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1. Guidance on electronic transactions in the tax sector

On 18 March 2021, the Ministry of Finance issued Circular 19/2021/TT-BTC (“**Circular 19/2021**”) guiding electronic transactions in the tax sector. Circular 19/2021 will take effect from 03 May 2021, replacing Circular 110/2015/TT-BTC and Circular 66/2019/TT-BTC. Accordingly, in order to conduct electronic tax transactions, taxpayers should note the following provisions:

1.1 Conditions for electronic tax transactions

Taxpayers who conduct electronic tax transactions must be able to access and use the Internet, have email addresses, digital signatures or mobile phone numbers issued by a telecommunications company in Vietnam (for individuals who have not been granted digital certificates) which have been registered to use in transactions with tax authorities, except for taxpayers who choose to pay tax via the electronic payment service provided by a bank or an intermediary payment service provider, then, they will follow the regulations of the bank or the intermediary payment service provider.

1.2 Methods for electronic tax transactions

Taxpayers can perform electronic tax transactions by one of the following 5 methods:

- (1) Web portal of the General Department of Taxation.
- (2) The National Public Service Portal, web portal of the Ministry of Finance which has been connected to the web portal of the General Department of Taxation.
- (3) The web portals of other competent state agencies which have been

connected to the web portal of General Department of Taxation.

- (4) The T-VAN service provider which is accepted by the General Department of Taxation to connect with the web portal of General Department of Taxation.
- (5) Electronic payment service of a bank or intermediary payment service provider to make electronic tax payments.

1.3 Time for conducting electronic tax transactions

Taxpayers can make electronic tax transactions 24 hours a day (from 00:00:00 to 23:59:59) and 7 days a week, including weekly days off, public holidays and New Year holidays. The time recorded on the notices, decisions and documents sent to taxpayers is determined to be within the same day if the dossiers are successfully deposited during the period from 00:00:00 to 23:59:59 of the day.

1.4 Looking up taxpayer information

Taxpayers can use electronic tax transaction accounts to access the web portal to look up, view and print all information about documents, vouchers, notices, decisions, dossiers received/sent between tax authorities and taxpayers; to look up declaration requirements, and other obligations

based on the codes of dossiers, vouchers and decisions; to look up the tax amount to be paid. Information on the notices, decisions and documents

issued by tax authorities on the web portal of General Department of Taxation is as valid for recognition as paper documents of tax authorities.

2. Decree 31/2021/ND-CP guiding the implementation of the 2020 Investment Law

On 26 March 2021, the Government issued Decree 31/2021/ND-CP (“**Decree 31/2021**”) detailing and guiding the implementation of a number of articles of the Investment Law. Decree 31/2021 takes effect from the date of signing, i.e. 26 March 2021 and replaces Decree 118/2015/ND-CP, Decree 37/2020/ND-CP, Decree 83/2015/ND-CP, Decree 104/2007/ND-CP, Decree 69/2016/ND-CP, Decree 79/2016/ND-CP, part of Decree 100/2018/ND-CP and features some noteworthy points as follows:

2.1 Security for project performance by investors

Decree 31/2021 stipulates that, except for some cases specified at points a, b, c and d, Clause 1, Article 43 of the Investment Law, investors must pay deposits or have guarantee letters issued by a credit institution or foreign bank branch established under the Vietnamese law as a security for the performance of an investment project in which land is allocated or leased by the State, or where the State allows to change the land use purpose.

(2) Production and supply of public goods or services, or the goods and services of state monopoly.

(3) Ownership and business in residential houses and real estate.

(4) Application of State support and subsidies to a number of sectors, fields or development of regions or territories.

(5) Participating in the programs and plans on equitizing state-owned enterprises.

2.2 Conditions for foreign investors to conduct investment and business activities with restricted access in Vietnam

According to Article 15 of Decree 31/2021, in addition to market access conditions for the industries and trades with restricted access, foreign investors and foreign-invested economic organizations must satisfy the following conditions while conducting investment activities in Vietnam:

(6) Other conditions as prescribed in the laws and resolutions of the National Assembly, ordinances and resolutions of the Standing Committee of the National Assembly, decrees of the Government and international treaties on investment in which it is prescribed that foreign-invested economic organizations are not allowed to, or restricted from accessing the market.

(1) Use of land and labour force; natural resources, minerals.

2.3 Restrictions on the ownership ratio by an investor

According to Clause 10, Article 17 of Decree 31/2021, restrictions on the ownership ratio by an investor in accordance with international treaties on investment are applied as follows:

- If many foreign investors contribute capital, buy shares, or buy shares of capital contribution into economic organizations and fall into the subjects of application of one or more international treaties on investment, the total ownership rate of all foreign investors must not exceed the highest rate according to an international treaty that stipulates the foreign ownership rate for a particular industry or trade.
- If many foreign investors in the same country or territory contribute capital, buy shares, or buy shares of capital contribution into economic organizations, the total ownership ratio of all such investors must not exceed the ownership rate specified in international treaties on investment applicable to such investors.
- If an economic organization has many lines of business and the international treaties on investment have different provisions on the foreign investor's ownership rate, then the foreign investor's ownership rate in that organization must not exceed the restriction on foreign ownership rate applicable to the business lines with a restriction on the lowest rate of foreign ownership.
- For public companies, securities companies, securities investment

fund management companies or securities investment funds, and securities investment companies, if the law on securities provides otherwise, foreign investors will comply with the securities law.

2.4 Conditions for amending an investment project in the case of dividing, splitting or merging investment projects

Investors may amend an investment project by dividing or splitting the existing investment project into two or more projects; or merging one or more investment projects of that investor into an investment project of the same investor, but the following conditions must be met:

- Land use conditions in accordance with the land law, investment and business conditions (if any) and other conditions as provided for by law.
- Not to change the investor's conditions (if any) stated in the investment policy approval decision or the investment registration certificate before the division, split or merger of an investment project;

2.5 Conditions for amending investment projects when using land use rights, and other land-attached assets under the investment projects to contribute capital to enterprises

The investor may use land use rights and land-attached assets under investment projects to contribute capital to the establishment of an economic organization, or contribute

capital to enterprises as permitted by the land law, corporate law and relevant laws. This capital contribution must satisfy the following conditions:

- Conditions under the land law on the rights and obligations of land users and people having assets attached to land; rights and obligations of people receiving capital in form of land use rights and assets attached to land; conditions for contributing and receiving capital in form of land use rights and land-attached assets.
- Conditions under the law on construction, housing, real estate business (if any).
- Conditions specified in the Decision on investment policy approval, Decision on investor approval, Certificate of investment registration, and agreements between the competent authority and the investor (if any).
- Conditions for contribution and receipt of capital in form of assets of enterprises in which 100% charter capital is held by the State in accordance with the law on management and use of state capital to invest in production and business at enterprises, the law on management and use of public properties and related laws.
- Conditions for foreign investors to contribute capital, buy shares or shares of capital contributions according to the Law on Investment.

- Fulfill financial obligations to the State (if any) in accordance with the law.

2.6 Investors will bear all damages arising from the act of falsifying the contents of investment procedural documents.

According to Article 7 of Decree 31/2021, when a competent agency, organization or person detects that there is fake content in the investment procedural documents, the Investors must be responsible in accordance with law for all damages arising from acts of falsifying such documents. At the same time, the investment registration agency must carry out the following procedures:

- Notify investors in writing of the violations.
- Cancel or report to competent agencies or persons to consider canceling the decisions on investment policy approval, investor approval decisions, investment registration certificates or outbound investment registration certificates and other relevant documents that were first issued or canceled content of documents, papers recorded on the basis of fake information.
- Restore the issued documents and papers on the basis of the most recent valid dossiers, at the same time handle or report to the competent agency or person for handling the issue in accordance with law.

3. Instructions on implementing the Law on Investment in the form of public-private partnership

On 29 March 2021, the Government issued Decree 35/2021/ND-CP (“**Decree 35/2021**”) detailing and giving instructions to implement the Law on Investment in the form of public-private partnership (PPP). Decree 35/2021 takes effect from the date of its signing, i.e. 26 March 2021 replaces Decree 63/2018/ND-CP and has some notable new points as follows:

3.1 Specifying the field of investment and the scale of a PPP project

Field		Scale
Transportation	Motorway; railway; inland waterways; marine; airway;	VND1,500 billion or more.
Power grid, power plant	Renewable energy; coal-fired thermal power; gas thermal power (including liquefied natural gas - LNG); nuclear power; power grid; except for the cases of State monopoly as specified by the Electricity Law.	VND1,500 billion or more; particularly, projects in the field of renewable energy to have a total investment of VND500 billion or more.
Irrigation; clean water supply, drainage and wastewater treatment; waste treatment.		VND200 billion or more.
Health care	Medical facility; preventive health care; testing facility	VND100 billion or more.
Education - training	Infrastructure, facilities, equipment for education - training and vocational education activities.	VND100 billion or more.
Information technology infrastructure	Digital information infrastructure, digital economy; modernization of information technology in Party and State agencies; application and development of information technology, database, data center; shared platforms, applications and services; network safety and security; application system, services serving for people and businesses; infrastructure of information and communications technology (ICT) for smart cities.	VND200 billion or more

3.2 Three subjects entitled to preferential treatment in selecting investors for PPP projects

According to Article 30 of Decree 35/2021, in investor selection, 3 subjects which are entitled to incentives are:

- (1) Investors whose project proposal dossier is approved will be entitled to a 5% incentive when evaluating bidding documents.
- (2) Investors who pledge to use domestic contractors to participate in project implementation with the work value accounting for 25% or more of the total investment value will enjoy a 3% incentive when evaluating bidding documents.
- (3) During the selection of an international investor, investors who pledge to use domestic goods, materials, and equipment for project implementation with a value of 25% or more of the total investment value will be entitled to a 2% incentive when evaluating bidding documents.

The principle in providing incentives is (i) an investor who is eligible for more than one type of incentive will only be entitled to the highest level as prescribed in the invitation-to-bid document; (ii) if after the consideration of incentives, if the bidding dossiers are ranked equally, priority will be given to the investor with the approved project proposal; and (iii) In the case an investor eligible for incentives mentioned in items (2) and (3) above is selected to sign the contract but fails to comply with the commitments in the bidding documents and PPP project contract, it will be sanctioned according

to the provisions of the PPP project contract. In this case, the PPP project contract must specify a specific penalty clause corresponding to the incentive level the investor is entitled to when evaluating the bidding documents.

3.3 The security value for performance of a PPP project contract

Article 35 of Decree 35/2021 stipulates that the security value for contract performance specified in the invitation-to-bid document will be from 1.5% to 3% of the total investment value for projects with a total investment to VND300 billion. Projects with a total investment of more than VND300 billion will have a security value for contract performance specified in the invitation-to-bid document from 1% to 1.5% of the total investment value.

3.4 Investor interest survey results are the basis for determining the investor selection form

Article 34 of Decree 35/2021 stipulates that, based on the results of an investor's interest survey, the competent authority will decide whether to apply the forms of open bidding or competitive negotiation to the selection of investors.

- For open bidding (domestic or international, prequalification or non-prequalification): if there is a foreign investor interested, the international bidding will be applied, if there are 6 investors or more interested, apply the method of prequalification.
- Competitive negotiation is applied in the case where (i) the project is surveyed (the survey applied to the

project in which special innovative solutions are needed to shorten the progress of completion of works, infrastructure systems in a certain period of time, achieving high levels of energy saving and environmental protection for projects in the group which may cause adverse impacts on the environment according to the law on environmental protection), there are no more than 3 investors

meeting the project implementation requirements. If, after the survey, there are more than 3 investors who satisfy the project implementation requirements, the open bidding form will be applied to select the investor; and (ii) the projects in which high technologies and new technology will be applied in accordance with the Law on PPP.

4. New regulations on guaranteeing the performance of civil obligations

On 19 March 2021, the Government issued Decree 21/2021/ND-CP (“**Decree 21/2021**”) regulating the implementation of the Civil Code on guaranteeing the performance of obligations, including security assets; establishing and implementing security measures for the performance of obligations and disposing of security property. Decree 21/2021 will take effect from 15 May 2021 and replace Decree 163/2006/ND-CP, Decree No. 11/2012/ND-CP with the following new noteworthy contents:

4.1 Four types of property are used to secure the performance of civil obligations

Article 8 of Decree 21/2021 stipulates that properties used to secure the performance of civil obligations include:

- (1) Existing property or future assets, unless the Civil Code or other relevant law prohibits the sale, purchase, assignment or other transfer of ownership at the time of establishing security contracts or security measures.
- (2) Property sold in a property sale contract with title retention.
- (3) Property that is subject to the obligations in the duplex contract that is violated with respect to lien.

- (4) Property belongs to all people, as provided for by relevant laws.

4.2 An obligation can be secured by many assets

According to Article 5 of Decree 21/2021, in addition to the provision on an obligation that may be secured by many security measures specified in Decree 163/2006/ND-CP, there is an additional provision that an obligation may also be secured by multiple assets. The scope of security for performance of the obligations of each of the collateral assets is determined according to the agreement between the securing party and the secured party. In the absence of an agreement, any of those assets will be used to secure the performance of the entire obligation.

4.3 Cases where a collateral is not reclaimed

Clause 2, Article 7 of Decree 21/2021 stipulates that the secured party is not allowed to reclaim the security property in the following 4 cases:

- (1) A collateral has been sold, assigned or otherwise transferred in terms of ownership due to the consent of the secured party and may not continue to be used to secure the performance of the agreed obligation.
- (2) A collateral is sold, replaced or exchanged in accordance with the Civil Code.
- (3) A collateral does not exist any more or is replaced with other assets in accordance with the provisions on changes in collateral in Decree 21/2021.
- (4) Other cases as provided for by the Civil Code, other relevant laws.

4.4 Disposing of a collateral as asset to be formed in the future

According to Article 55 of Decree 21/2021, the disposal of collateral as a future property will be implemented according to the agreement of the parties. This Agreement may contain the following:

- *If the collateral has not been formed or has been formed but has not been granted a Certificate* in case the collateral is required to register under the law, the secured party may transfer the contract of sale and purchase of property, other contracts on the establishment of rights to future properties, receiving collateral as a substitute for the

performance of the secured obligation or the sale of future assets in accordance with law.

- *If the collateral has been formed and the securing party has established ownership* of the property, the secured party may accept such property as a substitute for the performance of the secured obligation or dispose of according to general regulations on the disposing of collateral for existing assets.

4.5 Effective date of a security contract

Security contracts that are notarized or authenticated in accordance with the Civil Code, other relevant laws or upon request will take effect from the time they are notarized or authenticated. For the remaining cases, the security contract takes effect from the time agreed upon by the parties. If there is no agreement, it will take effect from the time the contract is entered into.

4.6 Arising time of the countervailing effect of a security measure against a third person

- A security measure only gives rise to a countervailing effect against a third person in case the security contract has taken legal effect.
- If the security measure must be registered under the Civil Code, other relevant laws, or registered under an agreement or registered at the request of the secured party, the time of registration at the competent agency in accordance with relevant laws is when a

security measure takes effect against a third person. If not falling into the said case, the countervailing effect of the measure of pledge, deposit or collateral against the third person arises from the time the secured party holds the collateral.

- Where a collateral is a security measure (pledge, deposit, deposit) is assigned to another person for management, the countervailing effect of the security measure against a third person arises from the time:
 - ✓ The mortgagee, the deposited party or the bailee holds the collateral.
 - ✓ The custodian receives collateral directly from the pledgor, the depositor or the bailor.
 - ✓ A security contract is in effect in the event that someone else is in direct control of the property which is used for pledge, deposit or collateral.
- Counteravailing effect of a deposit measure against a third person arises from the time when the collateral is deposited into the escrow account at the credit institution where the deposit is conducted.

GV Lawyers would like to introduce an article by **Lawyer Le Quang Vy** and **Paralegal Vo Tran Hoang Sa** titled **“Who is the real author between a conceiver of creative ideas and a ghostwriter?”** published on Vietnam Lawyer Journal dated 15 April 2021.

(LSVN) - It is about the copyright dispute between the family of Writer Huu Mai and the family of General Vo Nguyen Giap related to “the Memoirs of General Vo Nguyen Giap” ghostwritten by Writer Huu Mai; or the frustration of Writer Vo Dieu Thanh when he accepted to write memoirs for a famous person ... This is the problem of copyright disputes between a conceiver of creative ideas and a ghostwriter, which is currently happening in social life. Thus, how does the law provide for in terms of authors, co-authors, copyright owners?

Like other countries, the 2005 and as amended in 2009 Intellectual Property Law of Vietnam (IP Law) clearly states that copyright only arises when a work is created and expressed in a particular material form (Article 6, IP Law). This means that if a person comes up with an idea, but the idea has not been expressed in a material form such as articles, phonograms, video recordings ... the work has not been formed, and thus is not protected by law. In other words, copyright law

does not protect a work when it is just an idea creation in mind, and the law only protects when the idea creation in mind is expressed in a particular material form.

Difference among author, co-creator and copyright owner

We know that the subject of all rights always has two objects: natural person (man of nature, product of creation) and legal person (man from the perspective of law). Therefore, copyright holders can be natural persons or legal entities. However, when it comes to an author, it cannot be a legal person, but can only be a natural person because only such natural person can create a work directly.

Accordingly, Article 6.1 of Decree 22/2018/ND-CP on guidelines on the 2005 and amended in 2009 IP Law on copyright and related rights (Decree 22/2018 /ND-CP) stipulates: “An author means a person who personally creates part or the whole of the literary, artistic or scientific works”.

Article 6 The Swiss Federal Copyright Law introduces the concept "Authors are natural persons who create works". Legally, we should probably use the term "creative natural person / individual" rather than "creator", because as aforesaid, in a sense, "creator" can be understood as a juridical person that cannot create from the perspective of law.

In short, only individuals who, by their own labour, directly create a part or the whole of literary, artistic or scientific works expressed in particular material forms, is the author of the work, protected by law. A work is considered to be co-authored when many authors use their time, money and facilities to co-create that work.

The Law on Intellectual Property also clarifies cases in which an author is also a copyright owner and an author is not concurrently a copyright owner. Accordingly, an individual using his own time, finance and other material conditions directly creates the work, then that individual is both the author and the owner of the

copyright (Article 37 IP Law). In this case, the author has full ownership of moral and property rights to the work he has created. For works with co-authors, the co-authors are also co-owners of the copyrights. The law also predicts where any of co-authors has his own creation, which can be separated for independent use without prejudice to remaining co-authors, he is eligible for full ownership of moral rights and property rights over that independent creation (Article 38 of the Law on Intellectual Property). In case the author is only the creator of the work according to the assigned task or creation contract (the hired author), the author only has moral rights, while the property rights will belong to the individual or organization that gives job assignment to or signs a contract with the author.

Thus, the organization that assigns the task or the organization or individual that enters into a contract with a work creator will be the copyright owner of the work (Article 39 of the Law on Intellectual Property). In

addition, the Intellectual Property Law also stipulates cases in which the copyright owner is the heir, the person to whom the right is transferred or in which case the copyright owner is the State.

Is the ghostwriter an author or co-author?

Writers for another person are called “ghostwriters” in English and are defined as “a person who writes a book, etc.” for another person as a hirer, under whose name it is then published¹. Article 6.3 of Decree 22/2018/ND-CP stipulates: “Persons who support, give opinions or provide materials for others to create works are not recognized as authors or co-authors”. Thus, under the legal perspective, if the writer or typist only supports the creative author in creating the work, it will not be considered the author or co-author. Obviously, the ghostwriter is only the person who implements the idea of the author who created the work in a particular material form. Therefore, the writer is not the creator of the work and is not considered an author.

Copyright law of some countries around the world also does not recognize the role of the ghostwriter, or the supporter will have copyright for the work when performing the supporting work to express the creative ideas of the author (such as typing, document collection, ...).

In the United States, when discussing the copyright issue of the ghostwriter, the ghostwriter will not have the right to the work after having received the full payment from the author for such supporting work. Ownership of the copyright of the work will belong to the ordering party, and the ghostwriter will not have any copyright or ownership of the copyright on the work². However, copyright disputes arise when the contract or agreement between the parties does not have a clear provision regarding the ghostwriter's role in the relationship with the author. In addition, in Switzerland, the element of “co-creation” is compulsory to define the role of “co-author” for the work, accordingly, the concept of co-authoring is also only posed to those who co-contribute to the creation of

¹<https://www.oxfordlearnersdictionaries.com/definition/english/ghostwriter?q=ghostwriter>

² According to the US writer Lawrence Watt-Evants at the Quora response site

the work and copyrights belong only to these people rather than other supporting subjects (such as ghostwriters) who do not play the role of contributing to that creation of the work³.

A copyright dispute between the famous French author and writer in France is known between the famous French great writer Alexandre Dumas and his assistant in writing famous novels – Auguste Maquet. Accordingly, Auguste Maquet filed a lawsuit in Court to demand recognition of him as co-author with Alexandre Dumas for the famous novels he has co-authored with Alexandre Dumas, regardless of the cooperation contract stating Auguste Maquet agreed not to recognize the contribution to the creation of these novels. As a result, the Court ruled that only Alexandre Dumas - who really had creative ideas for the new work had copyright for these novels

after paying the costs of hiring Auguste Maquet to write the novel over a period of 11 years⁴.

However, in judicial practice, it is not obvious that 100% of the dispute settlement agency will choose a resolution based on the law only, because inherently, the terms agreed between the parties in this cooperative relationship play an important role when considering dispute resolution. Therefore, when hiring ghostwriters or assistants to carry out related work, it is important to pay attention to building a clear basis in the contract or cooperation agreement to best protect their own interests. On both legal and practical terms, a contract with strict provisions and clear affirmation of the supporting role of the ghostwriter to express the author's creative idea in the work is a necessary legal basis for the parties to settle

disputes when it happens later.

Back to the families of Writer Huu Mai and General Vo Nguyen Giap related to the Memoirs of General Vo Nguyen Giap, maybe when these works were published, Vietnam did not have an IP Law or otherwise, the parties did not clearly establish the contract. Vietnam's current IP law is relatively clear, in keeping with the progressive law of many countries around the world. It is thought that this will be the legal basis for the parties to together reach a mutual agreement. In terms of its purpose and meaning, the IP Law not only creates a legal corridor to protect the authors, but also ensures a balance of interests between the author, the communicator and the public (beneficiary), creating conditions for the dissemination of good works to help spiritual products serve the society better and better.

³ Retrieved at https://www.fedlex.admin.ch/eli/cc/1993/1798_1798_1798/en

⁴ According to information published at the World Intellectual Property Organization WIPO

https://www.wipo.int/wipo_magazine/en/2008/05/article_0011.html

1. Pilot purchase of solar and wind power about to be conducted without EVN

The Ministry of Industry and Trade is collecting comments on a draft Circular regulating the pilot direct purchase and sale of electricity between renewable energy generating units and electricity users (DPPA mechanism.)

Accordingly, customers using electricity for industrial production (voltage level from 22kV and above) can negotiate and agree to buy electricity directly from solar and wind power plants through forward contracts.

Electricity purchase and sale will be conducted through the spot electricity market, operating in accordance with the competitive wholesale electricity market regulation of the Ministry of Industry and Trade.

Electricity Regulatory Authority (Ministry of Industry and Trade) said that such customers participating in the pilot must have registration documents that meet criteria such as commitment to using renewable energy; 80% or more rate of electricity output purchased by contracts in the first 3 years of participation in the pilot.

On the part of power generation units, to participate in the pilot under this mechanism, the wind and solar power projects must be planned with an installed capacity of over 30 MW. These

projects must also be committed to the commercial operation time and participation in the electricity market

within 9 months of announcement of the selection of participants by the competent authority. In addition, the pilot project participation application file must be

accompanied by documents proving financial support from financial and credit institutions.

The Ministry of Industry and Trade plans to put this pilot mechanism into operation during the period of 2021-2023 with a total capacity of about 1,000 MW. One year after the pilot, the Electricity Regulatory Authority will evaluate the market, technical, financial and legal aspects ... complete contents and reports for competent agencies to consider and decide to widely apply this mechanism.

According to the Electricity Regulatory Authority, when implementing this pilot mechanism, the competitive wholesale electricity market is completed, the competitive electricity retail is officially deployed, the power purchase agreement will shift to compliance with the new relevant regulations.

By Anh Minh, vnexpress.net



Image: Quynh Tran

2. Proposing policies to support transportation businesses

The COVID-19 pandemic has severely affected businesses in the transport sector. The Ministry of Transport has proposed the Government to enable more new policies to support businesses in dire straits.

According to the Ministry of Transport, the COVID-19 pandemic has caused many difficulties to transport companies and further developed on a complicated trajectory. In need of continuing to maintain supporting policies for businesses, the Ministry of Transport has just requested the Ministry of Planning and Investment to report the Prime Minister towards direct ministries and branches to consider a number of policies, supportive solutions for businesses.

Specifically, the Government should allow the aviation industry to continue extending the policy of 50% reduction in the price of aircraft takeoff and landing services for domestic flights; apply a minimum price of 0 VND for specialized aviation services on the list where the State has regulated the price bracket until the end of 2021. In addition, the State Bank considers other proposals of the aviation industry with regard to credit support, bank interest rates, payment term.

In the field of railway transport, the Ministry of Transport proposed the

Government to allow the delay of the implementation of Decree No. 65/2018 on the implementation of the yearly period of using locomotives and wagons by 3 years; supplement Decree No. 32/2017 on state investment credit to enable projects on building new



Image: VNA

locomotives and railway carriages to be on the list of preferential loans from the Vietnam Development Bank; at the same time, to early approve 2

schemes "Management, use and exploitation of national railway infrastructure assets invested by the State and "Restructuring Vietnam Railway Corporation to serve as a basis for Vietnam Railway Corporation to deploy effective business and production activities.

At the same time, in the maritime field, the Ministry of Transport proposed to add priority subjects to the COVID-19 preventive vaccination such as seafarers working on board marine ships, working directly with marine ships; support in immigration procedures for Vietnamese officers and seafarers working on board marine ships operating on international routes beyond the labour contract term to be repatriated; consider bringing expired Vietnamese crew members that are stuck abroad to the priority list on the Vietnamese government's relief flights.

By Minh Hanh, laodong.vn

1. Corporate income tax and personal income tax policy for the sum to buy health insurance for employees

For the case where the Company purchases health insurance products that are not compulsory and do not accumulate premiums for employees:

- Regarding corporate income tax: the Company's expenses for purchasing health insurance for employees are considered to be welfare expenses directly paid to employees, and if the total expenses for welfare purposes are not more than average actual 01-month salary paid in the taxation year of the enterprise and satisfy the conditions as guided in Article 4 of Circular 96/2015/TT-BTC, they will be included in deductible expenses upon determining the income subject to corporate income tax.
- Regarding personal income tax: the total expenses for purchasing health insurance products that are not compulsory and do not accumulate premiums for employees are not included in the employee's income subject to personal income tax

Ha Noi Tax Department answers the queries of Business Sweden Vietnam Company Limited in Official Letter No. 7431/CTHN-TTHT dated 12 March 2021.

2. Personal income tax policy

- In light of the case that Ms. Christina Hui (with Hong Kong nationality) has a regular residence in Vietnam but actually is present in Vietnam for less than 183 days in a taxation year, the status of an individual's

residence in Vietnam will be determined as follow:

- ✓ If the individual proves that he/she is a resident of Hong Kong according to Hong Kong regulations, he / she is determined to be a non-resident in Vietnam and declares any income subject to PIT arising in Vietnam according to the full tax rate. The amounts of any arising income in Vietnam, which the Company has deducted and declared PIT according to the partially progressive tariff, will be then adjusted according to the tax rate applicable to non-resident individuals.
- ✓ If the individual cannot prove that he/she is a resident of Hong Kong according to Hong Kong regulations, he/she is determined to be a resident in Vietnam. Individuals are responsible for declaring any income generated in Vietnam and any income earned outside the territory of Vietnam (if any) according to the partially progressive tariff.
- In case Ms. Christina Hui is a resident of both Vietnam and Hong Kong, her status of residence will be determined according to Article 4.2 of the Agreement between the Government of the Socialist Republic of Vietnam and the Hong Kong Special Administrative Region government of the People's Republic of China on avoiding double taxation and preventing tax evasion on income taxes.

Ha Noi Tax Department answers the queries of Vietnamobile Telecommunications Joint Stock Company in Official Letter No. 9584/CTHN-TTHT dated 31 March 2021.

3. Value added tax on processing operations of export processing enterprises

- If the Company is an export processing enterprise providing processing services to another export processing enterprise, this service is not subject to VAT as prescribed in Article 4.20 of Circular No. 219/2013/TT-BTC. The company uses sales invoices, clearly stating "For organizations and individuals in the non-tariff zone" as prescribed in Article 5.1 of Circular No. 119/2014/TT-BTC.
- Taxpayers must make tax returns, lists and appendices (if any) according to the form set by the Minister of Finance and take responsibility before law for the accuracy, truthfulness and completeness of the contents in tax returns, lists, appendices; fully filing the documents and materials specified in the tax return dossier to the tax authority, except for the cases specified in Article 7.3 of Decree No. 126/2020/ND-CP.

Ha Noi Tax Department answers the queries of Luminous Optical Technology (Vietnam) Company Limited in Official

Letter No. 9054/CTHN-TTHT dated 26 March 2021.

4. Contractor taxes

In case the Company imports machinery and equipment together with warranty service performed in Vietnam, the foreign contractor's income from the provision of goods warranty and services will be liable to contractor taxes in Vietnam. If the foreign contractor does not meet the conditions for directly declaring tax in Vietnam as prescribed in Article 8, Section 2, Chapter II of Circular 103/2014/TT-BTC, the Company is responsible for withholding, declaring and paying taxes on behalf of the foreign contractor, specifically:

- Regarding CIT: rate (%) of CIT on the value of machinery and equipment: 1%; for the value of warranty services: 5%.
- Regarding VAT: If the company has fully paid VAT upon importation of machinery and equipment, the foreign contractor's VAT obligation is only calculated on the value of the warranty service, the VAT rate (%): 5%.

Ha Noi Tax Department answers the queries of Hacisco Joint Stock Company in Official Letter No. 8143/CTHN-TTHT dated 19 March 2021.

No.	Document title	Issuance date	Effective date
GOVERNMENT			
1	Decree 44/2021/ND-CP guiding the implementation of deductible expenses for determining taxable income with respect to expenditures by enterprises and organizations for supporting and sponsoring the prevention and control of Covid-19 pandemic.	31/3/2021	31/3/2021
2	Decree 38/2021/ND-CP on sanctioning administrative violations related to culture and advertising.	29/3/2021	01/6/2021
3	Decree 35/2021/ND-CP detailing and guiding the implementation of Law on investment in the form of public-private partnership.	29/3/2021	29/3/2021
4	Decree 31/2021/ND-CP detailing and guiding the implementation of Law on Investment.	26/3/2021	26/3/2021
5	Decree 30/2021/ND-CP amending and supplementing a number of articles of Decree 99/2015/ND-CP detailing and guiding the implementation of a number of articles of Law on Housing.	26/3/2021	26/3/2021
6	Decree 28/2021/ND-CP regulating the mechanism for financial management of public-private partnership projects.	26/3/2021	26/3/2021
7	Decree 21/2021/ND-CP regulating the implementation of the Civil Code on security for the performance of obligations.	19/3/2021	15/5/2021
8	Decree 18/2021/ND-CP amending and supplementing a number of articles of the Decree 134/2016ND-CP detailing a number of articles of and measures to implement the Law on Import Duty and Export Duty.	11/3/2021	25/4/2021
9	Decree 15/2021/ND-CP detailing a number of contents on management of invested construction projects.	03/3/2021	03/3/2021
PRIME MINISTER			
1	Decision 17/2021/QD-TTg providing levels of vocational training support for employees covered by unemployment insurance.	31/3/2021	15/5/2021
2	Decision 10/2021/QD-TTg providing criteria for identifying hi-tech enterprises.	16/3/2021	30/4/2021
MINISTRY OF PLANNING AND INVESTMENT			
1	Circular 01/2021/TT-BKHDT guiding the enterprise registration.	16/3/2021	01/5/2021
GENERAL DEPARTMENT OF TAXATION			
1	Official Letter 636/TCT-DNNCN guiding the finalization of personal income tax.	12/3/2021	12/3/2021
MINISTRY OF FINANCE			
1	Circular 23/2021/TT-BTC guiding the printing, issuance, management and use of electronic stamps on liquor and tobacco products.	30/3/2021	15/5/2021
2	Circular 19/2021/TT-BTC guiding the electronic tax transactions.	18/3/2021	03/5/2021



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