

PROFESSIONAL LEGAL NEWSLETTER

JULY 2020

A. LEGAL DOCUMENTS HAVE JUST BEEN ISSUED

● GOVERNMENT

1. Decree No. 81/2020/NĐ-CP dated 09 July 2020

Amending and supplementing a number of articles of Decree No. 163/2018/NĐ-CP dated 04 December 2018 providing for the issuance of corporate bonds

- To amend and supplement Clauses 1 and 3, Article 13 Dossier of the enterprise's bond issuance.
- To amend Point b, Clause 1, Article 14 as follows: “b) Purpose of the bond issue, in which information on investment programs and projects is specified; production and business activities that need additional capital; structured debts (debt name, value, debt term) by capital from bond issues.
- ...

This Decree takes into effect from 01 September 2020.

● THE MINISTRY OF FINANCE

2. Circular No. 65/2020/TT-BTC dated 09 July 2020

Amending and supplementing a number of articles of Circular No. 302/2016/TT-BTC dated 15 November 2016 of the Minister of Finance guiding the license fees

- Exemption from business license fees for: a) the cooperative and the union of cooperative (including branches, representative offices, places of business) operating in the field of agriculture sector in accordance with the law on agriculture cooperative. b) The People's Credit Funds; representative offices, and business locations of the cooperative, the union of cooperative and sole proprietorships operating in mountainous areas. The mountainous areas shall be determined according to regulations of the Committee for Ethnic Affairs
- Applying the exemption from licensing fees for the first year of establishment or starting production and business activities (from January 1st to December 31st) for the following entities: New establishment of the organization (being granted new tax code, a new business code); Individuals, groups of individuals, and households engage in production and business activities for the first time
- The small and medium-sized enterprise converted from the business households (as regulated in Article 16 of the Law on supporting for Small and Medium enterprises) shall be exempted from license fees for a period of 03 years from the date of the enterprise registration certificate's first issuance;
- Clause 2, Article 4 is amended and supplemented as follows: License fee rates applicable to individuals, groups of individuals and households engaged in goods and service production and trading.
- ...

This Decree takes into effect from 23 August 2020.



B. GUIDING – ANSWERING DISPATCH

● GENERAL DEPARTMENT OF TAXATION

3. No. 2698/TCT-KK dated 01 July 2020

VAT refund

In the case of phase 1 (from June 2013 to June 2016), the investment project - Thi Vai Port of Thi Vai International Port Company Limited came into operation and generated revenue from December 2017 and the Company did not fully contribute charter capital as registered in accordance with the law. If the tax declaration form 02/GTGT from May 2016 to September 2019 does not have the tax amount claimed for refund, the Company is not eligible for tax refund as prescribed in Clause 3 Article 1 Law No. 106/2016/QH13 dated 6 April 2016; Clause 6 Article 1 of the Government's Decree No. 100/2016/NĐ-CP dated 1 July 2016; Clause 3 Article 1 of Circular No. 130/2016/TT-BTC dated 12/08/2016 of the Ministry of Finance.

4. No. 2701/TCT-KK dated 01 July 2020

Regarding VAT refund when merging enterprises

The Tax Department of Hochiminh City has received the application for tax code invalidation due to merger, application for VAT refund from September 2018 to March 2019 and application for VAT refund of April 2019 of Hoshino (Vietnam) Co., Ltd (hereinafter referred to as the Company) headquartered in Ho Chi Minh City and has conducted tax inspection at the Company in accordance with Inspection Decision No. 1741/QĐ-CT dated 26 August 2019. The Tax Department of Hochiminh City fully and accurately determines the tax obligations of Hoshino (Vietnam) Co., Ltd to be completed before carrying out tax code invalidation procedures due to merger. In case, after fulfilling all tax obligations, if the Company has the VAT amount eligible for refund, the Tax Department of Hochiminh City shall handle the VAT refund for the Company in accordance with regulations.

5. No. 2756/TCT-CS dated 07 July 2020

Tax policy

- The corporate income tax amount actually arising in localities during the preferential period will be determined on the basis of taxable income calculated in that locality. In case an enterprise transfers goods between dependent accounting branches in order to continue the production cycle of the enterprise, it must calculate separately the taxable income of the branch enjoying CIT incentives in which the revenue for tax calculation does not include turnover of the enterprise from internal transfer of goods, the recognition of deductible expenses must correspond to taxable income.

In the same tax period, if the enterprise has a loss-making business or a profitable business, the offset against the taxable income of the income-earning activity comply with the guidance in Clause 9 of Article. 18 Circular No. 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance mentioned above.

6. No. 2835/TCT-TTKT dated 14 July 2020

Regarding guiding the implementation of Decree No. 68/2020/NĐ-CP

In 24 June 2020, the Government issued Decree No. 68/2020/NĐ-CP amending and supplementing Clause 3, Article 8 of Decree No. 20/2017/NĐ-CP on tax administration for enterprises with associated transactions. The above Decree has detailed provisions, ensuring immediate implementation without promulgating a circular guiding the implementation.



- For the tax finalization period in 2019: for enterprises that have declared for tax finalization in 2019 according to the tax period due before 31 March 2020, additional declarations are made to the corporate income tax finalization declaration under the provisions of Decree No. 68/2020/NĐ-CP amending and supplementing Clause 3, Article 8 of Decree No. 20/2017/NĐ-CP.
- For the retrospective processing for the CIT period 2017, 2018: Raising the interest expense control threshold from 20% to 30%; Apply the method of calculating net interest expenses (interest minus (-) interest on deposits and loans).

7. No. 2842/TCT-KK dated 15 July 2020

License fee in case of suspension

- In case the taxpayer performs business suspension procedures through the interconnected one-stop division, the tax authority shall base on the result of the tax registration processing on the Centralized Tax Management Application System (TMS).) to consider the non-payment of the license fee for the year of suspension.
- In cases where the taxpayer fails to carry out procedures for business suspension through the interconnected one-stop division, the tax authority shall guide the taxpayer to carry out the procedures as instructed at Point c, Clause 2 Article 1 of Decree No. 22/2020/NĐ-CP and Article 21 of Circular No. 95/2016/TT-BTC.

8. No. 2838/TCT-DNNCN dated 15 July 2020

Regarding PIT finalization for 2019

In case the employee has income from salaries or wages and signs a labor contract of 03 months or more at Viettel Branch and is actually working there at the time of authorized tax finalization, at the same time, having current income at Viettel Group (Mother company):

- In case the above average monthly current income of the year does not exceed VND 10 million and the mother company has a 10% tax deduction without request for settlement of this income, may authorize the Viettel branch where individuals are working to finalize personal income tax.
- In other cases, individuals shall declare tax finalization directly to the tax office.

9. No. 2972/TCT-CS dated 24 July 2020

Policy of foreign contractor tax

Sambang Eng Co., Ltd - Korea signs a contract with Pavonine Vina Co., Ltd. to provide machinery and equipment together with services performed in Vietnam such as installation, operating, warranty and generating income in Vietnam, Sambang Eng Co., Ltd is subject to foreign contractor tax (VAT, CIT) in Vietnam. In case, the contract (or appendix) separates the installation value but does not separate the other service values such as operating, testing or does not represent these services included in the value of the installation), under warranty, the installation service applies the rate (%) to calculate VAT, CIT of 5%, the remaining value of the contract (including the value of machinery and equipment and the value of other services) the rate (%) for calculating VAT is 3%, the rate (%) for CIT is 2% as prescribed in point b.2 clause 2 Article 12, point b.2 clause 2 Article 13 of Circular No. 103/2014/TT-BTC above.



● TAX DEPARTMENT OF HANOI CITY

10. No. 61915/CT-TTHT dated 06 July 2020

Uses electronic invoices and paper invoices in parallel

- During the period from 01 November 2018 to 31 October 2020, the Decrees: No. 51/2010/NĐ-CP dated 14 May 2010 and No. 04/2014/NĐ-CP dated 17 January 2014 of the Government regulations on invoices for selling goods and providing services is still effective.
- During the time mentioned above, if the tax authority has not notified the branch to convert to use e-invoices under Decree No. 119/2018/NĐ-CP, the branch will still apply the invoice as prescribed in the Decree. No. 51/2010/NĐ-CP, Decree No. 04/2014/NĐ-CP and documents guiding the implementation. A branch can use many different forms of invoice at the same time as prescribed in Clause 2 Article 1 of Decree No. số 04/2014/NĐ-CP. The State encourages the use of e-invoice form.
- If the branch still has a pre-printed invoice which has been notified of issuance and still wants to continue using the pre-printed invoice in accordance with the actual conditions of the enterprise, it shall continue to apply the pre-printed invoice according to regulations in Decree No. 51/2010/NĐ-CP dated 14 May 2010 and Decree No. 04/2014/NĐ-CP dated 17 January 2014 of the Government.

11. No. 65283/CT-TTHT dated 14 July 2020

Deduction of personal income tax

Coc Coc Company Limited (hereinafter referred to as the Company) concurrently signs 2 contracts with employees who are resident individuals: a labor contract with a term of three months or more and a service contract, if the contract performance is not contrary to the law, the Company shall withhold PIT according to the partially progressive tax schedule before paying the employees according to the instructions at Point b.1, Clause 1, Article 25 Circular No. 111/2013/TT-BTC dated 15 August 2013 of the Ministry of Finance, including income from the two above contracts and other incomes from salaries and wages arising in the tax period.

12. No. 66300/CT-TTHT dated 16 July 2020

Regarding tax policies for costs of repairing, renovating warehouses and warehouse rental costs

- If the company leases an office or warehouse to serve production and business activities, in the lease contract stipulates that the lessee is responsible for repairing the asset during the lease period, the repair cost of the leased fixed asset allowed to account into deductible expenses or gradually amortized into expenses but the time limit does not exceed 03 years if they meet the provisions of Article 4 of Circular No. 96/2015/TT-BTC dated 22 June 2015 of the Ministry of Finance.
- For the costs of renting warehouses and offices, the Company bases on the lease term and the rent fee to determine deductible expenses as prescribed in Article 4 of Circular No. No. 96/2015/TT-BTC dated 22 June 2015 of the Ministry of Finance.

