



GLOBAL VIETNAM
LAWYERS

LEGAL NEWSLETTER

Issue No. 10 | October 2020

www.gvlawyers.com.vn

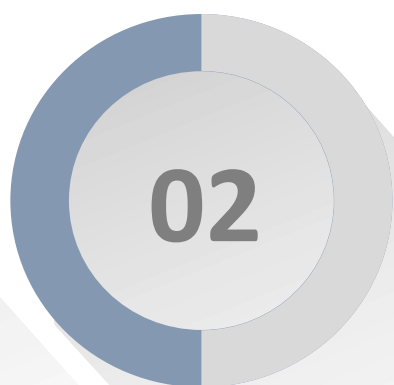




MAIN CONTENTS



REMARKABLE
REGULATIONS



ARTICLE



READING
FOR YOU



ANSWER TO
QUERIES



LIST OF
DOCUMENTS
ISSUED IN
MONTH

www.gvlawyers.com.vn



REMARKABLE REGULATIONS

01

Novelties on sanctioning administrative violations in the health sector

Standard power purchase agreement for solar power projects

Conditions for applying preferential import and export duties under EVFTA

Guidance on reducing 30% of corporate income tax payable in 2020



Novelties on sanctioning administrative violations in the health sector

On 28 September 2020, the Government issued Decree 117/2020/ND-CP on sanctioning administrative violations in the health sector ("**Decree 117/2020**"). Decree 117/2020 will take effect from 15 November 2020 and replace Decree 176/2013/ND-CP.

Accordingly, Decree 117/2020 is issued in the direction of increasing monetary fines for administrative violations and adding some new regulations to curb violations in the health sector as follows:

1. Administrative violations in the preventive medicine sector

Administrative violations in the preventive medicine sector are prescribed in Articles 5 and 18 of Decree 117/2020 updated with the following regulations:

- Violation of the regulations on hygiene to prevent infectious diseases will be fined from VND 200,000 to VND 20 million. In which, the act of failing to take measures to keep hygiene at the facilities of production, business, industrial waste treatment and other hygienic measures which leads to the spread of infectious diseases will be subject to a fine of VND 10 to 20 million.
- Acts of concealing, failing to report or not promptly reporting the status of an infectious disease of oneself or of another person suffering from a group A infectious disease; Deliberately giving false information about a group A infectious disease or intentionally spreading an agent of group A infectious diseases will be fined from VND 10 to 20 million.
- Violation of other regulations on preventive medicine will be fined from VND 3 to 30 million, for example: failure to comply with measures to prevent and control infectious diseases at the request of competent agencies or organizations will be fined from VND 5 to 10 million. A fine ranging from VND 20 to 30 million shall be imposed on the act of taking advantage of an epidemic to put up unreasonable prices for medicines, medical equipment, medical raw materials or raw materials for manufacture of medical equipment, medical services for disease prevention and control.
- Medical examination and treatment facilities will be fined from VND 3 to 30 million for violating the regulations on labor hygiene, occupational disease and occupational accident. In which, the act of providing fake test results of occupational disease examination without actually performing the tests will be fined from VND 20 to 30 million.

2. Violation of regulations on selling, supplying, preventing and controlling tobacco harms

- According to Article 26 of Decree 117/2020, cigarette wholesalers or retailers that do not post a signboard to notify of not selling cigarettes to people under 18 at the point of sale will be fined from VND1 to 3 million. Also, the acts of selling or supplying tobacco to people under 18 years old; Selling and supplying unlabeled cigarettes without printing health warnings on packaging will be fined from VND 3 to 5 million.
- In addition, Article 29 of Decree 117/2020 also stipulates:
 - ✓ People of full 16 years old but under 18 who use tobacco will be fined from VND 1 to 3 million.
 - ✓ Acts of advocating and forcing others to use tobacco; Using a person under 18 years old to buy medicines will be fined VND 500,000 to VND 1 million.
 - ✓ Not limiting the images of actors using tobacco in theatrical and cinematic works will also be fined from VND 3 to 5 million.



▶ Novelties on sanctioning administrative violations in the health sector

3. Administrative violations on advertising, sale, purchase and use of alcohol

Violations on the advertisement, sale, purchase and use of alcohol are specified in Articles of 30 and 37 of Decree 117/2020. Accordingly, penalties for those violations range from VND200,000 to 40 million, for example:

- People aged full 16 but under 18 who drink alcohol will be subject to a warning or a fine of VND 200,000 to 500,000.
- Drinking alcohol before or during working or studying hours or during the break-time; or forcing others to drink alcohol will be fined from VND 1 to 3 million.
- The head of an agency or organization that does not enforce the regulation of not drinking alcohol during working hours or at the workplace will be fined from VND 3 to 5 million.
- Selling and supplying alcohol to people under 18 years old; or not posting a notice of not selling alcohol to people under 18 years old at a visible location of an alcohol-selling facility will be fined from VND 1 to 3 million.
- Opening an on-premise alcohol selling outlet within a radius of 100 meters from the campus of medical facilities, kindergartens, preschools, and general education institutions will be fined from VND 5 to 10 million.
- Employing people under 18 years of age to get directly involved in the purchase and sale of alcohol; or providing information about alcohol and beer products that is not accurate and scientifically proven will be fined from VND 10 to 15 million.
- Violation of the regulations on alcohol and beer promotion will be fined from VND 10 to 20 million.
- Using people under 18 years old to directly participate in the advertising of alcohol will be fined from VND 15 to 20 million.
- Advertising wines with alcohol content from 5.5 degrees to under 15 degrees and beer with alcohol content from 5.5 degrees or more will be fined from VND 30 to 40 million.
- Sponsor by providing alcohol and beer products will be fined from VND 20 to 30 million.

4. Administrative violations in medical examination and treatment

Administrative violations in medical examination and treatment specified in Articles 38 to 51 of Decree 117/2020 are supplemented with a number of new regulations, as follows:

- Violation of regulations on the practice and use of medical practice certificates of medical practitioners will be fined from VND 500,000 to 5 million. In which, the act of disclosing the health condition and information of patients and medical records will be fined from VND 1 million - VND 3 million.
- Violation of the regulations on giving birth through in vitro fertilization will be fined from VND 3 - 40 million. Accordingly, the act of applying the technique of in vitro fertilization when the medical examination and treatment facility has not been recognized by law will be fined from VND 30 to 40 million.
- Violation of the regulations on surrogacy conditions for humanitarian purposes will be fined from VND 3 - 40 million.
- Violation of the regulations on health examination will be fined from VND 3 to 20 million. Accordingly, the health examination facility will be fined from VND 5 - 10 million for the act of not satisfying one of the conditions required of a health examination facility. For acts of conducting health examinations when the function of health examination is not announced, a fine of VND 10 - 20 million shall be imposed.
- Violation of the principles in practicing medical examination and treatment such as: the act of discriminating against a patient will be subject to a fine of VND 1 to 3 million; and acts of not complying with professional and technical regulations in medical examination and treatment will be fined VND 5 to 10 million.
- Violations of the regulations on advertising nutritional products for young children such as: advertising dietary supplements for children under 24 months of age that do not satisfy the requirements on advertising content will be fined from VND 20 to 30 million. For acts of using images of fetuses or babies in advertisements for milk used for pregnant women, a fine of between VND 40 million and VND 50 million will be imposed.



Novelties on sanctioning administrative violations in the health sector

5. Administrative violations related to pharmaceutical and cosmetic products

Administrative violations related to pharmaceutical and cosmetic products are specified in Articles 52 to 71 of Decree 117/2020 with a number of new provisions added as follows:

- Violation of the regulations on pharmaceutical business establishments and pharmaceutical business conditions will be fined from VND 1 to 20 million. Accordingly, the acts of forging proclamation dossiers of business establishments in which medicine shelves are installed will be fined from VND 10 to 15 million VND. If a pharmaceutical business establishment does not have an isolation measure or reserve a special storage for medicines or medical raw materials, a fine of between VND 15 - 20 million will be imposed.
- Forging and modifying documents, papers, and certificates of competent agencies and organizations, and organizations and individuals in the dossier of application for the certificate of eligibility for pharmaceutical business; or renting, borrowing, leasing, lending or letting other individuals or organizations use the certificate of eligibility for pharmaceutical business to trade in medicines will be fined between VND 20 - 30 million.
- Pharmaceutical business establishments that do not list the wholesale or retail prices in Vietnamese dong or list them incompletely, contrary to regulations, or not clearly, causing confusion for customers at the transaction places shall be fined from VND 1 - 3 million; Failure to compensate any organization or individual for damage caused by a medicine or medical raw material retailer will be fined between VND 5 - 10 million; Failure to compensate organizations or individuals for damage caused by the establishment's fault will be fined from VND 10 to 20 million.
- A pharmaceutical business establishment violating the regulations on packaging, labeling, and medical raw material will be fined from 5 to 30 million. In which, the act of changing or modifying the expiration date of medicines on the label; the packaging material or the form of packaging does not meet the requirements for ensuring the quality of medicines or medical raw material; Failure to update medicine information related to contraindications, user restriction as prescribed by law will be fined from VND 20 to 30 million.
- The act of forging documents, using fake seals or forging signatures, stamps of Vietnamese or foreign authorities, manufacturers or product owners in cosmetic product proclamation records will be fined from VND 30 to 40 million.
- Advertising cosmetics in the form of seminars, conferences, events without prior notification to the competent agency; or not in accordance with the content notified to the competent authority, the fine will be from VND 30 to 40 million.
- Manufacturing cosmetic products without a certificate of eligibility to produce cosmetic products; forging documents in the application file for the issue, re-issue, adjustment of the certificate of eligibility for cosmetic production; Failure to fulfill one of the conditions after being granted a certificate of eligibility for cosmetic production will be fined from VND 40 to 50 million.



Novelties on sanctioning administrative violations in the health sector

6. Administrative violations related to medical equipment

Administrative violations related to medical equipment are specified in Articles 72 to 79 of Decree 117/2020 with a number of new regulations added as follows:

- Violation of the regulations on classification of medical equipment will result in a fine of VND 5 to 30 million. In which, the medical equipment-classifying establishment that does not publish the classification results will be fined from VND5 - 10 million. If the medical equipment-classifying establishment classifies medical equipment when it fails to meet the conditions required of a medical equipment-classifying establishment after announcing its eligibility as prescribed by law, it will be fined from VND 20 to 30 million.
- Violation of the regulations on registration for circulation of medical equipment will result in a fine of VND10 - 50 million. In which, the highest fine is applicable to the acts of circulating type A medical equipment on the market when there is no receipt of application for the announcement of applicable standards or the import license has not been granted; circulating type B, C or D medical equipment on the market without the number of registration for circulation or the import license has not been granted; circulating medical equipment on the market that does not ensure the quality registered for circulation; not suspending the circulation of medical equipment related to an incident that seriously threatens the public health or causes deaths.
- Violation of the regulations on buying and selling medical equipment will be fined from VND3 to 20 million. Accordingly, the act of not re-performing the procedures for announcing the eligibility for purchase and sale when there is a change in the previous announcement documents will be fined from VND5 - 10 million. Documents in the application file for a certificate of free circulation of domestically manufactured medical equipment which are not valid will be fined from VND 10 to 20 million.
- Violation of the regulations on importing medical equipment such as: exporting or importing medical equipment when failing to meet the conditions prescribed by law will be subject to a fine of VND 20 - 30 million. For acts of importing medical equipment without the registration number or import permit, a fine of VND 30 - 40 million will be imposed.
- Violation of the regulations on medical equipment consulting services will be fined from VND 3 to 10 million. In which, documents in the dossier of declaration of eligibility for providing consulting services on medical equipment technology that do not ensure the legality as required by law; or providing consulting services on medical equipment without the receipt of dossier of declaration of eligibility will be fined from VND 5 to 10 million.

7. Administrative violations on health insurance

The administrative violations on health insurance (HI) are specified in Articles 80 to 95 of Decree 117/2020 in the direction of increasing monetary fines for violations, for example:

- Article 84 of Decree 117/2020 provides for a fine for the act of lending HI cards to others or using others' HI cards in medical examination and treatment as follows:
 - ✓ From VND 1 to 2 million for violations that do not cause damage to the HI fund. (*The old rate is VND 500,000 - 1 million*)
 - ✓ From VND 3 to 5 million for violations that cause damage to the HI fund. (*The old rate is from VND 1 to 2 million*)
- Article 89 of Decree 117/2020 provides for fines for medical examination and treatment contracts covered by HI for:
 - ✓ The act of unilaterally and unlawfully terminating medical examination and treatment contracts covered by HI which has not caused damage to the insured, medical examination and treatment facility and the HI fund will be fined from VND1 to 3 million. (*The old rate is VND 200,000 - 500,000*)
 - ✓ The acts of unilaterally terminating medical examination and treatment contracts covered by HI which have caused damage to the insured, medical facility or the HI fund will be fined from VND 3 to 40 million. (*The old rate is from VND 1 million - 40 million*)



▶ Standard power purchase agreement for solar power projects

On 17 July 2020, the Ministry of Industry and Trade issued Circular 18/2020/TT-BCT regulating project development and standard power purchase agreement for solar power projects (“**Circular 18/2020**”). Circular 18/2020 takes effect on 31 August 2020 and replaces Circular 16/2017/TT-BCT and Circular 05/2019/TT-BCT amending Circular 16/2017/TT-BCT regulating project development and standard power purchase agreement for solar power projects.

Accordingly, Circular 18/2020 features some notable key points as follows:

1. Governing scope and subjects of application

- Circular 18/2020 regulates development of grid-connected solar power projects and roof solar power systems, and the standard form power purchase agreement applicable to grid-connected solar power projects and roof solar power systems in Vietnam.
- Circular 18/2020 applies to organizations and individuals participating in the development of solar power in Vietnam and to other related organizations and individuals.

2. Regulations on development of grid-connected solar power projects

Pursuant to Article 4 of Circular 18/2020, the development of grid-connected solar power projects is prescribed as follows:

- For grid-connected solar power projects on which the competent agency made the investment policy decision prior to 23 November 2019 and which have a commercial operation day (initial tests of part or the whole of the project have been completed in accordance with regulations; the competent agency has issued a power operating licence for the power generation sector; and the Power Seller and Power Purchaser have fixed meter readings in order to start making payments) of the project or a part of the project within the period from 01 July 2019 until the end of 31 December 2020, then such project or part of the project will be subject to the power purchase tariff of grid-connected solar power projects at VND 1,644/kWh, equivalent to US cent 7,09/kWh.
- For grid-connected solar power projects in the province of Ninh Thuan:
 - ✓ Grid-connected solar power project whose the power selling tariff is determined on the basis of the chronological order of recognition of the commercial operation day of the project or a part of the project before 01 January 2021 under the total cumulative capacity of no more than 2,000 MW will be applied with the electricity price of VND 2,086/kWh (excluding value added tax, equivalent to US cents 9.35/kWh, according to the central exchange rate of VND 22,316/USD announced by the State Bank of Vietnam on 10 April 2017) applicable for 20 years from the date of commercial operation. Electricity purchase price is adjusted according to fluctuations of the exchange rate of VND/USD. The applicable exchange rate is the central rate of Vietnam dong against the US dollar announced by the State Bank of Vietnam on the date the Electricity Seller issues the payment invoice.
 - ✓ If the output of a part of or the entire project is not within total accumulated capacity of 2,000 MW, and the competent agency made the investment policy decision for the project prior to 23 November 2019 and the commercial operation day falls within the period from 01 July 2019 until end of 31 December 2020, then the power selling price will apply at VND 1,943/kWh, equivalent to US cents 8.38/kWh.
- The definite-term water surface or land use area of a project does not exceed 1.2 hectares/1MWp.



▶ Standard power purchase agreement for solar power projects

3. Regulations on developing roof solar power systems

According to Article 5 of Circular 18/2020, the development of roof solar power systems is implemented as follows:

- When the Power Purchaser is Vietnam Electricity Group:
 - ✓ The power selling price for a roof solar power system is VND 1,943/kWh, equivalent to US cents 8.38/kWh, the applicable exchange rate of VND/USD is the central rate announced by State Bank of Vietnam on the last day of the previous year to calculate the electricity bill for the following year. The Parties are responsible for the implementation of the applicable laws on taxes and fees.
 - ✓ Electricity purchase price at the time of electricity generation operation and confirmation of meter readings for the period from 01 July 2019 to 31 December 2020 is applicable for 20 years from the date of power generation operation. The cost of purchasing electricity from rooftop solar power projects is accounted for and fully included in the input parameters of the annual wholesale and retail electricity price plan of Vietnam Electricity Group. Payment invoices are made on the basis of the output of electricity delivered and the output of electricity received separately.
- When the power purchaser is not Vietnam Electricity Group: the power seller and the power purchaser will reach agreement on the power selling price.
- The Power Seller must ensure that any grid tie inverters have the function of export control to the grid when the grid does not have power, of preventing the possibility of intervening or gaining control of activities or operation from outside, and ensure compliance with the standards, technical regulations and laws on quality of electrical energy.
- Roof solar power systems are exempt from power operation licences.

4. Contents of a Power Purchase Agreement

Pursuant to Article 6 of Circular 18/2020, the contents of the model power purchase agreement will comply with the Appendix to Circular 18/2020, specifically as follows:

- The contents of the standard power purchase agreement for grid-connected solar power projects are set out in Appendix 1 issued with Circular 18/2020.
- The contents of the standard power purchase agreement for roof solar power systems are set out in Appendix 2 issued with Circular 18/2020.
- In addition, the Power Seller and Power Purchaser are permitted to supplement the contents of the standard power purchase agreement to clarify the responsibilities and powers of the parties. The supplemented contents must be uniform and must not be inconsistent with the contents of the standard power purchase agreement issued with Circular 18/2020.

In addition, Article 9 of Circular 18/2020 also provides for the transition clause in power purchase agreements from solar power projects as follows:

- A part or the whole of any grid-connected solar power project for which a power purchase agreement was signed and for which the commercial operation day was recognized prior to 01 July 2019, will continue to be implemented in accordance with the signed agreement.
- For any grid-connected solar power project (including the whole or a part of such project), or a roof solar power system for which a power purchase agreement was signed and which was commissioned for commercial operation for the period from after 30 June 2019 up until prior to the effective date of Circular 18/2020, the Power Purchaser and Power Seller will re-sign or amend and supplement the signed agreement in accordance with the prescribed standard form agreement.



Conditions for applying preferential import and export duties under EVFTA

On 18 September 2020, the Government issued Decree 111/2020/ND-CP on Vietnam's Preferential Export Tariff and Special Preferential Import Tariff for the implementation of the Free Trade Agreement between Vietnam and the European Union 2020-2022 ("**Decree 111/2020**"). Accordingly, Decree 111/2020 will take effect immediately from the date of signing (18 September 2020) and to enjoy the preferential duties under the Free Trade Agreement between Vietnam and the European Union (EVFTA), exports or imports must satisfy the following conditions:

❖ For goods exported from Vietnam

Pursuant to Article 4.2 of Decree 111/2020, goods exported from Vietnam must satisfy the following conditions to enjoy preferential export duties:

- Imported into the territories under the EVFTA, including:
 - ✓ Territories of members of the European Union as specified in Appendix III to Decree 111/2020.
 - ✓ United Kingdom of Great Britain and Northern Ireland (only applicable to goods exported from Vietnam during the period from August 1, 2020 to December 31, 2020).
- There is a transport document (*copy*) showing the destination is one of the above territories.
- There is an import customs declaration of the export consignment of Vietnamese origin imported into the above-mentioned territories (*a copy and translation in English or Vietnamese in case the language used on the declaration is not English*).

❖ For goods imported into Vietnam:

Under Article 5.3 of Decree 111/2020, imported goods under the EVFTA must comply with the following conditions to enjoy special preferential import duties:

- Falling into the Special Preferential Import Tariff specified in Appendix II to Decree 111/2020.
- Imported into Vietnam from:
 - ✓ European Union member territories specified in Appendix III.
 - ✓ United Kingdom of Great Britain and Northern Ireland (*only applicable to goods imported to Vietnam during the period from 01 August 2020 to 31 December 2020*).
 - ✓ Principality of Andorra; Republic of San Marino.
 - ✓ Socialist Republic of Vietnam (*Goods imported from non-tariff zones to the domestic market*).
- Meet the requirements on origin of goods and have proof of origin in accordance with the provisions of the EVFTA.

❖ Procedures for applying the preferential export duties under the EVFTA

According to Article 4.3 of Decree 111/2020, in order to enjoy preferential export tax rates under the EVFTA, customs declarants must follow the following procedures:

- At the time of customs clearance, the customs declarant will make an export declaration, apply the export tax rate, calculate tax and pay tax according to the Export Tariff as per the List of taxable goods prescribed in Decree No. 57/2020/ND-CP and its amendments and supplements (*if any*).
- Within 01 year from the day on which the export declaration is registered, the customs declarant will submit all documents proving that the goods meet the regulations (*01 copy*) and make additional declarations to apply preferential export tax rates under the EVFTA.
- Beyond the aforesaid time-limit of 1 year, exported goods are not eligible for the preferential export tax rates under the EVFTA.



Guidance on reducing 30% of corporate income tax payable in 2020

On September 18, 2020, the Government issued Decree 114/2020/ND-CP detailing the implementation of the National Assembly's Resolution 116/2020/QH14 on reduction of corporate income tax payable in 2020 for enterprises, cooperatives, non-business units and other organizations (*collectively referred to as enterprise*) ("**Decree 114/2020**").

Specifically, according to Article 2 of Decree 114/2020, the reduction of corporate income tax (CIT) is specified as follows:

- Reduce 30% of CIT payable in the CIT period of 2020 if the enterprise has total revenue in 2020 not exceeding VND 200 billion.
- Total revenue in 2020 as a basis for identifying the subjects eligible for tax reduction is the total revenue in the CIT period of 2020, including all sales, processing and service charges, including price subsidies, and surcharges that enterprises are entitled to in accordance with law.
- In case of a newly established enterprise, enterprises of which the type or ownership is transformed, or which are consolidated, merged, splitted, separated, dissolved, or go bankrupt:
 - ✓ in the CIT period of 2020, if the enterprise has not operated for full 12 months, the total revenue in 2020 is determined by dividing (:) the total actual revenue in the CIT period of 2020 by the number of months the enterprise has actually operated in the CIT period of 2020 multiplied (x) by 12 months.
 - ✓ in a month, the operation period is counted for a full month.
- If an enterprise expects the total revenue in the CIT period of 2020 to not exceed VND 200 billion, the quarterly temporary tax amount is determined to be 70% of the quarterly payable CIT amount.
- At the end of the CIT period of 2020, if the total revenue in 2020 of the enterprise does not exceed VND 200 billion, the enterprise shall declare and reduce the CIT of the year 2020 upon finalizing the CIT.
- ✓ The reduction amount of the CIT period of 2020 is calculated on the entire income of the enterprise, including such amounts as (i) income from capital transfer, transfer of the right to contribute capital; income from real estate transfer; income from the transfer of an investment project, the right to participate in an investment project, or the right to explore and exploit minerals; income from production and business activities outside of Vietnam; (ii) income from prospecting, exploration and extraction of oil, gas, other rare and precious resources and from mineral exploitation; (iii) income from services which are subject to special consumption tax in accordance with the Law on Special Consumption Tax.
- ✓ The reduced CIT amount is calculated on the CIT payable of the CIT period of 2020, after subtracting the CIT amount of incentive that the enterprise enjoys.
- The CIT calculation period is determined according to the calendar year, if the enterprise applies a fiscal year different from the calendar year, the CIT calculation period is determined according to the fiscal year.
- If the tax period for the first year of a newly established enterprise is 2019 or the tax period of the last year for an enterprise of which the type or ownership is transformed, or which are consolidated, merged, splitted, separated, dissolved, or go bankrupt is 2021 and shorter than 03 months, it will be added to the CIT period of 2020 to form one CIT period. The determination of total revenue and the reduced tax amount in this case only applies to the CIT period of 2020 (12 months).

In addition, according to Article 3 of Decree 114/2020, when preparing tax return, enterprises declare the reduced CIT on the tax return forms issued together with Circular No. 151/2014 / TT- BTC dated 10/10/2014 of the Ministry of Finance and the amendments and supplements (if any) and on the Appendix according to the Resolution No. 116/2020/QH14 issued together with Decree 114/2020 and the Law on Tax Administration and related guiding documents.

Decree 114/2020 will take effect from 03 August 2020 according to the effect of Resolution 116/2020/QH14 dated 19 June 2020.



GV Lawyers would like to introduce an article by Lawyer Do Duc Anh and Ms. Phan My Hanh titled "**Affixing price: how to be legal and avoid damage?**" published on Saigon Economic Times 38-2020 (1,553) dated 17 September 2020. In this article, the authors give opinions and legal bases related to the price affixing for goods, products, services, etc. Thence, they help sellers and businesses understand and properly apply the law on price affixing to avoid potential risks and unfortunate losses.





Affixing price: how to be legal and avoid damage?

Valuation of goods and services is the right of the enterprise. This is always true in terms of business. But affixing prices is a legal story. Failure to grasp the regulations on price affixing can lead to huge damage to the enterprise.

100k is not VND 100,000!

The current business habit is that enterprises often affix prices in the form of "100K" instead of "VND 100,000" for brevity. But 100K is not 100,000 VND! Therefore, writing "100K" on the price list can be considered "unclear price affixing" that leaves customers confused" under Clause 1, Clause 2, Article 12 of Decree 109/2013 / ND-CP. Consequently, enterprises may be subject to a fine of between 500,000 and VND 3,000,000 depending on the case.

Affixing in foreign currency may result in many legal risks

Another practice is to affix prices in foreign currency. The main goal of the price affixing in foreign currency is to preserve the value of goods, especially for imports when the enterprise has to pay for imports in foreign currency. However, according to the Foreign Exchange Ordinance, the affixing of goods in foreign currency violates the principle of restricting the use of foreign exchange in the territory of Vietnam.

In terms of administrative liability, parties will be warned against the amount of the payment in foreign currency less than 1,000 USD (or another foreign currency of equivalent value). However, when the violating amount is over 1,000 USD (or another foreign currency of equivalent value), the violating parties can be fined 60 - VND 100 million. But the damage doesn't end there. If the parties have made payments for goods and services in foreign currencies, that foreign currency will be seized and confiscated.



Regarding partner liability, in case the two parties have signed a contract in foreign currency, that contract may be invalidated by the court. At that time, the party receiving the payment in foreign currency must return the received amount and take back the goods they sold to the partner. But if the goods are already used by the buyer, the value of the goods is reduced and it will be difficult to sell the used goods again. Thus, from a small mistake of affixing goods in foreign currency, the enterprise may suffer tricks played by its partner requesting the court to declare the contract invalid in order to recover the paid amount and return the goods when having enough of them after a period of using! Of course, not all partners take advantage of the enterprise's mistakes to make profit therefrom, but when it is legally wrong, the damage is completely likely.

To reduce the risk of price affixing

In the territory of Vietnam, using foreign currencies and affixing prices in foreign currencies are generally in violation of the Foreign Exchange Ordinance. But it must also be recognized that preserving the value of any import is a reasonable need of the enterprise. Therefore, to meet this demand, enterprises often agree to adjust prices according to the change in exchange rate between VND and foreign currencies (e.g US dollar, Euro, etc). However, some regulators also take the view that, even if the parties agree to adjust the selling price according to the exchange rate change, such a pricing will still be considered a pricing in foreign currency. Therefore, the solution often used by enterprises, especially in long-term contracts, is the agreement to adjust the price of goods according to the consumer price index (CPI) or inflation.





The proportion of private investors in power projects is increasing

VOV.VN - The national power source has a capacity of 19,253 MW belonging to the private sector (including power plants invested in the form of IPP and BOT) accounting for 34.4%.

"The preliminary results of the Power Planning VIII report are studied by the Institute of Energy, forecasting the demand for electricity production in the basic scenario by 2030 is about 526 billion kWh, which corresponds to the installed power source capacity of the whole system of 131,000 MW, from now to 2030 there will be need to develop more 75,100 MW of electricity, 7,500 MW per year on average, etc."

Information was given at the Scientific Workshop "Mechanisms and policies for IPP investors to develop power sources in Vietnam - Problems against investors" on September 18, in Hanoi, under the chairmanship of the National Steering Committee for Electricity Development as organized by Vietnam Energy Magazine.

Preliminary results of the VIII Power Planning Report also assess that, in previous years, power projects were built and operated by state-owned enterprises, up to now, the size and proportion of private investors has grown bigger and bigger. Specifically, by the end of 2019, the national power source structure had a capacity of 19,253 MW belonging to the private sector (including power plants invested in the form of IPP and BOT), accounting for 34.4%.

Mr. Hoang Quoc Vuong, Deputy Minister of Industry and Trade, Deputy Head of the National Steering Committee for Electricity Development said that from now to 2030, electricity demand in Vietnam will increase on average by 7.5-8. %/year.

Therefore, from now to 2030, each year, Vietnam needs an average of about 7,500 MW of new power generation capacity, with a need for investment capital of about 7-8 billion USD/year. This proves that the market for investment, production and business in the electricity industry is really potential.

Recently, the Politburo has issued Resolution 55 on the orientation and strategy for Vietnam's energy development to 2030, with a vision to 2045. The resolution encourages and creates all favorable conditions for all economy sectors, especially the private sector to be involved in energy development.

"It can be said that the State incentive policies have been attracting many private investors to the country's energy development. The seminar is an opportunity for domestic and international private investors operating in the fields of wind power, solar power, gas power, coal-fired thermal power, hydroelectricity, etc to present problems in developing power projects in the form of IPP (independent power generation source) and discuss solutions to promote power source projects in Vietnam in the upcoming time ", Mr. Vuong pointed out.

According to many opinions at the seminar, many difficulties loomed large as inadequacies and failure to keep up with the reality of the guidelines and regulations of the law in the process of developing power projects; grid system infrastructure is still weak, not ready to receive and transmit along with power source projects on a large scale overnight; lack of coordination between state management agencies and local authorities in supporting investors (land compensation, site clearance, etc).

Mr. Hoang Tien Dung, Director of the Electricity and Renewable Energy Department - Ministry of Industry and Trade, said that Vietnam's load forecast will continue to increase in the 2021-2030 period at a rate of about 8% /year, in the 2031-2045 period with a rate of over 4% /year.

To meet this demand, the planning of electricity system development is very important, aiming to orient the development of the electricity industry and target power supply values; determine the scale and progress of power source and grid works and propose solutions to implement the master plan.

"Currently, the Department of Electricity and Renewable Energy is working with the Institute of Energy to implement Power Planning VIII. It is expected that this plan will be submitted to the Ministry of Industry and Trade by the end of September 2020 ", Mr. Dung informed ... /.

By Nguyen Quynh / VOV.VN



▶ Tightening management of mini apartments in Ho Chi Minh City

The People's Committee of Ho Chi Minh City has just issued instructions on dealing with the massive situation of developing mini-apartments, breaking the planning in the city.

Previously, according to the HCMC Real Estate Association (HoREA), over the past 10 years, the situation of building "mini condominiums" with many floors, many mini apartments in urban areas and inner districts.

Mini apartment buildings that are illegally built, illegally, disrupt the planning, increase the pressure on the urban infrastructure system, fail to ensure fire safety are ineligible to be granted a "red book" for buyers, leading to disputes, affecting social security.

To minimize violations in construction activities in the area for mini apartments, the Department of Construction of Ho Chi Minh City requires districts to strengthen the management over planning, grant of construction permits ...

Recently, the People's Committee of Ho Chi Minh City has just directed dealing with the massive situation of developing mini-apartments, breaking the planning in the city.

Accordingly, the City People's Committee assigned the Department of Construction to take the lead and coordinate with the People's Committees of Binh Tan and Thu Duc districts in thoroughly handling the wrong works before October 15, 2020.

At the same time, the Department of Construction reviews individual housing works that have been built or are under construction according to the issued construction permit but the work owner does not invest in construction as prescribed, arbitrarily changing room structure, etc, and require the owner to dismantle by himself or force the organization to dismantle the wrong part of the issued construction permit.

After dismantling, if the remaining work is compatible with the construction permit, the owner must complete the work according to the procedures stated in the guidance of the Department of Construction. In case of mismatch, it is only allowed to use for the dwelling purpose.

In addition, the City People's Committee also assigns the People's Committees of districts to coordinate with the Department of Justice to review, inspect and take measures to deal with cases of establishing bailiff certificates for illegal transfers of houses in the form of a mini apartment so-called "3-points-in-common house".

In addition, the units are assigned to review and inspect large-scale individual housing projects that have been granted construction permits or are under construction according to the issued construction permit. If it is discovered that the purpose of building a boarding room is for rent, the owner of the individual house is required to complete and set up procedures to suit the criteria according to the guidance of the Department of Construction.

By Phuong Le, m.thuongtruong.com.vn



Contractor taxes on transfer of ownership in bonded warehouses

- Goods in transit through the territory of Vietnam in accordance with the law are not subject to VAT as prescribed in Article 4.20 of Circular 219/2013/TT-BTC.
- In case foreign organizations and individuals use bonded warehouses or inland container depots (ICD) as cargo warehouses to support international transport, transit, border-gate transfer or storage of the goods not subject to Circular 103/2014/TT-BTC guiding the implementation of tax obligations applicable to foreign organizations and individuals doing business in Vietnam or earning income in Vietnam. Foreign organizations and individuals (foreign contractors) that generate income from the transfer of goods ownership by way of transit through the Vietnamese territory in accordance with the law are not subject to VAT and corporate income tax for foreign contractors as prescribed in Article 2.5 of Circular 103/2014/TT-BTC.

Ha Noi City Tax Department replies to the Maruwn Logistics Vietnam company limited in Official Letter 85109/CT-TTHT dated 22 September 2020.

Allocation of input VAT and adjustment of late payment interest

- For the Company transferring any infrastructure associated with the transfer of land use rights, if the Company can separately account the input VAT on infrastructure construction activities, the full input VAT amount on this activity will be deducted.
- In case, the Company cannot separately account the creditable and non-deductible input VAT of goods, services (including fixed assets) used simultaneously for the production and trading of the goods and services that are taxable and not liable to VAT, the creditable input VAT will be allocated according to the guidance at Article 1.9.a of Circular No. 26/2015/TT-BTC dated 27 February 2015 of the Ministry of Finance.

Ha Noi City Tax Department replies to the Vietnam Water and Environment Investment Corporation - JSC in Official Letter 85107/CT-TTHT dated 22 September 2020.

Exemption of electronic signature criteria of buyers

In case the buyer who is not a business account keeping unit or an accounting unit holds dossiers and documents proving the provision of goods and services to the Company such as economic contracts, stock-out slips, goods delivery and receipt minutes, payment receipts, receipts, other related documents and records, etc, the Company establishes the e-invoice according to the regulations, and the e-invoice is not required to have the electronic signature of the buyer (except for cases where the buyer is an accounting unit that requires its electronic signature on the invoice.)

Ha Noi City Tax Department replies to the Thai Binh Group.,JSC in Official Letter 85417/CT-TTHT dated 23 September 2020.





LIST OF DOCUMENTS ISSUED IN MONTH

No.	Document title	Issuance date	Effective date
GOVERNMENT			
1	Decree 117/2020/ND-CP on penalties for administrative violations in the health sector	28/09/2020	15/11/2020
2	Decree 116/2020/ND-CP regulating support for tuition and living costs granted to pedagogy students	25/09/2020	15/11/2020
3	Decree 115/2020/ND-CP on recruitment, employment and management of public employees	25/09/2020	29/09/2020
4	Decree 114/2020/ND-CP detailing the implementation of the National Assembly's Resolution 116/2020/QH14 reducing enterprise income taxes payable in 2020 for enterprises, cooperatives, non-business units and other organizations	25/09/2020	03/08/2020
5	Decree 113/2020/ND-CP detailing Article 3.3.đ of the Law Amending and Supplementing a Number of Articles of the Law on Construction regarding appraisal of construction designs to be implemented after basic designs and exemption from construction permits	18/09/2020	18/09/2020
6	Decree 112/2020/ND-CP disciplining high level officials, civil servants and public employees	18/09/2020	20/09/2020
7	Decree 111/2020/ND-CP on the Preferential Export Tariff and Special Preferential Import Tariff of Vietnam for the implementation of the Free Trade Agreement between the Socialist Republic of Vietnam and European Union in the 2020 - 2022 period	18/09/2020	18/09/2020
8	Decree 109/2020/ND-CP extending time limits for payment of excise taxes for domestically manufactured or assembled automobiles	15/09/2020	15/09/2020
9	Decree 106/2020/ND-CP on job positions and the number of people working in public non-business units	10/09/2020	15/11/2020
PRIME MINISTER			
1	Decision 28/2020/QD-TTg providing the list of scraps permitted for import from overseas for use as production materials	24/09/2020	15/11/2020
2	Decision 27/2020/QD-TTg on the List of imported goods banned from being deposited in bonded warehouses	21/09/2020	15/11/2020
MINISTRY OF PLANNING AND INVESTMENT			
1	Circular 06/2020/TT-BKHDT guiding the Government Decree No. 25/2020/ND-CP dated February 28, 2020 detailing the implementation of a number of articles of the Bidding Law on investor selection	18/09/2020	05/11/2020
MINISTRY OF FINANCE			
1	Circular 83/2020/TT-BTC guiding Article 7.3 of the Prime Minister's Decision 15/2020/QD-TTg dated 24 April 2020 of the Prime Minister providing regulations on the implementation of policies to support people facing difficulties due to COVID-19 pandemic	22/09/2020	06/11/2020
MINISTRY OF JUSTICE			
1	Circular 05/2020/TT-BTP detailing a number of articles and measures to implement Decree 08/2020/ND-CP dated 08 January 2020 of the Government on the organization and operation of bailiffs	28/08/2020	12/10/2020
MINISTRY OF INDUSTRY AND TRADE			
1	Circular 21/2020/TT-BCT regulating the sequence and procedures for issuance of electricity operation licences	09/09/2020	26/10/2020
MINISTRY OF INFORMATION AND COMMUNICATIONS			
1	Circular 22/2020/TT-BTTTT on technical requirements applicable to digital signature software and digital signature checking software	07/09/2020	01/11/2020



CONTACT US

info@gvlawyers.com.vn

HCMC - Head Office

8/F, Centec Tower
72 – 74 Nguyen Thi Minh Khai
Ward 6, District 3
Ho Chi Minh City, Vietnam
Tel: +84 (28) 3622 3555

Ha Noi - Branch

10A/F, CDC Building
25 Le Dai Hanh
Hai Ba Trung District
Ha Noi, Vietnam
Tel: +84 (24) 3208 3555

Da Nang - Branch

3/F, Indochina Riverside Tower
74 Bach Dang
Hai Chau District
Da Nang City, Vietnam
Tel: +84 (28) 3622 3555

The contents of the newsletter do not constitute legal advice and do not necessarily reflect the opinions of our firm or any of our attorneys or consultants. The newsletter provides general information, which may or may not be correct, complete or current at the time of reading. The content is not intended to be used as a substitute for specific legal advice or opinions. Please seek appropriate legal advice or other professional counselling for any specific issues you may have. We, GV Lawyers, expressly disclaim all liability relating to actions taken or not taken based on any or all contents of the newsletter.