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### **+ NEWLY ISSUED LEGAL DOCUMENTS IN AUGUST**

## 1. Tax exemption for imports as a sponsorship for the prevention and control of Covid-19 pandemic

On September 11, 2021, the Government issued Resolution 106/NQ-CP (“**Resolution 106**”) on tax policy on imports as a sponsorship for the prevention and control of Covid-19 pandemic.

According to Resolution 106, the imports by Vietnamese organizations and individuals as a sponsorship for State agencies in service of the prevention and control of Covid-19 pandemic will be subject to the policy on import duties and value added taxes in case of non-refundable humanitarian aids.

To enjoy preferential taxes, organizations and individuals must send a written request to relevant ministries and branches for approval on receipt of goods and accordingly, the customs authority will not apply the procedure for collecting import duties, value added taxes according to regulations.

In addition, the imports as a sponsorship for the prevention and control of Covid-19 pandemic before 11 September 2021 that have been approved by the state agency for their receipt will be also exempted from import duties and value added taxes. Organizations and individuals that have already paid taxes shall be dealt with in respect of overpaid taxes according to the tax administration law.

Resolution 106 takes effect from 11 September 2021 and the tax preference is applied until there is a written announcement of the end of Covid-19 pandemic by the competent state agency.

## 2. Policy to support small and medium-sized enterprises

On 26 August 2021, the Government issued Decree 80/2021/ND-CP (“**Decree 80/2021**”) detailing and guiding the implementation of a number of articles of the Law on Support for Small- and Medium-sized Enterprises (SMEs). Decree 80/2021 will take effect from 15 October 2021, replacing Decree 39/2018/ND-CP and featuring some notable novelties as follows:

### 2.1 Prioritize support for women-owned enterprises, enterprises employing many female employees and social enterprises

According to Article 4.1 of Decree 80/2021, women-owned SMEs and enterprises employing many female employees will be given priority for support. In which, enterprises

employing many female employees that have been identified more specifically include “*enterprises with female employees accounting for 50% or more of the total number of employees in case the enterprise employs less than 100 employees; accounting for 30% or more of the total number of employees in case the enterprise employs 100 or more employees*”. In addition, SMEs that are social

enterprises in accordance with the law will also be prioritized for support.

In case SMEs simultaneously satisfy the conditions of different support levels in the same support content, the enterprise may choose the most beneficial support level.

**2.2 Enterprises are supported with 50% of the value of a consulting contract on technology transfer, establishing intellectual property rights, and on digital transformation.**

According to Article 11 of Decree 80/2021, SMEs are supported up to 50% of the value of a contract for technology transfer consultancy, consultancy on establishing intellectual property rights, consulting on management and development of products, services that are protected by intellectual property rights of enterprises, but not exceeding VND100 million/contract/year/enterprise.

In addition, SMEs are also supported up to 50% of the value of the digital transformation solution consulting contract for businesses in terms of business processes, management processes, production processes, technology processes and business model transformation, but not

exceeding VND50 million/contract/year for small enterprises and VND100 million/contract/year for medium enterprises.

For SMEs to hire and purchase digital transformation solutions to automate and improve the efficiency of business processes, administration processes, production processes, technological processes in enterprises and transform business models, the support reaches up to 50% of expenses but not more than VND20 million/year for micro enterprises, VND50 million/year for small enterprises and VND100 million/year for medium enterprises.

**2.3 Enterprises are given a subsidy of 2%/year for loans by the State**

According to Decree 80/2021, innovative start-up SMEs and SMEs participating in industry clusters and value chains are entitled to interest rate support upon borrowing medium and long-term loans from credit institutions to implement a production-business plan or project under the mode of post-investment support for a production-business plan or project in the same period with the interest rate difference provided by the State Bank to make a compensation of 2%/year for loans of enterprises through credit institutions.

**3. Policy to support trade union members and employees hit by the Covid-19 epidemic**

On 24 August 2021, the Vietnam General Confederation of Labor issued Decision 3089/QĐ-TLĐ on supporting meals for union members and employees who are performing “3 on-site activities” plan of enterprises in the provinces and cities that deploy social distancing for the whole province and city according to Directive 16/CT-TTg.

Accordingly, from 24 August 2021, all union members and employees working at enterprises that pay union fees and conduct production through “3 on-site activities” will enjoy a one-off support of VND 1,000,000/person provided by upper level unions to grassroots trade unions.

Prior to that, on 09 August 2021, the Vietnam General Confederation of Labour also issued Decision 3022/QD-TLD to add emergency support to union members and employees hit by the Covid-19 epidemic during the 4th outbreak from 27 April 2021, specifically:

- Union members and employees at enterprises paying union dues who die due to infection with Sars-Co-2 virus from 27 April 2021 will receive a support of VND 5,000,000/person (not including other supports). In addition, union members and workers at enterprises having moved from the southern provinces to their hometowns since 01 August 2021 and being in difficult circumstances are also be
- considered and given a support up to a maximum of VND500,000/person by the labour confederation where the returnee is received. The standing committee of the provincial and municipal Labour Confederation, the central branch trade union, the corporation's trade union will specify criteria for determining difficult circumstances and detailing and providing guidance on implementation based on the actual situation of union members and employees, epidemic developments of the locality and industry and the unit's ability to balance the trade union's finances.
- For union members and employees who are mobilized by the superior trade union to participate in the prevention and control of the Covid-19 epidemic, they will enjoy a support of from 100,000 to VND150,000/person/day including holidays and public holidays, Tet, but not more than VND2,000,000/person.

GV Lawyers would like to present you an article by **Nguyen Cong Duy Thong** and **Tran Thi Cam Van**, titled **“When prices dance”** published in Saigon Economic Times, Issue No. 32-2021 (1.599) on 05 August 2021.

This wave of Covid-19 outbreak is more complicated and prolonged. Amid psychological panic, the residents' rush to hoard food and supplies in tandem with some problems in the supply chain prompt supply to fall short of expectation at times. Taking advantages of this situation, many individual sellers and businesses raised selling prices to gain profits.

The Law on prices stipulates that prices of goods must be publicly listed and goods must be sold at the listed prices. The law also prohibits organizations and individuals from taking advantages of economic crises, natural disasters, hostility, fires, epidemics, other unusual conditions, as well as the State's policies to sell goods and services at unreasonable prices. Therefore, taking advantages of the current epidemic to increase selling prices by 3-4 times is clearly illegal.

### **Legal might is not stringent enough to deter violatuons**

According to Article 12.3 of Decree No. 109/2013/ND-



*Residents waiting in line to go to the supermarket. Image: N. K*

CP, the act of selling goods at higher prices than listed

will be fined VND 5-10 million for individuals, and twice this level for organizations. In addition, the violating store is also forced to repay customers the monetary amount collected in excess of the listed price. If it is impossible to find those customers, the money must be paid to the State budget.

However, the fine of VND 10 million is not strong enough to deter violations, as the illegal profits gained from this act is sometimes many times higher than that. This is also the reason why stores keep violating the law. Meanwhile, the damage to each consumer is often small in each purchase, so they choose to “ignore” the violation, or just hesitate to speak out and denounce the violation. However, this illegal revenue is very large when

we add up the numbers collected from a large number of customers, so in some cases, consumers feel threatened when they dare to speak out and expose the violations of the store.

The current law creates many favorable conditions for consumers to sue individuals or organizations which commit violations, particularly (i) no obligation to provide proof of offences; (ii) not having to pay court fees and charges; (iii) being eligible to initiate a class action in some cases where many customers are involved (who have the same defendant and/or the same relationship/dispute with the defendant).

However, it is not feasible for consumers to initiate a civil lawsuit against an individual or organization, since this kind of lawsuit takes a lot of time and a litigation cost which is many times higher than the

damages that consumers can claim from the violating individual or organization, and it is often not easy to bring a large number of consumers together to initiate a class action.

### Measures to protect the customer's interests

*Firstly*, it is necessary to raise the amount of administrative fines and/or strengthen criminal liabilities to effectively discourage those who intend to commit violations. Civil proceedings should be simplified and enable consumers to exercise their right to initiate a legal action.

*Secondly*, there should be a mechanism to closely

monitor whether goods and services are sold at the listed prices: strengthen inspection, examination, and detection, and promptly handle violations; receive and handle denunciations and recommendations from customers.

*Thirdly*, customers need to protect themselves by regularly paying attention to, and carefully comparing the listed prices with the actual prices before paying. Residents also need to speak up for themselves and denounce violations to the competent authorities.

*Fourthly*, social organizations in charge of protecting consumers need to fulfill their responsibility by pointing out violations,

providing advice and actively supporting consumers to make complaints and denunciations against organizations and individuals that violate the consumer's interests.

*Fifthly*, within the legal framework, it is necessary to promote the role of the mass media (which are inherently very effective) to promptly report the act of selling goods at higher prices than listed, infringing on the consumer's interests.



## 1. 11 associations propose exemption from social insurance payments

*Recently, 11 associations have sent letters to Deputy Prime Minister Le Minh Khai and Vietnam Social Insurance, proposing exemption from social insurance payments in favour of businesses and employees hit by COVID-19.*

Associations propose that enterprises involved with areas applying the principle of Directive 16 or conducting the implementation of “3 on-site activities”, “1 route - 2 destinations”, should be allowed to stop paying social insurance premiums for at least 3 months, after the social distancing is lifted, or after the said production models are discontinued.

“For enterprises conducting production through “3 on-site activities” or suspending production, there are huge costs incurred, so the common proposal of businesses is to apply for a 100% reduction of social insurance during the epidemic,” said Chairwoman of the Food and Foodstuff Association Ly Kim Chi.

For employees who have been working under “3 on-site activities”, the association proposes a reduction of the social insurance premiums by half for 6 months, especially for those who have to suspend working due to quarantine or are unable to participate in “3 on-site activities”.

“We propose proceeding with supports according to Article 28.1 of the Law on Social Insurance, that is, entitlement to sickness benefits equal to 75% of the premium-based salary,” said Deputy General Secretary of the Vietnam Association of Seafood Exporters and Producers (VASEP) Nguyen Hoai Nam proposed.



11 associations propose exemption from social insurance payments for businesses and employees hit by the COVID-19 epidemic. (Artupbrk: Investment Newspaper)

At the same time, the associations also proposed an exemption from fines if businesses are unable to pay insurance during lockdowns due to having to stop operation or reduce production scale.

“It is known that the social insurance fund can also help employees, so we suggest Vietnam social insurance to support employees who are working at agencies and factories,” said Deputy General Secretary of the Vietnam Tea Association Hoang Vinh Long.

Currently, for paying social insurance alone according to regulations, enterprises and employees have to pay 32.5% of the total salary fund. Production and revenue have decreased, while expenses remain constant, even increasing, making it difficult for businesses to sustain in the long run. The associations hope that Deputy Prime Minister Le Minh Khai will arrange an online meeting as soon as possible to listen and jointly solve problems with associations and industries.

*By Minh Hang, vtv.vn*

## 2. Ho Chi Minh City plans to limit application of the “3 on-site activities” regulation

*In the coming time, according to the draft plan to gradually open the economy, Ho Chi Minh City is expected to limit the application of the “3 on-site activities” regulation.*

Instead, businesses will think of their own operation option, scheme in detail their resumption of production, based on the criteria of the number of workers vaccinated and the level of safety in the production area.

Specifically, in the first 2 weeks of the phase 1 from 16 September to 31 October, the city will make an experiment for businesses to reopen in areas called “green zones”, safe zones in some areas such as high-tech zone, Tan Thuan export processing zone, district 7, Cu Chi district, Can Gio district...

Accordingly, enterprises will make their own, detailed plans for the resumption of production, with the preparation of a safe workforce that have received the first or second vaccine shot, or enterprises must check where the labour force stays, if it stays in other provinces, is it safe or not?

In the coming time, the city will support medical stations, oxygen stations, quick tests ... near industrial parks so that businesses can continue to maintain production and business if F0 is detected.

Mr. Tran Hoang Ngan - Director of the Development Research Institute of Ho Chi Minh City. The city will also support businesses in respect of



*Ho Chi Minh City plans to limit the application of the “3 on-site activities” regulation.  
Artwork: Investment Newspaper)*

workers' health data, said Ho Chi Minh City. Through an application, businesses will grasp the situation about the health and number of vaccine shots of each employee towards arranging production activities in such a way that is safe. Currently, the data set is being deployed by the Department of Information and Communications in collaboration with the Department of Health before 16 September 2021.

Regarding the issue of ensuring supply chain connectivity, experts said that it is necessary to pay attention to the issue of production coordination among neighboring provinces and cities of Ho Chi Minh City: promoting safe production chains, linking “green areas”, creating favorable conditions for chain production activities among provinces.

In addition, in the economic recovery plan, measures to support in respect of production, bank interest rates, policies for workers and businesses... are also being proposed.

*By VTV Digital, vtv.vn*



## 1. Withholding and authorizing personal income tax final payment

- In case the Company does not sign a labor contract or signs a labor contract of less than 3 months for a member who is the Board of Supervisors of the Company, upon paying remuneration, the Company will withhold personal income tax ("PIT") at the rate of 10% with a total payment of VND 2 million/time or more.
- If these individuals have only income that is subject to tax withholding according to the said rate, but the estimate of the individual's total taxable income after deduction of exemptions/reductions from family circumstances is not enough to pay taxes, the individual gaining income makes a commitment to the income paying organization for their confirmation as a temporary basis for the PIT that has been not yet deducted.
- Authorization of PIT final payment for income payers will comply with Article 8.6.d of Decree 126/2020/ND-CP.

*Ha Noi Tax Department replies to the question of Hanoi Tourism Service Joint Stock Company in Official Letter No. 33104/CTHN-TTHT dated 30 August 2021.*

## 2. Determining costs related to the prevention and control of the Covid-19 epidemic

- Determining deductible expenses upon calculating the corporate income tax ("CIT") liable income:
  - ✓ For the cost of isolation for employees: in case the enterprise signs a labor contract with the employee in which the expenses for housing paid by the enterprise to the employee are recorded, and if there are sufficient invoices and documents and payment according to regulations, the expenses paid to the isolation establishment will be included in deductible expenses upon determining the CIT liable income.
  - ✓ The costs of Covid-19 testing, vaccination for employees are considered welfare expenses directly paid to employees, if these expenses have all invoices and supportive documents and their payment is made as prescribed and the total welfare expenses not exceeding 1 month's average salary actually paid in the tax year of the enterprise will be included in deductible expenses upon determining the CIT liable income.
- For determination of the PIT liable income, if the Company incurs expenses for the prevention and control of the Covid-19 epidemic as prescribed by law and these expenses clearly indicate the name of the beneficiary, they will be included in the PIT liable income.

*Ha Noi Tax Department replies to the question of Olympus Medical Systems Vietnam Co., Ltd in Official Letter No. 31557/CTHN-TTHT dated 13 August 2021.*

**3. Value added tax calculation price for property leasing activities**

In case the Company adjusts the rental price of the commercial center space agreed upon and determined by the lessee and the lessor according to the contract, the VAT calculation price of the above-mentioned leasing activities is the rental amount excluding VAT as prescribed in Article 7.6 of Circular 219/2013/TT-BTC.

*Ha Noi Tax Department replies to the question of Hanoi Residential and Trade Center Co., Ltd in Official Letter No. 32078/CTHN-TTHT dated 19 August 2021.*

**4. Tax policy for the amount received from partners to perform services in their favor**

- In case the Company receives money from partners (including support for the Company's employees to rent a house) to perform services in their favor, it must declare and payment value added tax as prescribed.

- The rent, electricity, water and related services (if any) for housing paid by the employer on behalf of the employee are included in the PIT liable income according to the actual amount paid on behalf of the employee, but not exceeding 15% of the total taxable income arising (excluding rent, electricity and water and accompanying services (if any) at the unit.

*Ha Noi Tax Department replies to the question of Ruby Development Vietnam Co., Ltd in Official Letter No. 31450/CTHN-TTHT dated 19 August 2021.*

No.	Document title	Issuance date	Effective date
<b>GOVERNMENT</b>			
1	Decree 81/2021/ND-CP prescribing the mechanism of collection and management of tuition fees for educational institutions under the national education system and policies on tuition fee exemption and reduction, and support for study expenses; service prices in the field of education and training	27/8/2021	15/10/2021
2	Decree 80/2021/ND-CP detailing and guiding the implementation of a number of articles of the Law on Support for Small- and Medium-Sized Enterprises	26/8/2021	15/10/2021
3	Decree 79/2021/ND-CP amending and supplementing a number of articles of Decree 97/2018/ND-CP on the on-lending of ODA loans and foreign concessional loans of the Government	16/8/2021	01/10/2021
<b>MINISTRY OF CONSTRUCTION</b>			
1	Circular 11/2021/TT-BXD guiding a number of contents on determination and management of construction investment costs	31/8/2021	31/8/2021
2	Circular 09/2021/TT-BXD guiding the implementation of a number of contents of Decree 100/2015/ND-CP on social housing development and management and Decree 49/2017/ND-CP amending and supplementing a number of articles of Decree 100/2015/ND-CP on social housing development and management	16/8/2021	01/10/2021
<b>MINISTRY OF FINANCE</b>			
1	Circular 74/2021/TT-BTC amending and supplementing a number of articles of Circular 261/2016/TT-BTC prescribing maritime charges and fees and the tariff thereof	29/7/2021	15/9/2021
<b>MINISTRY OF HEALTH</b>			
1	Official Letter 6666/BYT-MT guiding the COVID-19 prevention and control at agencies and units	16/8/2021	16/8/2021
2	Official Letter 6386/BYT-MT on taking COVID-19 prevention and control measures for people returning from pandemic-hit areas	06/8/2021	06/8/2021
3	Official Letter 6288/BYT-MT on shortening concentrated quarantine period for fully vaccinated entrants	04/8/2021	04/8/2021
<b>VIETNAM GENERAL CONFEDERATION OF LABOUR</b>			
1	Decision 3089/QD-TLD on supporting meals for union members and employees who are conducting "3 on-site activities" of enterprises in the provinces and cities that implement the province and city-wide distancing according to the Directive 16/CT-TTg	24/8/2021	24/8/2021
2	Decision 3022/QD-TLD amending and supplementing a number of articles of Decision 2606/QD-TLD on emergency financing for members and workers hit by the fourth outbreak of COVID - 19 epidemic from 27 April 2021	09/8/2021	09/8/2021



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