



PROFESSIONAL LEGAL NEWSLETTER

OCTOBER 2020

A. LEGAL DOCUMENTS HAVE JUST BEEN ISSUED

- **GOVERNMENT**

1. Decree No. 122/2020/NĐ-CP dated 15 October 2020

Regulations on coordination and association of procedures for establishment registration of enterprise, branch offices, representative offices, declaration of the use of employees, issuance of social insurance, registration of use of invoices

- This Decree provides for the mechanism of coordination and association between state management agencies in settling procedures for establishment registration of enterprise, branch offices, representative offices, declaration of the use of employees, issuance of social insurance, registration of use of invoices.
- After establishment, in case of change of relevant information, the enterprise, branch or representative office shall register or notify the change to the business registration agency or social insurance agency., tax authorities in accordance with the law.

This Decree takes effect since 15 October 2020.

2. Decree No. 123/2020/NĐ-CP dated 19 October 2020

Regulations on invoices and vouchers

This Decree provides for the management and use of invoices when selling goods or providing services; the management and use of vouchers when carrying out tax, fee and fee collection procedures and defining the tasks, powers and responsibilities of agencies, organizations and individuals in the management and use of invoices, vouchers.

- This Decree takes effect from 01 July 2022, and encourages agencies, organizations and individuals that meet information technology infrastructure conditions to apply regulations on electricity invoices and vouchers of this Decree before 01 July 2022.
- Decree No. 51/2010/NĐ-CP dated 14 May 2010 of the Government regulating invoices for selling goods and providing services, Decree No. 04/2014/NĐ-CP dated 17 January 2014 of the Government amending and supplementing a number of articles of Decree No. 51/2010/NĐ-CP on invoices for selling goods and providing services, Decree No. 119/2018/NĐ-CP dated 12 September 2018 of the Government regulating electronic invoices for selling goods and providing services will continue to be effective until 30 June 2022.

3. Decree No. 125/2020/NĐ-CP dated 19 October 2020

Regulations on sanctioning administrative violations of tax and invoices

- This Decree provides for administrative violations, sanctioning forms, sanctioning levels, remedial measures, competence to impose penalties, competence to make administrative violation records and a number of sanctioning procedures on violations of tax, invoices.
- This Decree does not apply to administrative violations of fees and charges; administrative violations of tax on imports and exports collected by the customs authority and violations of regulations on tax registration procedures, violations of regulations on notification of business suspension, notification to continue business operation before deadline with business registration agencies, cooperative registration agencies of



organizations and individuals that carry out tax registration together with enterprise registration, cooperative registration, Business Registration.

This Decree takes effect on 05 December 2020.

4. Decree No. 126/2020/NĐ-CP dated 19 October 2020

Detailing provisions on a number of articles of the Law on Tax Administration

This Decree details the implementation of a number of articles of the Law on Tax Administration applicable to the administration of taxes and other state budget revenues, except for the contents of regulations on tax administration for enterprises with associated transactions, applying invoices and vouchers, sanctioning administrative violations in the field of tax and invoices, sanctioning administrative violations in the customs field.

This Decree takes effect from 05 December 2020.

5. Decree No. 128/2020/NĐ-CP dated 19 October 2020

Regulations on sanctioning of administrative violations in the customs field

This Decree prescribes the violation acts, the sanctioning forms, the sanctioning levels and the remedial measures; sanctioning competence; administrative sanctions procedures; the application of measures to prevent and ensure the sanction of administrative violations in the customs field.

This Decree takes effect from 10 December 2020.

● **THE MINISTRY OF FINANCE**

6. Consolidated dispatch No. 39/VBHN-BTC dated 07 October 2020

Guide to organize the training and issue of Chief Accountant's training certificate

This document is merged from the following two Circulars: Circular No. 199/2011/TT-BTC dated 30 December 2011 of the Minister of Finance guiding the implementation of the organization of training and issuance of Chief Accountant's training certificate, effective from 01 April 2012; Circular No. 39/2020/TT-BTC dated 15 May 2020 of the Minister of Finance amending and supplementing the reporting regime in a number of Circulars in the field of accounting and independent audit, takes effect from 01 July 2020 (Hereinafter referred to as Circular No. 39/2020/TT-BTC) (Circular No. 39/2020/TT-BTC as amended by Official Letter No. 10965/BTC-QLKT dated 10 September 2020 of the Ministry of Finance on the correction of Circular No. 39/2020/TT-BTC).

This Circular takes effect from 01 April 2012 and replaces Decision No. 98/2007/QĐ-BTC dated 03 December 2007 of the Minister of Finance promulgating “Regulations on chief accountant training and certification”

7. Circular No. 88/2020/NĐ-CP dated 30 October 2020

Amending and supplementing Article 26 of Circular No. 68/2019/TT-BTC dated 30 September 2019 of the Ministry of Finance guiding the implementation of a number of articles of the Decree No. 119/2018/NĐ-CP dated 12 September 2018 of the Government providing regulation on electronic invoices when selling goods and providing services

- Amending Clause 2 Article 26 of the Circular No. 68/2019/TT-BTC dated 30 September 2019 of the Ministry of Finance as follows: “2. From the effective date of this Circular to 30 June 2022, the following documents promulgated by the Ministry of Finance remain effective: Circular No. 32/2011/TT-BTC dated 14 March 2011; Circular No. 191/2010/TT-BTC dated 01 December 2010; Circular No. 39/2014/TT-BTC dated 31 March 2014; Decision No. 1209/QĐ-BTC dated 23 June 2015; Decision No. 2660/QĐ-



BTC dated 14 December 2016; Circular No. 37/2017/TT-BTC dated 27 April 2017.

- Bãi bỏ khoản 3, khoản 4 Điều 26 Thông tư số 68/2019/TT-BTC ngày 30/9/2019 của Bộ Tài chính.
- To annul Clause 3, Clause 4, Article 26 of Circular No. 68/2019/TT-BTC dated 30 September 2019 of the Ministry of Finance.

This Decree takes effect from 01 November 2020.

B. GUIDING – ANSWERING DISPATCH

● THE MINISTRY OF FINANCE

8. No. 12452/BTC-TCT dated 09 October 2020

Regarding corporate income tax policy

Due to the impact of the covid-19 epidemic leading to a decline in market demand, enterprises facing difficulties must suspend operations of a number of fixed assets for less than 9 months during the corporate income tax period 2020, after which fixed assets continue to be put into service for production and business activities shall be belonged the case of temporary suspension due to seasonal production specified at Point 2.2, Clause 2, Article 4 of the Circular No. 96/2015/TT-BTC of Ministry of Finance.

● GENERAL DEPARTMENT OF TAXATION

9. No. 4160/TCT-CS dated 02 October 2020

VAT refund

In case, the taxpayer has a number of input VAT invoices for 2017 and 2018 that have not yet been declared and deducted in the VAT declaration dossier submitted to the tax authority (as stated in the Official Letter No. 6804/CT-TTKT2 dated 17 August 2020 above: because at the time of tax declaration, the taxpayer has not received the invoice from the seller due to the lack of payment documents), the tax authority has checked and inspected the VAT declaration for 2017, 2018 and confirming the fact that the unit has not declared input VAT on the above-mentioned invoices and the seller has declared and paid tax on these invoices according to regulations, the taxpayer can declare the input VAT invoices that are not yet declared.

10. No. 4401/TCT-PC dated 19 October 2020

Regarding administrative sanctions

- In case the act of using illegal invoices, using invoices illegally or using invoices in contravention of regulations happened before 01 July 2020, resulting in tax deficits and tax evasion. If it is handled from 01 July 2020, this act will be sanctioned for the act of false declaration leading to lack of tax or the act of tax evasion, not to be sanctioned for an administrative violation on invoices.
- In case taxpayers use acts of illegal use of invoices, use invoices illegally, use invoices in contravention of regulations but do not lead to tax deficits or tax evasion and be sanctioned regarding the violation of tax procedures, the taxpayer will be sanctioned for the act of using invoices illegally, using invoices illegally, using invoices in contravention of provisions under Decree No. 109/2013/NĐ-CP dated 24 September 2013, Decree No.



49/2016/NĐ-CP dated 27 May 2016 and sanctioned for violations of tax procedures as prescribed in Decree No. 129/2013/NĐ-CP dated 16 October 2013 of the Government.

11. No. 4433/TCT-CS dated 21 October 2020

VAT

- Bayer Vietnam Co., Ltd. transferred the investment project "*factory producing veterinary - aquatic Bayer Vietnam Co., Ltd.*" with the aim of both investing in the production and trading of goods and services not subject to VAT and investing in the production and business of goods and services subject to VAT to another legal entity in Vietnam; For projects meeting the conditions for investment projects in accordance with the Law on Investment, the Transferee continues to perform without changing the investment objectives.
- In case Bayer Vietnam Co., Ltd. cannot separate the investment project to manufacture products subject to VAT from the investment project to manufacture products not subject to VAT, the company must declare and pay VAT for the transfer of investment projects with the tax rate of 10%.

● **TAX DEPARTMENT OF HANOI CITY**

12. No. 8775/CT-TTHT dated 01 October 2020

Invoices, VAT, and corporate income tax for capital transfer activities

The Northern Foodstuff Stock Company assigns capital contribution to establish another enterprise in Vietnam to an individual in Vietnam, if the transfer is done according to the principle and authority to decide on the transfer of investment capital from the state enterprises to joint-stock companies and limited liability companies with two or more members, in accordance with the law:

- Capital transfer activities are not subject to VAT as prescribed at Point b, Clause 2, Article 3 of Decree No. 209/2013/NĐ-CP dated 18 December 2013 of the Government. When issuing VAT invoices for capital transfer activities, the company shall write the line of the selling price on the invoice as the payment price, the tax rate line and the VAT amount not written and cross out under the guidance at Point 2.1, Appendix 4 to attached to the Circular No. 39/2014/TT-BTC of the Ministry of Finance.
- If the Company generates income from capital transfer, this income is determined as other income and declared in taxable income when calculating CIT in accordance with the Law on Tax administration No. 38/2019/QH14 dated 13 June of the National Assembly.

13. No. 89931/CT-TTHT dated 09 October 2020

Regarding VAT for service provided by EPEs for domestic enterprises

If a company is an export processing enterprise that signs a contract to provide mold repair services or mold details or mold parts to domestic customers, the company must be allowed to do business with a domestic company. The company must open separate accounting books and tax registers with tax authorities to declare and pay VAT on this activity. Repair services provided to domestic enterprises are subject to 10% VAT.

14. No. 91495/CT-TTHT dated 16 October 2020

Regarding VAT on sales activities to export processing zones and domestic markets under CIF terms

- In case the Company's client satisfies the condition as an export processing enterprise, goods may be traded between foreign countries and non-tariff zones that are not subject to VAT as prescribed in Clause 20 Article 4 of Circular 219/2013/TT-BTC above.



- The company purchases goods from a foreign supplier but does not carry out the procedures for importing into Vietnam, but resells it to customers being Vietnamese domestic enterprises (hereinafter referred to as the buyer) on the condition of delivery at the Vietnam port/airport (delivery terms: CIF Incoterm 2010) and the buyer who does the import procedures and pays the related taxes (if any) at the stage of importation, the sale of goods mentioned above is not eligible to apply 0% tax rate. The company must issue an invoice, calculate and declare the output VAT when selling goods to customers in Vietnam according to regulations.
- If the taxpayer has a voucher of VAT payment at the import stage bearing the name of the taxpayer and satisfies the conditions for VAT deduction, the taxpayer may declare input VAT withholding according to regulations.

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