

PROFESSIONAL LEGAL NEWSLETTER

FEBRUARY 2020

A. LEGAL DOCUMENTS HAVE JUST BEEN ISSUED

● GOVERNMENT

1. Decree No. 22/2020/NĐ-CP dated 24 February 2020

Amending, supplementing some articles of Decree No. 139/2016/NĐ-CP dated 04 October 2016 of the Government detailing business tax

- To add Clauses 8, 9 and 10 of Article 3 as follows: "8. Exemption of license fees for the first year from the date of establishment or official commencement of production/business (from January 01 to December 31) shall be granted to: New organizations (issued with new TINs/enterprise ID numbers); Household businesses, individuals or groups of individuals engaging in production/business. During the exemption period, if an organization, household business, individual or group of individuals establishes a new branch, representative office or business location, the new branch, representative office or business location shall be also exempted from the license fee for the same exemption period granted to that organization, household business, individual or group of individuals.
- Small- and medium-sized enterprises (SMEs) transformed from household businesses (as prescribed in Article 16 of the Law on assistance for small- and medium-sized enterprises) shall be exempted from the license fee within 03 years from the date of issuance of initial enterprise registration certificate....

This Decree takes effect from 25 February 2020.

● THE MINISTRY OF FINANCE

2. Decision No. 155/QĐ-BTC dated 07 February 2020

Promulgating the List of goods eligible for import tax exemption for the prevention and control of acute respiratory infections caused by Corona virus

To promulgate together with this Decision the list of goods eligible for import tax exemption for the prevention and control of acute respiratory infections caused by Corona virus under the Prime Minister's authority.

- Medical masks;
- Hand sanitizer (gel or liquid)
- Raw materials for manufacturing medical masks: non-woven fabric, antibacterial filter, elastic band, nasal splint
- Disinfectant (liquid bactericidal preparation)
- Other necessary materials and equipment: Anti-epidemic uniforms (including pants, shirts, glasses, medical masks, protective helmets, gloves, shoes).

This Decision takes effect from the date of signing to the date of the competent authorities' written announcement of the end of the epidemic.



3. **Circular No. 10/2020/TT-BTC dated 20 February 2020**

Provisions on settlement of completed projects funded with state capital

- This Circular prescribes the settlement of investment projects, tasks (projects or expenses) for investment preparation and planning tasks (below collectively referred to as projects) using the state capital sources when completing or stopping the implementation permanently according to the written permission to stop or allow the termination of project implementation by the person who is competent to decide on project approval.
- This Circular applies to agencies, organizations and individuals related to the settlement of projects using state capital completed or permanently suspended.

This Circular takes effect from 10 April 2020. This Circular replaces the Ministry of Finance's Circular No. 09/2016/TT-BTC dated 18 January 2016, providing for final settlement of completed projects funded with state capital and Circular No. 64/2018/TT-BTC dated 30 July 2018 of the Ministry of Finance amending and supplementing a number of articles of Circular No. 09/2016/TT-BTC dated 18 January 2016 providing for finalization of completed projects funded by state capital.

B. GUIDING – ANSWERING DISPATCH

● **GENERAL DEPARTMENT OF TAXATION**

4. **No. 405/TCT-KK dated 04 February 2020**

Tax declaration, using invoice for business units of enterprises which locate different province from the managing unit

- The General Department of Taxation is upgrading the electronic tax service system to ensure that the Company can use the issued digital signatures to sign electronic tax declarations of business units in different provinces and cities where the Company is headquartered. While the electronic tax service system has not been upgraded, the Company uses the Company's seal to stamp on paper tax returns and submit to the tax authority managing the place of business (directly at headquarters or by post).
- In case where the Company's business location has a sale and arises turnover which is subject to VAT declaration and payment directly in the locality where it has a business unit, the Company shall send a notice of issuing invoice of business unit according to form TB01/AC, on the notice of publication, write item 1, 2, 3, 4 as information of the business unit, item 6 is the information of the Company, item 7 is the name of the tax office that manages business unit. After sending notice of issuing invoice of business unit to the tax authority managing the place of business as prescribed, the Company inscribes the name, tax code and address of the seller on the value-added invoice as information of the business unit and use the Company's digital signature to sign the invoice.

5. **No. 406/TCT-HTQT dated 04 February 2020**

Guidance on applying Tax Agreement

- Olam Singapore has made purchases and sales for Vietnamese and foreign businesses. Bonded warehouse services company on behalf of Olam Singapore carried out activities such as on-site export procedures, delivery according to orders of foreign enterprises, storage of goods in Vietnam before delivery. Bonded warehouse company and Olam Singapore carried out inventory; Authorized personnel on behalf of Olam Singapore are



allowed to enter and leave the bonded warehouse, supervise the workers and the means of performing the service contract signed with the Vietnamese party, conduct physical count of inventory and supervise quantity of goods delivered from bonded warehouses. As such, Olam Singapore has conducted its business through a permanent establishment in Vietnam - a bonded warehouse. Accordingly, Olam Singapore is obliged to pay corporate income tax in Vietnam under the Law on Enterprise Income Tax on income earned from the performance of goods purchase and sale contracts in Vietnam on the profit distribution of monetary policy in Vietnam as prescribed in Clause 1, Article 7 (Business profits) of the Tax Agreement.

- In case Olam Singapore Company is a resident of Singapore and earns income from Vietnam which according to the provisions of this Agreement may be subject to tax in Vietnam, Singapore will allow the deduction of tax paid in Vietnam whether paid directly or by deduction, into the tax amount payable in Singapore calculated on Olam Singapore's income.

6. No. 630/TCT-KK dated 17 February 2020

Declaration of value added tax

- DHD Consulting and Construction Co., Ltd. which has established and registered to apply value-added tax calculation according to the deduction method, must submit VAT declaration form No. 01/GTGT (even if it does not arise tax obligations in the tax period) according to Point c, Clause 1, Article 10 and Point b, Clause 3, Article 11 of the Ministry of Finance's Circular No. 156/2013/TT-BTC dated 06 November 2013 (amended and supplemented in Clause 2 Article 1 of Circular No. 119/2014/TT-BTC dated 25 August 2014).
- In case the Company is engaged in production and business activities and is subject to the VAT deduction method with hydropower investment projects, it must prepare a separate tax declaration for the investment project as prescribed at Point c, Clause 3 Article 11 of the Ministry of Finance's Circular No. 156/2013/TT-BTC dated 06 November 2013.

7. No. 774/TCT-KK dated 21 February 2020

V/v: hoàn thuế GTGT đối với dự án đầu tư

Tsurumi Pump Viet Nam Company Limited has been granted with the investment certificate No. 3254665350 in 08 February 2017 and the 6th amendment in 05 December 2018 by HEPZA - Ho Chi Minh City Export Processing Zone and Industrial Park Authority to build factories producing all kinds of pumps and spare parts. In the investment phase, the Company has been granted granted Business License No. 0314226417-KD dated 19 June 2017 by the Department of Planning and Investment of Ho Chi Minh City to exercise the rights of import, export, wholesale distribution, manufacture of pumps, compressors and other valves The company has made separate VAT declaration of investment projects and offset against VAT on production and business activities being implemented. The investment project generates revenue from October 2018, the Company has a dossier of VAT refund claim for investment projects with refund period from Quarter 1/2017 to Quarter 4/2018:

- If Tsurumi Pump Viet Nam Company Limited is an export processing enterprise, it is not eligible for VAT refund for investment project under the guidance in Clause 3, Article 18 of Circular No. 219/2013/TT-BTC dated 31 December 2013 (being amended and supplemented under Clause 3, Article 1 of Circular No. 130/2016/TT-BTC dated 12 August 2016) of the Ministry of Finance.
- If Tsurumi Pump Viet Nam Company Limited is not an export processing enterprise, the input VAT on the investment project arising in the investment phase (before the project is completed and put into operation) will be refunded VAT on investment projects if they



meet the deduction conditions in Article 15 of Circular No. 219/2013/TT-BTC dated 31 December 2013 (being amended and supplemented under Clause 10, Article 1 of the Circular No. 26/2015/TT-BTC dated 27 February 2015) of the Ministry of Finance and conditions for tax refund in Clause 3 Article 18 of Circular No. 219/2013/TT-BTC dated 31 December 2013 (being amended and supplemented under Clause 3, Article 1 of Circular No. 130/2016/TT-BTC dated 12 August 2016) of the Ministry of Finance.

8. No. 788/TCT-CS dated 24 February 2020
VAT

Citra West Lake City Development Company Limited transfer all of the component investment projects of "Ciputra Hanoi Trading Center" to Lotte Properties Hanoi Co., Ltd. If it is determined to transfer the investment project in accordance with the provisions of law for the production and trading of goods and services subject to value-added tax, they are not required to declare and calculate value-added tax under the provisions of Point d, Clause 3 Article 2 Decree No. 209/2013/NĐ-CP dated 18 December 2013 of the Government and Clause 4 Article 5 Circular No. 219/2013/TT-BTC dated 31 December 2013 of the Ministry of Finance. If it is determined that the property is transferred, VAT declaration and calculation must be made according to regulations.

● **HANOI TAX DEPARTMENT**

9. No. 7639/CT-TTHT dated 24 February 2020
Regarding the invoice recovery

Where e-invoices have been made and sent to buyers with errors, they shall handle the e-invoices made in accordance with Article 9 of Circular No. 32/2011/TT-BTC. In case the buyer does not have an electronic signature, the seller and the buyer shall make a written agreement clearly stating the errors signed by the seller and the buyer.

10. No. 7651/CT-TTHT dated 24 February 2020
Use of electronic invoices

- The company has used invoices purchased from tax authorities from April 2018 (until the expiry of 12 months). If the Company meets the conditions of the organization generating electronic invoices as prescribed in Clause 2 Article 4, Clause 1 Article 7 of Circular No. 32/2011/TT-BTC dated 14 March 2011 of the Ministry of Finance, the company can use electronic invoices. Prior to use, the Company is requested to implement the Notice of electronic invoice issuance in accordance with Clause 2 Article 7 of Circular No. 32/2011/TT-BTC dated 14 March 2011 of the Ministry of Finance.
- The company must stop using invoices purchased by the tax authorities from the date the e-invoices start and cancel the invoices purchased by the tax authorities that are no longer used as prescribed in Circular No. 39/2014/TT-BTC of the Ministry of Finance. The company is responsible for submitting monthly reports on usage of invoices from the first day of the month to the final day of using invoices purchased from the tax authorities and transferring them to the quarterly report on usage of invoices to the tax agencies from the next day as prescribed in Article 27 of Circular No. 39/2014/TT-BTC above.

11. No. 8208/CT-TTHT dated 27 February 2020
Apartment management cost

AMALC Co., Ltd. (hereinafter referred to as the Company) has foreign experts who come to Vietnam to work, hold a management position in Vietnam and receive salaries in Vietnam under the labor contract signed with the Company:



- Regarding VAT: The company must not deduct VAT corresponding to the apartment management expenses for this foreign expert as prescribed in Clause 1, Article 14 of Circular 219/2013/TT-BTC dated 31 December 2013 of the Ministry of Finance.
- Regarding corporate income tax: In accordance with the agreement in the labor contract, the Company is responsible for paying salaries, bonuses, ... and the costs related to housing in Vietnam to foreign experts (including apartment management service costs), the apartment management service fee is deducted when determining taxable income if it satisfies the provisions of Article 4 of Circular No. 96/2015/TT-BTC dated 22 June 2015 by the Ministry of Finance.

12. No. 8309/CT-TTHT dated 27 February 2020

Brief writing of company address

If the company has an address on the certificate of business registration that is too long, making it difficult to display the full address on transaction documents and input invoices and output invoices, the company is allowed to write briefly some common nouns which still ensure correctness, completeness and conformity with the business registration, tax registration of the business and still identify the correct address of the buyer and the address of the seller and other criteria on invoices which are still adequate and in compliance with regulations, shall be considered valid invoices for use in declaration and accounting under the provisions of Point b, Clause 7, Article 3 of Circular No. 26/2015/TT-BTC dated 27 February 2015 of the Ministry of Finance.

