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

## 1. Guidance on the obligations of organizations and individuals in foreign investment activities on the Vietnamese stock market

On 30 June 2021, the Ministry of Finance issued Circular 51/2021/TT-BTC (“Circular 51/2021”) guiding the obligations of organizations and individuals in foreign investment activities on the Vietnamese stock market. Circular 51/2021 takes effect from 16 August 2021, replacing Circular No. 123/2015/TT-BTC and has some notable novelties as follows:

### 1.1 Subjects of application

Circular 51/2021 provides guidelines on the obligations of foreign investors, organizations providing services to foreign investors and other organizations and individuals involved in the investment activities by foreign investors on the Vietnamese stock market, and applies to:

- ✓ Foreign investors and groups of related foreign investors.
- ✓ Depository members, clearing members, securities companies, securities investment fund management companies, branches of foreign fund management companies in Vietnam, organizations issuing depository receipts abroad, economic organizations with foreign investors holding more than 50% of charter capital.
- ✓ Vietnam Securities Depository and Clearing Corporation, Vietnam Stock Exchange and its subsidiaries.
- ✓ Other relevant agencies, organizations and individuals.

### 1.2 Supplementing the principle of conducting the obligation to make information disclosure about

### securities transactions by foreign investors

Compared with Circular 123/2015/TT-BC, Circular 51/2021 adds the principle related to the obligation of foreign investors and groups of foreign investors to report on ownership and disclose information about securities transactions in accordance with the law on information disclosure on the securities market as follows:

- In case there is a change in the number of foreign investors in a group of foreign investors, but there is no change in the organization or individual performing the obligation to report on ownership and disclose information, the organizations and individuals that are appointed or authorized to report ownership and disclose information are responsible for reporting to the State Securities Commission, a subsidiary of the Vietnam Stock Exchange within 7 working days of such change.
- Reporting documents include: (i) An update on changes in the list of the relevant foreign investor group prepared in the prescribed form, (ii) Appointment or authorization letter for the new foreign investor on the fulfillment of the obligation to report on ownership and disclose

information prepared in the prescribed form (for adding a new foreign investor to the relevant group of foreign investors).

### 1.3 Adding 2 more obligations in the activity of providing services to foreign investors

In addition to fulfilling the obligations in service provision as before, Circular 51/2021 also adds two more obligations in service provision that foreign investors must perform:

- Depository members must make and keep records and documents recording asset depository activities on the depository accounts of organizations and individuals that are granted securities trading codes and must provide them as required by competent management agencies.
- Clearing members must keep sufficient documents on clearing and settlement of securities transactions conducted by organizations and individuals that are granted securities trading codes, and as required by competent management agencies, timely provide sufficient and accurate information and documents related to securities transaction clearing and settlement.

### 1.4 Adding regulations on data closing time and report storage

According to Article 7 of Circular 51/2021, the time for closing periodical data and archiving reports by depository members, depository banks, securities companies, securities investment fund management companies, branches of foreign fund management companies in Vietnam, Vietnam Securities Depository and Clearing Corporation, and subsidiaries of the Vietnam Stock Exchange will be as follows:

- For bi-weekly reports: from the first day to the 15th day of the reporting month and from the 16th day to the last day of the reporting month (except for data reflected at a certain time).
- For monthly reports: from the first day to the last day of the reporting month (except for data reflected at a certain time).
- For annual reports: from January 1 to December 31 of the reporting year (except for data reflected at a certain time).
- Reports are prepared in the form of paper documents attached to an electronic data file or on the foreign investor activity management system of the State Securities Commission and must be archived for at least 5 years.

## 2. Guidance on application of the APA mechanism to enterprises conducting associated transactions

On 18 June 2021, the Ministry of Finance issued Circular 45/2021/TT-BTC (“Circular 45/2021”) guiding the application of the APA (Advance Pricing Agreement)

mechanism in tax administration of enterprises conducting associated transactions. Circular 45/2021 takes effect from 03 August 2021, replacing Circular No. 201/2013/TTBTC and contains the following notable provisions:

## 2.1 Transactions to which the APA is recommended to apply

According to Article 3 of Circular 45/2021, transactions to which the APA is recommended to apply include:

- Transactions of buying, selling, exchanging, renting, leasing, borrowing, lending, transferring, assigning goods, providing services; taking/giving loans, financial services, financial guarantee services and other financial instruments.
- Transactions of buying, selling, exchanging, renting, leasing, borrowing, lending, transferring tangible assets, intangible assets and agreements to buy, sell and use common resources such as assets and capital, labor, to share costs between parties having associated relationship, except for business transactions for goods and services within the scope of price adjustment by the State in accordance with the law on prices.

Transactions in which the APA is recommended to apply must simultaneously meet the following conditions:

- ✓ Actual transactions have arisen in the taxpayer's production and business activities and will continue to take place during the period of recommended application of the APA.
- ✓ Transactions providing a basis for determining their nature in order to

decide the tax liability and for analysis, comparison and selection of subjects under independent comparison as prescribed in Decree 132/2020/ND-CP based on information and data in compliance with the Law on Tax Administration 2019.

- ✓ Transactions that are not involved in tax disputes or complaints.
- ✓ Transactions that are made transparently, not for the purpose of evading taxes, or taking advantage of tax agreements.

## 2.2 Principles of applying the APA

The APA mechanism is applied on the principle that tax authorities and taxpayers or Vietnamese tax authorities and tax authorities of the partner's country and taxpayers will cooperate, exchange and discuss the application of legal provisions on corporate income tax in associated transactions within the scope of the APA in accordance with the principles of independent transactions and the principle that the nature of transactions will determine tax obligations.

## 2.3 The General Department of Taxation is the one to conduct negotiations on the mechanism for determining tax calculation prices

According to Article 8.1 of Circular 45/2021/TT-BTC, the General Department of Taxation will exchange and discuss the APA contents with taxpayers (in case of applying APA unilaterally), or with the partner's tax

authorities and taxpayers (in case of applying APA bilaterally or multilaterally) in the form of meetings, face-to-face meetings or by telephone, online video meetings or by exchange via email about the contents related to the taxpayer's request for application of APA.

The exchange and negotiation are aimed at reaching an agreement with taxpayers and the partner's tax authorities on the intended contents of the final draft APA according to Decree 126/2020/ND-CP to submit to the competent authority for approval

the results of each exchange and negotiation must be recorded in writing by the parties.

### 2.4 Responsibilities of taxpayers during the period of application of APA

According to Article 9.2.c of Circular 45/2021, during the implementation of the APA, taxpayers are responsible for complying with the conditions in the signed APA and making appropriate adjustments to taxable incomes corresponding to the price or profit rate or profit distribution ratio prescribed in the APA to declare and pay corporate income tax

## 3. Regulations on certificates of origin of goods in UKVFTA

On 11 June 2021, the Ministry of Industry and Trade issued Circular 02/2021/TT-BCT ("Circular 02/2021") stipulating the rules of origin of goods in the Free Trade Agreement between Vietnam and the United Kingdom of Great Britain and Northern Ireland (UKVFTA). Circular 02/2021 takes effect from 27 June 2021, especially drawing attention to the regulation on documents certifying the origin of goods.

### 3.1 Exporters are allowed to self-certify origins for the goods with a value not exceeding EUR6,000

According to Article 19 of Circular 02/2021, for goods of UK origin imported into Vietnam with a value of no more than EUR6,000, any exporter is allowed to self-certify the origins of goods. For shipments valued at more than EUR6,000, only exporters that are eligible under UK regulations can self-certify origins.

For goods of Vietnamese origin imported into the UK valued at no more than EUR6,000, any exporter is allowed to self-certify origins. For shipments valued at over EUR6,000, apply the C/O mechanism issued by agencies and organizations authorized by the Ministry of Industry and Trade.

### 3.2 Exporters are allowed to self-certify origins for the goods from the UK

- According to Article 24 of Circular 02/2021, exporters are allowed to self-certify the origins of goods when the goods originate from the UK and meet other UKVFTA regulations.
- Exporters self-certify the origins of goods on invoices, delivery notes or other commercial documents with sufficient information about the goods, by typing, stamping or printing on documents the content of declaration of the origins of goods. Note that "other commercial documents" can be consignment notes, proforma invoices or packing lists. Transport documents such as bills of lading or air waybills are not

considered to be other commercial documents.

- The contents of self-certification must not be made on a separate form. The contents of self-certification of origins can be printed on another page of the commercial documents, provided that the page can be recognized as part of the commercial document.
- The self-certification document must have the handwritten signature of the exporter. However, an exporter that is eligible under UK regulations may choose not to sign the document, provided that the exporter must provide the competent authority of the exporting member country with a written undertaking that the exporter takes full responsibility for the documents certifying the origin of goods.
- Documents of self-certification of origins may be issued after the goods are exported, provided that they must be presented in the importing member country no later than two years from the date on which the goods enter the territory of the importing member country or in accordance with the provisions of the importing member country.

### 3.3 Exporters are allowed to self-certify origins for the goods from Vietnam

- According to Article 25 of Circular 02/2021, exporters self-certify the origin of goods when the goods are of Vietnamese origin and meet other UKVFTA regulations.
- Exporters self-certify the origins of goods on invoices, delivery notes or

other commercial documents with sufficient information about the goods, by typing, stamping or printing on documents the content of declaration of the origins of goods. Note that “other commercial documents” can be consignment notes, proforma invoices or packing lists. Transport documents such as bills of lading or air waybills are not considered to be other commercial documents.

- Documents of self-certification of origin may be issued after the goods are exported, provided that they must be presented in the importing member country no later than two years from the date on which the goods enter the territory of the importing member country or in accordance with the provisions of the importing member country.
- Within 3 working days of issuing self-certification documents of origin, exporters shall declare and post self-certification documents of origin and documents related to export shipments such as: (i) a printed copy of the export declaration form; (ii) copies (stamped as a true copy of the trader's original) of the commercial invoice, bill of lading or an equivalent copy of the transport document, the production process; (iii) a detailed declaration of exported goods meeting the preferential rules of origin or the non-preferential rules of origin; and (iv) documents of declaration of origins by the manufacturer or supplier of domestically produced goods according to the form on the Electronic Origin Management and Certification System at [www.ecosys.gov.vn](http://www.ecosys.gov.vn) of the Ministry

of Industry and Trade in case the raw material is used for a further stage to produce another goods.

### 3.4 Certificates of origin are valid for 12 months

According to Article 26 of Circular 02/2021, a certificate of origin is valid for 12 months from the date of issue in the exporting member country and must be submitted to the customs authority of the importing member country within its validity period. However, the certificate of origin submitted to the customs authority of the importing member country after the said period may remain accepted for UKVFTA preferential tariff treatment in the event that the importer is unable to submit such documents within the validity period due to force majeure or other valid reasons beyond the control of the importer. In the event of another late presentation, the customs authority of the importing member country may accept a document certifying the origin of the goods that have been imported within the validity period.

### 3.5 Time limit for submission of the certificate of origin to enjoy tariff preferences

Article 27 of Circular 02/2021 stipulates that, in order to enjoy tariff preferences under UKVFTA, the certificate of origin must be submitted to the Vietnamese customs authority within 2 years of importation. The customs authority may require a translation if the certificate of origin is not in English. In addition, according to Article 37 of Circular 02/2021, originating goods that are in a member country or in the process of transportation, temporary storage, in a bonded warehouse or in a non-tariff zone as from 01/01/2021 will

enjoy tariff preferences under UKVFTA when they meet the requirements of Circular 02/2021 and have their certificates of origin issued later to be submitted to the customs authority of the importing member country.

### 3.6 Exemption from certificate of origin

According to Article 29 of Circular 02/2021, cases exempt from certificate of origin include:

- (i) Goods sent in individual-to-individual small packages or personal luggage of travelers are considered to be originating goods without requirement of a certificate of origin, provided that such goods are not imported in a commercial manner, declared to meet the provisions of this Circular and there is no doubt about the authenticity of such declaration.
- (ii) A consignment of occasional import consisting of only products for the personal consumption of the consignee or the traveler or his/her family is not considered to be commercially imported if the nature and quantity of such product may be evidence that the product is not intended for commercial use.

And the total value of goods in the said two cases must not exceed:

- EUR500 for small packages or EUR1,200 for the goods that are part of a traveler's personal baggage upon entry into the UK.
- USD200 for small packages and goods that are part of personal luggage of travelers upon entering Vietnam.

We would like to introduce an article by Lawyer Le Quang Vy and Paralegal Le Kieu Phuong Cac, titled “**International Trademark Protection – Legal Lessons for Vietnamese enterprises**” was published on the Vietnam Lawyer electronics magazine on 12 June 2021.

ARTICLE

(LSVN) – Intellectual property rights (“IPR”) is a legal term used to refer to the rights of the subject to intellectual property, including copyright and related rights to copyright, industrial property rights and rights to plant varieties [1]. Depending on different intellectual property objects, the prerequisites for protection, scope and content of IP rights for each intellectual property object will be different. For a mark that is a sign used to distinguish goods and services of different subjects, the owner of the mark will have industrial property rights, including the right to use and the right to allow others to use the mark, prevent others from using the mark and dispose of the mark. In addition to the IP Law with regulations on the protection mechanism of IPR within the territory of Vietnam, Vietnam has also joined bilateral and multilateral international treaties to facilitate the protection of Vietnamese enterprises’ IP rights in

general, and industrial property rights for trademarks in particular, in many countries around the world.



Illustration

**When do IP rights arise?**

The IP Law divides two groups of arising IP rights (1) naturally arising; (2) arising on a registration. For the group of naturally arising rights, it is copyright and related rights. This means that the IPR of a literary, artistic and scientific work arises since the author creates the work in a certain material form. The law does not require authors to register for a certificate of copyright or related rights to be protected, but the registration procedure is only for the purpose of the author escaping from the

burden of proof when a copyright dispute occurs.

In contrast, the group of rights arising on the basis of registration includes industrial property rights such as: inventions/utility solutions, industrial designs, design and layout of semiconductor integrated circuits, trademarks, geographical indications, and the law only protect IP rights when these objects are registered with the State management agency in charge of industrial property (the National Office of Intellectual Property of Vietnam) in accordance with the specified forms and conditions. The protection title for the mark (or certificate of trademark registration) is valid for protection throughout the territory of Vietnam from the date the National Office of Intellectual Property issues a decision to grant the Certificate of protection and takes effect up to the end of ten years from the



date of application, and can be renewed many times, each ten years. Industrial property rights to a well-known mark are established on the basis of widespread use that makes the mark well-known without having to carry out registration procedures at the National Office of Intellectual Property.

In multilateral international treaties, such as the Agreement on Trade related aspects of Intellectual Property rights (TRIPS Agreement), the Madrid Agreement on international trademark registration in 1891, as amended in 1979 and the Protocol relating to the Madrid Agreement of 1989, or under bilateral international treaties to which Vietnam is a member, such as the Vietnam-US Trade Agreement (BTA) dated 13 July 2000, industrial property rights to trademarks were also established on the basis of recognition by state management agencies through trademark registration in the requested country.

**How can Vietnamese trademarks not be registered for possession in the international market?**

The registration of trademark protection is the legal basis to identify the owner of the right to the mark under which the enterprise is doing business to avoid any competition with other businesses. Protected trademarks are valuable IP assets that exist like other tangible or intangible assets of an enterprise. IP assets are also valued, transferred, licensed to use (Trademark License), leased, etc. among the subjects. It can be said that IP assets are considered as a barometer to assess the reputation of enterprises in the market. Therefore, without registration, the trademark will not be protected by law. This will keep the mark always in a state that can be registered for possession at any time.

With the aforesaid importance, Vietnamese businesses need to be aware that Vietnam is actively participating in the international market through a series of bilateral and multilateral trade agreements. Owning a brand with a good image and reputation will be a competitive advantage over its competitors. Therefore, in order to prevent their trademark from being registered for possession, enterprises

need to conduct international registration of trademarks in two ways:

*Method 1:* Register under the Madrid Agreement and the Madrid Protocol through the World Intellectual Property Organization (WIPO).

To register under this form, the mark intended for international registration must ensure that (i) the organization or individual owning the mark bears the nationality of a country that is a member of the Madrid System; (ii) the mark is of Vietnamese origin; (iii) the basic registration application has been filed with the National Office of Intellectual Property of Vietnam or has been granted a certificate of trademark registration by the National Office of Intellectual Property [2].

Trademark registration at the International Bureau is valid for 10 years, renewable (Article 6.1 of the Madrid Protocol) and is protected in the countries where the international applicant or the owner of the international registration according to international requirements (Articles 3bis & 3ter of the Madrid Protocol). It should be noted, however, that the registration office in the

Member State for which an international application is requested has the right to refuse protection of a mark when the mark has been registered directly with the home office under the Paris Convention for the Protection of Industrial Property (Article 5.1 of the Madrid Protocol).

*Method 2:* Register your trademark directly with the Intellectual Property Office of each country through an intellectual property representative in the country you want to register (also known as the Designated Country). The owner wishing to register a trademark in another country must go through an industrial property representative recognized by that country. Unlike the previous method, the trademark is not required to be filed for trademark registration at the National Office of Intellectual Property of Vietnam before international registration.

Registration in the designated country will depend on the laws of the designating country, the opinion of a third party on the grant of a Trademark Protection Certificate in the host country, as well as whether the mark meets the statutory requirements to be protected in terms of IP

rights such as distinctiveness, possibility of being confusingly identical or similar to other marks, etc.

### **What is the solution when the trademark is registered for possession?**

A fact arises due to many different reasons: Vietnamese enterprises only stop at registering for domestic trademark protection without really paying attention to protecting their exclusive trademark ownership in the international market – specifically the countries where Vietnamese enterprises are doing business or looking to invest in business in the future. Meanwhile, the protection of a trademark is limited to the territory of the country where protection is registered, but does not automatically apply to all other countries in the world. This has resulted in many product marks of Vietnamese origin having lost their right to be protected in many other countries around the world, mainly because enterprises in the host country have earlier registered trademarks with Vietnamese origin.

Typically, there are a number of cases such as

Trung Nguyen's distributor in the United States - Rice Field filed an application to protect Trung Nguyen Cafe's trademark with the United States intellectual property authorities (USPTO) and the World Intellectual Property Organization (WIPO) in 2000 when the parties were in the process of negotiating cooperation; or the case that the Vinamit product brand of Duc Thanh company has been registered for trademark protection in Chinese by its partner in China. Most recently, ST25 rice has been filed by T&L Global Foods Supply PTY LTD for trademark protection in Australia and some other businesses require trademark protection in the United States, while in Vietnam, ST25 rice has been granted a plant variety protection certificate by the Department of Crop Production, Ministry of Agriculture and Rural Development of Vietnam, according to Decision No. 45/QD-TT-VPBH dated 06 March 2020 of Director of the Department of Crop Production, Ministry of Agriculture and Rural Development grants the Plant Variety Protection Certificate No. 21VN.2020 to Ho Quang Tri Private Enterprises and the ST25 rice breeder, Mr./Ms. Ho

Quang Cua, Tran Tan Phuong, Nguyen Thi Thu Huong.

So how to get back the registered trademark? Usually, based on the granted Trademark Protection Certificate and on the basis of the laws of the country in which the trademark is registered for possession. Enterprises need to file an objection to the intellectual property management agency of the host country to prevent the grant of protection for the mark (if the trademark is still in the application examination stage) or the right to request the invalidation of trademark protection (if it has been protected.) The enterprise has an objection and must provide documents and evidences to prove that its claim is grounded for consideration and is approved. Specifically in the case of Trung Nguyen coffee, among the most important evidences is the company's business license issued in 1996, Trung Nguyen's trademarks and

signboards have been widely used in Vietnam. A list of nearly 400 coffee shops that exist and operate under the franchise of Trung Nguyen and its overseas markets. There is also evidence of annual net revenue from the sale of the company's products and business books from 1997 to 2001 [3]. In addition, in addition to requesting an objection or requesting the cancellation of the aforesaid protection title, Vietnamese enterprises need to carry out parallel procedures for filing a request for registration of trademark protection to thoroughly resolve the case, guarantee your intellectual property rights.

Trademarks are often registered for possession in the international market by enterprises in the host country that are their own partners or by enterprises of the host country that have the same business line as them. Therefore, more than anyone else, it is Vietnamese businesses that need to be aware of the

importance of trademark protection in particular and intellectual property protection in general in the international area, because this brings huge economic benefits such as exclusive rights to own a trademark, including the right to use the mark in the host country. In addition, Vietnamese enterprises also have the right to transfer the right to use the mark through the license agreement (License Agreement), ensuring the legal value to create added economic value for the trademark, especially creating a balanced position when negotiating and competing with enterprises doing business in the same service industry in foreign countries.

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[1] Article 4.1 of the 2005 IP Law (amended in 2009)

[2] <http://www.noip.gov.vn/nhan-hieu>

[3] Reference source: <http://www.doanhtri.net/tin-nhac-lai-hai-vu-tranh-chap...>, last accessed at 10:45 am on June 8, 2021

## 1. Free time to livestream, make money online is about to end

*(DNHN) The Ministry of Information and Communications is collecting public comments on the draft Decree amending and supplementing Decree 72/ND-CP in 2013 of the Government on management, provision and use of internet services.*

According to the Ministry of Information and Communications, cross-border social networking platforms are dominant compared to domestic social networks. As of the end of June, Facebook had about 65 million Vietnamese members, YouTube about 60 million and TikTok about 20 million. Meanwhile, these social networks have not fully complied with Vietnam's legal regulations, many individuals and organizations take advantage of social networks to conduct press activities, organize livestreams to provide false information and insult the reputation and dignity of other organizations and individuals...

Currently, although it has not been officially managed by

legal normative documents, a fragment of the “underground” economy from livestream sales, YouTube, Facebook, TikTok channels ... is bringing a huge source of revenue for many individuals and organizations.

The hot development, lack of control of content and quality from livestreams and online money-making channels have resulted in many consequences. The problem is how to manage to fill the “legal gaps”, avoid livestream chaos, lead this fragment of the underground economy to transparently contribute and positively impact the development of the economy and society.

The two most notable points in the draft amendment to the Decree are the proposal by MICs on supplier obligations and user rights. Accordingly, channels/accounts and websites/apps providing content services with 10,000 regular visits per month must notify/confirm their activity announcements with the Ministry of Information and Communications in coordination with them and cooperate in handling violating information according to the process. These services must block and remove infringing information and services within 24 hours as required by Vietnamese competent authorities, and telecommunications businesses are also allowed to take technical measures to prevent any violating content.

In particular, users in Vietnam have the right to report violations, request cross-border suppliers to handle and sue. Cross-border



Image: PV

social networks must have a department dedicated to receiving and handling complaints from users, complying with press copyright with Vietnamese press agencies. As for livestreams, only channels and accounts

that have been notified to the Ministry of Information and Communications are allowed to provide livestreaming services and revenue-generating services. The account holder is responsible for the user's content and comments.

In fact, online content creators on cross-border platforms such as Facebook (streamer, livestream), YouTuber, TikToker... in Vietnam, despite a rapid surge in number, are not officially considered to be an industry and there is no specific regulation and management. This means that the online content broadcast on these social media platforms is not strictly

managed and monitored, leading to many objectionable and misleading content.

Currently, there are a lot of small individuals who livestream sales in their network of only a few dozen to a few hundred people. In fact, livestream activities take place on social networks more than on e-commerce platforms, so management regulations need coordination between parties, both the Ministry of Information and Communications and the Ministry of

Industry and Trade. If the regulation on the number of new channel subscribers is livestreamed, it will reduce high socialization, making it difficult to create opportunities for the disadvantaged, from farmers to small businesses.

Besides, functional branches also need more policies to facilitate livestream development, because this will be part of the future of Vietnam's e-commerce industry.

*According to ĐT (TH), dungnhiephoinhap.vn*

## 2. About to “leave for dead” paper invoices to prevent fraud

*The General Department of Taxation is studying technology solutions, building the overall design of the electronic invoice management system, meeting the provisions of Decree No. 123/2020/ND-CP dated 19 October 2020 regulating on invoices and documents, aiming to “leave for dead” paper invoices on 01 July 2022.*



authorities according to Decision No. 1209/QĐ-BTC dated June 23, 2015 of the Ministry of Finance. At the same time, more than 550,000 businesses applied e-invoices according to Circular No. 32/2011/TT-BTC dated March 14, 2011 guiding the creation, issuance, use and management of e-invoices when selling goods and providing services.

It is expected that the said system will be deployed first at 6 Tax Departments of provinces and cities, including Hanoi, Ho Chi Minh City, Quang Ninh, Hai Phong, Phu Tho and Binh Dinh in the last months of this year.

The number of used e-invoices in 2020 is about 2.3 billion, accounting for about 50% of the total number of invoices used in 2020. Currently, there are about 800 businesses providing electronic invoice software solutions for enterprises and business organizations to use.

According to a report of the General Department of Taxation, there are currently 255 enterprises nationwide conducting the pilot application of e-invoices with authentication codes of tax

The implementation of the Electronic Invoice System also contributes to helping businesses digitalize when digitizing, automating all work processes to replace the previous manual and inefficient working method; at the same time, helping to reduce the cost of invoices for enterprises, overcoming fraudulent acts on invoices.

From 2017 to 2019, the tax industry detected 7,474 businesses buying, selling and using illegal invoices, with nearly 500,000 violating invoices, and arrears of nearly 200 billion VND in tax. The year 2020 has seen the number of businesses using illegal invoices sharply reduce in tandem with the surging severity that was linked to arrears of VND6,599 billion for 9 months of 2020.

*By Anh Tuyet, vneconomy.vn*

### 1. Procedures for temporary export and re-import of substitute goods

- For the goods that have been temporarily exported without re-import: Carry out export procedures (code B12- Export after being temporarily exported) at the Customs Sub-department where the temporary export declaration form is submitted as prescribed in section 5 chapter III of Decree 08/2015/ND-CP which is amended and supplemented by Decree 59/2018/ND-CP. If the declaration form is classified into the red channel, then Manager of the Customs Sub-department will decide not to inspect the goods.
- For the goods that have just been imported as substitutes: Carry out import procedures (not applied to re-import) as usual in accordance with section 5 of Decree 08/2015/ND-CP which is amended and supplemented by Decree 59/2018/ND-CP, Circular 38/2015/TT-BTC, and Circular 39/2018/TT-BTC.

*The General Department of Customs replies to the question of M.T Technical Trading Joint Stock Company in Official Letter No. 3261/TCHQ-GSQL dated 29 June 2021.*

### 2. Invoice and value-added tax for providing services abroad by export processing enterprises

In case the Company is an export processing enterprise that provides design services, market research and production management consulting services abroad (outside the territory of Vietnam), this activity will not be

subject to VAT as prescribed in Article 4.20 of Circular 219/2013/TT-BTC. For the said provision of services, the Company should use commercial invoices as prescribed in Article 3.7 of Circular 119/2014/TT-BTC.

*Ha Noi Tax Department replies to the question of Kalotec Vietnam Co., Ltd in Official Letter No. 23122/CTHN-TTHT dated 25 June 2021.*

### 3. Final payment of personal income taxes

- In case the Representative Office employs foreign workers who are transferred from the parent company abroad to work in Vietnam, all salaries are paid by the parent company abroad, and the Representative Office only pays house rents for these employees, then:
  - ✓ For the Representative Office: House rents, and fees for electricity, water and accompanying services (if any) paid for employees will be classified as taxable incomes from salaries or wages as specified in Article 11.2 of Circular 92/2015/TT-BTC. When organizations or individuals provide employees with incomes from salaries or wages, they are responsible for making tax declarations, regardless of whether taxes must be withheld or not.
  - ✓ For foreign workers: If the foreign worker meets the conditions of a resident tax payer in the tax year, the taxable income will be the income

generated both inside and outside the Vietnamese territory, regardless of where the income is paid. They will declare PIT as per the partially cumulative tariff as provided in Article 26.7 of Circular 111/2013/TT-BTC and Article 16.7 of Circular 156/2013/TT-BTC.

- If the foreign worker meets the conditions of a non-resident tax payer in the tax year, the taxable income will be the income generated in Vietnam (regardless of where the income is paid and received). They will declare tax at the tax rate of 20% as instructed in Article 26.8 of Circular 111/2013/TT-BTC and Article 16.8 of Circular 156/2013/TT-BTC.
- Whether a foreign worker is identified as a resident in Vietnam or not will be decided based on the guidance in Article 1.1 of Circular 111/2013/TT-BTC and Article 2 of Circular 119/2014/TT-BTC.

*Ha Noi Tax Department replies to the question of the Representative Office of BYN BlackYak Co., Ltd in Official Letter No. 22241/CTHN-TTHT dated 22 June 2021.*

#### 4. Value-added tax policy for transfer of investment projects

In 2016, the Company transferred an investment project to another company in accordance with law, if this is a transfer of an investment project for production of and trading in the goods and services subject to VAT as instructed in Article 5.4 of Circular 219/2013/TT-BTC, the Company is not required to declare, calculate and pay VAT. When making the transfer, the Company must issue an invoice in accordance with law, and at the line of selling price on the VAT invoice, write "Selling price", do not write anything at the lines of tax rate and VAT amount but cross out.

*Ha Noi Tax Department replies to the question of Licogi 19 Joint Stock Company in Official Letter No. 20844/CTHN-TTHT dated 11 June 2021.*

No.	Document title	Issuance date	Effective date
<b>GOVERNMENT</b>			
1	Decree 62/2021/ND-CP detailing a number of articles of the Law on Residence	29/6/2021	01/7/2021
2	Decree 58/2021/ND-CP regulating the provision of credit information services	10/6/2021	15/8/2021
3	Decree 57/2021/ND-CP supplementing Article 20.2(g) of Decree 218/2013/ND-CP (amended and supplemented by Decree 12/2015/ND-CP) regarding corporate income tax incentives for projects manufacturing supporting industry products.	04/6/2021	04/6/2021
<b>MINISTRY OF INDUSTRY AND TRADE</b>			
1	Circular 02/2021/TT-BCT regulating the rules of origin of goods in the Free Trade Agreement between Vietnam and The United Kingdom of Great Britain and Northern Ireland	11/6/2021	26/7/2021
<b>MINISTRY OF INFORMATION AND COMMUNICATION</b>			
1	Decision 874/QD-BTTTT promulgating the Code of Conduct used on social networks	17/6/2021	17/6/2021
<b>MINISTRY OF FINANCE</b>			
1	Circular 51/2021/TT-BTC guiding obligations of organizations and individuals with respect to foreign investment in the Vietnamese securities market	30/6/2021	16/8/2021
2	Circular 45/2021/TT-BTC guiding the application of the Advance Pricing Agreement (APA) in tax administration of enterprises conducting associated transactions	18/6/2021	03/8/2021
3	Circular 43/2021/TT-BTC amending and supplementing Article 10.11 of Circular 219/2013/TT-BTC guiding the implementation of the Law on Value-Added Tax and Decree 209/2013/ND-CP detailing and guiding a number of articles of the Law on Value-Added Tax (amended and supplemented by Circular 26/2015/TT-BTC)	11/6/2021	01/8/2021
4	Circular 42/2021/TT-BTC issuing the Charter of Organization and Operation of Vietnam Debt and Asset Trading Corporation	04/6/2021	20/7/2021
5	Circular 40/2021/TT-BTC providing guidelines on value added tax, personal income tax and tax administration for business households and individuals	01/6/2021	01/8/2021
<b>MINISTRY OF CONSTRUCTION</b>			
1	Decision 705/QD-BXD on the announcement of newly issued administrative procedures, replaced, amended and supplemented administrative procedures, and annulled administrative procedures in the field of housing and real estate business under the state management function of the Ministry of Construction	11/6/2021	26/3/2021
2	Official Letter 2096/BXD-QLN on enforcement of the regulations on transaction of real estates and houses formed in the future	07/6/2021	07/6/2021





## CONTACT US

[info@gvlawyers.com.vn](mailto:info@gvlawyers.com.vn)

### HCMC - Head Office

8/F, Centec Tower,  
72 – 74 Nguyen Thi Minh Khai,  
Vo Thi Sau Ward, District 3  
Ho Chi Minh City, Vietnam  
Tel: +84 (28) 3622 3555

### Ha Noi - Branch

10A/F, CDC Building,  
25 Le Dai Hanh  
Hai Ba Trung District  
Ha Noi, Vietnam  
Tel: +84 (24) 3208 3555

### Da Nang - Branch

3/F, Indochina Riverside  
Tower, 74 Bach Dang  
Hai Chau District  
Da Nang City, Vietnam  
Tel: +84 (28) 3622 3555

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