

LEGAL NEWSLETTER

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01

REMARKABLE REGULATIONS

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□ Guidance on procurement bidding under the CPTPP

On 24 August 2020, the Government issued Decree 95/2020/ND-CP providing guidelines on procurement bidding under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) ("Decree 95/2020"). Accordingly, Decree 95/2020 takes effect from the date of its signing, i.e. 24 August 2020, and features some notable key points as follows:

1. Governing scope and subjects of application

Pursuant to Articles 1 and 2 of Decree 95/2020, the governing scope and subjects of application in relation to procurement bidding under the CPTPP are specified as follows:

- The selection of contractors to execute the bidding packages of consulting services, non-consulting services, construction services and goods supply specified in Appendices IV, V and VI in attachment to Decree 95/2020 under the procurement projects of the agencies listed in Appendix II and Appendix III to Decree 95/2020 when the package price is equal to the price specified in Appendix I to Decree 95/2020 or higher.
- Subjects of application are organizations and individuals participating in or related to the bidding activities under the above governing scope.

2. General principles in conducting procurement bidding under the CPTPP

- National treatment and non-discrimination, the procurement agency has the obligation to provide:
 - ✓ Equal treatment for goods, services and contractors of the Member countries and those of Vietnam.
 - ✓ Equal treatment for goods, services and contractors of the Member countries.
 - ✓ Equal treatment for domestic contractors, regardless of whether the contractor has shares or capital contributed by foreign investors or organizationally depends on foreign investors.
- Rule of origin: the origin of goods in the bidding package is determined in accordance with the law on origin of goods.
- Domestic preferences: the procurement agency may apply the domestic preferences according to the following roadmap:
 - ✓ From 14 January 2019 to 13 January 2026, the procurement agency stipulates the minimum time for preparing bidding dossiers is 25 days from the date of posting the notice of invitation for bids on National bidding network system (for open bidding without short-listed bidders) or from the date the invitation is sent to shortlisted bidders (for open bids with short-listed bidders) until the date of bidding closing.
 - ✓ From 14 January 2019 to 13 January 2029, the procurement agency applies domestic preferences as prescribed by law. Competent persons are responsible for determining the total value of domestic preferences in a year, not exceeding 40% of the total contractual price of bidding packages under their management.
 - ✓ From 14 January 2029 to 13 January 2044, the procurement agency applies domestic preferences as prescribed by law. Competent persons are responsible for determining the total value of domestic preferences in a year, not exceeding 30% of the total contractual price of bidding packages under their management.
 - ✓ From 14 January 2044 onwards, the procurement agency is not allowed to apply domestic preferences.

3. Ensuring competitiveness in bidding

According to Article 7 of Decree 95/2020, competitiveness in bidding is ensured as follows:

- Contractors to submit dossiers of expression of interest, and bidding dossiers must be legally and financially independent from the parties: Procurement agency; consulting contractors assisting in the preparation of dossiers of expression of interest and dossiers of invitation to prequalification; evaluate dossiers of expression of interest and dossiers for prequalification; and appraise the results of invitation for expression of interest and results of prequalification.
- When participating in bidding, contractors must be legally and financially independent from the following parties: Procurement agency; contractors providing consultancy on the preparation, examination and appraisal of design and cost estimation dossiers; preparation and examination of invitation-to-bid dossiers and dossiers of requirements; evaluate bidding dossiers and dossiers of proposals; appraise the results of selection of contractors for such bidding package.
- Consulting and supervising contractors must be legally and financially independent from the contractors that execute contracts and the consulting contractors that inspect such bidding packages.
- Contractors participating in a mixed bidding package must be legally and financially independent from the contractor who prepares the feasibility study report, and prepares the design document for that package, except for the cases that this work is part of a mixed package.
- Consulting contractors can provide one or more consulting services for the same project or the bidding package, including: Pre-feasibility study report preparation, feasibility study report preparation, design document preparation, construction drawing design documents, supervision and consultancy.

A contractor is assessed to be legally and financially independent from other contractors; consulting contractors; and the procurement agency when the following conditions are met:

- (i) Not belong to the same agency or organization directly managing the non-business unit.
- (ii) Contractors and procurement agencies do not have more than 30% of shares or contributed capital of each other.
- (iii) Bidding contractor and the consulting contractor do not have shares or contributed capital of each other; do not have more than 20% of shares or contributed capital at another organization or individual.

□ Guidance on procurement bidding under the CPTPP

4. Bid security

Article 12 of Decree 95/2020 provides for the bid security as follows:

- Applicable only to open bidding for the bidding packages to provide non-consultancy services, construction services, goods procurement and mixed bidding packages.
- Contractors shall provide bid security before the time of bid closing. In case the method of two-stage bidding is applied, contractors shall provide bid security in the second stage.
- Bid security measures include: deposits, or guarantee letters issued by a credit institution or foreign bank branch established in accordance with the Vietnamese law or guarantee insurance certificates of domestic non-life insurers, branches of foreign non-life insurance enterprises established under the laws of Vietnam.
- The value of bid security shall be specified in the invitation-to-bid dossiers between 1% and 3% of the bidding package price, depending on the size and characteristics of each specific package.
- The validity duration of bid security as prescribed in the invitation-to-bid dossiers is at least equal to the validity duration of bidding dossiers plus 30 days. In case of extension of the validity duration of bidding dossiers after the time of bid closing, the contractors must extend the validity duration of the bid security correspondingly.
- In case where a partnership joins a bid, each member of the partnership may provide a separate bid security or elect a member to provide bid security for itself and for other members. The total value of bid security must not be lower than that requested in the invitation-to-bid dossier.
- The bid solicitor shall refund or release the bid security for contractors that are not selected within a time limit prescribed in the invitation-to-bid dossier which must not exceed 20 days after the contractor selection results are approved. For selected contractors, the bid security may be refunded or released after the contractors take the measure to secure the contract performance.

However, the bid security will not be refunded in the following cases:

- If a member in the partnership violates a provision on liability to provide information at the request of a Member State, then the bid security of all members will not be refunded.
- Contractors withdraw bidding dossiers after the time of bid closing and within the validity period of bidding dossiers.
- Contractors violate the bidding law, leading to cancellation of the bidding.
- Contractors fail to provide the contract performance security.
- Contractors fail or refuse to negotiate contracts within 20 days after being invited to negotiate the contract or has negotiated the contract but refuses to finalize or sign the contract, except in exceptional cases of force majeure in accordance with civil law.

5. Subjects and principles of application of domestic preferences in bidding

Pursuant to Articles 16 and 17 of Decree 95/2020, the procurement agency determines the subjects and principles of applying domestic preferences to domestic goods and contractors, intra-regional goods and contractors in international bidding as follows:

Subjects and principles of applying preferences	Domestic goods and contractors	Intra-regional goods and contractors	
Subjects entitled to preferences	For procurement bidding package	Entitled to preferences when participating in intra-regional or international bidding for the supply of goods whose domestic production costs accounting for 25% or more;	Entitled to preferences when participating in international bidding for the supply of goods whose production costs in the Member States account for 50% or more
	For bidding packages for consultancy services, non-consultancy services, construction services and combination	Entitled to preferences when participating in intra-regional and international bidding, including: domestic contractors participating in bidding independently or in partnership with other domestic contractors; Foreign contractors in partnership with domestic contractors or employ domestic subcontractors which take over 25% or more of the value of bidding package.	Entitled to preferences when participating in international bidding, including: intra-regional contractors participating in bidding independently or in partnership with other intra-regional contractors; partnership contractor in which a member is an intra-regional contractor which undertakes 50% or more of the value of bidding package.
Principles of applying preferences	Contractors as subjects eligible for many types of preferences	When considering preferences, only the highest preference is applied as prescribed by the invitation-to-bid dossier and the request for proposals.	
	For mixed bidding packages, the calculation of preferences is based on all proposals of the contractor in the services of consultancy, goods provision, and construction.	Contractors are entitled to preferences when proposing total domestic costs (cost of consultancy, goods and construction services) of 25% or more of the value of the bidding package.	Contractors are entitled to preferences when proposing the total cost in the Member States (cost of consultancy, goods and construction services) of at least 50% of the value of the bidding package.
	If after calculating preferences, the bidding dossiers and dossiers of proposals are ranked equal	Priority is given to contractors that propose higher domestic costs or employ more local workers (based on the salaries and wages paid).	Priority is given to contractors who propose higher intra-regional costs or employ more intra-regional workers (based on the salaries and wages paid).

□ Guidance on procurement bidding under the CPTPP

6. Conditions for contract signing and contract performance guarantee

- After selecting a contractor or investor for a project, the bid solicitor for regular procurement, the centralized procurement unit or the unit with a need for centralized procurement, and the selected contractor must sign a contract to execute the bidding package. The contract signed among the parties must comply with the contractual conditions specified in Article 82 of Decree 95/2020 as follows:
 - ✓ At the time of signing, the bidding dossier and dossier of proposals of the selected contractor are still valid.
 - ✓ At the time of signing, the selected contractor must satisfy requirements on technical and financial capacity to execute the bidding package. In case of necessity, the investor must verify information about the contractor's capacity, and if it still satisfies the bidding package requirements, the contract can be signed.
 - ✓ The investor must ensure the conditions of advance capital, payment capital, execution site and other necessary conditions to implement the bidding package on schedule.
- The contract performance guarantee is implemented in accordance with Article 84 of Decree 95/2020 as follows:
 - ✓ Contract performance guarantee is applicable to the selected contractors, except contractors providing consulting services.
 - ✓ The selected contractor must provide a contract performance guarantee before signing the contract or before the effective date of the contract. Contract performance guarantee must be made in one of the following forms: deposits or letters of guarantee issued by a domestic credit institution or foreign bank branch established under the laws of Vietnam.
 - ✓ Based on the size and nature of the bidding package, the value of the contract performance guarantee specified in the invitation-to-bid dossier, the dossier of requirements shall be 2% - 10% of the contract price.
 - ✓ The validity period of the contract performance guarantee shall be from the effective date of the contract to the date the parties fulfill their contractual obligations or the date of switching to warranty obligations if there are provisions on warranty. If it is necessary to extend the contract performance period, the contractor must be required to extend the valid period of the contract performance guarantee accordingly.
- The contractor shall not be refunded the contract performance guarantee in the following cases:
 - ✓ Refuse to perform the contract when the contract takes effect.
 - ✓ Violate any agreement in the contract.
 - ✓ Contract performance is delayed due to its fault but refuses to extend the validity of the contract performance guarantee.



□ Novelties on licensing electricity activities

On 09 September 2020, the Ministry of Industry and Trade issued Circular 21/2020/TT-BCT regulating the sequence and procedures for issuance of electricity activity licenses ("Circular 21/2020"). Circular 21/2020 will take effect from 26 October 2020 and replace Circular 36/2018/TT-BCT and Circular 15/2019/ TT-BCT amending Circular 36/2018/TT-BCT.

Accordingly, Circular 21/2020 features some notable key points as follows:

1. Governing scope and subjects of application

- Pursuant to Article 1 of Circular 21/2020, the sequence and procedures for issuance of electricity activity licenses are governed in the following activities:
 - ✓ Electrical industry consultancy includes:
 - Design consulting of such works as hydropower, wind power, solar power, thermal power (coal, gas, oil, biomass, solid waste), transmission lines and transformer stations.
 - Construction supervision consultancy including hydropower, wind power, solar power, thermal power (coal, gas, oil, biomass, solid waste), transmission lines and transformer stations.
 - ✓ Electricity generation; Electricity transmission; Electricity distribution; Electricity wholesaling; Electricity retailing.
- Subjects of application of Circular 21/2020, includes: individuals or entities that engage in the electricity industry, including the following electricity activities such as electrical specialized consulting, generation, transmission, distribution, wholesaling and retailing.

2. Cases of license exemption and the scope of activities licensed for electricity activities

According to Articles 3 and 5 of Circular 21/2020, cases of license exemption and the scope of sector activities licensed for electricity activities are specified as follows:

Cases of license exemption	Scope of licensed activities
<ul style="list-style-type: none"> ▪ Generating electricity for self-use without selling electricity to other organizations or individuals. ▪ Generating electricity with installed capacity up to 01 MW to sell electricity to other organizations and individuals. ▪ Electricity business in rural, mountainous or island regions purchase electricity with a capacity of not exceeding 50 kVA from electricity distributing grid for supplying electricity directly to consumers in such rural, mountainous or island regions. ▪ Electricity activities are performed to serve the national electrical load dispatch and management of electricity market. 	<ul style="list-style-type: none"> ▪ Electrical specialized consulting has a nationwide scope of operation. ▪ Electricity transmission or electricity distribution can be used within the scope of management and operation of a specific electrical grid. ▪ Electricity wholesaling and retailing have scope of activities in specific areas. ▪ Electricity generation can be used within the scope of each power plant.

3. Principles of licensing and term of an electricity activity license

Pursuant to Article 4 of Circular 21/2020, the electricity activity license is done according to the principles and term of the license as follows:

- Before the stage of the competitive electricity retail market, an electricity license is granted to engage in both electricity retailing and electricity distribution, except that an electricity generator unit applies for a license for retail electricity by using its own electrical grid without purchasing electricity supplied from the national electrical grid, an electricity license shall be granted to engage in both electricity retailing and electricity generation.
- An electricity generation license will be granted to the power plant owner to run only one power plant.
- Maximum term periods of electricity licenses are provided as follows:

Electricity activities		Term
Electrical specialized consulting		05 years
Electricity generation	Power plants that are on the list of large-scale power plants having special importance in socio-economic, national defense and security aspects, approved by the Prime Minister	20 years
	Power plants that are not on the list of large-scale power plants having special importance in socio-economic, national defense and security aspects, approved by the Prime Minister	10 years
Electricity transmission		20 years
Electricity distribution		10 years
Electricity wholesaling, electricity retailing		10 years

- In case of change of name, head office address, property transfer, the term of the electricity activity license will be issued according to the term of the previous license.
- Organizations and individuals that propose the term of the electricity activity license is shorter than the prescribed time limit will be granted according to the proposed term, unless based on the actual conditions of the power work item, the licensing authority for electricity activities will grant electricity activity licenses with the shorter term than the prescribed time limit.

□ Novelties on licensing electricity activities

4. Time limit, forms of dossier submission and authority to issue electricity activity licenses

Content	Licensing authority		
	Ministry of Industry and Trade	Electricity Regulatory Authority	People's Committees of centralized provinces and cities (or authorizing the Department of Industry and Trade)
Deadline for submission	At least 15 business days before its planned date of official operation		
Licensing field	Electricity transmission and electricity generation activities for large power plants of particular importance in terms of socio-economy, national defense and security, which are on the list approved by the Prime Minister.	Electricity distribution, electricity wholesale, electricity retail, electricity specialized consultancy and power generation activities for power plants with a capacity of 03 MW or more are not subject to the authority to issue electricity activity licenses by the Ministry of Industry and Trade.	<ul style="list-style-type: none"> ▪ Electricity generation by a power plant that has a capacity of less than 03 MW and is located in the province. ▪ Electricity distribution with a voltage up to 35 kV in the province. ▪ Electricity retailing with a voltage up to 0.4 kV in the province. ▪ Electrical specialized consulting includes: Consulting and designing works of transmission lines and transformer stations with voltage up to 35 kV, registering businesses with local authorities; Consulting and construction supervision of transmission lines and transformer stations with voltage up to 35 kV, registering business with local authorities.
Number of dossiers	<ul style="list-style-type: none"> ▪ 01 set ▪ Organizations and individuals are responsible for the accuracy and truthfulness of the application for a license 		
Forms of dossier submission	<ul style="list-style-type: none"> ▪ Online public service portal at https://dichvucong.moit.gov.vn ▪ Submit in person or by post (if the electronic documents are large in size or documents are not sent by law) 		

5. Responsibility of units receiving electricity activity licenses

According to Article 14 of Circular 21/2020, the electricity unit that is issued the electricity activity license shall:

- Perform electricity activities according to the issued license.
- Within 30 days of changing the name, address of the head office, transaction office, type of operation, scope of activities, term of the license, the unit must carry out the application procedure for a change or supplement of the license.
- Prepare application for amendment of electricity activity license in case of revocation of a part of field or scope of operation.
- Ensure electricity activity conditions as prescribed by law during activities and comply with relevant law provisions. Comply with the law on fire prevention and fighting for generation, transmission and distribution of electricity.
- Fully pay licensing fees as regulated by laws.
- Do not lease, lend or alter contents of the license by itself.
- Before the commercial operation date, generating units are responsible for completing:
 - ✓ Signing Power Purchase Agreement as regulated.
 - ✓ SCADA system serving the operation of the electricity system and market in accordance with regulations, Information technology infrastructure system, telecommunications infrastructure serving electricity market operation (for plants participating in the electricity market).
 - ✓ Comply with other regulations on management and operation of power plants laid down in relevant legal normative documents.

□ Novelties on licensing electricity activities

5. Responsibility of units receiving electricity activity licenses (Cont.)

- Being exposed to the inspection by and comply with decisions of competent state authorities on penalties for violations concerning the license use and guarantee of electricity activity requirements as prescribed by law.
- Keeping the original of the issued electricity activity license at the head office of the unit and a copy of the electricity activity license at its transaction office.
- Within 30 days of being granted the electricity activity license, the granted unit shall send a copy of the granted electricity activity license to the local state management agency in electricity sector.
- Responsibility for reporting
 - ✓ Before 01 March every year, reporting directly to the licensing agency on electricity activities, the local Service of Industry and Trade on the operation situation in the licensed field of the previous year by direct delivery, post or via email system.
 - ✓ Reporting to the agency issuing the electricity activity license within 60 days prior to the date of cessation of electricity activities or transfer of electricity activities by direct delivery or by post.
 - ✓ Reporting and providing complete and accurate information when requested by the licensing agency, the competent authority.
- 30 days before the electricity activity license expiry, a licensed electricity unit wishing to continue its operation must prepare an application for an electricity activity license and follow the sequence and procedures for applying for electricity activity license according to regulations.

6. Cases of leasing, renting or assigning for management and operation of the power plant

- The investor of a power plant must fulfill obligations relating to the investment and operation of that power plant in accordance with applicable law.
- The entity that leases the power plant or is hired or assigned or authorized to manage and operate the power shall fulfill all obligations relating to the operation of the power plant under the agreement on lease, rent or assignment for for management and operation of the power plant.



□ Novelties on duty-free business

On August 28, 2020, the Government issued Decree 100/2020/ND-CP regulating duty-free business ("Decree 100/2020"). Accordingly, Decree 100/2020 will take effect from October 15, 2020 and replace Decree 167/2016/ND-CP and feature the following novelties:

1. Additional objects and conditions eligible for duty-free purchase

Pursuant to Article 3 of Decree 100/2020, in addition to the subjects eligible to purchase duty-free goods as prescribed previously, Decree 100/2020 also adds the following new subjects and conditions eligible to do so:

- People on exit or in transit after completing exit or transit procedures, passengers on international flights leaving from Vietnam or people waiting for exit are entitled to purchase duty-free goods, outside of receiving locations such as:
 - ✓ People who exit or transit through international land border gates; international intermodal rail station border gates, class 1 seaports and international civil airport border gates may purchase duty-free goods at duty-free shops located in quarantine areas.
 - ✓ People awaiting exit can buy duty-free goods at domestic duty-free shops. Duty free goods are picked up at the receiving counter in the quarantine area at the international checkpoint where the passenger exits.
 - ✓ Foreign tourists traveling in groups by sea, with passports or papers of international travel value are entitled to purchase duty-free goods at a seaport type 1 border gate and a domestic duty-free shop. In case of buying duty-free goods domestically, tourists may receive the goods at the receiving counters in the quarantine area at the class 1 seaport checkpoint

Duty-free buyers can also receive goods overseas (except for customers who buy goods on international flights departing from Vietnam).

- Passengers on international flights departing from Vietnam can purchase duty-free goods on exit aircraft.

2. Goods sold at duty-free shops

According to Article 6 of Decree 100/2020, goods sold at duty-free shops include:

- Goods put on sale at duty-free shops include:
 - ✓ Goods temporarily imported from abroad, of non-tariff zones and bonded warehouses put into sale at duty-free shops are those not on the list of goods banned from import or temporarily suspended from import in accordance with the law on foreign trade management.
 - ✓ Domestic goods permitted to be circulated in accordance with law and put into sale at duty-free shops are those not on the list of goods banned from export or temporarily suspended from export. Where goods are subject to conditional export, the conditions prescribed by law must be met.

- Domestic goods that are allowed to be circulated in accordance with Vietnamese law and put into sale at duty-free shops must be under the management and supervision of customs offices on the basis of notification of the list of goods brought into duty-free shops and warehouses of duty-free business conducting enterprises.
- Goods sold at duty-free shops must be kept at duty-free shops and duty-free warehouses of duty-free goods operating businesses.
- The time of storing goods at the duty-free shop is no more than 12 months from the date of completion of customs procedures. If there is a plausible reason, the Director of the Sub-department of Customs in charge of the duty-free shop may extend it once for no more than 12 months.
- Cigarettes, cigars, liquor and beer sold at duty-free shops must have the stamp "VIET NAM DUTY NOT PAID" issued by the Ministry of Finance. The position of stamp "VIET NAM DUTY NOT PAID" is specified in Appendix I issued with this Decree. Stamps must be affixed before being displayed for sale at duty-free shops or before being delivered to purchasers in case goods are exported directly from duty-free warehouses to buyers.
- Goods that are broken, damaged, losing quality, poor in quality, expired, cannot be sold for consumption: The enterprise makes a record on the status of the goods for destruction (certified by Customs branches managing duty free shops and duty free warehouses) and organizes destruction according to regulations. Before carrying out the destruction, the enterprise must notify in writing the destruction plan to the Sub-department of Customs in charge of duty-free shops and warehouses in order to supervise the destruction according to regulations.
- For goods as samples, trial goods brought into duty-free shops for customers to purchase trial goods (test papers for perfume flavor, alcohol, cosmetics, perfumes, etc), bags, packaging imported to contain duty-free goods bought by customers, enterprises must manage these goods separately, ensure their use for the right purposes and must report to customs offices in accordance with law.

□ Novelties on duty-free business

3. Currency used in duty-free sales transactions

Under Article 7 of Decree 100/2020, currency used in duty-free sales transactions, in addition to:

- Vietnamese Dong.
- Currency of the country sharing the land border with the location of the duty-free shop in the border area.

Also available:

- US dollar foreign currency (USD), euro (EUR).
- Currency of the country where international flights of airlines are established and operated under the laws of Vietnam that enter and transit in that country.

4. Responsibility of businesses dealing in duty-free goods

According to Article 19.1 of Decree 100/2020, duty-free businesses, in addition to the responsibilities when selling goods to purchasers as:

- People on exit, in transit, passengers on exit aircraft, tourists by sea, crew members buying duty-free goods for personal needs while the ship is anchored at Vietnamese seaports.
- Passengers on an international flight to Vietnam.
- People waiting for exit and buying goods at domestic duty-free shops.
- Organizations and individuals that are entitled to privileges and immunities to purchase goods at domestic duty-free shops.
- Seafarers working on ships on international routes

Enterprises are also responsible for:

- Entering data about customer and goods information into the electronic data processing system when accepting orders and completing payment procedures. Particularly in case of selling to customers waiting for exit, exiting, transiting through international civil airports, updating information about passengers via barcode scanning on boarding pass before checking and comparing information that customers have declared when buying online.
- When delivering goods to buying customers, checking and comparing information that customers have declared when buying online with information on papers related to buying customers according to regulations for each subject.

In addition to the said novelties, Decree 100/2020 also adds a number of new provisions on customs procedures for goods sold to customers on exit but delivered abroad at their request; procedures for goods put into sale at duty-free shops that change the purpose of use, transfer to domestic sale or re-export.



❑ Novelties on sanctioning administrative violations in the activities of business and production and trade in counterfeit goods, banned goods and protection of consumers' interests

On August 26, 2020, the Government issued Decree 98/2020/ND-CP on sanctioning administrative violations in the activities of business and production, trade in counterfeit goods, banned goods and protecting the interests of consumers ("**Decree 98/2020**"). Decree 98/2020 comes into force from October 15, 2020 and replaces Decree 141/2018/ND-CP, Decree 185/2013/ND-CP and Decree No. 124/2015/ND-CP amending and supplementing a number of articles of Decree 185/2013 / ND-CP ("**Decree 185/2013 / ND-CP**").

Accordingly, Decree 98/2020 is issued in the direction of raising fines for administrative violations and adding a number of novelties on notable violations as follows:

1. Subjects of application

- Vietnamese individuals, organizations or foreign individuals and organizations that commit acts of administrative violation specified in this Decree in the Vietnamese territory. In which, organizations include:
 - ✓ Enterprises established and operating under the Enterprise Law; cooperatives and unions of cooperatives established under the Cooperative Law; other economic organizations established and operating under the provisions of law and the subordinate units of the said economic organizations.
 - ✓ Representative offices and branches of foreign traders in Vietnam; representative office of foreign trade promotion organization in Vietnam.
 - ✓ Other organizations established in accordance with
- Business household established in accordance with the law; households engaged in agricultural, forestry, fishery production, salt making, street vendors, snacks peddlers, wholesalers, mobile businesses, and low-income service workers are not required to register their business in accordance with the law. Breaching this Decree will be sanctioned like violating individuals.

2. Penalty for violation

- Maximum fine level in the field of commerce, protection of the interests of consumers: VND 100 million for individuals and VND 200 million for organizations.
- Maximum fine level in the field of manufacturing and trading fake and banned goods is VND 200 million for individuals and VND 400 million for organizations.

3. Acts of violation on alcohol and beer trading

In addition to the previous violations of alcohol and beer trading, Decree 98/2020 adds a number of violations on alcohol trading with the following fines:

- A fine ranging from VND 500,000 to VND 1 million will be imposed for manually producing alcohol with an alcohol content of 5.5 degrees or more and selling it to an establishment that has been licensed for re-processing alcohol without registering with the commune-level People's Committee where the production establishment is located.
- A fine of from 1 million to VND 3 million will be imposed for selling alcohol with an alcohol content of 5.5 degrees or higher for local consumption or trading alcohol with less than 5.5 degrees of alcohol without registering with the Economic Department or district-level Infrastructural Economic Department as regulated.
- A fine of from 500,000 to VND 1 million will be imposed for selling or supplying alcohol and beer to people under 18 years old.
- A fine of from 3 million to VND 5 million will be imposed for employing employees under 18 years old for directly participating in the production, purchase and sale of alcohol or beer.

4. Supplementing a number of administrative violations in the field of e-commerce

Decree 98/2020 supplements a number of administrative violations in e-commerce with the following acts:

- For violations on setting up e-commerce website or e-commerce application on mobile platforms:
 - A fine of from 1 million to VND 5 million will be imposed for
 - ✓ Failure to fully or incorrectly publish on the sales e-commerce website or sales application information about the website owner or sales application, information on goods, services, and information on price, shipping and forwarding, information on general transaction conditions, and information about specified payment methods.
 - ✓ Receiving transfer of e-commerce website or sales application without carrying out transfer procedures or reporting to competent state agencies as prescribed.
- A fine of from 5,000,000 to VND 10,000,000 will be imposed for forging the logo of "Notified" to the Ministry of Industry and Trade: Using the "notified" logo to attach to the sales e-commerce website or goods sale application without approval or confirmation of notification by competent state agencies according to regulations.

❑ Novelties on sanctioning administrative violations in the activities of business and production and trade in counterfeit goods, banned goods and protection of consumers' interests

4. Supplementing a number of administrative violations in the field of e-commerce (cont.)

- For violations of information and transactions on e-commerce websites or mobile applications, a fine of between 10 million and VND 20 million will be imposed for the following acts:
 - ✓ Providing information, doing business or trading in counterfeit goods, goods or services infringing intellectual property rights or goods or services banned from business on the internet environment.
 - ✓ Failing to comply with the terms of the signed contract or unilaterally terminating the signed contract for using the online ordering function on the e-commerce website or mobile application as prescribed.
- For violations of providing e-commerce services:
 - A fine of from 1 million to VND 5 million for: Failure to provide customers with full information about the auction location and time, notice of auction of goods, how to determine the buyer and notice of auction results on website or online auction application as prescribed.
 - A fine of from 5 million to VND 10 million is imposed for one of the following acts: Failure to notify the auction result and send it to the seller, buyer and related parties as prescribed; Failure to give the seller information about the progress of the auction that the seller has organized when requested.
 - A fine of from 10 million to VND 20 million will be imposed for the following acts:
 - ✓ Unilaterally terminate the contract or stop providing services on the website or e-commerce service application without the mechanism of notifying the service users or without any plausible reason.
 - ✓ Failure to publish regulations or publish regulations on a website that are different from the information in the application for registration of an e-commerce service website or application of e-commerce services that has been confirmed by a competent state management agency.
 - ✓ Change the contents of the regulations on websites providing e-commerce services or applying e-commerce services without notifying the service users before applying those changes.
 - ✓ There is no mechanism for checking and monitoring to ensure that the seller's information provision on e-commerce website or mobile application is done accurately and completely.
- A fine ranging from 30 million to VND 40 million will be imposed for the following acts: Arbitrarily changing, deleting, destroying, copying, disclosing or illegally moving customers' payment information on the website or application of E-commerce service provision or causing customers' payment information through e-commerce service websites or e-commerce applications to be appropriated and resulting in damage to customers.
- A fine of from 10 million to VND 20 million will be imposed on the owner of an e-commerce website that has an online payment function but does not publish on the website a policy on confidentiality of payment information for customers.

5. Acts of violation on protecting the interests of consumers

The acts of violation on the protection of consumers' interests are supplemented by Decree 98/2020, including the acts and fine levels as follows:

- A fine of between 500,000 and VND 1 million will be imposed for one of the following acts where goods or services of a transaction are valued at less than VND 5 million:
 - ✓ Conducting trade promotion activities, proposing direct transactions with the object as a person who has no civil act capacity or has lost civil act capacity.
 - ✓ Requesting or compelling consumers to pay the cost of goods or services provided without prior agreement with consumers.
 - ✓ Taking advantage of consumers' difficult circumstances or taking advantage of natural disasters and epidemics to provide poor quality goods and services.
- A fine of from 1 million to VND 5 million will be imposed for any of the following violations:
 - ✓ Failure to explain or explain in time or provide information, documents and evidence as required by the state management agency on the protection of consumers' interests according to regulations.
 - ✓ Refuse to receive consumer requests to negotiate or fail to negotiate with consumers within 7 working days of receiving the consumer's request as prescribed.
- A fine of between 10 million and VND 20 million will be imposed on the act of remote concluding of contracts with consumers in one of the following cases:
 - ✓ Restricting or preventing consumers from unilaterally terminating the performance of a signed contract within ten days of entering into the contract in case the business organization or individual incorrectly or insufficiently provides information as specified.
 - ✓ Forcing or requiring consumers to pay costs to be allowed to terminate a signed contract, except costs for the part of goods or services that have been used by consumers.
- A fine of between 30 million and VND 50 million will be imposed for failure to properly apply model contracts or general transaction conditions registered with the competent state management agency on the protection of consumers' interests in accordance with the law.

02

ARTICLE



GV Lawyers would like to introduce an article of Lawyer Le Quang Vy & Lawyer Nguyen Thi Hang titled "**What do authors benefit from when EVFTA comes into effect?**" posted on the website Vietnam Online Lawyers. In this article, the authors focused on researching and discussing prominent provisions related to Vietnam's Intellectual Property Law and EVFTA's commitment to intellectual property protection in general and Copyright, Related Rights in particular under treatment of most-favored-nation status.



Lawyer Le Quang Vy



Lawyer Nguyen Thi Hang



What do authors benefit from when EVFTA comes into effect

(LSO) - On February 12, 2020, the European Parliament officially ratified the Free Trade Agreement between Vietnam and the European Union ("EVFTA"). This opens the opportunity but equally poses enormous challenges for Vietnam in the process of deep integration with the world economy.

In addition to outstanding regulations related to goods, import and export, tariffs, etc., there are many notable regulations that govern the commitments to intellectual property protection and the Copyright and Related Rights (Section B Chapter 12 of EVFTA). It can be said that in general, the Copyright and Related Rights of the current Vietnamese Intellectual Property Law are quite progressive, relatively consistent with the international conventions to which Vietnam has acceded.

Therefore, EVFTA stipulates that in order to have the Copyright and Related Rights protected, the Parties must comply with the rights and obligations specified in international treaties (i) Berne Convention (Vietnam acceded to in 2004); (ii) Rome Convention (having acceded to in 2007); (iii) TRIPs Agreement (having acceded in 2007); in addition, within 3 years of entry into force of the EVFTA, the Parties shall accede to the WIPO Treaty and Copyright and the WIPO Treaty on Performances and Phonograms adopted in Geneva on 20 December 1996. Currently, Vietnam is conducting procedures for joining these two Treaties. It should be added that the CPTPP Agreement also has the same terms as EVFTA, whereby within 3 years of January 14, 2019 (the effective date of the CPTPP for Vietnam), the Parties must participate in these 2 Treaties. Thus, by January 14, 2022, Vietnam will have to surely become a member of the aforesaid two WIPO Treaties according to international commitments.

Most-favored-nation (MFN) status

EVFTA's first commitment to the protection of intellectual property in general and the Copyright and Related Rights in particular is the treatment under most-favored nation status. Accordingly, any advantage, preference, privilege or immunity accorded to a national of any third country by either Party will be accorded to a national of the other Party immediately and unconditionally. This commitment is also included in the WTO Agreements, including the TRIPs Agreement on trade aspects related to intellectual property rights among WTO member states. This provides an opportunity for artists and consultants of copyright law to research, explore and apply "case studies" in different countries to review and apply to their own situation in Vietnam. For a "flat world" in modern times like these days, the music market in particular and cultural and artistic activities in general are increasingly developing on the internet environment, it seems that exchanges know no borders. Therefore, copyright disputes between Vietnamese artists and subjects in other countries, as well as between artists in the world and subjects in Vietnam are inevitable. Therefore, the fact that the Parties grant each other the treatment under most-favored nation status is a fair, reciprocal basis according to international standards.

Exclusive rights of authors and performers

Under EVFTA, each Party shall grant the author the exclusive right to permit or prohibit "the direct or indirect reproduction by any means or form, of any part or all of its work". To this effect, the Vietnamese law also has respective provisions in Articles 20 and 28.6 of the Intellectual Property Law and Article 3.1 of Decree 22/2018 / ND-CP, under which the Vietnamese law defines a copy of the work means a direct or indirect reproduction of the work in part or in its entirety by any means or form. Copying the work without the permission of its author or copyright owner is an infringement of copyright. Likewise, the exclusive rights of performers, Vietnam's current IP Law has also met the basic EVFTA regulations including rights such as (i) shaping the performance; (ii) Directly or indirectly reproduce his or her performance; (iii) broadcast or otherwise transmit its performance to the public; (iv) distributing their performance to the public by selling, leasing or transferring ownership.

The right to compensation of performers and producers of recordings

EVFTA provides that performers and producers of phonograms are entitled to a reasonable remuneration paid by their users when a phonogram has been released for commercial purposes or a copy of such phonogram used for broadcasting by radio means or for public communication. Each Party shall ensure that such remuneration is distributed between the concerned performers and producers of phonograms. Each Party may specify conditions for the distribution of such remuneration in the event of no agreement between performers and producers of phonograms.

Article 33 of the Vietnamese IP Law provides for the right to remuneration of performers and producers of phonograms and video recordings in case organizations or individuals use published phonograms for commercial purposes and use in business and commercial activities. The payment of this remuneration is subject to the agreement, in case the agreement cannot be reached, the Parties shall comply with the Government's regulations or either Party initiates a lawsuit at the Court. As such, Vietnam's current IP Law has not yet to provide for the conditions to distribute this remuneration in the absence of agreement between performers and phonographs. Although EVFTA is not required to stipulate, it only "can" specify conditions for remuneration. For this matter, the first thought is that the law should have clear provisions as a standard for the parties to follow. Vietnam needs additional conditions for the distribution of remuneration between producers and performers.

What do authors benefit from when EVFTA comes into effect

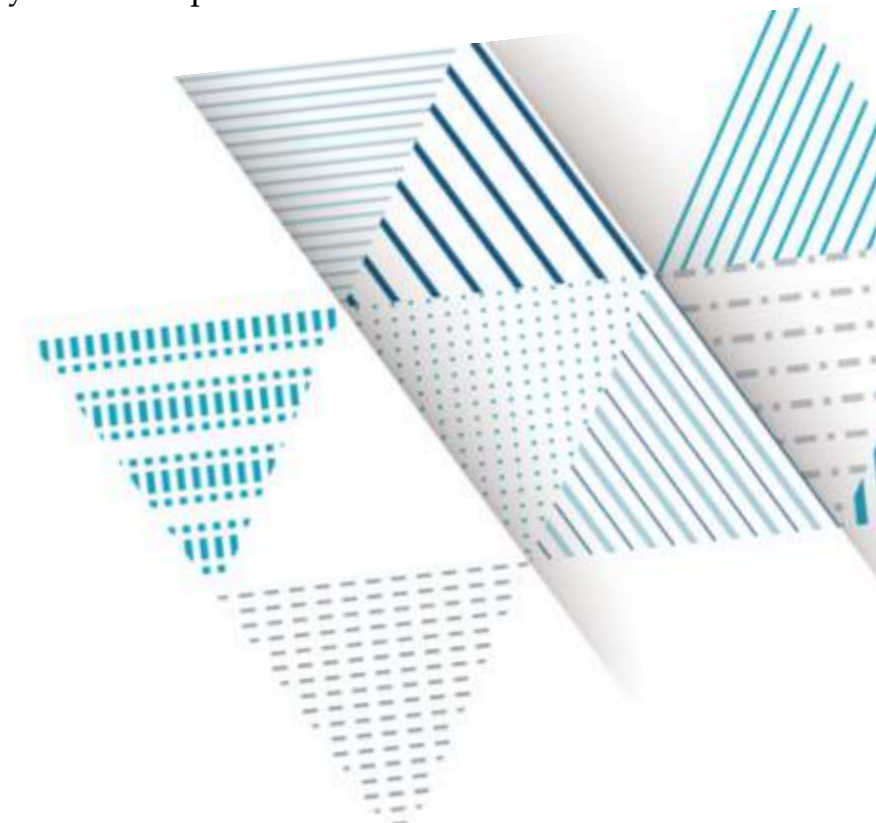
Provisions on the artist's right to resell works of art

EVFTA provides that for the benefit of the author of an original work of art, each Party may grant a right to resell, which is determined as a non-transferable right, to receive a royalty based on the sale price for the reselling period of the work after the author has delivered the work for the first time. This is a pretty good rule to ensure that the author can enjoy more benefits from his work, which is regulated by many countries around the world. Specifically, the Copyright Law of Swedish literary and artistic works calls it Special Remuneration (Article 26j Chapter IIa).

Accordingly, remuneration for the resale of copies of a work of art arises when the copy of a work that has been transferred is resold by the trader during the term of copyright protection and the author has the right to receive remuneration from the seller. The author also reserves the right to receive remuneration in other cases where the sale is carried out by a trader within the scope of his or her business. In this case the remuneration will be paid by the trader. Remuneration is 5% of the wholesale price excluding value added tax. This right to special compensation is personal and non-transferable.

Vietnam IP Law does not provide for the rights for the author to resell the work of art, or the right to his special remuneration like the Swedish Law. The transfer of the Copyrights and Related Rights in Vietnam is established on the basis of a Transfer Agreement or License Transfer Agreement. Accordingly, the parties themselves agree on royalties in the contract. Whether the author receives additional remuneration when the purchaser of the work transfers the work to a third party. Although the IP Law has not yet adjusted the matter in question, but on the basis of civil matters if not contrary to law and social ethics, the parties still have the right to negotiate by themselves in the Contract. At a glimpse of the matter, with the artist's Resale Rights in respect of a work of art as provided for in the EVFTA, or in reference to the Special Remuneration as regulated by Swedish Law, for the purpose of guaranteeing the rights of the authors as well as encouraging the spirit of creativity in society, the Vietnamese IP Law should supplement this issue to become a statutory clause.

It can be said that Vietnam's IP Law almost meets the requirements of EVFTA basically with Term of Protection Provisions; Protection of technological measures, Protection of rights management information; Cooperation on collective management rights, etc. Vietnamese IP Law has terms that are compatible with EVFTA. The long awaited expectation from artists as well as law consultants is an effective law enforcement mechanism. In the last analysis, legal documents are "static", only "dynamic" implementation can be of vital nature and true value.



❑ Beware of the legal risks of e-mail contracts

On 26 August 2020, at an online seminar with the topic "*Digital transformation and key legal points to take advantage of opportunities from the EVFTA Agreement*" jointly organized by the Vietnam International Arbitration Center (VIAC) and Investment and Trade Promotion Center of Ho Chi Minh City (ITPC), Mr. Dinh Quang Thuan - Partner of GV Lawyers and Mediator of Vietnam Mediation Center (VMC) as keynote speaker shared that the Vietnamese law only clearly regulates electronic contracts signed with digital signatures and authenticated digital signatures (Decree 130/2018/ND-CP). With this legal corridor in mind, the signed contracts with digital signatures are absolutely safe.

On the contrary, another form of signing that is quite common in Vietnam is the direct signature on a paper contract (hard file) that is then turned into an image and transmitted back and forth by email, thereby containing many legal risks.

According to Lawyer Thuan, there have been many cases related to this form of contracting when either party wants to deny the obligations.

First, either party said that the email was not sent by them and the other party could not prove that it was received.

Second, either party argued that the contents of the contract file were changed, which an expert in the IT industry confirmed as likely.

There are cases where either party believes that the email they received was not sent from an authorized person or sent to an unauthorized person.

"The signing of the contract is performed by the director, the legal representative. But in practice, the director does not directly scan the contract and then send e-mail to the partner, but assign this to his subordinates. However, when either party wants to deny it, they can give the reason the sender is not competent," said Thuan.

Therefore, the advice to businesses is that if you directly sign a contract, transmit images via e-mail, this transaction should be done by email with your own domain name, separately registered, avoid using such domain names as gmail, hotmail, yahoo, etc. Of course, it is possible to exclude the case that the e-mail addresses with this domain name have been confirmed, certified before or officially provided on the partner's website. When dealing with a person who is not the legal representative, it is necessary to send a letter in groups, in the presence of this person for future assurance.

In addition, to avoid encountering problems in case of any dispute, it is advisable to choose the arbitration method. If no arbitrator is chosen, the case will fall to the court. The Vietnamese courts are still conservative, used to the old method. Evaluation of evidence by e-mail, electronic method is not accepted", emphasized Thuan.

According to Lawyer Thuan, the contracts that are transmitted via e-mail are not clearly regulated by law, so they are only valid when the two parties can prove them by authentic and accepted evidence. There have been cases where he had to bring along a computer that sent contract by e-mail for the court to watch live. On the contrary, there are also companies overseas that have to bring a computer that has been used to send e-mail to Vietnam to prove it.

Against the backdrop of the raging Covid-19 epidemic, and lingering national border shutdowns, the form of entering into an electronic contract brings benefits in terms of cost and time. However, for many Vietnamese enterprises, this form is uncommon.

If directly sign a contract, transmit images via e-mail, this transaction should be done by email with your own domain name, separately registered, avoid using such domain names as gmail, hotmail, yahoo, etc. Of course, it is possible to exclude the case that the e-mail addresses with this domain name have been confirmed, certified before or officially provided on the partner's website.

When dealing with a person who is not the legal representative, it is necessary to send a letter in groups, in the presence of this person for future assurance.

In addition, to avoid encountering problems in case of any dispute, it is advisable to choose the arbitration method.

□ Responding appropriately to legal risks posed by the Covid-19 pandemic

On 18 June, 2020, Investment and Trade Promotion Center of Ho Chi Minh City (ITPC) collaborated with Vietnam International Arbitration Center (VIAC) in organizing a webinar titled *Some notes for businesses upon recovering operations after Covid-19*. The webinar aims to support businesses in updating market information, preventing legal risks from arising in the process of contract performance and dispute resolution, restoring business operations in the context of the Covid-19 epidemic almost under control.

At the webinar, Mr. Luong Van Ly - Senior advisor of Global Vietnam Lawyers - VIAC Arbitrator, also raised the types of common disputes caused by the Covid-19 epidemic, such as disputes on ground lease contracts, goods sale and purchase contracts, service provision, the most common ones are hotel reservation, tour organization, labor contracts, etc.



Besides, there are disputes caused by the parties having difficulty in cash flow, significant decline or insolvency due to social isolation and distancing; due to unexpected, unforeseen problems, with serious consequences, the recovery time cannot be determined.

With the said types of disputes, businesses will encounter some problems in settlement such as delaying implementation, contract adjustment or cancellation; if the settlement is done, so it relies on what basis of the law to be appropriate; whether the dispute is subject to a "force majeure" clause or it is just a "basic change in situation".

Therefore, businesses should learn out carefully whether the content of "force majeure" conditions in the contract stipulates specific epidemic cases. In case of a "basic change in situation", businesses need to consider bringing the dispute to the court because only the court has the authority to decide on remedies. However, businesses should also consider the time of initiation and the place where the lawsuit was initiated (court or arbitration), the mediation method should also be carefully considered to ensure the interests of the parties and avoid wasting time and money.

Mr. Luong Van Ly also provides a lot of information related to dispute resolution procedures by court and arbitration, whereby helping businesses distinguish the difference between the two settlement forms to have the right choice.

By Do Doan, thoibaotaichinhvietnam.vn

□ Some additions to be given to clarify the contents of the condotel sale and purchase contract

Responding to the petition of Binh Dinh Province People's Committee on the proposal of specific regulations on rights and obligations for buyers of resort apartments, hotel apartments (condotels), the Ministry of Construction said the current rights and obligations of buyers of real estate such as houses, construction works in general and other real estate including resort apartments and condotels in particular are implemented in accordance with the laws on real estate, civil law and land, etc.

Accordingly, Articles 23 and 24 of the Law on Real Estate Business 2014 regulate the rights and obligations of the buyers of houses and construction works; the Civil Code 2015 provides for the rights and obligations of the parties in civil transactions, the Land Law regulates the rights and obligations of land users, etc.

"Based on the fact arising in the management of construction investment, business as well as transactions on tourism and resort real estate, the Ministry of Construction issued Document No. 276/BXD-QLN dated 20 January 2020 guiding the People's Committees of centralized provinces/cities to strengthen the management of investment, construction and trading of this real estate", stated the Ministry of Construction.

At the same time, the Ministry of Construction is studying to propose the Government to amend and supplement Decree No. 76/2015/ND-CP detailing the implementation of a number of articles of the Law on Real Estate Business, in which there will be some additions to clarify the contents of the sale and purchase contract of these real estates and specific provisions on the rights and obligations of the parties in these transactions.

Regarding the interests of condotel buyers, previously, the Department of Competition and Consumer Protection, the Ministry of Industry and Trade, issued in a notice advising investors and customers about the observance of the law to protect the interests of consumers.

This Department affirms that customers who buy condotel are not consumers and are not subject to the Law on the protection of consumers' interests. Disputes arising from this transaction are resolved in accordance with civil law.

As such, customers who buy condotel will not be protected by the consumer protection agency.

According to the Ministry of Construction, there are about 30,000 tourist accommodation establishments and about 6 million square meters of offices for lease nationwide. Specifically, about 16,500 officetel apartments (office apartments combined with hotels) and 39,100 condotel apartments (tourist apartments) have been invested and built. But so far the legal issues with condotel apartments have not yet been unclear, there are differences in viewpoints between the land management agency and the construction management agency in issuing ownership certificates for condotel apartments.

By Cao Nguyen, laodong.vn

❑ Tax policy for advertising activities on Facebook and Google

- If the Company incurs the expenses for advertising on Facebook and Google and these expenses meet the actual conditions related to the production and business activities of the Company, there is a tax declaration form, source documents evidencing foreign contractor tax payment and source documents of non-cash payment that comply with the law on value added tax, then these expenses shall be included in deductible expenses when determining the corporate income tax.
- If the Company authorizes an individual who is an employee to use his/her credit card to pay for the above services, and then the Company will pay him/her via bank transfer from the Company's account to his/her account (a credit card opened by the Company for an individual), if this form of payment is specified in the Financial Regulations or the Decision on the authorizing such individual by the Company, this payment will be considered a non-cash payment source document as prescribed in Article 1 of Circular No. 173/2016/TT-BTC.

Ha Noi City Tax Department replies to Hong Ngoc Hospital Co., Ltd in Official Letter 78002/CT-TTHT dated 24 August 2020.

❑ To reduce by 30% of corporate income tax payable in 2020

- In case the Company falls under the subjects specified in Article 1 of the National Assembly's Resolution No. 116/2020/QH14 of 19 June 2020 and the total revenue in 2020 is not more than VND 200 billion, the Company is entitled to a reduction of 30% of the corporate income tax payable in 2020. The Company shall refer to the conditions for reduction of payable corporate income tax in 2020 to determine the reduced tax amount when temporarily paying quarterly corporate income tax and finalizing corporate income tax in 2020.
- In case the Company has the corporate income tax period aligned with the fiscal year which does not coincide with the calendar year, the reduced corporate income tax amount of 2020 shall be determined in accordance with the enterprise income tax period of the enterprise.

Ha Noi City Tax Department replies to the Maps Vietnam Co. Ltd in Official Letter 77768/CT-TTHT dated 21 August 2020.

❑ Personal income tax withholding after termination of labor contracts

- In the case the representative office pays benefits and bonuses to employees (signed a labor contract with the Company for 03 months or more) after termination of the labor contract, if this expense is from two million (VND2,000,000) or more, the representative office must withhold personal income tax (PIT) at the rate of 10% of the total income before making payment to the employee (except for the income excluded when calculating PIT, and the income exempt from PIT).
- At the end of the year, employees must calculate incomes from salaries and wages to perform PIT finalization if they are the subjects required to finalize PIT according to the guidance in Article 21 of Circular No. 92/2015/TT-BTC of Ministry of Finance.

Ha Noi City Tax Department replies to the Representative office of Chemonics International, Inc in Hanoi in Official Letter 78764/CT-TTHT dated 26 August 2020.

❑ Importing ventilators

Regarding the request of Van Lang HealthCare Co., Ltd. (the "Company") to verify 2000 Eliciae MV20 ventilators imported for humanitarian aid to the Government, the Ministry of Health for Covid-19 epidemic prevention, these ventilators are not subject to import duties and VAT. In this regard, the General Department of Customs has the following opinions:

- **Regarding import duty:** Pursuant to Appendix II issued together with the Government's Decree No. 57/2010/ND-CP of 25 May 2020 amending and supplementing a number of articles of Decree No. 122/2016/ND-CP dated 01 September 2016 of the Government on the Export Tariff, Preferential Import Tariff, List of goods and absolute tax rates, mixed tax rates, non-quota import duties and Decree No. 125/2017/ND-CP dated 16 November 2017 amending and supplementing a number of articles of Decree No. 122/2016/ND-CP, ventilators are assigned with code 9019.20.00 "Therapeutic machine with ozone, oxygen, inhalation, CPR or other therapeutic ventilators" and code 9020.20.00 "Other breathing machines" has a preferential import duty rate of 0%.

- **Regarding VAT:**

- ✓ In the case the Company imports 2000 Eliciae MV20 ventilators from abroad that have completed import procedures, then they are provided as non-refundable aid to the Government of Vietnam (as domestic aid), this is not included in the cases of importing goods as foreign humanitarian aids or non-refundable aids to Vietnam in accordance with Decree No. 93/2009/ND-CP dated 22 October 2009 (from 17 September 2020, to be replaced by the Decree No. 80/2020/ND-CP dated 08 July 2020), Decree No. 50/2020/ND-CP dated 20 April 2020, Decree No. 56/2020/ND-CP dated 25 May 2020 of the Government, therefore it is not one of the cases to be certified by the Ministry of Finance or the Department of Finance as foreign aids, so the imported goods of the Company are not exempt from VAT as prescribed in Article 5.19 of the Law on Value added tax No. 13/2008/QH11 dated 03 June 2008, Article 3.9 of Decree No. 209/2003/ND-CP dated 18 December 2013, Article 4.19 of Circular No. 219/2013/TT-BTC dated 31 December 2013.
- ✓ If the company's imported ventilators are confirmed by the Ministry of Health as specialized medical instruments and equipment as prescribed in Circular No. 26/2015/TT-BTC, the Company shall pay VAT with the rate of 5%. If there is no certification from the Ministry of Health, the VAT rate of 10% will be applied.

- **Regarding the goods management policy:** the Company should comply with the Government's Decree No. 36/2016/ND-CP dated 15 May 2016 on the management of medical equipment, Decree No. 169/2018/ND-CP dated 31 December 2018 amending and supplementing a number of articles of Decree No. 36/2016/ND-CP dated 15 May 2016, Decree No. 03/2020/ND-CP dated 01 January 2020 amending and supplementing adding a number of articles of Decree 36/2016/ND-CP dated 15 May 2016 and Decree No. 169/2018/ND-CP dated 31 December 2018.

General Department of Customs replies to Van Lang Healthcare Co, Ltd in Official Letter 5583/TCHQ-TXNK dated 21 August 2020.

No.	Document title	Issuance date	Effective date
GOVERNMENT			
1	Decree 101/2020/ND-CP on amending and supplementing a number of articles of the Government's Decree 123/2016/ND-CP dated 01 September 2016 on defining the functions, tasks, powers and organizational structures of ministries and ministerial-level agencies	28/08/2020	15/11/2020
2	Decree 100/2020/ND-CP on duty free business	28/08/2020	15/10/2020
3	Decree 99/2020/ND-CP on sanctioning administrative violations in the field of oil and gas, oil and gas business	26/08/2020	11/10/2020
4	Decree 98/2020/ND-CP on sanctioning administrative violations in commercial activities, production of and trading in counterfeit or banned goods, and protection of consumer rights	26/08/2020	15/10/2020
5	Decree 97/2020/ND-CP on increasing the limits of liability for damage compensation applicable to the carrier in air transportation	26/08/2020	15/10/2020
6	Decree 96/2020/ND-CP on sanctioning administrative violations in the field of management and protection of the national border	24/08/2020	10/10/2020
7	Decree 95/2020/ND-CP providing guidelines on procurement bidding under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership	24/08/2020	24/08/2020
8	Decree 94/2020/ND-CP regulating the preferential regime and policies applicable to the National Innovation Centre	21/08/2020	05/10/2020
9	Decree 93/2020/ND-CP on detailing several articles of the Law on Libraries		
10	Decree 91/2020/ND-CP on fighting against spam text messages, spam emails and spam calls	14/08/2020	01/10/2020
11	Decree 90/2020/ND-CP on assessment and classification of cadres, civil servants and public employees.	13/08/2020	20/08/2020
12	Decree 89/2020/ND-CP defining the functions, tasks, powers and organizational structure of the Vietnam Social Security Agency	04/08/2020	20/09/2020
PRIME MINISTER			
1	Decision 22/2020/QD-TTg on the reduction of land rental in 2020 for those affected by the Covid-19 epidemic pursuant to the Government's Resolution No. 84/NQ-CP dated May 29, 2020	10/08/2020	10/08/2020
MINISTRY OF HEALTH			
1	Official Letter No. 4674/BYT-MT providing the guidance on COVID-19 epidemic prevention and control for foreigners entering Vietnam to work for a short term (less than 14 days)	31/08/2020	31/08/2020
2	Circular 15/2020/TT-BYT on promulgating the List of drugs procured through bidding, List of drugs procured through centralized bidding, and List of drugs procured through price negotiation	10/08/2020	06/10/2020
MINISTRY OF FINANCE			
1	Circular 78/2020 / TT-BTC on guiding the accounting duties in civil judgment enforcement	14/08/2020	01/10/2020
2	Circular 77/2020/TT-BTC on guiding a number of provisions of the Government's Decree 81/2020/ND-CP of July 09, 2020, amending and supplementing a number of articles of the Government's Decree 163/2018/ND-CP of December 04, 2018 on issuance of corporate bonds	14/08/2020	28/09/2020
3	Circular 73/2020/TT-BTC on amending, supplementing a number of articles of the Circular 134/2017/TT-BTC dated December 19, 2017 of the Minister of Finance on guiding e-transactions in the securities market	07/08/2020	01/10/2020
MINISTRY OF INDUSTRY AND TRADE			
1	Circular 19/2020/TT-BCT on amending and supplementing a number of Circulars on the implementation of the Rule of Origin under the ASEAN Trade in Goods Agreement	14/08/2020	27/09/2020
MINISTRY OF LABOR, WAR INVALIDS AND SOCIAL AFFAIRS			
1	Circular 06/2020/TT-BLDTBXH on promulgating the List of occupations subject to strict requirements on occupational safety and hygiene	20/08/2020	05/10/2020
VIETNAM SOCIAL SECURITY			
1	Decision 1040/QD-BHXH on issuing the report form of employment status and the list of participants in social insurance, health insurance, unemployment insurance	18/08/2020	18/08/2020
2	Official Letter 2533/BHXH-BT on continuing to suspend payment to the retirement and death fund	10/08/2020	10/08/2020



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