

# PROFESSIONAL LEGAL NEWSLETTER

## DECEMBER 2021

### A. LEGAL DOCUMENTS HAVE JUST BEEN ISSUED

#### ● GOVERNMENT

##### 1. Decree No. 108/2021/NĐ-CP dated 07 December 2021

###### Adjustment of pension, social insurance allowance and monthly allowance

- This Decree adjusts the pension, social insurance allowance and monthly allowance for beneficiaries of pension, social insurance allowance and monthly allowance before 01 January 2022.
- The subjects specified in Clause 1 of this Article are people who retired before 01 January 1995 after making adjustments as prescribed in Clause 1, Article 2 of this Decree and have pensions, social insurance allowances, and monthly allowance under 2,500,000 VND/month.

This Decree takes effect from 20 January 2022.

##### 2. Decree No. 122/2021/NĐ-CP dated 28 December 2021

###### Provisions for administrative violation in planning and investment field

- This Decree stipulates administrative violations, sanctioning forms, fine levels, remedial measures, competence to make records of administrative violations and competence to sanction administrative violations in the field of planning and investment.
- An administrative violation in the field of planning and investment is an illegal act committed by an organization or individual that is not a crime according to the Penal Code and specified in Decree No. This Decree includes: a) Violations against regulations in the field of investment (including: public investment, business investment in Vietnam, business investment from Vietnam to abroad, investment by method of public-private partnership (PPP)); b) Violations against regulations in the field of bidding; c) Violations against regulations on enterprise registration; d) Violations against regulations in the field of planning.

This Decree takes effect from 20 January 2022.

#### ● MINISTRY OF FINANCE

##### 3. Circular No. 120/2021/TT-BTC dated 24 December 2021

###### Regulations on collection rate of a number of fees and charges in order to support and remove difficulties for those affected by the Covid-19 epidemic

- From 01 January 2022 to the end of 30 June 2022, the rates of some fees and charges are detailed in this Decree.
- From 01 July 2022 onwards, the fees and charges specified in the above Schedule shall comply with the provisions of the original Circulars and the Circulars amending, supplementing or replacing (if applicable).

This Circular takes effect from 01 January 2022 to the end of 30 June 2022.



## B. GUIDING – ANSWERING DISPATCH

### ● MINISTRY OF FINANCE

#### 4. No. 13751/BTC-CST dated 02 December 2021

Regarding responding to voters' petitions sent before the 2nd session, the XV National Assembly

- Accordingly, for the proposal to supplement regulations on VAT refund for expansion investment projects according to the criteria specified in the Law on CIT and guiding documents, the Ministry of Finance would like to acknowledge to study, report to competent authorities for consideration and amendment of the VAT Law at an appropriate time in accordance with the provisions of the Law on Promulgation of Legal Documents.
- Business establishments are only considered for VAT refund when they have fully contributed the registered charter capital.

#### 5. No. 13983/BTC-TCT dated 07 December 2021

Responding to voters' petitions sent to the 2nd session, the XV National Assembly

- After Decree No. 126/2020/NĐ-CP took effect, a number of businesses had opinions similar to those of the Ho Chi Minh City National Assembly Delegation mentioned above. In order to create favorable conditions for businesses in the context of complicated developments of the Covid-19 epidemic, the Government has issued Decree No. 52/2021/NĐ-CP extending the deadline for payment of value-added tax and corporate income tax in 2021, accordingly, businesses are entitled to an extension of the temporary payment of corporate income tax for the first quarter of 2021 and the second quarter of 2021. In fact, in the second and third quarter of 2021, there were 23 provinces and cities that had to implement social distancing in the whole province, these provinces are all large economic areas, where most businesses are concentrated but many enterprises had to suspend production and business, not generating revenue or income, resulting in no temporarily payable corporate income tax.
- Entering the fourth quarter of 2021, the Government has implemented many measures to prevent and control the Covid-19 epidemic in the new situation, businesses gradually resume operations, it is expected that the main amount of corporate income tax will be incurred and mainly accumulated in the last quarter of the year. In order to facilitate support for businesses in the context of the Covid pandemic, the Ministry of Finance has reported in writing to the Prime Minister for permission to amend a number of articles of Decree No. 126/2020/NĐ-CP, in which there is a provision for temporary payment for the first 3 quarters of the year mentioned above.
- Based on the direction of the Prime Minister, the Ministry of Finance drafts Decree amending and supplementing Decree No. 126/2020/NĐ-CP in abbreviated form and sends it to ministries and branches for comments to submit to the Government for promulgation.

#### 6. No. 14257/BTC-VP dated 15 December 2021

Preventing loss of tax collection in business activities and real estate transfer

To prevent loss of tax collection in business activities, real estate transfer; guide people and businesses to declare the correct transfer prices of real estate, improve management efficiency, and ensure state budget revenues. The Ministry of Finance recommends:



- The People's Committees of the provinces and centrally-run cities shall direct relevant agencies to: strengthen coordination, exchange and provide information to the tax authorities; Request notarial practice organizations and relevant state agencies to guide people, investors real estate project, enterprises trading and transferring real estate to declare the actual purchase and sale price on notarization contracts in order to serve as a basis for tax calculation according to the provisions of law. Cases of real estate transfer with the declared price on the contract lower than the actual transfer price is a tax violation and will be handled in accordance with the law.
- General Department of Taxation: Promote propaganda and dissemination of legal policies, especially provisions on tax evasion and handling violations of tax evasion in the criminal law and tax policies related to business activities, real estate transfer for people and businesses to know to implement; Strengthen tax administration for business activities, real estate transfer of people and enterprises. Directing to strictly handle tax evasion...

**7. No. 14971/BTC-QLKT dated 29 December 2021**

**Recording temporarily paid CIT for pre-collected money**

- When reflecting the current corporate income tax amount temporarily payable to the state budget into current corporate income tax expense, record: Dr 8211 - Current corporate income tax expense/ Cr 3334 - Corporate income tax.
- When paying corporate income tax into the state budget, record: Dr 3334 - Corporate income tax/ Cr 111, 112,...
- At the same time, because there is a temporary difference between accounting profit and taxable income in the period, based on Article 48 and Clause 1, Article 95 of Circular No. 200/2014/TT-BTC, enterprises must also record increase of deferred income tax assets as follows: Dr 243 - Deferred income tax assets/ Cr 8212 - Deferred corporate income tax expenses.

● **GENERAL DEPARTMENT OF TAXATION**

**8. No. 4910/TCT-DNNCN dated 15 December 2021**

**Policy of corporate income tax**

In case, Giao Hang Tiet Kiem Joint Stock Company pays for services to non-business individuals who deliver goods to customers, this payment is subject to the provisions of the Law on PIT from salaries and wages. The company is responsible for withholding PIT according to the guidance at point i, clause 1, Article 25 of Circular No. 111/2013/TT-BTC dated 15 August 2013 of the Ministry of Finance mentioned above.

● **TAX DEPARTMENT OF HANOI CITY**

**9. No. 51438/CTHN-TTHT dated 01 December 2021**

**Policy of personal income tax**

- The company organizes mid-shift meals and lunches for employees in the form of direct cooking, buying meals, providing meal vouchers, this expense is not included in the employee's PIT taxable income. In case the Company does not organize mid-shift meals or lunches but spends money on employees according to the level of expenditure in accordance with the guidance of the Ministry of Labor, War Invalids and Social Affairs, it is not included in the income subject to personal income tax. If the expenditure is higher than the level guided by the Ministry of Labor, War Invalids and Social Affairs, the excess expenditure must be included in the individual's taxable income.



- Expenses for vacations paid by the Company to employees, which clearly state the individual's name, this amount shall be included in the employee's personal income taxable income. In case the general expenditure for the collective of employees does not specify the name of the individual entitled to it, this income is not included in the employee's personal income taxable income.
- In case Vietnam Airport Ground Services Company Limited - Noi Bai Branch incurs expenses for employees, which are deducted from the Trade Union Fund, to fulfill the tasks specified in Article 27 of the Law on Trade Union No. 12/2012/QH13, when employees receive these expenses, they are not included in the income subject to PIT from salaries and wages.

**10. No. 53949/CTHN-TTHT dated 13 December 2021**  
Regarding PIT for supporting amount against Covid 19

The employer will support the entire amount obtained from the reduction of contributions to the Insurance Fund for occupational accidents and diseases for employees to prevent and control Covid-19 according to the provisions of Decision No. 23/2021/ Decision-TTg dated 07 July 2021 of the Prime Minister stipulating the implementation of a number of policies to support employees and employers facing difficulties due to the Covid-19 pandemic which are not included in the employee's taxable income.

**11. No. 56687/CTHN-TTHT dated 23 December 2021**  
Regarding withholding tax on brokerage commission

- Overseas companies that generate income from brokerage activities for freight forwarding services from Vietnam to abroad are subject to withholding tax as prescribed in Article 1 of Circular No. 103/2013/TT-BTC.
- The percentage to calculate VAT on turnover is 5%, the rate (%) of CIT calculated on taxable turnover is 5%.

**12. No. 56824/CTHN-TTHT dated 23 December 2021**  
Regarding: issue invoices to customers who do not receive invoices

- During the period from the date that Decree No. 123/2020/ND-CP dated 19 October 2020 was issued to 30 June 2022, Decrees No. 51/2010/ND-CP dated 14 May 2010 and No. 04/2014/ND-CP dated 17 January 2014 of the Government on invoices for selling goods and providing services are still valid.
- In case, the tax authority has not notified the branch of the company of registration of electronic invoices according to Decree 123/2020/ND-CP, the branch of the company still uses invoices according to the instructions in this Decree. 51/2010/ND-CP and Circular No. 32/2011/TT-BTC. Accordingly: When selling goods and services for 200,000 VND or more each time, if the buyer does not receive an invoice or does not provide his/her name, address, tax code (if any), the Company's branch shall issue an invoice and the contents of the invoice. The content written on the invoice must clearly state the arising economic transactions, clearly stating "the buyer does not take the invoice" or "the buyer does not provide the name, address and tax code" as prescribed in Clause 7 of this Article 3 Circular No. 26/2015/TT-BTC dated 27 February 2015 of the Ministry of Finance mentioned above.
- When the Branch of the Company is notified by the Tax authority to accept the registration of e-invoices according to Decree 123/2020/ND-CP, the Branch of the Company shall issue invoices according to the principles specified in Clause 1, Article 90 of Law on Tax Administration No. 38/2019/QH14.

