



PROFESSIONAL LEGAL NEWSLETTER SEPTEMBER 2019

A. LEGAL DOCUMENTS HAVE JUST BEEN ISSUED

- **GOVERNMENT**

1. **Decree No. 75/2019/NĐ-CP dated 26 September 2019**

Provisions on sanctioning administrative violations in the field of competition

- Scope: This Decree provides for sanctioning forms, levels, remedial measures, sanctioning competence, and execution of sanctioning decisions for administrative violations regarding competition, other administrative violations on competition and competence to make records on administrative violations for other administrative violations on competition.
- Subjects of application: Business organizations and individuals (hereinafter collectively referred to as enterprises), including manufacturing enterprises and enterprises supplying public-utility products and services; and enterprises operating under the State monopoly, public non-business units and foreign enterprises operating in Vietnam; Industry associations operating in Vietnam; Relevant domestic and foreign agencies, organizations and individuals.

This Decree takes effect from 01 December 2019.

- **THE MINISTRY OF FINANCE**

2. **Circular No. 62/2019/TT-BTC dated 05 September 2019**

Amending and supplementing some articles of Circular No. 38/2018/TT-BTC dated 20 April 2018 of the Ministry of Finance defining determination of origin of export and import goods

- Amend and supplement some articles of Circular No. 38/2018/TT-BTC dated 20 April 2018: Point b, Clause 4, Article 4; Point h, Clause 6, Article 15; Supplementing to Point d, Clause 1, Article 22 and Article 7a.
- Amending and supplementing the column "Description" in Section III, Appendix II List of imported goods subject to the certification of goods origin with the customs authority issued together with Circular No. 38/2018/TT-BTC

This Decree takes effect from 21 October 2019.

3. **Circular No. 68/2019/TT-BTC dated 30 September 2019**

Guiding the implementation of some articles of the Government's Decree No. 119/2018/NĐ-CP dated 12 September 2018, providing for electronic invoices when selling goods and providing services.

This Circular guides a number of contents on e-invoices, including: contents of e-invoices, time of making e-invoices, format of e-invoices, application of e-invoices, provision of e-invoice service, manage the use of e-invoices, build e-invoice database and provider management.

This Decree takes effect from 14 November 2019.



B. GUIDING – ANSWERING DISPATCH

● THE MINISTRY OF FINANCE

4. No. 11243/BTC-TCT dated 24 September 2019

Policy of corporate income tax

The current law on corporate income tax stipulates that losses are transferred in the case of conversion of business type, division, splitting, merger, consolidation) and there is no provision for carrying forward losses in the case of branches with independent accounting converted to dependent accounting.

● GENERAL DEPARTMENT OF TAXATION

5. No. 3509/TCT-DNL dated 04 September 2019

For: guiding deployment of e-invoices

- Regarding the continued use of printed invoices in parallel with e-invoices.
- Regarding the digital signature of the buyer on e-invoices.
- Regarding the signature of the legal representative and the seal on the invoice converted to paper.
- Regarding e-invoices with more than one page line.

6. No. 3612/TCT-DNNCN dated 12 September 2019

Determining asset value of business households when converted to enterprises

For fixed assets, labor tools and inventory of business households, when converted to enterprises for being accounted into deductible expenses when determining taxable income, shall be done as following:

- For fixed assets, labor tools, inventory of individual business households with adequate invoices and documents as prescribed: continue to register to become the initial investment capital of new enterprises established under the provisions of tax law and the guidance of the current accounting regime.
- For fixed assets, labor tools and inventory of individual business households without or incomplete invoices and documents as prescribed: Business households shall re-evaluate assets according to regulations. Newly established enterprises from business households shall base on the appraisal results of the price appraisal agencies to serve as a basis for making accounting entries and be included in deductible expenses (depreciation of fixed assets, allocation of labor tools according to regulations) when determining taxable income.

7. No. 3614/TCT-DNNCN dated 12 September 2019

Regarding documents for personal income tax deduction

In case, Asia Commercial Bank needs to use self-printed deduction vouchers, it is required to submit the dossier to the managing tax agency, the Ho Chi Minh City Tax Department. If Asia Commercial Bank satisfies the conditions specified in Article 1, Part A of Circular No. 37/2010/TT-BTC dated 18 March 2010 of the Ministry of Finance, it is allowed to print documents of income tax withholding by itself. The Ho Chi Minh City Department of Taxation is responsible for checking the application file and comparing with the implementation of personal income tax policy of Asia Commercial Bank, issuing a notice of approval of the registration of deduction documents. In case of disqualification, the notice clearly stating the reason of disapproval.



8. No. 3812/TCT-KK dated 24 September 2019

Regarding granting tax code, declaring VAT for business locations outside the province that management units located.

In case, the managing unit of a business place is an enterprise or its branch establishing a business location in a province outside the province where the enterprise operates, or where the branch of the enterprise is headquartered (in case the branch is assigned to manage a place of business, has to declare and pay tax separately with the tax authority directly managing the branch) from the effective date of Decree No. 108/2018/NĐ-CP, tax authorities shall base themselves on business registration information of business registration offices to grant 13-numeral tax code to business locations and business-managing units shall declare and pay added value tax of business locations under the guidance at Point 2 and Point 4 of Official Dispatch No. 3200/TCT-KK dated 12 August 2019 of the General Department of Taxation until the Law on Tax Administration No. 38/2019/QH14 takes effect.

9. No. 3913/TCT-CS dated 30 September 2019

Value added tax

- In case, Sao Ta Food Joint Stock Company exports goods to foreign customers, International Marketing Specialists, Inc., then the foreign customer authorizes overseas third party - Bonamar Corporation to make payment via a bank in accordance with the appendix of the export contract or the contract amendment, the payment authorization mentioned above is guided in point b.3, Clause 3, Article 16 of Circular No. 219/2013/TT-BTC dated 31 December 2013 of the Ministry of Finance.
- According to the presentation in Official Letter No. 445/CT-KK above and attached documents, in 13 export lots of Sao Ta Food Joint Stock Company exported to International Marketing Specialists, Inc., there are 09 consignments (from No. 01 to No. 09) certified by Customs Supervision Department before 2 August 2018, before the time the two sides signed Appendix 01/18 dated 2 August 2018 which is agreed that the buyer, International Marketing Specialists, Inc., will assign Bonamar Corporation to pay for 13 orders and this Appendix is valid from the signing date. However, at 09 orders, the payment terms stated: "By TTR 100% of the total invoice value within 3 days after the product is approved by USFDA and delivered to the buyer's designated warehouse." Therefore, Soc Trang Tax Department is requested to review more about the conditions and payment term between International Marketing Specialists, Inc. and Sao Ta Food Joint Stock Company and compare the above regulations to handle.

● **TAX DEPARTMENT OF HANOI CITY**

10. No. 68923/CT-TTHT dated 03 September 2019

Regarding personal income tax for non-resident individuals' income

- In case, Wilmar Marketing CLV Co., Ltd opens a representative office in Laos and Cambodia and employs local labor to work for the representative office, if these individuals are not residents in Vietnam, their income earned by working for a Representative Office abroad is not subject to PIT in Vietnam.
- In case, Wilmar Marketing CLV Co., Ltd pays for accommodation, travel ... for foreign workers who come to work in Vietnam (for non-resident individuals), the accommodation and travel expenses for workers and foreigners in Vietnam is the income subject to PIT. The company is responsible for deducting 20% before paying to individuals as prescribed.



- Wages and salary that Wilmar Marketing CLV Co., Ltd. pays to foreign workers (who are non-residents in Vietnam) when performing work in Vietnam is determined as income subject to PIT in Vietnam. The company is responsible for deducting 20% of PIT before paying to individuals as prescribed.

11. No. 70538/CT-TTHT dated 09 September 2019

Regarding expenses paid by the parent company

In case, the Company is paid by the Parent Company in Japan for operating expenses (the Parent company pays the suppliers, the Company has no obligation to return the Parent Company for such payments), if the Company does not have non-cash payment documents as prescribed in Clause 10 Article 1 of Circular No. 26/2015/TT-BTC, Article 4 of Circular No. 96/2015/TT-BTC above, the Company is not eligible to declare, deduct input VAT and account it into deductible expenses when calculating CIT on VAT invoices received from suppliers.

12. No. 71443/CT-TTHT dated 11 September 2019

Guidance on determination of interest expenses under Clause 3, Article 8 of Decree No. 20/2017/NĐ-CP

The determination of interest expenses of taxpayers having associated transactions deducted to determine income subject to corporate income tax under the provisions of Clause 3, Article 8 of Decree No. 20/2017/NĐ-CP is made as follows:

- Apply regulations on interest expenses incurred from 01 May 2017 onwards until the end of the fiscal year, regardless of loan contracts signed before or after 01 May 2017.
- If the taxpayer records separately the business results from 01 May 2017 to the end of the fiscal year, the criteria to calculate “Total net profit from business activities plus loan and interest expenses and depreciation expense in the period” is determined according to the actual arising figures. In case taxpayers cannot separately account and monitor business results from 01 May 2017 to the end of a fiscal year, the criteria to calculate “Total net profit from business activities plus loan interest, amortization expenses during the period” is allocated in proportion to the remaining months of the fiscal year from 01 May 2017.

13. No. 72944/CT-TTHT dated 18 September 2019

Regarding VAT on goods and services trading with export processing enterprises (EPE)

- CIMAS Engineering Co., Ltd. (hereinafter referred to as CIMAS) signs a contract with Vinasanfu Material Company Limited (EPE) to perform a number of items (such as fire protection licensing; construction permit; design, construction, installation of pre-engineered steel buildings; pile construction), goods and services provided to EPE subject to VAT rate 0 % if meeting the conditions specified in Clause 2, Article 9 of Circular No. 219/2013/TT-BTC.
- In case, CIMAS continues to sign contracts with subcontractors to carry out the above project, subcontractors must make invoices, calculate and declare and pay 10% VAT as prescribed. CIMAS may deduct input VAT if it satisfies the conditions specified in Article 15 of Circular No. 219/2013/TT-BTC and Clause 10, Article 1 of Circular No. 26/2015/TT-BTC of the Ministry of Finance.

