



LEGAL NEWSLETTER

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1. Some noteworthy novelties of the Law on Vietnamese guest workers under contract.

On 13 November 2020, the National Assembly voted to approve the amended Law on Vietnamese guest workers under contract ("**Law No. 69**") with 8 chapters, 74 articles. Law No. 69 will take effect on 01 January 2022 and replace Law No. 72/2006/QH11 on Vietnamese guest workers under contract and have some noteworthy novelties as follows:

1.1 7 jobs in which Vietnamese guest workers cannot be used

Article 7.12 of Law No. 69 prohibits Vietnamese guest workers from, or sending Vietnamese workers abroad for the following 7 jobs:

- (1) Massage jobs at restaurants, hotels or entertainment centers.
- (2) Jobs regularly exposed to explosives and toxic substances in extractive metallurgy of non-ferrous metals (copper, lead, mercury, silver, zinc) or regularly exposed to manganese or mercury dioxide.
- (3) Jobs exposed to open radioactive sources, or radioactive ores of all types.
- (4) Manufacturing or packaging jobs regularly exposed to nitric acid, sodium sulfate, carbon disulfide or pesticides, herbicides, rodenticides,

1.3 Acts which are prohibited in sending Vietnamese workers abroad to work

Article 7 of Law No. 69 adds the following acts which are prohibited in sending Vietnamese workers abroad to work under contracts:

antiseptics or termiticides of strong toxicity.

- (5) Hunting predators, crocodiles or sharks.
- (6) Jobs constantly putting workers in poorly ventilated or high-pressure conditions (underground sites, deep-sea areas).
- (7) Shrouding or burying corpses, burning corpses, or exhuming tombs.

1.2 Regions where workers are not allowed to work while abroad

Article 7.13 of Law No. 69 stipulates that workers sent abroad are not allowed to work in the following regions:

- (1) Regions at war or in danger of war.
- (2) Radiation-contaminated regions.
- (3) Toxin-contaminated regions.
- (4) Regions suffering extremely dangerous epidemics.

- Enticing, seducing, promising, advertising, providing false information or using other tricks to deceive workers; taking advantage of the activity of sending workers abroad to organize illegal border exit, human trafficking, exploiting

and forcing labor or committing other illegal acts.

- Supporting workers or directly carrying out procedures for workers to work abroad without the approval of the competent state agency.
- Discrimination; offending the honor and dignity of workers; forcing labor.
- Collecting workers' brokerage fees.
- Improper collection of service charges from workers.

- Applying security measures other than providing deposits and guarantees.
- Going to work abroad or sending Vietnamese workers abroad under a contract that violates national security, social order and safety, social ethics, and worker's health or not permitted by the host country.
- Illegal use of the Oversea Employment Support Fund.

1.4 Workers working abroad are not required to pay social insurance premiums and personal income tax twice

Accordingly, Article 6.1.g of Law No. 69 stipulates that Vietnamese workers working abroad under contracts are not required to pay social insurance or personal income tax twice in Vietnam and in the host country if Vietnam and that country have signed an agreement on social insurance or an agreement on double taxation avoidance.

1.5 Workers are allowed to unilaterally terminate contracts if they are mistreated or sexually harassed

According to Article 6.1.d of Law No. 69, Vietnamese employees working abroad under contracts have the right to unilaterally terminate their contracts when they are mistreated or forced by their employers, or a threat is posed directly to their life, health or they are sexually harassed while working abroad.

1.6 Conditions for the enterprise to be granted the license for sending workers abroad to work under contracts

According to Article 10.1 of Law No. 69, an enterprise may be granted the license for sending Vietnamese workers abroad to work under contracts when it fully meets the following conditions:

- Having a legal capital of at least VND 5 billion; having its owner(s), all members or shareholders being

domestic investors as prescribed in the Investment Law;

- Having paid deposits as prescribed;
- Having a legal representative who is a Vietnamese citizen, has a university or higher degree and at least 5 years of experience in the field of sending Vietnamese workers abroad to work under contracts or employment service;
- Having a sufficient number of professional staff performing the activities of sending Vietnamese

workers to work abroad under the contract;

- Having sufficient facilities to meet the requirements on orientation

1.7 Specifying the service fee ceiling

Article 23.4 of Law No. 69 specifies the service fee ceiling that enterprises are allowed to collect from workers as follows:

- Not to exceed 1 month's salary under contract for every 12 months of working. For officers and crew members working on board ships, the ceiling may not exceed 1.5 months' salary for every 12 months of working.
- In case it is agreed in the contract to send Vietnamese workers to work

education for workers who will be sent abroad to work under contracts; and

- Having a website.

abroad from 36 months or more, the service fee must not exceed 3 months' salary of the employee.

- If there is an agreement on the collection of service fee for contract extension, the maximum service fee for each 12 months of extension must not exceed 0.5 months of the employee's salary.
- For some specific markets, industries and occupations, the Minister of Labor, War Invalids and Social Affairs stipulates that the service fee ceiling is lower than the above regulations.

2. Novelty on the retirement age

On 18 November 2020, the Government issued Decree 135/2020/ND-CP ("**Decree 135**") regulating the retirement age. Accordingly, Decree 135 regulates the time of retirement and retirement age of employees from 01 January 2021 as follows:

❖ Regarding the time of retirement

- The time of retirement is the end of the last day of the month in which the employee reaches the stipulated retirement age.
- If an employee continues to work after reaching the stipulated retirement age, then the time of retirement is the time of termination of his or her labour contract.
- If the file of an employee does not certify the day or month of birth but only provides the year of birth, then 01 January of the year of birth will be provided as the basis for determining the time of retirement.

❖ **Regarding the retirement age**

Cases of retirement	Conditions	
Retirement age in normal working conditions <i>(Article 4.1 of Decree 135)</i>	Male	Full 60 years plus 3 months, thereafter increasing by 3 months for each year until reaching full 62 years of age in 2028.
	Female	Full 55 years plus 4 months, thereafter increasing by 4 months for each year until reaching full 60 years of age in 2035.
Earlier retirement than the retirement age in normal working conditions <i>(Article 5.1 of Decree 135)</i>	Employees may retire 5 years earlier than the retirement age in normal working conditions in the following cases: <ul style="list-style-type: none"> ▪ Employees who have full 15 years or more of engaging in heavy, toxic or dangerous jobs or a particularly heavy, toxic or dangerous job on the list issued by the Ministry of Labor, War Invalids and Social Affairs. ▪ Employees who have worked for a full 15 years or more in an area with particularly difficult socio-economic conditions, including the working time at places with a regional allowance coefficient of 0.7 or more prior to 01 January 2021. ▪ Employees with a reduced working capacity of 61% or more. ▪ Employees who have a total of 15 years or more performing a heavy, toxic or dangerous job or a particularly heavy, toxic or dangerous job, and working in an area with particularly difficult socio-economic conditions. 	
Later retirement than the retirement age in normal working conditions <i>(Article 6.1 of Decree 135)</i>	<ul style="list-style-type: none"> ▪ Reaching an agreement with the employer to continue working after the retirement age. ▪ Lawfully conducting the procedures for terminating labour contracts and settle social insurance benefits 	

3. Regulations on prudential criteria for securities trading institutions

On 13 November 2020, the Ministry of Finance issued Circular 91/2020/TT-BTC ("Circular 91") regulating prudential criteria and remedies applicable to securities trading institutions that fail to achieve the prudential criteria. Particularly, attention should be paid to the regulation on reporting the capital availability ratio, and the cases where securities trading institutions are put in warning, control and special control status.

❖ **Reporting the capital availability ratio**

According to Article 12 of Circular 91, the reporting regime on the capital availability ratio of securities trading institutions (STI) is as follows:

- STIs will monthly send the State Securities Commission (SSC) reports on capital availability ratio within 7 working days after the end of the month; At the same time, the report must be published on the website of the STI on 30 June and 31 December in the prescribed form after it has been reviewed and audited by an accredited auditing organization.
- In particular, if the capital availability ratio falls below 180%, STIs must submit an irregular report to the SSC with a frequency of twice per month (data recorded on the 15th and 30th every month) within 3 working days following the 15th and 30th every month.
- If the capital availability ratio falls below 150%, STIs will send the SSC a weekly report before 4:00 p.m. on Friday. If the capital availability ratio falls below 120%, STIs will send the SSC daily reports on capital availability ratio before 4:00 p.m.
- STIs may make reports on a normal regular basis when their capital availability ratio reaches and surpasses 180% in the reporting periods for 3 consecutive months.
- Reports of the STI must be sent to the SSC electronically via the database system.

❖ **The cases where securities trading institutions are put in the state of warning, control and special control**

Status	Warning <i>(Article 13 of Circular 91)</i>	Control <i>(Article 14 of Circular 91)</i>	Special control <i>(Article 16 of Circular 91)</i>
Cases	<ul style="list-style-type: none"> ▪ The capital availability ratio is <i>from 150% to below 180%</i> in all reporting periods for 3 consecutive months; or ▪ The approved capital availability ratio is <i>from 150% to below 180%</i> (reviewed or audited by an accredited audit firm); or 	<ul style="list-style-type: none"> ▪ The capital availability ratio is <i>from 120% to below 150%</i> in all reporting periods for 3 consecutive months; or ▪ The approved capital availability ratio is <i>from 120% to below 150%</i> (reviewed or audited by an accredited audit firm); or 	<ul style="list-style-type: none"> ▪ The capital availability ratio calculated by itself or reviewed, audited by an accredited audit firm falls <i>below 120%</i>; or ▪ The STI fails to remedy the control status within 12 months of being placed under control. ▪ The STI fails to make prudential ratio reports for 2 consecutive reporting periods or fails to have its

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	<ul style="list-style-type: none"> ▪ In a prudential ratio report, an accredited audit firm gives an adverse opinion, rejects giving opinions (or is unable to give opinions), gives a qualified opinion on a number of items in such report, and if the impact of qualified opinions are eliminated, the capital availability ratio will reach <i>from 150% to below 180%</i>. 	<ul style="list-style-type: none"> ▪ In a prudential ratio report, an accredited audit firm gives an adverse opinion, rejects giving opinions (or is unable to give opinions), gives qualified opinions on a number of items in such report, and if the impact of qualified opinions are eliminated, the capital availability ratio will reach <i>from 120% to below 150%</i>. 	<p>prudential ratio reports audited or reviewed or to disclose information on its prudential ratio reports which have been reviewed or audited by an accredited audit firm;</p> <ul style="list-style-type: none"> ▪ In a prudential ratio report, an accredited audit firm gives an adverse opinion, rejects giving opinions (or unable to give opinions), gives qualified opinions on a number of items in such report, and if the impact of qualified opinions are eliminated, the capital availability ratio will fall <i>below 120%</i>.
Term of warning, control	<ul style="list-style-type: none"> ▪ From the date on which the STI is placed under the state of warning to the date on which the SSC decides to lift the STI out of the state of warning. 	<ul style="list-style-type: none"> ▪ Not exceed 12 months from the date an STI is placed under control. 	<ul style="list-style-type: none"> ▪ Not exceed 4 months from the date an STI is placed under special control.
Lifted out of the state of warning, control	<ul style="list-style-type: none"> ▪ When its capital availability ratio reaches or surpasses 180% for 3 consecutive months. ▪ In which, the capital availability ratio in the last reporting period 	<ul style="list-style-type: none"> ▪ When its capital availability ratio reaches or surpasses 180% for 3 consecutive months. ▪ In which, the capital availability ratio in the last reporting period 	<ul style="list-style-type: none"> ▪ When its capital availability ratio reaches or surpasses 180% for 3 consecutive months. ▪ In which, the capital availability ratio in the last reporting period will be audited by an accredited audit firm

	will be audited by an accredited audit firm and such STI must report to the SSC the remedy of the state of warning.	will be audited by an accredited audit firm and such STI must report to the SSC the remedy of the state of control.	and such STI must report to the SSC the remedy of the state of special control.
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When the SSC issues a decision to place the SSC under the state of warning, control or special control, it must disclose this information within 24 hours from the date of issuance of the decision on its website. The STI must also publish information about this decision on its website.

Circular 91 will take effect from 01 January 2021 and replace Circular No. 87/2017/TT-BTC.

4. Regulations on the list of Vietnamese occupations

On 26 November 2020, the Prime Minister issued Decision No. 34/2020 / QD-TTg ("**Decision 34**") on the list of Vietnamese occupations used for Vietnamese labour statistics and as a basis for managing labour by the occupation. Decision 34 will take effect from 15 January 2021.

Accordingly, Decision 34 provides for the list of Vietnamese occupations including 5 levels:

- Level 1: Skill level (showing the difficulty and complexity in doing the job). In which there are 10 groups of level 1 occupations including (1) Managing leaders in branches, levels and units; (2) Senior professional; (3) Intermediate professional; (4) Office assistant staff; (5) Sales service staff; (6) Skilled labour in agriculture, forestry and fisheries; (7) Manual labour and other related occupations; (8) Assemblers and operators of machinery and equipment; (9) Simple labour; and (10) Armed Forces.
- Level 2 to Level 5: Area of expertise (including expertise corresponding to the field of trained expertise or due to experience acquired in performing the job).

Decision 34 also clarifies occupations, including: general description, major tasks, examples, exclusion. A typical example like the profession group "System and computer network technician" is explained as follows:

- General description: Computer system and network technicians who set up, operate, and maintain

- networks and other data transmission systems.
- Main tasks include:
 - ✓ Operation, maintenance and troubleshooting of network systems.
 - ✓ Operation and maintenance of other data communication systems outside the network.
 - ✓ Support user to deal with network and data transmission problems.
 - ✓ Identify areas for equipment and software upgrades.
 - ✓ Install computer hardware, network software, operating system software and application software.
- ✓ Perform operations from program startup to closure, and backup and recovery.
- Examples of classified occupations include: Computer network technician; Network support technician.
- Exclusion: Network administrator (2522); Network analyst (2523); Computer operator technicians (3511); Site technician (3514)

5. Guidelines for the implementation of the EVFTA on trade remedies

On 26 November 2020, the Ministry of Industry and Trade issued Circular 30/2020 / TT-BCT ("**Circular 30**") guiding the implementation of the Free Trade Agreement between the Socialist Republic of Vietnam and the Union. The EU (EVFTA) on trade remedies applies to goods originating from the EU member territories, United Kingdom, Northern Ireland, Principality of Andorra and Republic of San Mary. Circular 30 will take effect from 11 January 2021 and apply two trade remedies as follows:

5.1 Anti-dumping and anti-subsidy measures

Under Article 5 of Circular 30, the anti-dumping tax or the countervailing tax cannot be higher than the dumping margin or the subsidy rate. Based on the conclusion of the investigating agency, the Ministry of Industry

and Trade will consider applying the anti-dumping and anti-subsidy tax rate lower than the dumping margin or the subsidy if the lower tax is enough to eliminate damage to the domestic industry.

5.2 Bilateral safeguard measures

According to Article 9 of Circular 30, the investigation and application of bilateral safeguard measures are provided as follows:

- The investigation time limit for application of bilateral safeguard measures is 1 year from the date of issuance of the investigation decision.
- The Minister of Industry and Trade will decide to apply a bilateral safeguard measure when the investigation conclusion by the investigating agency contains the following contents:
 - ✓ There is an increase in the absolute or relative import of the imported goods entitled to special preferential import tax rates under the Agreement in comparison to the volume and quantity of the similar goods and directly competing goods that are produced domestically.
 - ✓ The domestic industry suffered serious damage or was threatened with serious damage.
 - ✓ The import increase specified in Article 9.a causes serious damage or threatens to cause serious damage to the domestic industry.
- The applied bilateral safeguard measure includes:
 - ✓ Suspend further reduction of import tax rates in accordance with the Agreement; or
 - ✓ Increase the import tax rate on such goods but not exceeding the preferential import tax rate in effect at the time of application of this measure or the base import tax rate specified in the tariffs.
- The maximum duration for application of the bilateral safeguard measure is 2 years. In the event that the Investigative agency concludes that a bilateral safeguard measure is required to be applied to prevent or remedy serious damage and facilitate adjustment by the domestic industry, the period of application can be extended for up to 2 years.
- In the event that the duration of the bilateral safeguard measure is longer than two years, the bilateral safeguard measure must be gradually loosened throughout the application of the measure.
- After the expiration of the duration for application of a bilateral safeguard measure, the import tax rates applicable to the concerned goods will comply with the Agreement in effect at the time of termination of the application of such bilateral safeguard measure.

GV GV Lawyers would like to introduce an article by Lawyer Tran Huu Tien titled "Sharing economy - 4.0 economic revolution or labour squeezing business" was posted on Vietnam's Online Lawyer website on December 10, 2020.

Sharing economy...

Vietnam is one of the leading countries in Southeast Asia that allows the pilot implementation of the "cooperation with business partners" model that many technology firms are currently applying. This is seen as a typical illustration of the concept of "cooperative economy" or "sharing economy", which is the term commonly used in the past few years to talk about the business model in which players take advantage of digital technology development, help save transaction costs and reach a large number of customers through digital platforms. Simply put, this is the model in which the operator of the digital system, finds out and brings customers to individual partners. On the contrary, the partner will play the role of performing services (such as passenger transportation, delivery). Revenue is divided according to the agreement.



In light of nature and resultant economic efficiency, "sharing economy" is followed by the expression and at the same time the driving force behind the 4.0 Industrial Revolution to take place strongly in Vietnam as well as in the region. This help

change the way of conducting business from manual to technology. It cannot be denied that "Sharing Economy" promotes economy, improves competition and innovation in the market. This model is also considered beneficial in helping platform providers and their partners develop together.

However, is such economy truly sharing?

In recent times, a tax policy has been passed and attracted public attention, especially those engaged in business models in partnership with technology platform providers that connect customers with service providers such as Grab, Now, Gojek ..., whose interests are directly affected. Specifically, the new tax policy under Decree 126/2020/ND-CP, effective from 05 December 2020, identifies all providers of technology platforms that connect customers with service providers will have to declare and collect VAT on all sales at the collected tax rate of 10% (significantly increased from 3% as before).

Almost immediately, many technology firms have ignored the tax increase story by announcing a correspondingly increased fee schedule. The revenue share for cooperators is accordingly reduced

significantly. Tax increases and fee hikes lead consumers to reconsider the choice of using the service. Once supply decreases, the rate of enjoyment downs, the burden is then placed on the shoulders of "business partners" of these firms.

From the economic perspective, although the technology firms themselves are involved in providing services to customers (as operators), these parties do not have to share any damage from the policy change. This is just one of many examples of the current scenario of a "sharing economy" in Vietnam, both half-hearted and inequal, in which workers are given the title of "partner", but bear many disadvantages.

Many technology firms, including multinational companies, that already have "techniques" for this business cooperation model cleverly take advantage of the legal gaps to open up and develop profit opportunities. Calling workers "partners", technology firms automatically remove an interest in such expenses as basic salary, social insurance and other employee benefits. On the other hand, thanks to reasonable costs due to reduced operating costs when applying "Sharing Economy", technology firms have quickly gained a large market share, directly competing and even overwhelming the traditional enterprises.

With that edge, these firms also have the right to decide all service policies to provide to users, including price list and share rate, even though individual

"business partners" are the authentic service providers. Through a matrix of agreements, contracts, terms that "partners", sometimes as unskilled workers, cannot fully grasp the matter core that many firms have quickly taken ownership of the game. As argued by these firms, the law recognizes business cooperation relationships based on the agreement of the parties involved, provided that it is not unethical or illegal. That sounds right, but ...

Workers, with no fixed wages, no insurance, no benefits, no voice and no protection, are clearly resigned to a relationship of sharing without "enjoying something" from their own partner.

There have been multiple controversies about the authority to guide, the reasonableness and clarity of relationship between technology firms and "business partners", not to mention discussions on current legal regulations (including recently enacted tax policies.) Vietnam clearly lacks a comprehensive, legal mechanism governing the "sharing economy" between technology firms and "business partners." For this reason, state agencies are often very confused and passive in the state management of this new but not new field, and more importantly, do not have any instrument to protect workers' interests when needed.

Workers are always the weaker side in the working relationship. Workers in the "sharing economy" are even more

vulnerable when they have to invest money in means and tools to facilitate cooperation with technology firms, even to borrow money. Vietnamese law respects the agreement and voluntariness of the parties to the transaction. However, this does not mean that we should allow excessive liberalization of unequal business concepts and structures that in the long run can affect the interests of workers. Besides, it is clear that technology firms, with "Sharing Economy", are having great edges in the market game, product prices, but are looking to push the burden on workers. The issue of ensuring fair competition and interests should also be considered so that workers have more choices in finding a really suitable partner.

In Vietnam, the upcoming 2019 Labour Code, which introduces reforms, contributes to blurring the boundaries of cooperation/service relationships between individuals and businesses and labor relations. Around the world, a number of foreign courts and authorities have also identified the technology firms providing the connection platform as the employers. Accordingly, we also expect the more specific and clearer guidance from Vietnamese lawmakers on "Sharing Economy", especially in the context of important legal documents on investment and business in Vietnam including the Enterprise Law 2020, Investment Law 2020 that will take effect from January 2021.

1. 7-day holiday schedule is for Xin Chou Lunar New Year

The Prime Minister has just agreed to the 7-day Xin Chou Lunar New Year holiday schedule, as proposed by the Ministry of Labour, Invalids and Social Affairs. Accordingly, officials, civil servants, public employees and employees take 7 consecutive days off, from 10 February 2021 until end of 16 February 2021 of the calendar year (*i.e. December 29, the year of Geng Zi to January 5, the year of Xin Chou.*) In which, the 4th and 5th of the lunar new year (ie February 15-16, 2021) are compensatory days for Saturday and Sunday

THÁNG 2/2021						
T2	T3	T4	T5	T6	T7	CN
1 _{20/12}	2 ₂₁	3 ₂₂	4 ₂₃	5 ₂₄	6 ₂₅	7 ₂₆
8 ₂₇	9 ₂₈	10 ₂₉	11 ₃₀	12 _{1/1}	13 ₂	14 ₃
15 ₄	16 ₅	17 ₆	18 ₇	19 ₈	20 ₉	21 ₁₀
22 ₁₁	23 ₁₂	24 ₁₃	25 ₁₄	26 ₁₅	27 ₁₆	28 ₁₇

The Prime Minister also agreed that the 2021 National Day holiday plan will have an additional day off after 02 September. Thus, on the National Day holiday, civil servants and public employees have 4 days off from Thursday, September 2 to Sunday September 5, including 2 days off on National Day and 2 days off weekly.

By Chi Hieu, thannien.vn

2. Proposal to abolish regulations on taxing dividends by shares, bonus shares

The Vietnam Association of Financial Investors (Vafi) has just submitted a petition to the Prime Minister and the Ministry of Finance against the taxation on dividends in shares and bonus shares.

Is taxation is also applied in case of failure to receive any cash?

Vafi and the Securities Trading Association, the Club of Fund Management Companies, the Club of Listed Companies propose to the Prime Minister and the Minister of Finance that they should not tax the form of paying dividends in shares and bonus shares. According to the analysis of the associations, the nature of paying dividends in shares and bonus shares to stock investors neither change the equity of the enterprise (at the time of distribution), nor reduce the profit after tax of the enterprise, nor change the share ownership ratio of each shareholder, all shareholders of the company do not receive any cash as a form of cash dividend. At the time of the split, the share market value must be reduced according to the split ratio and, in principle, the share value of the shareholder remains unchanged. Dividends in shares or bonus shares are not a form of after-tax profit distribution like the one to pay bonuses to employees, to management or using part of

profit after tax to distribute cash dividends to existing shareholders. Enterprises carefully consider paying dividends in shares or bonus shares because the more charter capital increases, the more profits in the future must be spent to pay cash dividends.

The form of paying dividends in shares and bonus shares is a form of capital mobilization. Enterprises need to mobilize a large amount of capital to invest in production expansion, increase financial potential, and handle bad debts that are in desperate need of this form, which the group of joint stock commercial banks in the country pay attention to its application. The share price decreases after receiving dividends in shares, bonus shares are called capital investment income to be taxed 5% in addition to the 0.1% tax on the transfer value that investors must pay when selling shares. Taxing dividends in shares and bonus shares will make investors less enthusiastic about this method for fear of double losses due to both falling share prices and large taxation. Thus, investors require businesses to pay more cash dividends, limit the form of paying by shares, bonus shares, obstructing the annual and regular capital mobilization mechanism of businesses. The domestic banking system will find it difficult to keep a lot of after-tax profits to handle bad debts and banks will also have difficulty with reducing deposit rates and lending rates.

Reasonable tax to call idle capital

The associations believe that the policy of tax exemption and reduction for enterprises having re-investment and production expanding activities has been in place for a long time, this is a very appropriate policy to encourage production development, therefore, dividends and bonus shares should not be taxed to facilitate businesses to mobilize capital from the stock market.

Singapore has become the financial center of Asia and the world, there are many reasons but their securities taxes are lower and more attractive than Vietnam as they have no tax on dividends in shares and bonus shares, no tax on securities transfer transactions. In developed countries such as the UK, the US, and the EU, they have policies to exempt retirees from all dividend taxes. Having a reasonable policy encourages idle capital flows into the stock market and from those small capital flows, millions of capital flows are formed, making the enterprise system easy to mobilize capital and thereby lending interest rates will be very cheap.

By Thanh Xuan, thanhnien.vn

1. Declaring personal income tax and keeping accounts of value added tax

- Regarding personal income tax: In case the Ha Noi branch of Samsung SDS Co., Ltd. has 4 employees who work under labor contracts, and Samsung SDS Vietnam pays salaries and other income from salaries and wages, then Samsung SDS Vietnam Co., Ltd. will withhold and declare personal income tax for the said 4 employees at the tax agency directly managing Samsung SDS Co., Ltd.
- Regarding the deduction of input value-added taxes: The Ha Noi branch of Samsung SDS Co., Ltd. should rely on the actual business status to follow the instructions in Article 1.9 of Circular No. 26/2015/TT- BTC dated 27 February 2015 by the Ministry of Finance.

Ha Noi City Tax Department replies to Ha Noi branch of Samsung SDS Vietnam Co., Ltd. in Official Letter 101316/CTHN-TTHT dated 23 November 2020.

2. How to calculate environmental protection tax on grease products

If the Company produces mixed fuel containing gasoline, oil, fossil lubricants and biofuel, the Company will calculate the environmental protection tax based on the taxable quantity of goods and the absolute tax rate as prescribed in Article 5 of Circular 152/2011/TT-BTC dated 11 November 2011

In which:

- The quantity of taxable goods in a period is the amount of fossil-based gasoline, oil or grease contained in the quantity of mixed fuel imported or sold after production, exchanged, donated or put into internal consumption, which is converted to the unit of measure for tax calculation of the respective goods.
- The absolute tax rate serving as the basis for calculating environmental protection tax for each goods subject to environmental protection tax is the one specified in the environmental protection tax rate tariff issued together with Resolution No. 579/2018/UBTVQH14 dated 26 September 2018.

Ha Noi City Tax Department replies to Additives and Petroleum Products Joint Stock Company in Official Letter 101320/CT-TTHT dated 23 November 2020.

3. Value added tax in case of customers re-selling resort reservations to the Company

If you sell other customers resort-reservation cards with a term of 5 years, each year customers are entitled to book 7 nights (the contract specifies that the product is sold and purchased definitively without return), and in 2020, customers use only 02 nights and re-sell the remaining 05 nights to the Company with a profit of 26%, then this is not a return of products, and the Company does not have to issue adjusted invoices. Tax declaration and payment for the transfer of resort reservations will be conducted as follows:

- If the customer is an individual and re-sells his/her reservations to the Company, he/she (may authorize an organization to declare tax on his/her behalf) will declare and pay personal income tax for each irregular business occasion with no fixed place of business if the total business revenue in the calendar year is over VND 100 million as prescribed in Article 3, Article 7 of Circular 92/2015/TT-BTC.
- If the customer is an organization or enterprise and re-sells its reservations to the Company, the organization or enterprise must issue an invoice and declare and pay value added tax and corporate income tax in accordance with law.

Ha Noi City Tax Department replies to Pcorp Joint Stock Company in Official Letter 101315/CT-TTHT dated 23 November 2020.

4. Importing gold wires to manufacture electronic components

- The import of gold wires to manufacture electric circuits in the production of electronic components for mobile phone cameras will be conducted in accordance with the law related to the import of raw materials to manufacture electronic components.
- On a quarterly basis (on the 10th of the first month of the following quarter), the Company must submit to the State Bank (the Foreign Exchange Management Department) a report attached with the customs declaration of the preceding quarter on the import and use of gold wires. If the Company does not submit the report, the State Bank will issue a document in coordination with the Customs Department to handle the import of gold wires by the Company.

State Bank of Vietnam replies to Power Logics Vina Co., Ltd, in Official Letter 8352/NHNN-QLNH dated 18 November 2020.18/11/2020.

NEWLY ISSUED LEGAL DOCUMENTS IN NOVEMBER

No.	Document title	Issuance date	Effective date
NATIONAL ASSEMBLY			
1	Law No. 69/2020/QH14 on Vietnamese guest workers	13/11/2020	01/01/2022
GOVERNMENT			
1	Decree 140/2020 /ND-CP amending and supplementing a number of articles of Decree 126/2017/ND-CP on the transformation of State enterprises and one-member limited liability companies with 100% of their charter capital invested by State enterprises into joint-stock companies; Decree 91/2015/ND-CP on investing state capital in enterprises, and managing and using State capital and assets in enterprises; and Decree 32/2018/ND-CP amending and supplementing a number of articles of Decree 91/2015/ND-CP.	30/11/2020	30/11/2020
2	Decree 139/2020 /ND-CP amending and supplementing a number of articles of Decree 13/2014/ND-CP detailing and implementing the Law on Education of National Defense and Security.	27/11/2020	15/01/2021
3	Decree 138/2020/ND-CP providing for the recruitment, employment and management of civil servants	27/11/2020	01/12/2020
4	Decree 137/2020/ND-CP on management and use of firecrackers and fireworks	27/11/2020	11/01/2021
5	Decree 136/2020/ND-CP detailing a number of articles and enforcement measures of the Law on Fire Prevention and Fighting and the Law amending and supplementing a number of articles of the Law on Fire Prevention and Fighting.	24/11/2020	10/01/2021
6	Decree 135/2020/ND-CP regulating the retirement age	18/11/2020	01/01/2021
7	Decree 134/2020/ND-CP amending and supplementing a number of articles of Decree 84/2016/ND-CP defining the criteria and conditions for certified public accountants, audit organizations that audit public interest related units	15/11/2020	01/01/2021
8	Decree 133/2020/ND-CP detailing the implementation of a number of articles of the Law on Execution of Criminal Judgments.	09/11/2020	25/12/2020
9	Decree 132/2020/ND-CP on tax administration with regard to enterprises conducting associated transactions.	05/11/2020	20/12/2020
10	Decree 131/2020/ND-CP providing for the organization and operation of clinical pharmacy in medical examination and treatment establishments	02/11/2020	01/01/2021
PRIME MINISTER			
1	Decision 34/2020/QD-TTg promulgating the List of Vietnamese occupations.	26/11/2020	15/01/2021
MINISTRY OF PLANNING AND INVESTMENT			

NEWLY ISSUED LEGAL DOCUMENTS IN NOVEMBER

1	Circular 09/2020/TT-BKHDT on detailing the preparation of bidding documents for goods procurement in bidding packages under the governing scope of the Agreement for Comprehensive and Progressive Trans-Pacific Partnership.	27/11/2020	15/01/2021
2	Circular 08/2020/TT-BKHDT guiding the receipt of sponsorships, contributions and entrustments of the Small and Medium Enterprise Development Fund.	13/11/2020	15/01/2021
STATE BANK OF VIETNAM			
1	Circular No. 15/2020/TT on amending and supplementing a number of articles of Circular No. 26/2013/TT-BTC promulgating the Schedule of service charges paid via the State Bank of Vietnam	20/11/2020	01/02/2021
2	Circular 14/2020/TT-NHNN on judicial assessment in the monetary and banking sector.	16/11/2020	01/01/2021
3	Circular 10/2020/TT-NHNN amending, supplementing a number of articles of Circular 28/2015/TT-NHNN providing for the management and use of digital signatures, digital certificates and digital signature certification service of the State Bank	02/11/2020	01/01/2021
MINISTRY OF INDUSTRY AND TRADE			
1	Circular 37/2020/TT-BCT regulating the List of dangerous goods that must be packed during transportation and the transportation of dangerous goods by road, railway and inland waterway.	30/11/2020	14/01/2021
2	Circular 30/2020/TT-BTC guiding the implementation of the Free Trade Agreement between the Socialist Republic of Vietnam and the European Union regarding trade remedies	26/11/2020	11/01/2021
MINISTRY OF HEALTH			
1	Circular 21/2020/TT-BYT providing guidelines on the practice of professions in order for medical doctors to be granted the certificate of medical examination and treatment.	30/11/2020	15/01/2021
MINISTRY OF FINANCE			
1	Circular 96/2020/TT-BTC guiding the disclosure of information on the securities market	16/11/2020	01/01/2021
2	Circular 95/2020/TT-BTC guiding the supervision on securities trading on the securities market	16/11/2020	01/01/2021
3	Circular 91/2020/TT-BTC prescribing prudential criteria and remedies to be taken against securities trading institutions that fail to achieve these criteria	13/11/2020	01/01/2021
4	Circular 90/2020/TT-BTC prescribing the forms used for imposition of penalties for administrative offences in the field of customs.	11/11/2020	26/12/2020



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