - đ) Non-business units and other organizations as prescribed by legal regulations.
3. Business households with business registration under legal regulations, households that commit administrative violations specified in this Decree shall be sanctioned as for individuals.

(This Decree shall take effect from 15 October 2019)

26 August 2019 | Circular No. 57/2019/TT-BTC Guiding the regulations on dealing with risks of the Credit Guarantee Funds for small and medium-sized enterprises

Small and medium-sized enterprises shall be considered dealing with risks in the following 5 cases:

- ✓ Customers who suffer from losses in finance and assets affecting business operations fail to pay debts (initials and interests) on time under the compulsory debt acceptance contracts signed due to following reasons:
 - Natural disasters, poor crops, epidemics, fires;
 - Political risks, war.
- ✓ Customers going bankrupt according to current regulations;
- ✓ Customers failing to pay debts (principals and interests) on time under the compulsory debt acceptance contracts signed because:
 - The State changes policies affecting customers' business operations;
 - Facing risks due to other objective factors directly affecting the business operations.
- ✓ Customers having doubtful debts (from Group 3 to Group 5) according to debt classification as prescribed in Clause 1, Article 36 of the Government's Decree No. 34/2018/NĐ-CP.

(This Circular shall come into force from 01 January 2020)

❖ **COUNCIL OF JUDGES OF THE SUPREME PEOPLE'S COURT**

15 August 2019 | Resolution No. 05/2019/NQ-HĐTP of the Council of Judges of the Supreme People's Court guiding the application of Articles 214, 215 and 216 of the Penal Code on fraudulent violations of social insurance, health insurance and unemployment insurance

Violations that are the responsibility of the enterprise, the employer may suffer, are explained in the Resolution as follows:

- ***Evading payment of insurance premiums*** as prescribed in Article 216 of the Penal Code is an act of the employer who is obliged to pay social insurance, health insurance and unemployment insurance premiums for their employees cheats or by other means fails to pay or does not fully pay insurance premiums for employee who is subject to social insurance, health insurance and unemployment insurance.

- ***Committing frauds to not pay or fully pay the insurance premiums*** specified in Clause 1, Article 216 of the Penal Code is the case of intentional failure to

declare or incorrectly declaring the actual payment of social insurance, health insurance and unemployment insurance premium with the competent authority.

- ***Failure to pay insurance premiums*** specified in Clause 1, Article 216 of the Penal Code is the case where the employer fails to send the application for registration of payment of social insurance, health insurance and unemployment insurance premium to the employees or has submitted a dossier and determined clearly and fully the number of employees to pay or the amounts payable, making vouchers and records of finalization of wages for employees and enterprise income, but not paying social insurance, health insurance and unemployment insurance premiums to the insurance agencies. social insurance as prescribed.

- ***Failure to make full payment*** as prescribed in Clause 1, Article 216 of the Penal Code means that the employer clearly and fully insures the premiums, prepares documents and records of the finalization of wages for the employees, corporate income but only partially paid the social insurance, health insurance and unemployment insurance premium to the Social Insurance Authority as prescribed

In particular, Article 216 of the Penal Code 2015 provides as follows:

“Article 216. Evading payment of social insurance, health insurance, unemployment insurance for workers

1. A person who is responsible for paying social insurance, health insurance and unemployment insurance for his/her workers but fails to pay or pays insufficiently for 06 months or more in any of the following circumstances despite the fact that he/she has incurred an administrative penalty for the same offence shall be liable to a fine of from VND 50,000,000 to VND 200,000,000 or face a penalty of up to 01 year's community sentence or 03 - 12 months' imprisonment:

a) The amount of insurance contribution evaded is from VND 50,000,000 to under VND 300,000,000;

b) The offenders evades paying pay insurance for 10 - 50 workers.

2. This offence committed in any of the following circumstances carries a fine of from VND 200,000,000 to VND 500,000,000 or a penalty of 06 - 36 months' imprisonment:

a) The offence has been committed more than once;

b) The amount of insurance contribution evaded is from VND 300,000,000 to under VND 1,000,000,000;

c) The offenders fails to pay insurance for 50 - 199 workers;

d) The offenders collects or deducts insurance contribution from the workers as prescribed in Point a or Point b Clause 1 of this Article but fails to pay insurance.

3. This offence committed in any of the following circumstances carries a fine of from VND 500,000,000 to VND 1,000,000,000 or a penalty of 02 - 07 years' imprisonment:

a) The amount of insurance contribution evaded is \geq VND 1,000,000,000;

b) The offender fails to pay insurance for \geq 200 workers;

c) The offenders collects or deducts insurance contribution from the workers as prescribed in Point b or Point c Clause 2 of this Article but fails to pay insurance.

4. The offender might also be liable to a fine of from VND 20,000,000 to VND 100,000,000, be prohibited from holding certain positions or doing certain works for 01 - 05 years.

5. Punishments incurred by a corporate legal entity that commits any of the offences specified in this Article:

a) A corporate legal entity that commits this offence in any of the circumstances specified in Clause 1 of this Article shall be liable to a fine of from VND 200,000,000 to VND 500,000,000;

b) A corporate legal entity that commits this offence in the circumstances specified in Clause 2 of this Article shall be liable to fine of from VND 500,000,000 to VND 1,000,000,000;

c) A corporate legal entity that commits this offence in any of the circumstances specified in Clause 3 of this Article shall be liable to a fine of from VND 1,000,000,000 to VND 3,000,000,000.”

(This Resolution shall come into force from 01 September 2019)

B. OFFICIAL INSTRUCTIONS

✚ GENERAL DEPARTMENT OF TAXATION

27 August 2019 | Official Letter No. 3402/TCT-HTQT guiding the settlement of dossiers of application for Agreement on incomes from capital transfer activities

Income from capital transfer of Heineken Asia Pacific Pte.Lia to Heineken Vietnam Brewery Co., Ltd. for 100% of contributed capital in Heineken Hanoi Brewery Company Limited - hereinafter referred to as the Company - will be taxed in Vietnam if more than **50% of the Company's value is directly or indirectly from real estate.**

- **For land use rights:** the value of land use rights of the Company is considered real estate when determining the ratio of real estate to total assets.

- **For machinery, equipment:** in case machinery and equipment are attached to the Company's factory on a regular, stable basis in a long time; machinery and equipment combines with workshops constitute a complete brewery, serving the function of producing beer products, machinery and equipment are

considered real estate when determining the ratio of real estate to total assets.

30 August 2019 | Official Letter No. 3470/TCT-DNL on the CIT policy for offshore investments

Clause 4, Article 3 of Circular No. 48/2019/TT-BTC of 8 August 2019, guiding the setting up and handling of provisions for devaluation of inventories, losses of investments, doubtful debts and warranty products, goods, services, construction at the specified enterprise:

“4. The enterprise does not set up risk provisions for outward investments.”

Clause 5, Article 8 of Circular No. 48/2019/TT-BTC guiding the handling of provisions for outward investment as follows:

“5. The balance of provision for offshore investments that enterprises have made up to before the effective date of this Circular (if any) is reversed and recorded as a decrease in expenses at the time of preparing 2019 financial statements.”

Based on the above provisions, in 2018, Saigon Thuong Tin Commercial Joint Stock Bank made a provision for outward investment capital of VND 210,633,736,930, requested the Bank to refund and record a decrease in the appropriated amount stated above to calculate the payable CIT at the time of preparing the 2019 financial statement.

04 September 2019 | Official Letter No. 3504/TCT-CS on problems related to corporate income tax incentives

According to the explanation of Binh Thuan Department of Taxation in Official Letter No. 5390/CT-TTKT2: Electricity Operating Company (the Company) was granted the first investment certificate on 14 March 2017 to implement the "Projects for repairing and maintaining machinery and equipment for power projects" in Phan Thiet city, Binh Thuan province (not in the geographical areas eligible for investment incentives). In 2018, the Company relocated its head office to Vinh Phuc hamlet, Vinh Tan commune, Tuy Phong district, Binh Thuan province (in areas with difficult socio-economic conditions) and provided repair, maintenance, and operation of electrical equipment services according to the demands and locations of customers.

Therefore, at the time of establishment (2017), the Company did not meet the conditions that a new investment project was implemented in the area of investment incentives. At the time the Company relocates (2018), the Tax Law does not provide for CIT incentives in case the enterprise relocates. After relocating its head office, the Company did not have an investment project to perform at a fixed location, but provided repair and maintenance services for electrical projects at places according to customers' requirements.

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