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# LEGAL NEWSLETTER

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### NEWLY ISSUED LEGAL DOCUMENTS

**1. New guidelines on having corporate bonds going private in the domestic market**

On 17 May 2023, the Ministry of Finance issued Circular 30/2023/TT-BTC (“**Circular 30/2023**”) guiding the registration, depository, exercise of rights, transfer of ownership, payment for transactions and organisation of the market for private placement of corporate bonds in the domestic market. Circular 30/2023 will take effect from 01 July 2023 with some notable novelties as follow:

**1.1 Registering information of corporate bondss privately placed**

Article 6 of Circular 30/2023 stipulates that bond issuers must register information of privately-placed corporate bonds with the Vietnam Securities Depository and Clearing Corporation (“**VSDC**”) in accordance with Appendix I of the Circular 30/2023, including: (i) Information on the enterprise; (ii) Information on privately-placed corporate bonds; and (iii) Information on private-going corporate bond holders.

When the registered information changes, the issuer must register such change with VSDC.

Privately-placed corporate bonds shall be registered at VSDC in the form of digital entries or electronic data.

**1.2 Cases where VSDC adjusts information on the quantity of bonds owned by investors**

According to Article 6.3 of Circular 30/2023, VSDC will adjust information about the quantity of bonds owned by investors in the following 3 cases:

- (i) The issuer makes a mistake in updating transfer information in the Register of Bondholders registered with VSDC for transactions that have been

conducted before the time of closing the list of Bondholders;

- (ii) The issuer enters the wrong quantity of bonds owned by a Bondholder while setting up the Register of Bondholders; and
- (iii) Bondholders change their identity information, or the issuer or depository member makes a mistake in the process of updating bondholder identity information.

**1.3 Seven cases where the ownership of corporate bonds may not be transferred through the transaction system**

According to Article 9.2 of Circular 30/2023, VSDC will transfer ownership of privately-placed corporate bonds registered at VSDC not through the privately-placed corporate bond transaction system in 7 cases as follows:

- (i) Donating or inheriting privately-placed corporate bonds as prescribed in the Civil Code;
- (ii) Division, separation, consolidation or merger of enterprises; reorganisation of public non-business units; dissolution of enterprises, dissolution of business households as prescribed in the Enterprise Law and other relevant laws;

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- (iii) Transfer of ownership pursuant to a judgment, court decision, arbitral award or decision of a judgment enforcement agency;
  - (iv) Transfer of ownership as a result of foreclosure on security assets being privately-placed corporate bonds registered at VSDC and performing blockade in accordance with Article 23.1(c) of Circular 119/2020/TT-BTC;
  - (v) Transfer of ownership of privately-placed corporate bonds as a result of division of common property of husband and wife formed in the marriage period in accordance with the Law on Marriage and Family;
  - (vi) Transfer of ownership of privately-placed corporate bonds upon division, separation, consolidation, merger or dissolution of a securities investment fund; establishing and increasing charter capital of privately-issued securities investment companies;
- increasing or decreasing the charter capital of member funds; open-ended funds making payment in privately-placed corporate bonds in the acquisition activities; and
- (vii) Transfer of ownership of privately-placed corporate bonds by the issuer as prescribed in Article 1 of Decree 08/2023/ND-CP.
- 1.4 Customers' trading orders are prioritised over exchange members' self-trading orders at the best price**
- Circular 30/2023 stipulates that exchange members must consolidate and publicize the method of receiving and handling customer's trading orders at the head office, branches and transaction offices. At the same time, they must prioritise execution of trading orders for customer at the best price before executing their self-trading orders. The best price can be the price that customers request or better than such price.

## 2. Novelties on the identification of origin of imports and exports

On 31 May 2023, the Ministry of Finance issued Circular 33/2023/TT-BTC ("**Circular 33/2023**") regulating the identification of origin of imports and exports with some notable novelties as follows:

### 2.1 Declare and submit certificates of origin (C/O) for exports

- The customs declarant must, when carrying out customs procedures, declare the origin of exported goods on the *e-customs declaration form* in the "goods description" box according to form No. 02, Appendix I of Circular 39/2018/TT-BTC, specifically:
  - If exports are qualified as originating from Vietnam as prescribed in Decree 31/2018/ND-CP: declare according to the structure "goods description#&VN";

## 2.2 Declare and submit C/O for imports

- If exports originate from another country: declare according to the structure "*goods description#& (code of country of origin of goods)*";
  - If exports are manufactured from many sources of raw materials originating from various countries, if the origin of the goods cannot be determined, or the exports have only undergone a number of stages of simple processing and assembling in Vietnam: declare according to the structure "*goods description#&KXD*".
  - If *paper customs declaration forms* are used in the customs procedures, the origin of exports shall be declared in the box "*origin*" on the paper declaration form according to the form HQ/2015/XK Appendix IV of Circular 38/2015/TT -BTC.
  - If exports have been pre-determined of origin according to the notice of the General Department of Customs, the customs declarant will declare the number, date and validity period of the notice of origin in the box "*licence*" on the electronic-customs declaration form No. 02 Appendix II or the paper customs declaration form HQ/2015/XK Appendix IV of Circular 38/2015/TT-BTC.
  - Customs declarants are not required to submit the C/O to the customs agency when carrying out customs procedures for exports.
  - In case of submission of C/O at the time of customs clearance, the declarant must declare the reference number and date of issue of the C/O or the code of the exporter eligible for self-certification of origin (REX code under the EVFTA Agreement, EORI code under the UKVFTA Agreement, CE code under the ATIGA Agreement or RCEP) in the box "*Notes*" on the electronic e-customs declaration form No. 02 Annex II or the box "*Accompanying documents*" on the paper customs declaration form according to the form HQ/2015/XK Appendix IV of Circular 38/2015/TT-BTC.
- If a Free Trade Agreement does not specify a reference number and/or does not have an exporter code eligible for issuing C/O, the declarant will declare the name of the document, the document number, the date of issue and the name of the organisation or the exporter issuing the C/O together with the name of the applicable Free Trade Agreement.
- If exports have been pre-determined in writing by the General Department of Customs of its origin and the document is still valid, the customs declarant will declare the number and date of the document of determination of origin in the box "*Notes*" on the electronic customs declaration form or the box "*Accompanying documents*" on the paper customs declaration form.

- If it is required to make deduction in the C/O, the customs declarant must declare the date of issue, and the body issuing the deduction monitoring sheet in the box "Notes" on the e-customs declaration form or the box "Accompanying documents" on the paper customs declaration form.
- The customs declarant may declare additional C/O information in case the customs declarant has not yet declared the information or incorrectly declared the C/O at the time of customs clearance.

According to Circular 33/2023, the customs authority may reject the C/O of imported goods in cases as follows:

- (i) The customs declarant submits the C/O later than the prescribed time limit.
- (ii) The C/O of imports is cancelled by the C/O-issuing authority of the exporting country, or the imports do not meet the origin-related criteria according to the regulations of the exporting country.

### 2.3 Cases where the C/O of imports is rejected

Circular 33/2023 will take effect from 15 July 2023 and replace Circular 38/2018/TT-BTC, Circular 62/2019/TT-BTC, Circular 47/2020/TT-BTC and Circular 07/2021/TT-BTC.

### 3. Amendment of regulations on lending to traders operating in regions with difficult conditions

On 15 June 2023, the Prime Minister issued Decision 17/2023/QĐ-TTg ("**Decision 17/2023**") amending and supplementing a number of articles of Decision 92/2009/QĐ-TTg on credit extension for traders conducting commercial activities in disadvantaged regions, oriented towards increasing the lending capital levels as follows:

- For traders who are individuals, the maximum loan is VND 100 million/individual (*previously, individual traders who did not open accounting books and pay flat taxes were only allowed to borrow up to VND 50 million/individual*) and no loan guarantee is required.
- For traders being economic organisations legally established, the maximum loan granted by the social policy bank is VND 1

billion/organisation (previously, the maximum amount was VND 500 million/organisation). Traders borrowing over VND 100 million must provide loan security in accordance with the law on obligation performance security and regulations of the Bank for Social Policies (previously, over VND 50 million).

Decision 17/2023 will take effect from 08 August 2023.

**4. Amending and supplementing the Decree on management of multi-level business operations**

On 28 April 2023, the Government issued Decree 18/2023/ND-CP (“Decree 18/2023”) amending and supplementing a number of articles of Decree 40/2018/ND-CP on management of multi-level business operations. Decree 18/2023 will take effect from 20 June 2023 with some following notable novelties:

**4.1 Adding 2 responsibilities of a multi-level marketing enterprise**

- (i) Ensure that at least 20% of multi-level sales revenue in a fiscal year must be revenue from customers who are not multi-level sale participants of that enterprise; and
- (ii) To not provide information about food by using images, equipment, costumes, names, letters of medical units, facilities, doctors, pharmacists, medical staff, letters of appreciation, thank you letters from patients, articles written by doctors, pharmacists, medical staff; must not provide information about food which posts or quotes comments from patients describing the therapeutic effects of the food.

for at least 3 consecutive years in a country or territory in the world.

**4.3 Specifying conditions for working as a contact of a local multi-level marketing enterprise**

If an enterprise does not have a head office, branch, representative office or business location in the locality, it must appoint an individual residing locally to act as a contact to work with state management agencies in that locality, and this contact must satisfy the following conditions:

- Not being a person who is serving a prison sentence or has a previous conviction for the crime of manufacturing, trading in counterfeit goods, manufacturing or trading in banned goods, false advertising, deceiving customers, deceiving and appropriating properties, abusing trust to appropriate properties, illegally seizing properties, violating regulations on multi-level marketing;
- Having been certified of legal training in multi-level marketing, has received training to work as a contact in the locality; and
- Being authorised by enterprises to work with, and provide information and documents

**4.2 Supplementing the conditions for registration of multi-level sale activities for enterprises with foreign investors**

Decree 18/2023 has added conditions for registration of multi-level sale activities for the economic organisations that are enterprises with foreign investors or those with foreign-invested capital that are owners or members or shareholders. Accordingly, all foreign investors and foreign-invested economic organisations must have been operating in multi-level sales

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related to multi-level sale activities in the locality as required by competent state management agencies.

If the above conditions are not satisfied, the enterprise will have its certificate of local registration of multi-level sale activities revoked.

**4.4 Adding the responsibility for notifying the on-line holding of conferences, seminars and trainings on multi-level marketing**

According to Decree 18/2023, if an enterprise holds on-line conferences, seminars and trainings on multi-level marketing with the participants residing in a centralised province or city, the enterprise must notify the Department of Industry and Trade in that province or centrally run city. In case such conference, seminar or training is attended by participants residing in many centralised provinces and cities, the enterprise will notify the Department of Industry and Trade in the locality where the enterprise's head office is located.



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### 1. Personal income tax and corporate income tax policy for foreign experts

If the foreign expert does not meet the condition of being an individual residing in Vietnam as prescribed in Article 1.1 of Circular 111/2013/TT-BTC, he/she will be determined as a non-resident individual and the scope of determination of the PIT taxable income in Vietnam is the one arising in Vietnam regardless of the place of payment and receipt of income as prescribed in Article 2 of Circular 119/2014/TT-BTC. If the income is paid to the individual abroad and is not related to the work performed by such individual in Vietnam, this income will not incur any tax and only the salary income in Vietnam is subject to PIT.

In case the foreign expert meets the condition that he is an individual residing in Vietnam, the scope of determination of the PIT taxable income is the one arising inside and outside the Vietnamese territory, regardless of the place of payment and receipt of such income. Once any income is received from abroad, individuals declare and pay PIT directly to Vietnamese agencies as prescribed in Article 19.3 of Circular 80/2021/TT-BTC.

In case the Company pays on behalf of the employee, the expenses will be included in the deductible expenses when determining the corporate taxable income if the conditions are met as prescribed in Article 4.1 of Circular 96/2015/TT-BTC and not included in the deductible expenses as prescribed in Article 4.2 of Circular 96/2015/TT-BTC and Article 3.2 of Circular 25/2018/TT-BTC and amendments and supplements related (if any).

*Ha Noi City Tax Department replies to the question of Megane Prince Co., Ltd. in Official Letter No. 40818/CTHN-TTH dated 12/6/2023.*

### 2. Issuing value-added tax invoices for office rental services

In case the Company (declares and pays value-added taxes by deduction method) provides office leasing services, it must issue an invoice to the buyer according to Article 4.1 of Decree 123/2020/ND-CP. The value-added taxable price for office leasing services, including surcharges and additional fees in addition to the service price to which business establishments are entitled, will apply as prescribed in Article 7.22 of Circular 219/2013/TT-BTC.

*Ha Noi City Tax Department replies to the question of Consultant and Inspection joint stock company of Construction Technology and Equipment in Official Letter No. 35355/CTHN-TTHT dated 23/5/2023.*

### 3. Liquidation of fixed assets

In case the Company incurs the depreciation expenses for the fixed assets not used for production and trading of goods and services, these expenses are not deductible when determining any income subject to corporate income tax as prescribed in Article 4.2.2(a) of Circular 96/2015/TT-BTC.

In case the Company has the fixed assets that have not been fully depreciated and are damaged but cannot be repaired, Article 9.4 of Circular 45/2013/TT-BTC will be followed.



*Ha Noi City Tax Department replies to the question of Japan Securities Co., Ltd. in Official Letter No. 35356/CTHN-TTHT dated 23/5/2023.*

#### 4. Issue a password to log in an e-invoice

In case the Company pays value-added taxes by the deduction method and is forced by the tax authority to stop the use of invoices, it will be granted an e-invoice with the tax authority's code for each time arising. The Company sends an application for an e-invoice with the tax authority's code according to Form No. 06/DN-PSDT Appendix IA of Decree 123/2020/ND-CP to the tax

authority and access to the tax authority's e-invoicing system for proceeding with e-invoicing as prescribed in Article 13.2 of Decree 123/2020/ND-CP.

The sequence and procedures for receipt, processing and issuance of codes for e-invoices for each time arising as prescribed in Article 12 of Decision No. 1447/QD-TCT of the General Department of Taxation.

*Ha Noi City Tax Department replies to the question of Sortech Vietnam Co., Ltd. in Official Letter No. 37935/CTHN-TTHT dated 31/5/2023.*



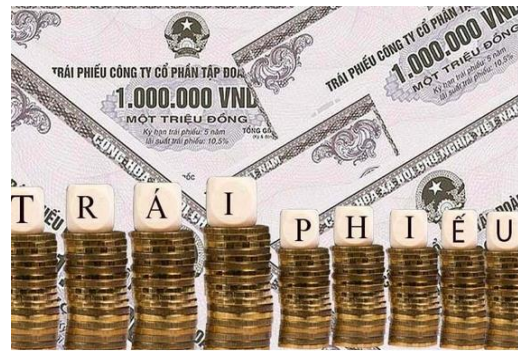
## 1. VAFI proposes tax exemption for bond investors

The Vietnam Association of Financial Investors (VAFI) has just sent a document to the Prime Minister, the Ministry of Finance, and the State Bank of Vietnam to propose solutions to increase long-term capital mobilisation for the economy amid sharp deposit rate falls.

According to VAFI, interest rates on government bonds and corporate bonds are still very high compared to other countries. Due to Vietnam's lack of a safe and effective legal framework for residents to actively participate in the bond market, VAFI proposes effective safety solutions for individual investors to do the same, and also recommends solutions to reduce bond issuance interest rates.

Specifically, it is necessary to create an almost absolutely safe legal framework for individual investors to participate; develop types of bond that are almost absolutely safe. Typically, bonds are guaranteed to pay interest and principal on time in all situations but may have small risks such as inflation, VND devaluation with respect to government bonds; develop bonds issued by banks with good business performance and sound financial status and guaranteed for payment by the State Bank; Bonds are issued by local governments and by State financial institutions and guaranteed for payment by the Ministry of Finance.

The type of risky bonds under VAFI is issued by non-banking organisations; the Bonds issued by banks have not been classified as special issuance. These types of bond are not issued to individuals and are only available to institutions because they have a lot of



VAFI proposes tax exemption for bond investors.

investment experience, they can assess the level of risk of the types of bond.

In addition, VAFI proposes a waiver of taxes on bond trading for individual and institutional investors because if the bond issued has an interest rate above 10%/year, the corporate income tax expenses will account for about 2%/year, and bonds with an interest rate of less than 10%/year, the corporate income tax expenses are about 1.5%... According to VAFI, this tax exemption does not benefit the bond-buying organisation but only benefits for issuers, notably, the most benefit goes to government bonds.

In particular, according to VAFI, so far, resident savings deposits have been not taxed, but if individual investors invest in bonds, they are subject to an income tax at 5%/year and subject to a transfer tax of 0.1% on the transaction value. Because of this shortcoming, investing in bonds is much less attractive than short-term savings deposits. Therefore, VAFI requests the Government, the National Assembly and the Ministry of Finance to consider exemption from the income tax and transfer tax against individual investors to stimulate development of the long-term capital mobilisation market.

*By congthuong.vn*

## 2. Proposal to exempt late payment interest for enterprises that incur losses in the tax period of 2022

The Ministry of Finance is developing a draft proposal towards developing a resolution of the National Assembly on the exemption of late payment interest for the enterprises and organisations that incur losses in the tax period of 2022.



*The Ministry of Finance proposes to exempt late payment interest for enterprises that incur losses in the tax period of 2022 to support enterprises to restore production and business. Photo: H. Anh.*

Accordingly, the Ministry of Finance proposes a waiver of late payment interest arising in 2022 and 2023 related to the debts of taxes, land use levies and land rent against the enterprises and organisations (including dependent units and business locations) that incur a loss in the tax period of 2022. This provision does not apply to the cases

where late payment interest has been paid before the effective date of this Resolution.

The Ministry of Finance says that the proposal to exempt late payment interest may be satisfied on the condition that losses arise in 2022 to ensure the right support, because if there is no loss condition, the subjects of support as enterprises and organisations, once not really in trouble but entitled to such support, will spark any inequality and result in any waste of resources.

This is the late payment amount of the enterprises and organisations that suffer losses and are unable to pay into the budget on time, so it exerts little impact on the reduction of state budget revenue. Anyway, this policy has the effect of reducing the financial burden of the enterprises and organisations so that they can rest assured and soon recover their production and business activities.

*By haiquanonline.com.vn*

No.	Document title	Issuance date	Effective date
<b>GOVERNMENT</b>			
1	Decree 32/2023/ND-CP amending and supplementing Decree 53/2018/ND- amending and supplementing Decree 58/2016/ND-CP on the sale and provision of civil cryptography products and services and the exportation or importation of civil cryptography products.	09/6/2023	09/6/2023
2	Decree 26/2023/ND-CP on the Export Tariff, the Preferential Import Tariff and the list of commodity items and their specific duty rates, combined duty rates and out-of-quota duty rates.	31/5/2023	15/7/2023
3	Decree 23/2023/ND-CP amending and supplementing a number of articles of Decree 89/2016/ND-CP prescribing the conditions for foreign exchange agency and provision of foreign currency receipt and payment services of the economic organisations and Decree No. 88/2019/ND-CP on the penalties for administrative violations against currency and banking regulations.	12/5/2023	01/7/2023
4	Decree 22/2023/ND-CP amending and supplementing a number of articles of Decrees related to the business activities in the field of natural resources and environment.	12/5/2023	12/5/2023
<b>PRIME MINISTER</b>			
1	Decision 17/2023/QD-TTg amending and supplementing a number of articles of Decision 31/2007/QD-TTg on credit for production and business households in difficult areas and Decision 92/2009/QD-TTg on the credit for traders conducting commercial activities in disadvantaged areas.	05/6/2023	08/8/2023
2	Decision 15/2023/QD-TTg providing for the application of ordinary duty rates for imports.	31/5/2023	15/7/2023
<b>MINISTRY OF NATURAL RESOURCES AND ENVIRONMENT</b>			
1	Circular 04/2023/TT-BTTTT stipulating the list of the potentially unsafe products and goods under management of the Ministry of Information and Communications.	15/5/2023	20/5/2023
<b>MINISTRY OF FINANCE</b>			
1	Circular 33/2023/TT-BTC prescribing the identification of origin of imports and exports.	31/5/2023	15/7/2023
2	Circular 30/2023/TT-BTC guiding the registration, depository, exercise of rights, transfer of ownership, payment for transactions and organisation of the market for private trading of corporate bonds in the domestic market.	17/5/2023	01/7/2023
<b>GENERAL DEPARTMENT OF TAXATION</b>			
1	Decision 679/QD-TCT promulgating the Tax Refund Process.	31/5/2023	31/5/2023
2	Decision 657/QD-TCT on the Regulation on settlement of state compensation at the tax authorities at all levels.	25/5/2023	25/5/2023



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