



PROFESSIONAL LEGAL NEWSLETTER NOVEMBER 2020

A. LEGAL DOCUMENTS HAVE JUST BEEN ISSUED

- **GOVERNMENT**

1. Decree No. 132/2020/NĐ-CP dated 05 November 2020

Regulations on tax administration for enterprises with associated transactions

- This Decree provides principles, methods, and order of determining the factors that form associated transaction prices; rights and obligations of taxpayers in determining transfer pricing, declaration procedures; Responsibilities of state agencies in tax administration for taxpayers with associated transactions.
- Associated transactions governed by this Decree are transactions of buying, selling, exchanging, renting, leasing, borrowing, lending, transferring, transferring goods or providing services; borrowing, lending, financial services, financial guarantees and other financial instruments; buying, selling, exchanging, renting, leasing, borrowing, lending, transferring, transferring tangible and intangible assets and agreeing to buy, sell, and use resources such as assets, capital, labor cost-sharing activities among associated parties, except for business transactions for goods and services subject to the State's price adjustment scope, which are subject to the law on prices.

This Decree takes effect from 20 December 2020 and applies from the corporate income tax period 2020.

2. Decree No. 135/2020/NĐ-CP dated 18 November 2020

Regulations on retirement age

- This Decree details Article 169 of the Labor Code regarding the retirement age.
- Subjects of application: Employees and employers defined in Clauses 1, 2 and 3, Article 2 of the Labor Code. Agencies, organizations and individuals involved in social insurance.

This Decree takes effect from 01 January 2021.

B. GUIDING – ANSWERING DISPATCH

- **GENERAL DEPARTMENT OF TAXATION**

3. No. 4703/TCT-CS dated 04 November 2020

Policy of corporate income tax

- In case the Company meets the conditions of the Investment Certificate and is enjoying CIT incentives (including the preferential tax rate for tax exemption and reduction period) as specified in the Investment Certificate, will continue to enjoy these incentives for the remaining time.



- For income from the addition of business lines: "leasing redundant office, warehouse and factory", the Ministry of Finance has issued Official Letter No. 17008/BTC-CST dated 17 November 2015 sent to the People's Committee of Ha Tinh province in order to guide enterprise operating and enjoying CIT incentives has added business lines without increasing capital, not implementing investment expansion, the income from additional lines of business will not enjoy preferential corporate income tax (copy attached).

4. No. 4751/TCT-CS dated 06 November 2020

Answering questions about registration fee collection policy

- An Khanh New City Development Joint Venture Company Limited implements the project of Bac An Khanh New Urban Area, the company is granted a land use right certificate for 154 land plots according to Decision No. 4379/QĐ-UBND dated 11 August 2016 of the People's Committee of Hanoi city approving the overall adjustment of the detailed planning of Bac An Khanh New Urban Area, the rate of 1/500.
- In case An Khanh New City Development Joint Venture Company Limited registers the right to use above 154 land plots in accordance with law to invest in the construction of infrastructure, to build houses for transfer, the company is exempt from registration fees. In case the Company registers the right to use the above 154 land lots for lease or self-use, the Company must pay registration fees as prescribed at Point a, Clause 3, Article 1 of Decree No. 20/2019/NĐ-CP of Government.

5. No. 4819/TCT-PC dated 12 November 2020

Regarding the transfer of losses and penalties for tax evasion through tax inspection

- In case the taxpayer violates the tax law in the case of tax assessment, the competent tax agency shall determine the payable tax amount or determine the factors related to the determination of the payable tax amount. Tax assessment is a method of determining a payable tax amount or determining relevant factors to determine a payable tax amount.
- Regarding the loss carry-forward issue in case a taxpayer is subject to tax assessment, in accordance with the law on corporate income tax, in case when finalizing corporate income tax, the taxpayer has a loss of previous years while the loss carry-forward is allowed, the losses may be carried forward to the following years until the time limit for loss transfer expires. There are no regulations on corporate income tax and tax administration that are not allowed to carry forward losses in cases where taxpayers are subject to tax assessment.

6. No. 4818/TCT-PC dated 12 November 2020

Regarding a number of new points in sanctioning administrative violations of tax and invoices and the implementation of Decree No. 125/2020/NĐ-CP

- The General Department of Taxation introduces a number of new points in the sanctioning of administrative violations of taxes and invoices (details are specified in the attached Appendix).
- The Information Technology Department is assigned to chair and coordinate with the Legal Department, the Tax Accounting and Declaration Department to upgrade the application, meet the requirements, and implement the regulations on making minutes of administrative violation since 05 December 2020.



7. No. 4868/TCT-CS dated 16 November 2020

Regarding a number of contents of Decree No. 123/2020/NĐ-CP on invoices and documents

- The General Department of Taxation introduces some new contents of Decree No. 123/2020/NĐ-CP dated 19 October 2020 (*details in the attached appendix*).
- Request the Director of the Tax Department of provinces and centrally-run cities to propagate and disseminate the contents of Decree No. 123/2020/NĐ-CP above for tax officials and taxpayers to understand the rights and obligations in the use of invoices and vouchers. In particular, taxpayers understand the benefits of applying electronic invoices in business activities.

8. No. 5032/TCT-CS dated 26 November 2020

Regarding the cost of isolation and prevention due to Covid 19 for foreign experts

- Regarding deductible expenses when determining taxable income for CIT:
 - + For isolation cost at hotel for foreign experts, if the enterprise signs a labor contract with foreign expert, including the house rent fee paid by the enterprise for the employee, payment to the isolation establishment are included in deductible expenses when determining taxable income if there are sufficient invoices and vouchers and the payment is made according to regulations.
 - + For the cost of purchasing business air tickets for foreign experts, if the expenses comply with Point 2.9, Clause 2, Article 6 of Circular No. 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance (as amended and supplemented in Article 4 of the Circular No. 96/2015/TT-BTC dated 22 June 2015 of the Ministry of Finance) shall be included in deductible expenses when determining taxable income of corporate income tax when there are full invoices and documents and payment according to regulations.
 - + The cost of Covid-19 testing for foreign experts is considered as a welfare expense directly paid to the employee, if such expenses comply with Point 2.30, Clause 2 of Article 6. Circular No. 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance (amended and supplemented in Article 4 of Circular No. 96/2015/TT-BTC dated 22 June 2015 of the Ministry of Finance) it will be included in deductible expenses when determining taxable income of corporate income tax when there are sufficient invoices and vouchers and payment according to regulations.
- Regarding the determination of income subject to PIT: If the foreign worker is paid for the cost of the Covid-19 quarantine and prevention by the Company upon his/her entry into Vietnam, this expense is the benefit for him/her. Therefore, the above expenditure is included in taxable income of personal income tax from salaries and wages of employees.

● **TAX DEPARTMENT OF HANOI CITY**

9. No. 95840/CT-TTHT dated 02 November 2020

Regarding invoices, VAT and corporate income tax for capital transfer activities

If the company applies an electronic invoice in accordance with the provisions of Decree No. 51/2010/NĐ-CP, Circular No. 39/2014/TT-BTC and Circular No. 32/2011/TT-BTC, the time to make E-invoice complies with the provisions of Clause 3, Article 15 of Decree No. 51/2010/NĐ-CP and guidance in Clause 2, Article 16 of Circular No. 39/2014/TT-BTC. An e-invoice must contain all required contents (including the seller's electronic signature) as guided in Article 6 of Circular No. 32/2011/TT-BTC, it is considered an legal invoice. In case the date of signing an invoice is after the date of issuing an e-invoice, the Company must base on the date of issuing the e-invoice to determine the obligation to declare, pay tax and record according to regulations.



10. No. 95835/CT-TTHT dated 02 November 2020

Regarding declaration of corporate income tax

- If the company has an affiliated branch that does independent accounting, the affiliated branch shall submit the arising CIT declaration of the affiliated branch to the supervisory tax authority of the affiliated branch. In case the Company has an affiliated unit but does dependent accounting, the affiliated branch of the Company is not required to submit CIT declaration; When filing corporate income tax returns, the Company is responsible for centralized declaration at the head office, including the arising part at its branches.
- In case the Company's branch converts independent to dependent accounting so that the company declares corporate income tax at the head office, the independent branch of the Company has a decision to change into a subsidiary of the Company must re-register in order to get a new tax identification number by the tax authority as prescribed in Articles 6, 7 and 8 of Circular No. 95/2016/TT-BTC. When there is a conversion decision, the branch of the company before the conversion must carry out procedures for closing tax code with the tax authority as prescribed in Article 16, Article 17 of Circular No. 95/2016/TT-BTC.

11. No. 97742/CT-TTHT dated 10 November 2020

Regarding VAT on non-commercial goods

Companies importing goods in the non-commercial form to serve the production and trading of VAT-liable goods and services of the Company are eligible to be deductible for the input VAT amount of the above goods paid at the importation stage in accordance with the principles specified in Article 14 of Circular 219/2013/TT-BTC (supplemented in Circular No. 119/2014/TT-BTC dated 25 August 2014 and amended and supplemented in the Circular No. 26/2015/TT-BTC dated 27 February 2015 of the Ministry of Finance).

12. No. 97740/CT-TTHT dated 10 November 2020

Regarding VAT policy for gifts

Cibes Lift Vietnam Co., Ltd. pays VAT according to the deduction method by purchasing processed gold products from gold and silver business to promote customers but not registered under the provisions of commercial law. The company must issue a VAT invoice which present full items and calculate VAT as goods/service for gift to customers in accordance with clause 9 Article 3 Circular No. 26/2015/TT-BTC with 10% VAT on processed gold.

13. No. 101315/CT-TTHT dated 23 November 2020

Regarding VAT policy

Pcorp Group Joint Stock Company (hereinafter referred to as the Company) has incurred the sale of resort cards to customers with a term of 5 years, each year the customer has the right to book 7 nights (the contract stipulates that the product is bought off for sale, no return), then in 2020, the customer only uses 02 nights and sells them to the Company for 05 nights with a profit of 26%, this is not a return activity, so the Company does not have to invoice. To adjust. Tax declaration and payment for overnight stay transfer activities are as follows:

- In case the customer is an individual, when selling the vacation night to the company, the individual (can authorize the organization to declare instead) to make PIT declaration and payment for each time incurred for irregular business activities, no fixed place of business if the total revenue from business in the calendar year of the individual is over 100 million VND as prescribed in Article 3, Article 7 of Circular No. 92/2015/TT-BTC.
- In case the customer is an organization or enterprise, when selling the number of vacation nights to the company, the organization or enterprise must issue an invoice and declare and pay VAT and CIT according to regulations.