

LEGAL NEWSLETTER

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NEWLY ISSUED LEGAL DOCUMENTS IN MAY

1. Guidance on value-addes tax, personal income tax and tax management foe business households and individual businesses

On 01 June 2021, the Ministry of Finance issued Circular 40/2021/TT-BTC ("Circular 40/2021") guiding value-added tax (VAT), personal income tax (PIT) and tax management for business households and individuals. Circular 40/2021 will take effect from 01 August 2021 and annul Chapter I and Chapter II of Circular 92/2015/TT-BTC, in which, there are some notable new contents as follows:

1.1 Adding the subjects of application

Compared with Circular 92/2015/TT-BTC, Circular 40/2021 has added the following subjects:

- Business households and individuals engaged in e-commerce activities, including individuals earning income from digital information products and services.
- Business households and individuals conducting production and business activities at border markets, bordergate markets or markets in bordergate economic zones in the Vietnamese territory.
- Individuals renting out properties.
- Individuals transferring the Vietnamese internet domain name ".vn".
- Organizations cooperating with individuals in business.
- Organizations and individuals declaring and paying tax on behalf of other individuals.
- Lottery, insurance and multi-level sale enterprises paying incomes to individuals who directly sign agency contracts to sell these products at the correct prices.

 Tax authorities, state agencies, other relevant organizations and individuals.

1.2 Tax payment methods

Business households and individual businesses may pay tax by the following methods:

- (1) Paying tax by the declaration method: applicable to business households, large-scale individual businesses or individual businesses which are not yet large-scale ones but choose to pay tax by the declaration method.
- (2) Paying tax for each occurrence: applicable to individuals doing business infrequently and without a fixed business location.
- (3) Paying tax by the presumptive method: applicable to business households and individual businesses that do not fall into the two cases above.

In addition, Circular 40/2021 also provides detailed instructions on tax administration for business households and individual businesses, and promulgates a list of business lines subject to VAT and PIT at the percentage of revenue for business households and individual businesses in Appendix I of Circular 40/2021.

2. New regulations on the application of risk management in tax administration

On 17 May 2021, the Ministry of Finance issued Circular 31/2021/TT-BTC ("Circular 31/2021") regulating the application of risk management in tax administration. Circular 31/2021 will take effect from 02 July 2021 and replaces Circular 204/2015/TT-BTC and has some notable new points as follows:

2.1 Adding some principles of risk management

Compared with Circular 204/2015/TT-BTC, Circular 31/2021 adds the following risk management principles:

- Risk management information is collected from sources inside and outside the tax authority accordance with the law centrally managed at the General Department of Taxation through an information technology-applied system to serve the tax management purposes as prescribed by law.
- Assessment and classification of the level of tax compliance and taxpayer risk are conducted automatically, based on the taxpayer segment.
- Based on the results of tax compliance assessment, taxpayer classification, information available tax administration on support applications, information on the signs of violation and other risks provided at the time of decisionmaking, tax authorities will:
 - (i) Decide to examine, inspect, supervise and apply appropriate professional measures.
 - (ii) Develop an overall compliance improvement plan in line with the tax authority's resources based on the results of analyzing behaviors, causes and scale of each level of tax compliance and taxpayer risk.

- Tax officials are exempt from personal responsibility when they have strictly complied with the provisions of law, Circular 31/2021 and regulations and guidelines on risk management.
- When an application crashes or does not meet the requirements of risk management and settlement when there is a change in information leading to a change in the tax compliance assessment results and the taxpayer risk classification, where the application does not automatically adjust the level of tax compliance and taxpayer risk, this adjustment will be done manually by approval of the the written competent person.

2.2 4 Assessment of taxpayers' legal compliance

According to Article 10 of Circular 31/2021, taxpayers are assessed and classified based on 1 of 4 levels of tax compliance, including: (i) compliance; (ii) Moderate compliance; (iii) Low compliance; and (iv) Noncompliance. For taxpayers who are noncompliant, implement management measures as prescribed in Article 22 on special control and supervision on taxpayers showing signs of violations of Circular 31/2021. For taxpayers in the high, medium, low and non-compliance levels, conduct behavioral analysis to determine measures for improving legal compliance.

2.3 Measures for improving tax law compliance

Based on the results of the tax **2.5** compliance assessment, the tax authority analyzes the nature taxpayer's behaviors and the level of tax compliance, develops a plan to improve compliance with the tax law with remedial actions for each noncompliance issue as follows:

- In case of high compliance: include taxpayers who comply with tax laws in the list of consideration for praise and reward.
- Where it is necessary to improve compliance: implementing measures to support taxpayers in carrying out tax procedures, holding programs to taxpayers, organizing dialogue conferences, seminars, and training sessions to help taxpayers fulfill tax obligations, doing research simplifying amend policies, administrative procedures, classifying risks and applying tax management measures.

2.4 Adding the cases where special supervision on tax is needed

In addition to the cases where special control and supervision is needed due to the signs of tax law violations as specified in Circular 204/2015/TT-BTC, Circular 31/2021 adds the following signs: taxpayers assessed as not complying with tax law, taxpayers rated with high risk or very high risk, and taxpayers who do not provide explanations or information or do provide explanations or information but not sufficient according to the requirements and deadlines as notified by the tax authority.

2.5 Applying risk management to individual taxpayers

- For business households individual businesses, in case of high risk, one or more of the following measures can be applied: (i) review, check and verify relevant information as a basis for determining revenue and tax rates of business households and individual businesses.; (ii) make a checklist to re-determine revenue and tax rates business households and individual businesses. the fulfillment of tax obligations by relevant organizations.
- For individuals who have revenues related to land and land-attached assets in high-risk cases, analyze the dossiers, make a list to submit to the head of the tax agency regarding the inspection plan at the head office of tax authorities, inspect tax declaration dossiers at the head office of tax authorities in accordance with current regulations for relevant individuals and organizations.

In addition, Circular 31/2021 also specifies criteria for assessing taxpayers' compliance with tax laws, such as: criteria for assessing taxpayers' compliance with tax laws include 6 groups of criteria, criteria for classifying the risk level of taxpayers as enterprises include 26 groups of criteria, and the criteria for classifying risk levels of taxpayers as individuals include 8 groups of criteria.

3. Regulations on corporate income tax incentives for project to manufacture supporting industry products

On 04 June 2021, the Government issued Decree 57/2021/ND-CP ("Decree 57/2021") on the addition of point g, Article 20.2 of Decree 218/2013/ND-CP (amended and supplemented in Decree 12/2015/ND-CP) on corporate income tax (CIT) incentives for projects manufacturing supporting industry products. Decree 57/2021 takes effect from the date of signing, i.e. 04 June 2021.

Decree 57/2021 adds the cagetory of enterprises eligible for CIT incentives if they meet the following conditions:

- Have an investment project (new investment and expansion) manufacturing products on the list of supporting industry products prioritized for development, implemented before January 1, 2015.
- Satisfy the conditions of a project manufacturing supporting industry products according to the Law on amending tax laws 2014.
- A certificate of incentives for manufacturing supporting industry products is granted by a competent authority.

Enterprises meeting the above conditions are entitled to CIT incentives as follows:

• In case an enterprise has an investment project to manufacture supporting industrial products but the income from this project is not yet entitled to CIT incentives, it will be entitled to CIT incentives according to the conditions of a project manufacturing supporting industry products from the tax period in which a certificate of incentives for production of supporting industry products is granted by a competent authority.

In case an enterprise has investment project to manufacture supporting industrial products and the income from this project is receiving or has fully received CIT incentives under other preferential conditions, it will be entitled to CIT incentives according to the condition project manafacturing supporting industrial products for the remaining time from the tax period in which a certificate of incentives for production supporting industry products granted by a competent authority.

The remaining incentive period is determined to be equal to the CIT incentive period according to the conditions of a project manafacturing supporting industrial products minus the number of years of tax exemption, the number of years of enjoying preferential tax rates under other preferential conditions.

4. Regulations on preliminary environmental impact assessment

On 21 May 2021, the Government issued Decree 54/2021/ND-CP ('Decree 54/2021") regulating preliminary environmental impact assessment. Decree 54/2021 takes effect from the date of signing and promulgation.

According to Decree 54/2021, the subjects required to conduct preliminary environmental impact assessment include investment projects

subject to the preparation of environmental impact assessment reports in one of the following cases:

- (1) Public investment projects (except for urgent public investment projects, projects under national target programs, component projects of projects that have been decided by competent authorities on investment policies, investment preparation tasks and planning tasks).
- (2) Investment project under the mode of public-private partnership (PPP project).
- (3) Investment projects subject to approval of investment policies in accordance with the law on investment.
- (4) Investment projects subject to the issuance of an Investment Registration Certificate, except for the case of issuance of an Investment Registration Certificate at the request of the investor.

The preliminary environmental impact assessment includes the following contents:

- Assess the suitability of the location of the investment project with the National Environmental Protection Strategy, the National Environmental Protection Planning...
- Identify and forecast the main environmental impacts of investment projects on the basis of scale, production technology and location of the project.
- Identify environmentally sensitive factors of the area where the investment project is implemented according to the location options (if any).

- Analyze, evaluate and select options on scale, production technology, waste treatment technology, location of investment project and measures to minimize environmental impacts.
- Identify the main environmental issues and scope of noteworthy environmental impacts during the implementation of the environmental impact assessment.

In addition, according to Decree 54/2021, the following projects are not required to carry out a preliminary environmental impact assessment:

- (1) The investment project has been appraised and reported by competent authority before 21 May 2021 with the approved results modification without and supplementation, and the investment has been project approved on the environmental impact assessment report by the competent authority before 21 May 2021.
- (2) The investment project has carried out a preliminary environmental impact assessment and is approved on investment policy by a competent authority when applying for issuance of an Investment Registration Certificate.
- (3) PPP projects whose dossiers have been received and decided on the investment policy decision by a competent authority before 01 January 2021 and have had an environmental impact assessment report in accordance with the law on environmental protection will continue to comply with the law at the time of receipt.

GV Lawyers would like to introduce our readers an article by Lawyer Do Duc Anh and Ms. Truong Ngoc Mai titled "Does the legal representative have joint obligations to corporate debts?" was published in Saigon Economic Times No. 24-2021 (1,591) on 10 June 2021.

The Covid-19 pandemic has not passed, many businesses have not only fallen into a state of business stagnation or even paralysis, but also entangled in "pressed" debt disputes leading to court proceedings. Who will pay this debt?

The term "legal representative of the enterprise" (Legal Representative) quite is familiar to business people and administrators. It can be seen that in fact, legal representatives are usually investors contribute capital to the enterprise to engage in the management and administration of enterprise.

Thus, in a sense, business results of enterprises have a direct impact on the interests of legal representatives. In other words, the interests of enterprises and legal representatives are closely linked. Perhaps from such a perspective, there is a belief that when an enterprise has an obligation to pay its debt, the legal representatives must also have a joint obligation.

That belief tends to be more prevalent in the face of the challenging economic situation during the Covid-

19 pandemic, when not only business activities are halted or even paralyzed, but many businesses are also caught in lawsuits. Debt disputes are "highly pressed" that they have to go to court, and there are companies that lose their lawsuits and have no money or assets for judgment enforcement. And then people question the involvement of legal representatives in the debt repayment obligations of enterprises, especially when legal representatives show still a fairly comfortable image of themselves economically, such as still living in a good house, traveling in their own cars controlled by drivers, ... It is whether they might enjoy the profits and push the debts to the enterprise.

Does the Legal Representative bear the joint payment obligation with the enterprise?

Current law provides for where cases legal representatives are personally liable damage to enterprises, which is the case of breach responsibilities of follows: (1) to perform assigned rights and

obligations best, honestly and carefully to ensure the legitimate interests of the enterprise. (2) to be loval to interests the of enterprise; not to abuse their position and information, know-how, business opportunities and assets other of enterprise for personal gain or to serve the interests of organizations other or individuals. To (3) promptly, fully and accurately notify the enterprise of another enterprise in which they or their related persons own or has shares or contributed capital in accordance with the Law on Enterprises.

Accordingly, current law only limits personal liability for business damage in certain cases. And it should also be noted, "damage of the enterprise" (as stated in the above regulations) and "debts of the enterprise" are two



completely different concepts. If the "debts of the enterprise" is the result of commercial transactions, not from the fault of the legal representatives, then the legal representatives are not personally liable for these debts.

However, in certain cases it is still possible to bind the liability of the legal representatives for paying the debts of the enterprise in the form of a personal guarantee.

fact, the transaction parties often turn to the bank's service known as "letter of credit" or "letter of guarantee" to secure the right to be paid. Letters of credit and letters guarantee is by their nature "guarantee". This is one of the measures to ensure the performance of obligations specified in the Civil Code 2015 and is also one of the most common measures in commercial business.

Guarantees in general and bank guarantees particular are often applied in cross-border transactions. Bank guarantee is a reliable security measure because banks are usually highly entities. reputable However, in order for the bank to issue a guarantee, the parties will have to pay a fee to the bank. If no party can agree to pay the guarantee fee, this security measure cannot be established. In this case, the two businesses need to aim a personal guarantee committed by their own legal representative.

Personal guarantee: effective solution with low cost

Article 335 of the 2015 Civil Code stipulates that "A guarantee is a commitment by a third person (the guarantor) to the obligee (the guarantor) to perform an obligation on behalf of the obligee (the guaranteed party), if, upon the due date for performance of the obligation, the obligee fails to perform or improperly performs the obligation.

Thus, in signing commitment to guarantee payment with two enterprises having contractual relationship, the legal representative of the enterprise will play the role of a third person, ie the guarantor. And because the enterprise itself and the legal representative have a close relationship, signing a guarantee contract will not incur as many costs as using a bank guarantee service.

In fact, there have been many judgments that the Court has accepted the role of "guarantor" of the legal petitioner, requiring representative legal perform payment obligations on behalf of the enterprise. The instance judgment (which has taken legal effect) dated 23 October 2019 of the People's Court of Gia Lam District, Hanoi City on the dispute over a credit contract between a bank and the legal entity that is granted the loan. In this judgment, the Court ordered the legal representative of the legal entity to perform obligations guarantee under the personal guarantee contract dated 31 December 2010 for the debts of the legal entity.

Thus, in case the the legal representative of the legal entity does not enter into a personal guarantee contract with the bank, judgment enforcement/loan recovery will have to depend on the status of the legal entity's assets. However, in many cases, legal entities no longer have enough assets to execute judgments due to business losses; or even somehow, the legal representative has transferred the ownership of valuable assets of the

legal entity to himself, making judgment enforcement/loan recovery difficult.

Therefore, a personal guarantee (especially the personal guarantee committed by the legal representative himself) can be applied as an effective backup measure when considering that the guarantee does not incur too many costs, besides, current law is not required to carry out notarization and registration procedures for this measure.

In addition, the measure of personal guarantee can be applied to any individual who plays an important role in the business such as the company owner, the chairman of the board of directors, the chairman of the members' council, or individuals, though they are not directly involved in the management and administration of the enterprise, they still have a decisive voice in business.

But in case the legal representative does not agree to sign the personal guarantee, what should be done? For commercial banks, the processing is not too difficult because the bank always has regulations credit on granting conditions that customers need to meet, or else, the bank has the right to refuse to grant credit for

As for customers. enterprises that have commercial relations with each other, the parties can agree in specifically commercial contract that: one of the conditions for a commercial contract come into effect is that the party that is obliged to pay must be able to provide the other party with a personal guarantee from the legal representative.

The law has provisions that enterprises can apply to ensure the right to be paid under the contract. Enterprises should apply the legal provisions in commercial business practice in order to minimize the risks that may occur in the market.

1. Vietnam Sociai Insurance agrees to exempt employees from paying health insurance premiums for 8 months

Vietnam Social Insurance (SI) agrees to the proposal of the Vietnam General Confederation of Labour (VGCL) on

businesses and employees to be exempted from paying into the Health Insurance Fund from June 2021 to January 2022.

After the Vietnam General Confederation of Labour sent a proposal to the Government to add

support subjects affected by the Covid-19 epidemic, including support policies to businesses, employees through exemption from paying into the Health Insurance Fund, Vietnam Social Security has also sent an official letter to the Ministry of Labour, Invalids and Social Affairs for their comments on this issue.

Accordingly, Vietnam Social Insurance has agreed to exempt health insurance premiums for employees who temporarily suspend the performance of their labour contracts or take unpaid leave at some units whose operations are suspended as required by competent state agency to prevent and control the Covid-19 epidemic.

Employers pay 3% of the minimum salary and employees are exempt from paying 1.5% health insurance. The maximum payment exemption period of 8 months is counted from June 2021 to January 2022.

Vietnam Social Insurance has also agreed to maintain the health insurance card for employees who lost their jobs for a maximum period of 8 months. Subjects entitled to this policy must have 2 consecutive years of

> participating in health insurance before the time of losing their job.

> However, according to Vietnam Social Insurance, the proposal on



Image: T. Hang

changing the responsibility for paying health insurance premiums leading to the decision on policy entitlement by employees during the time they do not participate in paying health insurance, which is beyond the authority of the Government.

According to current regulations, the National Assembly is the body that makes decisions on these issues, so it is necessary to report to the competent agency to make the final decision.

In addition, the Vietnam Social Insurance also suggests that when promulgating these policies, it is necessary to specify the responsibilities of organizations and individuals in determining the support beneficiaries.

Previously, as expected by the Vietnam General Confederation of Labor, the number of people eligible for exemption from health insurance premiums was 50,000, with a total amount of 33.6 billion dong.

By Thu Hang, thanhnien.vn

2. The Ministry will study, welcome constructive comments and amend the Law on Advertising

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TTO - The Ministry of Culture, Sports and Tourism will coordinate with the Ministru Information of Communication to study and welcome constructive comments in the process of reviewing the implementation of the Law on Advertising towards amending

the contents of press advertisement activities under this law.

This is the share of Deputy Minister of Culture, Sports and Tourism - Ms. Trinh

Thi Thuy this morning on 01 June 2021 related to a number of inadequate provisions in Decree 38/2021/ND-CP stipulating penalties for administrative violations in the field of culture and advertising, which take effect from today.

Regarding the recent press report, Decree 38 has regulations that make it difficult for advertising businesses to suffer a fine of between 10 and 15 million dong with two acts: failing to create any design for readers to proactively turn on or off the ad without depending on a fixed area, or the pending time to turn off or on the ad is more than 1.5 seconds; and creating any design and arranging a mixture of advertising and content. Ms. Thuy explains that this regulation has not changed compared to Decree 158, which was introduced in 2013 and replaced by Decree 38 from 01 June 2021.

And both of the said Decrees are consistent with the Law on Advertising 2012 and the Law on Handling Administrative Violations. According to Ms. Thuy, this regulation is appropriate when issued, with the reason to avoid readers having to watch ads that are forced and inhibited.

Ms. Thuy also emphasizes that this is not a new regulation as it has been implemented for nearly 10 years and will not affect the revenue of electronic newspapers, leaving businesses worried about.



favourable than those of newspapers. Electronically, the ministry coordinate with the Ministry Information and Communications to "study, welcome constructive comments and summarize in the process of reviewing, amending and supplementing the contents of press advertisement activities under the Law on Advertising ".

Regarding the specific roadmap, Ms. Thuy adds, in 2022, the Ministry of Culture, Sports and Tourism will review 10 years of implementation of the Law on Advertising and issue guiding documents to capture changes in advertising activities, media and advertising methods to make recommendations therefrom propose amendments to regulations in line with reality.

Ms. Thuy reveals that the regulations applied to advertising activities on social networks are not the same as those in newspapers, but still must ensure the truth and accuracy of information and protect the interests of recipients without prejudice to national security, social order and safety according to the Law on Advertising, rather than completely not regulated by Decree 38.





1. Personal income tax policy

Taxpayers must carry out tax registration procedures and be granted tax codes by tax authorities before conducting business activities or incurring tax obligations to the state budget. If the Company's partner is an individual who has been granted a tax code, this tax code will be used to declare and pay tax when tax obligations to the state budget arise, including declaration and payment of personal income tax which has been deducted from salaries, wages or business activities.

If the Company pays bonuses, sales supports, sales promotion, trade discounts, payment discounts, cash or non-cash supports to individuals who are business households or individuals paying taxes by the presumptive method, the Company will be responsible for declaring and paying taxes on behalf of such individuals as prescribed in Article 7.5 of Decree 126/2020/ND-CP.

This is the answer of Ha Noi Tax Department to the question of Newhope Hanoi Co., Ltd in Official Letter No. 20217/CTHN-TTHT dated 07 June 2021.

2. Determination of corporate income tax from capital transfer activities

In case Standard Chartered Bank (in the United Kingdom) carries out a capital transfer from Standard Chartered Bank (Vietnam) to the transferee which is Standard Chartered Bank (Singapore), the purchase price of the transferred capital as a basis for calculating taxable income will be determined in accordance with Article 8 of Circular 96/2016/TT-BTC.

This is the answer of Ha Noi Tax Department to the question of Standard Chartered Bank Limited in Official Letter No. 20216/CTHN-TTHT dated 07 June 2021.

3. Personal income tax policy for foreign sexperts apartments provided by the Company

In case the Company buys apartments for the use of their foreign experts, and if it is stipulated in labor contracts that the Company shall pay salaries (not including apartment e rent) and arrange accommodation for the foreign experts during their stay in Vietnam, the expenses for depreciation, electricity, water and other accompanying services (if any) corresponding to the time they use the apartments will be included in the taxable income of employees in accordance with Article 11.2 of Circular 92/2015/TT-BTC.

This is the answer of Ha Noi Tax Department to the question of Lotte Shopping Plaza Vietnam Co., Ltd in Official Letter No. 20214/CTHN-TTHT dated 07 June 2021.

4. Guidance on invoices issued prior to the establishment of an enterprise

If the Company, before being granted the establishment license, authorizes another company to pay expenses related to salary, compulsory social insurance, union fees, PIT and other sale expenses, then invoices and source documents bearing the name of the authorized company will be considered reasonable and valid documents to account these expenses into deductible reasonable expenses of the Company when calculating the income subject to corporate income tax if the conditions prescribed in Article 4 of Circular No. 96/2015/TT-BTC are met.

This is the answer of Ha Noi Tax Department to the question of True North Co., Ltd in Official Letter No. 17151/CTHN-TTHT dated 20 May 2021.

No.	Document title	Issuance date	Effective date	
GOVERNMENT				
1	Decree 56/2021/ND-CP detailing Resolution 1024/2020/UBTVQH14 dated 09 October 2020 of the National Assembly Standing Committee on the addition of medical supplies and equipment to the List of national reserves.	31/5/2021	31/5/2021	
2	Decree 55/2021/ND-CP amending and supplementing a number of articles of the Government Decree No. 155/2016/ND-CP dated 18 November 2016 providing for the sanctioning of administrative violations in the domain of environmental protection.	24/5/2021	10/7/2021	
3	Decree 54/2021/ND-CP providing for the preliminary environmental impact assessment.	21/5/2021	21/5/2021	
4	Decree 53/2021/ND-CP on the Preferential Export Tariff, Special Preferential Import Tariff of Vietnam for implementation of the Free Trade Agreement between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland in the period of 2021-2022. MINISTRY OF FINANCE	21/5/2021	21/5/2021	
1				
1	Circular 36/2021/TT-BTC guiding a number of contents regarding investment of the state capital in enterprises and management and use of capital and assets at enterprises as prescribed in Decree 91/2015/ND-CP; Decree 32/2018/ND-CP; Decree 121/2020/ND-CP, and Decree 140/2020/ND-CP.	26/5/2021	10/7/2021	
2	Circular 32/2021/TT-BTC guiding the initial sale of shares and the management and use of proceeds from the equitization of state-owned enterprises and one-member limited liability companies with 100% charter capital invested by state-owned enterprises and converted into joint stock companies.	17/5/2021	01/7/2021	
3	Circular 31/2021/TT-BTC regulating the application of risk management in tax administration.		02/7/2021	
4	MINISTRY OF CONSTRUCTION		05/5/2021	
1	Circular 01/2021/TT-BXD promulgating QCVN 01:2021/BXD – the National technical regulations on construction planning.	19/5/2021	05/7/2021	
2	Circular 02/2021/TT-BXD promulgating QCVN 06:2021/BXD – the National Technical Regulations on Fire Safety for houses and construction works.	19/5/2021	05/7/2021	
3	Circular 03/2021/TT-BXD promulgating QCVN 04:2021/BXD – the National Technical Regulations on Apartment Buildings.	19/5/2021	05/7/2021	
	MINISTRY OF NATURAL RESOURCES AND ENVIRONMENT			
1	Circular 03/2021/TT-BTNMT providing guidelines for land use plans when equitizing State enterprises; elaborating and approving land use plans for public non-business units which are converted into joint stock companies.	12/5/2021	28/6/2021	



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