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LEGAL NEWSLETTER

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Legal Newsletter

January 2020

Dear Valued Clients,

In the joyful atmosphere up to the New Year, Global Vietnam Lawyers would like to extend Valued Clients the deepest and most sincere gratitude for your continued support for and cooperation with us during the recent past.

We, Global Vietnam Lawyers commits ourselves to always accompanying and devotedly assisting you on the path to integrated and sustainable development.

Wishing you a New Year Filled With Joy, Happiness And Fortune.

Best regards,





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ISSUED IN THE MONTH

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01. REMARKABLE REGULATIONS

**07 compulsory
standards applying a
remote digital signing
model**



On 05 December 2019, the Ministry of Information and Communications issued Circular 16/2019/TT-BTTTT (“Circular 16”) on promulgating the list of mandatory standards applicable on digital signatures and digital signature certification services under the digital model on mobile devices and remote digital signatures. Circular 16 will take effect from 01 April 2020.

Accordingly, standards applicable to digital signatures and digital signature certification services under the remote digital signature model include the following seven (07) types:

- Standard for cryptography and digital signature;
- Standard for data information;
- Policy standards and digital signature authentication
- The standard protocol for storing and retrieving digital certificates;
- Standard for checking the status of digital certificates;
- Security standards for HSM to manage secret keys of organizations providing digital signature certification services;
- The standard system of equipment for managing secret keys, digital certificates and creating digital signatures of customers.

The details of each standard in the Appendix issued together with Circular 16/2019/TT-BTTTT.



01. REMARKABLE REGULATIONS

Tax debt relief,
elimination of
penalties and late
payment of taxes
within 3 years



On 26 November 2019, the National Assembly issued Resolution No. 94/2019/QH14 on tax debt relief, elimination of penalties and late payment of taxes of taxpayers who are unable to fulfil the tax to the State budget (“**the Resolution No. 94**”). The Resolution takes effect from 01 July 2020 and is implemented within 3 years from the effective date.

According to Article 4 of the Resolution No. 94 stated that the subjects who are not unable to pay the debt of taxes, including taxpayers owing taxes, penalties for late payment, and late payment in one of the cases as below, arising before 1 July 2020:

- i. The taxpayer who has died, declared as dead, missed or incapable of civil behaviour.
- ii. The taxpayer has issued a decision on dissolution and sent it to the tax authority, the business registration authority for dissolution procedures, and the business registration authority has notified on the system of National information of enterprise registration that the taxpayers are processing their dissolution procedure which has not been completed.
- iii. The taxpayer has filed a request for the opening of bankruptcy procedures or has been lodged by the person with concerned rights and obligations in accordance with the bankruptcy law.
- iv. Taxpayers no longer conduct business activities at registered business addresses with business registration offices and tax administration agencies in coordination with People's Committees of communes, wards where taxpayers are headquartered for checking and verifying information about taxpayers and find out that they are not operating at the registered business address or contact address registered with tax administration agencies.
- v. The taxpayers have been requested by the tax administration agency to the business registration offices for revoking the business registration certificate, operation license or practising license or taxpayers have been revoked their business registration certificate, operation license or practising license as requested by the tax administration agency.
- vi. Taxpayers suffer material damage due to natural disasters, disasters, epidemics, fires and unexpected accidents.
- vii. Taxpayers supplying goods and services are paid directly with the State budget, including subcontractors specified in contracts signed with investors and directly paid by the investor but not yet paid.

In addition, the Resolution contains specific states on the principles of tax debt settlement, debt settlement measures and jurisdiction of debt settlement for enterprises and organizations.



01. REMARKABLE REGULATIONS

New regulations on entry and exit of Foreigners



As of 25 November 2019, the National Assembly, Legislature XIV, 2nd Session, passed the Law on amending and supplementing a number of Articles of the Law on Entry, Exit, Transit, and Residence of Foreigners in Vietnam. ("Law No. 51") with many new regulations on entry and exit of foreigners as follows:

1. Supplementing the order and procedure for granting electronic visas to foreigners, including four (04) steps as follows:

(a) **Step 1.** Access the website to declare information in application for electronic visas and upload photo and passport records for issuance of electronic visas.

(b) **Step 2.** Submit fees for visa issuance to accounts specified in the visa issuance website after receiving electronic dossier codes from immigration authorities.

(c) **Step 3.** Immigration authorities shall consider, process and respond to applicants in the visa issuance website within 3 working days from the date on which all information and fees for visa issuance have been received.

(d) **Step 4.** Receiving results: Foreigners issued with electronic visas shall use electronic dossier codes to check and print settlement results from the visa issuance website.

2. Several cases where visa's purpose can be converted

- Presenting documents proving to be an investor or a representative of a foreign organization investing in Vietnam as per the law of Vietnam;
- Presenting documents proving his/her relationship with the person inviting or sponsoring him/her such as parents, spouse, or children;
- He/she is invited or sponsored by agencies or organizations and presents work permit or confirmation of eligibility for work permit exemption according to labor law; and
- He/she makes an entry by electronic visa and presents work permit or confirmation of eligibility for work permit exemption according to labor laws.

Law No. 51 sets out regulations in accordance with actual conditions, saving time and costs in the process of visa application, procedures for exit and entry, creating favorable conditions for foreigners to continue to stay in Vietnam if they fall into any of the above cases and have proof.



01. REMARKABLE REGULATIONS

New regulations on entry and exit of Foreigners



3. Making amendments to exit and entry conditions

a) Conditions of entry

Accordingly, Law No. 51 stipulates the cases where Foreigners are allowed to enter the country when fully meeting the following conditions:

Possessing passport or valid documents for international travel and visa, except for cases of visa exemption under this Law.

If foreigners enter the country unilaterally on a visa-free basis, their passports must have a validity period of at least 06 months.

b) Conditions of exit

Law No. 51 stipulates the cases where Foreigners are allowed to exit when fully meeting the following conditions:

- Possessing a passport or documents enabling international travel, except for cases of visa-free entry as specified in this Law;
- Possessing valid certificates of temporary residence, temporary residence cards, permanent residence cards;
- Not subject to the entry suspension as prescribed.

In addition, it should be noted that if foreigners using electronic visas on entry or exit must meet the above conditions as prescribed by law on entry and exit through international border gates.

4. Visa-free entry to coastal economic zones

Law No. 51 adds a case where foreigners will be exempted from visa for temporary stay period of 30 days, when entering the coastal economic zone as decided by the Government. Currently, Vietnam has many coastal economic zones but not all coastal economic zones are exempted from visas because of the difficulties in ensuring security, order and management of the activities of foreigners. Therefore, it is worth noting that the coastal economic zone exempted from visa must meet the following conditions:

- Having an international airport;
- There is a separate space;
- There is a definite geographical boundary, separated from the mainland;

Consistent with socio-economic development policies and without prejudice to national defense, national security, social order and the safety of Vietnam.

Above are the most notable new points on the entry and exit of foreigners. Law No. 51/2019 takes effect on 1 July, 2020.



01. REMARKABLE REGULATIONS

Regulations on land recovery
in industrial parks, industrial
clusters and trade villages
which do not put land into
use, slow down the land use
progress in Binh Duong
province



On 20 December, 2019, the People's Committee of Binh Duong Province issued Decision No. 39/2019/ QD-UBND stipulating land recovery in industrial parks, industrial clusters and trade villages which do not put land into use, slow down the progress of land use in Binh Duong province ("**Decision 39**").

1. Governing scope of land recovery

a) In case the land lessee executes an investment project without putting the land into use, delays the land use schedule as agreed in the land lease or sublease contract with the enterprise investing in the infrastructure of industrial parks, industrial clusters and trade villages.

b) In case of renting land in industrial parks, industrial clusters or trade villages before March 3, 2017, the land lessee does not put land in use, is behind schedule for land use 36 months compared with the progress of land use concluded in the land lease contract or more than 36 months from the date of issuance of the certificate of land use right, ownership of houses and other land-attached assets when the parties have no agreement on the progress of putting land into use in the land lease contract.

2. Subjects of application

a) **Organizations and individuals:** including domestic organizations; domestic households and individuals; Vietnamese people residing abroad; Foreign-invested enterprises executing investment projects in the form of land lease or sub-lease in industrial parks, industrial clusters and trade villages.

b) Enterprises investing in infrastructure of industrial parks, industrial clusters and trade villages.

In addition, Decision 39 also applies to enterprises investing in infrastructure of industrial parks, industrial clusters, trade villages or state agencies and units assigned to manage natural resources and environment, investment management, industrial land management, industrial clusters, trade villages.

This Decision takes effect on 1 January, 2020.



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02. READING FOR YOU

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02. READING FOR YOU

LUNAR NEW YEAR HOLIDAY 2020 OF CIVIL SERVANTS AND OFFICIALS LASTING 7 DAYS.

The Prime Minister has approved the 2020 Lunar New Year holiday as proposed by the Ministry of Labor, Invalids and Social Affairs. Therefore, this year's Tet holiday will last for 07 days, including 05 prescribed holidays and 02 compensatory days.

Specifically, cadres, civil servants, officials and employees of administrative, professional, political and social-political organizations have 7 days off from Thursday, 23 January 2020 to the end of Wednesday, 29 January 2020 (i.e. from 29 December, Ky Hoi year to the end of 5 January of Canh Ty year). As the date of 25 - 26/1/2020 (i.e. the 1st and 2nd of the Lunar New Year) coincides with Saturday and Sunday as a weekly day off, civil servants, officials and employees will take compensatory leave on 28 January 2020 and 29 January 2020 (i.e. the 4th and 5th of the Lunar New Year).

Agencies and units that do not have Saturdays and Sundays as days off, they will refer to their specific programs and plans to arrange the vacation schedules appropriately and lawfully. Ho Chi Minh City also requested agencies, units, enterprises, schools, hospitals, armed units and households to put up the national flag during the holidays mentioned above.



The city assigns presidents of People's Committees of districts to check and remind the hanging of the national flag in each residential area. Heads of agencies and units inspect the display of the national flag at units under their management; arranging personnel on duty on holidays, ensuring order and security at agencies, units and public play areas.

In addition, the city also requires the Department of Natural Resources and Environment to coordinate with the Departments, branches, units, People's Committee of the district to do well in cleaning the city, and mobilizing people, agencies and units to organize the maintenance and sanitation of residential areas, markets, schools, offices, enterprises and roads, continue to implement the urban civilized lifestyle.

Source: Young intellectuals

LOOKING BACK ON 8 REMARKABLE LEGAL EVENTS IN 2019

The year 2019 ends with a series of prominent legal events that have a great impact on society. Please look back on the key legal events of Vietnam in the past year.

1. Vietnam was elected a non-permanent member of the United Nations Security Council.

On the morning of June 7, 2019, at the United Nations headquarters in New York City, the United Nations General Assembly voted to choose five countries as non-permanent members of the United Nations Security Council (UN Security Council). Vietnam is the only candidate of Asia and was elected with 192/193 votes.

The fact that Vietnam has received such overwhelming support votes has met the expectations and expectations of all Vietnamese people, while also showing positive, substantive and responsible contributions of Vietnam. with the United Nations in general and the UN Security Council in particular over the years has been recognized by the international community.

2. Vietnam And The European Union Sign Comprehensive Free Trade and Investment Protection Agreements

On 30 June 2019, in Hanoi, the European Union (EU) and Vietnam officially signed a Free Trade Agreement (EVFTA) and the Vietnam-EU Investment Protection Agreement (IPA). after 9 years of negotiation. This is considered a historical event of the relationship between Vietnam and the EU; Opening unprecedented benefits to companies, consumers and workers in Europe and Vietnam.

EVFTA is a comprehensive, high quality, balanced agreement of interests for both Vietnam and the EU, at the same time compliant with the provisions of the World Trade Organization (WTO). This new generation FTA not only creates conditions for improving two-way turnover but also enhances the competitiveness of the economy, helping us to join the new value chain.

02. READING FOR YOU



3. Promulgating the Politburo's Resolution on a number of guidelines and policies to actively participate in the Fourth Industrial Revolution.

Accordingly, this Industrial Revolution opens up many opportunities and at the same time poses many challenges and strongly affects all aspects of the country's life, economy and society.

The Politburo stated that over the past time, our country has promoted the application, development of science, technology and innovation, enhanced the accessibility and actively participated in the Fourth Industrial Revolution.

4. Opening of the National Public Service Portal.

After 9 months of active implementation, on 9 December, the opening ceremony of the National Public Service Portal (address: dichvucong.gov.vn) was held with the attendance of Prime Minister Nguyen Xuan Phuc, Chairman. National Commission on E-Government.

The National Public Service Portal (NSC) is set up at a single address, which is the focal point to provide information, support organizations and individuals to implement administrative procedures (administrative procedures), online public services (DVC), supervise and evaluate the administrative procedures.

LOOKING BACK ON 8 REMARKABLE LEGAL EVENTS IN 2019

5. Proposing the development of partnership law by public-private partnership

The Public-Private Partnership Investment Proposition (referred to as the PPP Bill) will be commented by the National Assembly at the National Assembly's Meeting in 2019 and is expected to be approved at the first meeting of 2020. The Ministry of Planning and Investment said that currently, the detailed regulations for PPP activities are just at the Decree level, subject to many laws (State budget, investment, public investment, environmental protection, businesses, land, construction, bidding ...). To continue promoting PPP investment, a stable legal framework for long-term PPP contracts, high risks and large-scale investments is needed. Investors as well as lenders often require the stability of the laws governing contracts.

6. Proposal to amend the Investment Law and the Enterprise Law

Also in 2019, the Ministry of Planning and Investment proposed amending and submitting two important Draft Laws, the Investment Law and the Enterprise Law. Accordingly, for the group of regulations on sectors and trades banned from business investment and conditional business investment, the Draft Law on Investment has completed the provisions of Article 7 of the Investment Law in order to improve quality, effective implementation of the principle of ensuring business freedom of individuals and businesses in the industries that are not prohibited or must fulfill conditions as required by law, particularly:

Supplementing the provisions on the form of application, the content of business investment conditions as well as the principles, conditions and procedures for proposing the issuance, amendment and supplement of the List of conditional business lines;

02. READING FOR YOU



7. The National Assembly passes the Labour Code (amended)

On the morning of November 20, 2019, with 90.06% of deputies approved, the National Assembly passed the Labor Code (amended). The Code consists of 17 chapters and 220 articles, regulating labor standards; rights, obligations and responsibilities of employees, employers, labor representative organizations at grassroots level, organizations representing employers in labor relations and other relevant relations. directly to labor relations; State management of labor.

8. Fighting fraudulence in goods origin to protect businesses

In July 2019, Prime Minister Nguyen Xuan Phuc approved the Project "Strengthening state management on evading trade remedies and origin fraudulence".

The fight against origin fraudulence to defend the prestige of Vietnamese goods, and protects the domestic production has never been as hot as this year. Just a minute of neglect, the risk that import partners, especially the US, punishes will bring about unpredictable consequences. As a result, exports from Vietnam to key markets are still "welcome", and are constantly expanding in both value and volume.

Source: Enternews.vn



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03. ANSWERS TO QUERIES

Accounting of foreign travel expenses

In case the enterprise sends workers abroad to serve production and business, incur expenses for traveling and accommodation abroad, these expenses shall be accounted as deductible expenses if have sufficient legal invoices and documents as guided in Article 4 of Circular No. 96/2015/TT-BTC.

For expenses incurred abroad, invoices and vouchers of these expenses must conform to the regulations of the host country and must be translated into Vietnamese according to the instructions in Clause 4, Article 5 of the Circular. No. 156/2013 /TT-BTC dated 06 November 2013 of the Ministry of Finance as a basis for accounting deductible expenses.

Guidelines are provided in Official Letter No. 95764/CT-TTHT dated 23 December 2019 of the Ha Noi City Tax Department.

Tax declaration and settlement of foreign individuals

In case at the Bank, the foreign residents have monthly income received in Vietnam such as salary allowances, other benefits ... and income from salaries and wages paid by the parent company If the foreign party pays, it shall declare tax directly with the tax authority for the above-said income according to form No. 02 / KK-TNCN enclosed with Circular No. 92/2015 / TT-BTC. The company deducts the PIT of employees according to the instructions in Clause 1 Article 25 of Circular 111/2013/TT-BTC above.

At the end of the year, foreign workers who are individuals residing in Vietnam who are not authorized subjects must self-finalize PIT with the tax authorities according to form No. 02 / QTT-TNCN enclosed with Circular No. 92/2015/TT-BTC if subject to PIT finalization under the guidance in Article 12 of Circular No. 151/2014 / TT-BTC above.

Guidelines are provided in Official Letter No. 92131/CT-TTHT dated 10 December 2019 of the Ha Noi City Tax Department.

Personal income tax reimbursement dossier for foreigners

In case a foreign individual earns income from salaries and wages directly settling with the tax agency, the tax refund request dossier shall comply with the guidance in Item b.2.1, Point b, Clause 3, Article 21 and Clause 2 Article 23 of Circular No. 92/2015 / TT-BTC dated 15 June 2015 of the Ministry of Finance.

If the tax authority finds that the foreign individual's tax refund request contains incorrect information, incorrect data, or verification contents related to the proposed tax amount, Refunds shall, based on the actual situation of tax agencies, notify in writing taxpayers' explanation and supplement of information and documents strictly according to regulations. In the process of personal tax management of foreigners, if the tax authorities request that they need to be provided or verify information from the foreign tax authorities, then send a document to the General Department of Taxation (via the Department of International Cooperation) to the General Department of Taxation to request foreign tax authorities to provide or verify information according to the instructions at Point 1.1, Clause 1, Article 7 and Clause 2, Article 3 of the Regulation on information exchange under the double taxation avoidance agreement issued Enclosed with the Decision No. 1294/QD-TCT dated 13 August 2018 of the Director of the General Department of Taxation.

Guidelines are provided in Official Letter No. 4886/TCT-DNNCN dated 27 November 2019 of the General Department of Taxation.





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04. LIST OF LEGAL DOCUMENTS ISSUED IN THE MONTH



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04. LIST OF LEGAL DOCUMENTS ISSUED IN THE MONTH

NO.	DOCUMENT TITLE	ISSUANCE DATE	EFFECTIVE DATE
GOVERNMENT			
1	Decree 100/2019/ND-CP on administrative sanctions for road traffic and rail transport violations	30/12/2019	01/01/2020
2	Decree No. 99/2019/ND-CP Government detailing and guiding the implementation of a number of articles of the Law Amending and Supplementing a Number of Articles of the Law on Higher Education	30/12/2019	15/02/2020
3	Decree 98/2019/ND-CP on amending and supplementing a number of articles of Decrees on technical infrastructure	27/12/2019	15/02/2020
4	Decree 97/2019/ND-CP on amending and supplementing a number of articles of Decree 30/2018/ND-CP dated 7 March 2018 of the Government detailing the establishment and operation of the Council of property valuation; order and procedures for asset valuation in criminal proceedings	23/12/2019	15/02/2020
5	Decree 96/2019/ND-CP on the land price bracket	19/12/2019	19/12/2019
6	Decree 95/2019/ND-CP on amending and supplementing a number of Articles of the Government's Decree No. 24a/2016/ND-CP dated April 05, 2016 on management of building materials	16/12/2019	10/02/2020
7	Decree 94/2019/ND-CP on detailing some Articles of the Law on Crop Production regarding plant varieties and crop cultivation	13/12/2019	01/02/2020
SUPREME PEOPLE'S COURT - MINISTRY OF FOREIGN AFFAIRS			
1	Joint Circular 01/2019/TTLT-TANDTC-BNG prescribing the order and procedures for coordination between the People's Court and the Representative Office of the Socialist Republic of Vietnam abroad to implement a number of civil and administrative proceedings in foreign countries	05/12/2019	03/02/2020
MINISTRY OF FINANCE			
1	Circular 87/2019/TT-BTC on guiding the sanctioning of administrative violations in the field of State Treasury	19/12/2019	01/02/2020
2	Circular 86/2019/TT-BTC on guiding the determination of the starting price in auction for lease or definite-term transfer of the rights to exploit infrastructure assets invested and managed by the State	03/12/2019	20/01/2020
MINISTRY OF INDUSTRY AND TRADE			
1	Circular No. 41/2019/TT-BCT on supplementing HS code Lists of imported and exported goods prescribed in some Circulars of the Ministry of Industry and Trade	16/12/2019	29/01/2020
2	Decision 3624/QD-BCT issuing the procedures for issuing Electronic Certificates of Origin in Form D	09/12/2019	01/01/2020

NO.	DOCUMENT TITLE	ISSUANCE DATE	EFFECTIVE DATE
MINISTRY OF PLANNING AND INVESTMENT			
1	Circular No. 11/2019/TT-BKHDT detailing the provision and publishing of bidding information, the roadmap for selecting online contractors, selection and management and use of values of bid security and performance of non-refundable contract	16/12/2019	01/02/2020
2	Decision 1967/QD-BKHDT on announcing the supplemented list of administrative procedures in the field of outbound investment under the management function of the Ministry of Planning & Investment.	13/12/2019	13/12/2019
MINISTRY OF INFORMATION AND COMMUNICATIONS			
1	Circular 16/2019/TT-BTTTT on lists of mandatory standards to be applied in digital signatures and digital signature authentication services in form of mobile devices and remote signing	05/12/2019	01/04/2020
MINISTRY OF NATIONAL DEFENSE			
1	Circular 185/2019/TT-BQP guiding the provision, management and use of digital signature certification services for governmental authorities	04/12/2019	18/02/2020
STATE BANK OF VIETNAM			
1	Circular 37/2019/TT-NHNN guiding credit institutions and foreign bank branches to act as insurance agents for insurance enterprises	31/12/2019	02/03/2020
2	Circular 33/2019/TT-NHNN on amending and supplementing a number of Articles of Circular No. 34/2013/TT-NHNN dated 31 December 2013 of the Governor of the State Bank on issuance of exchange bills, treasury bills, deposit certificates and domestic bonds of credit institutions and foreign bank branches	31/12/2019	19/02/2020
3	Circular 32/2019/TT-NHNN on amending and supplementing a number of Articles of Circular 19/2013/TT-NHNN dated 06 September 2013 of the State Bank Governor providing for the purchase, sale and settlement of bad debts by Vietnam Asset Management Company	31/12/2019	14/02/2020
4	Circular 31/2019/TT-NHNN on regulating the accounting account system applicable to micro-finance institutions	30/12/2019	01/03/2020
5	Circular 29/2019/TT-NHNN on amending and supplementing a number of Articles of Circular 16/2012/TT-NHNN dated 25 May 2012 of the State Bank of Vietnam guiding a number of articles of the Government's Decree 24/2012/ND-CP of 03 April 2012, on management of gold business activities	27/12/2019	12/02/2020
6	Circular 27/2019/TT-NHNN on amending and supplementing a number of Articles of Circular 35/2014/TT-NHNN dated 20 November 2014 of the State Bank Governor of Vietnam on service fees for cash withdrawal via payment accounts at the State Bank of Vietnam	25/12/2019	01/05/2020
7	Circular No. 25/2019/TT-NHNN on amending and supplementing a number of Articles of Circular 40/2011/TT-NHNN of the Governor of the State Bank of Vietnam dated 15 December 2011, providing for the grant of licenses, and organization and operation of commercial banks, foreign bank branches, representative offices of foreign credit institutions and other foreign institutions engaged in banking activities in Vietnam	02/12/2019	17/01/2020



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