



GLOBAL VIETNAM
LAWYERS

LEGAL NEWSLETTER

Issue No. 07 | July 2020





LEGAL NEWSLETTER

Issue No. 07 | July 2020

MAIN CONTENTS

1



REMARKABLE REGULATIONS

2



ARTICLE

3



READING FOR YOU

4



ANSWER TO QUERIES

5



**LIST OF DOCUMENTS
ISSUED IN MONTH**



1 REMARKABLE REGULATIONS

01

Some noteworthy novelties of the Law on Investment in the Form of Public-Private Partnership

02

New regulations on tax administration in respect of enterprises having associated transactions

03

Regulations on entry and exit of foreigners in Vietnam

04

Rules of origin in the Europe – Vietnam Free Trade Agreement (EVFTA)





1 REMARKABLE REGULATIONS

□ Some noteworthy novelties of the Law on Investment in the Form of Public-Private Partnership

On 18 June 2020, the National Assembly passed the Law on Investment in the Form of Public-Private Partnership (the "**Law on PPP**") with 11 chapters and 101 articles. The Law on PPP will take effect on 01 January 2021 and has some notable novelties as follows:

1. Five groups of PPP investment sectors

Article 4.1 of the Law on PPP stipulates five (05) groups of PPP investment sectors, including:

- Transportation.
- Power grids, power plants (except for hydroelectric plants and the cases of State monopoly as prescribed by the Law on Electricity).
- Irrigation, clean water supply; water drainage and waste water treatment; waste treatment.
- Health; education and training.
- Information technology infrastructure.

2. Size of PPP projects

According to Article 4.2 of the Law on PPP, **the minimum total investment** of a PPP project will be:

- Not less than VND 200 billion in respect of the projects in the sectors of transportation, power grids, power plants (except for hydroelectric plants and the cases of State monopoly as prescribed by the Law on Electricity); Irrigation, clean water supply; water drainage and waste water treatment; waste treatment; and information technology infrastructure.
- Not less than VND 100 billion in respect of the projects which are carried out in areas with difficult or extremely difficult socio-economic conditions as prescribed in the law on investment.
- Not less than VND 100 billion in respect of the projects in the sectors of health; education and training.

3. 12 acts which are prohibited during investment in the PPP form

According to Article 10 of the Law on PPP, the following acts are prohibited during investment in the PPP form:

- Issuing an investment policy incompatible with the strategy, master planning or plans; which fails to identify the sources of State capital in the PPP projects which require State capital funding; contrary to the authority, sequence and procedures.
- Approving PPP projects without an investment policy; not in line with an investment policy; contrary to the authority, sequence and procedures.
- Collusion by competent agencies and/or contracting agencies with consultants or investors resulting in an investment decision or approval of PPP projects which causes losses to the State capital and assets and the national resources, damaging or infringing the interests of citizens and of the community.

- Failing to ensure fairness and transparency during the selection of investors.
 - Disclosing or receiving documents and information regarding the selection of investors.
 - Collusion in bidding.
 - Transferring shares, capital portions, rights and obligations contrary to the provisions of this Law and the PPP contract.
 - Stop supplying products and public services except for the cases stipulated in PPP contracts.
 - Giving, receiving or brokering bribes.
 - Abusing positions and powers to conduct an act of appropriation, gain-seeking or corruption during the management and use of State capital in a PPP project; illegally interfering with the process of implementing a PPP project.
 - Forging or falsifying related information, files and documents; deliberately providing false or non-objective information.
 - Impeding the detection of or dealing with the violations of the law on investment in the PPP form.
- ### 4. Specifically regulating the authority to make the investment decision on a PPP project
- The National Assembly will make investment decisions on PPP projects satisfying one of the following criteria:
 - ✓ Projects using public investment capital from VND 10,000 billion.
 - ✓ Projects with a large impact on the environment or the potential for such large impact.
 - ✓ Projects using land and requiring to convert the use purpose of wet rice cultivation land in two (02) harvest seasons or more in an area of five hundred (500) hectares or more;
 - ✓ Projects requiring relocation and resettlement of 20,000 people or more in mountainous areas, or 50,000 people or more in other areas;
 - ✓ Projects which require the application of a special mechanism or policy required to be decided by the National Assembly.
 - The Prime Minister will make investment decisions on PPP projects satisfying one of the following criteria:
 - ✓ Project requiring relocation and resettlement 10,000 citizens or more in a mountainous area or 20,000 citizens or more in other regions.
 - ✓ Projects using central budget capital with the total investment equivalent to Group A projects under the law on public investment, projects using ODA loans and preferential loans provided by foreign sponsors.
 - ✓ New construction investment projects: airports or aerodromes; runways of an airport or aerodrome; international airport passenger terminal; airport cargo terminal with an output of one (01) million tonnes per year or more.
 - ✓ New construction investment projects: port or port area of a special seaport; port or port area of a seaport of Grade I with total investment capital equivalent to a Group A project pursuant to the law on public investment.
 - Ministers or heads of central agencies or provincial people's councils will make investment decisions on PPP projects under their scope of management.



1 REMARKABLE REGULATIONS

Some noteworthy novelties of the Law on Investment in the Form of Public-Private Partnership

5. Regulations on the eligibility of an investor

According to Article 29 of the Law on PPP, not all investors can invest in PPP projects, and only the investors who meet the following conditions may participate in the investment in PPP projects:

- Having registered its establishment and operation with the competent authority of the country where such investor is currently operating.
- Conducting independent cost accounting, and ensuring competition in the selection of investors.
- Currently not in the process of dissolution, or not deemed as insolvent as stipulated by law.
- Currently not prohibited from participating in investment activities in PPP projects.
- An enterprise in which the State holds 100% charter capital must have a partnership with an investor in the private sector in order to participate in tendering.
- An investor established under foreign laws must satisfy the conditions on market access when tendering for a project in an industry or trade with the conditions on market access stipulated by the law on investment.

6. Regulations on the forms of selecting investors

According to the Law on PPP, the selection of investors is made in the following forms:

- *Open tendering*: applicable to all PPP projects, except for cases where investors must be selected in the form of *competitive negotiation, appointment and selection of investors in special cases*.
- *Competitive negotiation*: applicable to the cases where projects utilize high technologies on the list of high technologies prioritized for development and investment according to the law on high technologies or the projects requiring new technologies.
- *Appointment of investors*: applicable to one of the cases where the project requires the protection of national defence and security or State secrets; The project which needs a replacement investor immediately to ensure continuity in the project implementation.
- *Selection of investors in special cases*: in case where special conditions arise in a PPP project and it is impossible to apply the forms of investor selection above, the competent agency shall make a request to the Prime Minister for his decision on a plan for selection of investors.

7. Establish the PPP project enterprise in the form of a company

- According to Article 44 of the Law on PPP, after the decision on investor selection is made, the investor will establish the PPP project enterprise in the form of a limited liability company or a non-public shareholding/joint stock company with the sole objective of entering into and performing the PPP contract.
- The enterprise is permitted to issue individual bonds and redeem such bonds to raise capital to implement the PPP project; and is not permitted to issue convertible individual bonds and individual bonds with warrants.
- An issuance of bonds must satisfy the following three (03) conditions:
 - ✓ The amount of capital raised from an issue of bonds must not exceed the value of the loan prescribed in the PPP contract.
 - ✓ Capital raised from an issue of bonds must not be used for any purpose other than for implementation of the project in accordance with the PPP contract or for the restructure of the enterprise's debts.
 - ✓ The PPP project enterprise must open an escrow account to receive payments for purchase of bonds and disburse the proceeds according to law regulations.

8. Mechanism on sharing turnover increase or decrease

Article 52.2 of Law on PPP stipulates the mechanism on sharing turnover increase or decrease as follows:

- When the actual turnover is higher than 125% of the revenue set out in the financial plan of a PPP contract, the investor or the PPP project enterprise shall share with the State 50% of the difference between the actual turnover and the 125% of the revenue specified in the financial plan. The sharing of the turnover increase shall be applied after an adjustment of the costs of products or public service fees or an amendment to the PPP project contractual term and the State Audit Office has audited the turnover increase.
- When the actual turnover is lower than 75% of the revenue set out in the financial plan of a PPP contract, the State shall share with the investor or the PPP project enterprise 50% of the difference between the 75% of the revenue specified in the financial plan and the actual turnover. The sharing of turnover decrease shall be applied upon satisfaction of the following conditions:
 - ✓ The project carried out under the contract type of BOT, BTO or BOO.
 - ✓ The relevant master planning, policies and/or law changed resulting in a turnover shortfall.
 - ✓ All measures have already been taken, including an adjustment of product prices, public service fees, adjustment of the term of the PPP contract as prescribed but not reaching the minimum turnover of 75%.
 - ✓ The State Audit Office has audited the turnover decrease.

9. Dealing with violations in conducting investment in the PPP form

- According to Article 98 of Law on PPP, any organization or individual in breach of the law on PPP investment will be handled under one of the following forms:
 - Prohibition from participating in investment activities in the PPP form.
 - Cancellation of the tendering, suspension of the tendering, or not recognizing the results of selection of investors or declaring invalid the decisions made by the competent agencies or the agency signing the PPP contract or the party calling for tenders.
 - Termination, suspension of the contract upon detection of a contractual breach or a breach of the provisions of this Law or other relevant laws.
 - In addition, organizations and individuals may also be disciplined, subject to an administrative penalty or prosecuted in accordance with law.



1 REMARKABLE REGULATIONS

□ New regulations on tax administration in respect of enterprises having associated transactions

On 24 June 2020, the Government issued the Decree 68/2020/ND-Cp on amending and supplementing Clause 3 Article 8 of Decree 20/2017/ND-CP dated 24 February 2017 by the Government on tax administration in respect of enterprises having associated transactions (“Decree 68”). Accordingly, Decree 68 has some noteworthy new points as follows:

❖ Increasing loan interest expenses from 20% to 30%

Decree 68 amends regulations on the total loan interest expense to be deducted from the income subject to corporate income tax (CIT) in respect of enterprises having associated transactions as follows:

- The total loan interest expense (after deducting the interest accrued from deposits and loans) arising in a period eligible to be deducted upon determining the income subject to CIT will not exceed 30% of total net profit generated from business activities plus loan interest expense (after deducting the interest of deposits and loans) plus the depreciation cost arising in that period.
- For the part of loan interest expense ineligible to be deducted shall be transferred to the next tax period if the total loan interest expense in the next tax period is lower than the level prescribed.
- Time for transferring the loan interest expense shall not exceed 05 years from the following year of the year in which the non-deducted loan interest expense arises.

❖ Subjects which are not subject to the regulation on controlling loan interest expense

According to Decree 68, the following subjects shall not be subject to the regulations on controlling loan interest expenses:

- Credit institutions according to the Law on credit institutions.
- Organizations engaged in insurance business according to the Law on insurance business.
- Loans for official development assistance (ODA).
- Preferential loans of the Government which the Government borrows from foreign countries and re-lends to enterprises.
- Loans for implementation of the national targets (programs of new rural areas and sustainable poverty reduction).
- Loans for implementation of programs and projects on social welfare policy of the State (resettlement housing, worker and student housing and other social welfare projects).

❖ Allow to offset corporate income tax for 5 years if overpaid

- For the tax period of 2017 and 2018, enterprises are allowed to supplement the dossier of tax settlement declaration to determine the loan interest expense and amount of CIT to be paid respectively (if any) and pay to the tax administration agency before 01 January 2021. If there is any amount of CIT subject to reduction after supplementing the tax declaration, the late payment will be reduced accordingly.
- In case the tax payer has the paid amounts of CIT and late payment more than the CIT and late payment amounts re-determined, the differences will be offset from the amount of payable CIT in 2020. If the offset is not completed in 2020, the remaining amount will be offset in the following years but no more than 05 years from 2020. At the end of the above time limit, the remaining tax will not be offset.

❖ Not to re-audit or re-check the payable tax amount at the office of the tax payer

- In the case where the taxation agency or the competent State agency has conducted inspection and issued the results of inspection along with the decision on tax settlement in accordance with the Law on Tax administration, tax payers will be entitled to request the taxation agency to re-determine the amount of payable CIT. The re-determination of the payable tax amount will be conducted at the office of the taxation agency instead of the office of the tax payer, and not to alter the inspection results issued previously.
- However, if the administrative violation on tax has been sanctioned or is being handled in accordance with the procedure of complaint settlement, the amount of fine for administrative violations on tax will not be modified.

Decree 68 takes effect from 24 June 2020 and will be applied to the 2019 period of CIT.





1 REMARKABLE REGULATIONS

Regulations on entry and exit of foreigners in Vietnam

On July 1, 2020, the Government issued Decree 75/2020/ND-CP detailing a number of articles of the Law amending and supplementing a number of articles of the 2019 Law on Entry, Exit, Transit and Residence of foreigners in Vietnam ("Decree 75"). Accordingly, Decree 75 applies to the relevant subjects including foreigners who enter, exit and reside in Vietnam, Vietnamese state management agencies, foreign and Vietnamese agencies, organizations and individuals.

Decree 75 regulates the following:

❖ Visa for foreigners entering border gate economic zones or coastal economic zones or other Vietnamese locations.

Decree 75 provides for a number of cases of granting visas to foreigners entering border-gate economic zones or coastal economic zones or other Vietnamese locations as follows:

▪ For foreigners who enter the border-gate economic zone or economic zone under visa-free status and wish to visit other Vietnamese places, they will conduct the visa application process at the immigration authority as prescribed through agencies, organizations and individuals in Vietnam that have invited or guaranteed them.

▪ For citizens of countries unilaterally exempted by Vietnam from entry visas into border gate economic zones and coastal economic zones under visa-free status and wishing to travel to other Vietnamese places, the following procedures will apply:

- ✓ If the applicant has been staying for less than 15 days, the immigration control unit will stamp "expired" mark on the previous temporary residence certificate and issue a new temporary residence certificate for a period of 15 days from the date of entry.
- ✓ If you have been staying for 15 days or more, you will need to apply for a visa as prescribed.

▪ For foreigners entering the border gate economic zones or coastal economic zones and exempted from visas under international treaties to which Vietnam is a member, if their temporary residence duration expires and they need to go to another location in Vietnam, the issuance of visas will comply with international treaties.

❖ Issuing visas for foreigners who enter Vietnam under international treaties to which Vietnam is a member but have no commercial presence or partners in Vietnam

Procedures and time limit for issuing visas for foreigners entering Vietnam under international treaties to which Vietnam is a member but not having a commercial presence or partners in Vietnam are as follows:

- In case a foreigner enters Vietnam under an international treaty of which Vietnam is a member but does not have a commercial presence or a partner in Vietnam, he/she will carry out the procedure for applying for a visa through the portal on immigration.
- Within 02 working days of receiving sufficient information on visa application, the immigration authority will refer dossiers to the agency in charge of implementing the treaty as assigned by the Government.
- Within 03 working days of receiving the visa application of foreigners from the immigration agency, it is responsible for determining whether foreigners fall into the category subject to any international treaty.
- Within 02 working days of receiving the visa application of foreigners, the ministry or ministerial-level agency will directly send any visa application to the immigration agency.
- Within 03 working days of receiving the visa application, the immigration agency will consider, resolve, respond to the visa requesting agency and notify foreign visa applicants at the Immigration Portal.
- After that, the foreigner requests the visa to use the electronic file code to check and print the response of the immigration agency to carry out visa obtaining procedure.

❖ Form of temporary residence certificate for foreigners entering Vietnam

- Immigration control unit issues temporary residence certificate for entering foreigners in one of two forms:
 - (i) Stamping on the passport; or
 - (ii) Stamping on a separate visa.
- However, if foreigners enter through automatic gate, the immigration control unit does not issue temporary residence certificate.

Decree 75 takes effect from 01 July 2020.





1 REMARKABLE REGULATIONS

□ Rules of origin in the Europe – Vietnam Free Trade Agreement (EVFTA)

On June 15, 2020, the Ministry of Industry and Trade issued Circular No. 11/2020 / TT-BCT regulating the rules of origin in the free trade agreement between Vietnam and the European Union (EVFTA) ("Circular 11"). Accordingly, Circular 11, consisting of 05 chapters, 42 articles and 08 attached Appendixes, will officially take effect from August 1, 2020 and has the following remarkable contents:

1. Subjects of application

Subjects of application of Circular 11 include:

- Agency/organization issuing the Certificate of Origin (C/O).
- Traders.
- Agencies, organizations and individuals related to the origin of exports and imports.

2. Goods are considered to be incidental to an origin

Under Circular 11, goods are considered to be resulting from an origin when:

- (i) Goods of pure origin in a Member State.
- (ii) Goods of non-pure origin in a Member State from non-originating materials provided that such materials have gone through full processing or manufacture.

Accordingly, goods are deemed to be of a pure origin in a Member State in the following cases:

- Minerals extracted from the earth or seabed of a Member State.
- Crops and crop products (including crops, flowers, fruits, vegetables, seaweed and mushrooms) are grown and harvested or gathered in any Member State.
- Live animals born and raised in any Member State.
- Products of live animals raised in any Member State.
- Products obtained from slaughter of the animals that are born and raised in any Member State.
- Products obtained from hunting or fishing in any Member State.
- Products obtained from aquaculture where fish, crustaceans and mollusks are produced or raised from eggs, fry, young fish and larvae.
- Other and fished products obtained outside the territorial waters by vessels of any Member State.
- Products manufactured on the vessel of any Member State from catches and other products obtained outside its territorial waters by vessels of such Member State.
- Used products obtained from any Member State are only suitable for recycling into raw materials.
- Waste and scrap derived from production in any Member State.
- Products taken from the seabed or beneath the seabed outside the territorial sea but within the exclusive economic zone of any Member State.
- Goods manufactured entirely in any Member State from all said products.

For goods of non-pure origin, it is considered to have gone full processing or manufacture when it meets the product-specific rules specified in Appendix II promulgated together with Circular 11.

3. General provisions on the mechanism of certification of goods origin

▪ Goods of European Union origin imported into Vietnam are eligible for preferential tariff under EVFTA when submitting one of the following certificates of origin:

✓ C/O is issued in line with the declaration, issuance, subsequent issuance and re-issuance of C/O Form EUR.1.

✓ Self-certification of origin documents following the provisions on self-certification of origin of goods from the European Union issued by a qualified exporter in accordance with European Union regulations for shipments with any value; or issued by any exporter for shipments not exceeding EUR 6,000.

✓ Self-certification of origin documents issued by exporters registered in an electronic database in compliance with European Union regulations and notified to Vietnam.

▪ Goods of Vietnamese origin imported into the European Union are eligible for preferential tariff under EVFTA when one of the following certificates of origin is obtained:

✓ C/O is issued according to the regulations on certifying and checking the origin of goods in Vietnam and the regulations on the declaration, issuance, subsequent issuance and re-issuance of C/O Form EUR.1.

✓ Self-certification of origin documents in accordance with the regulations on self-certification of origin of the goods in Vietnam issued by the exporter whose shipment is not more than 6,000 EUR.

✓ Self-certification of origin documents issued by a qualified exporter or exporter registered in a database in accordance with the regulations of the Ministry of Industry and Trade. This self-certification complies with the regulations of the Ministry of Industry and Trade and applies after Vietnam notifies the European Union.

▪ In case of any goods exempted from the certificate of origin, the goods of origin eligible for EVFTA incentives do not need to submit the certificate of origin.



1 REMARKABLE REGULATIONS

□ Rules of origin in the Europe – Vietnam Free Trade Agreement (EVFTA)

4. Valid period of the certificate of origin of goods

▪ A certificate of origin of goods is valid for 12 months from the date of issuance in any exporting Member State and submitted to the customs authorities of any importing Member State within the valid period.

▪ A certificate of origin of goods submitted to the customs authorities of any importing Member State after the expiry of the valid period may be still accepted for enjoying the EVFTA preferential tariff in case any importer is unable to submit such certificate within the valid period due to force majeure or other rational reasons beyond the importer's control.

▪ In case of a late presentation, the customs authority of any importing Member State may accept a certificate of origin of the imported goods within the prescribed valid period.

5. Submitting documents certifying the origin of goods

In order to enjoy the EVFTA preferential tariff, C/O of goods must be submitted to the customs authorities of any importing Member State as provided for by that Member State. Customs authorities may request a translation if the C/O is not written in English.

6. Cases exempted from any certificate of origin of goods

▪ Goods sent in small parcels from individuals to individuals or personal luggage of any traveler are considered to be originating goods without requiring C/O of goods, provided that such goods are not to be commercially imported.

▪ Irregular imported shipments that consist only of products for personal consumption of the consignee or his/her family or travelers are not considered commercially imported if the nature and the quantity of the product may prove that the product is not commercially available.

▪ However, in order to be exempted from a certificate of origin of goods, the total value of the said goods must not exceed:

✓ 500 EUR for small packages or 1,200 EUR for goods that are part of the personal luggage of travelers to the European Union.

✓ USD 200 for small parcels and goods that are part of the personal luggage of any traveler to Vietnam.

7. Documents proving the origin of goods

Documents used to prove the origin of goods to apply for C/O or issue self-certification of origin documents include:

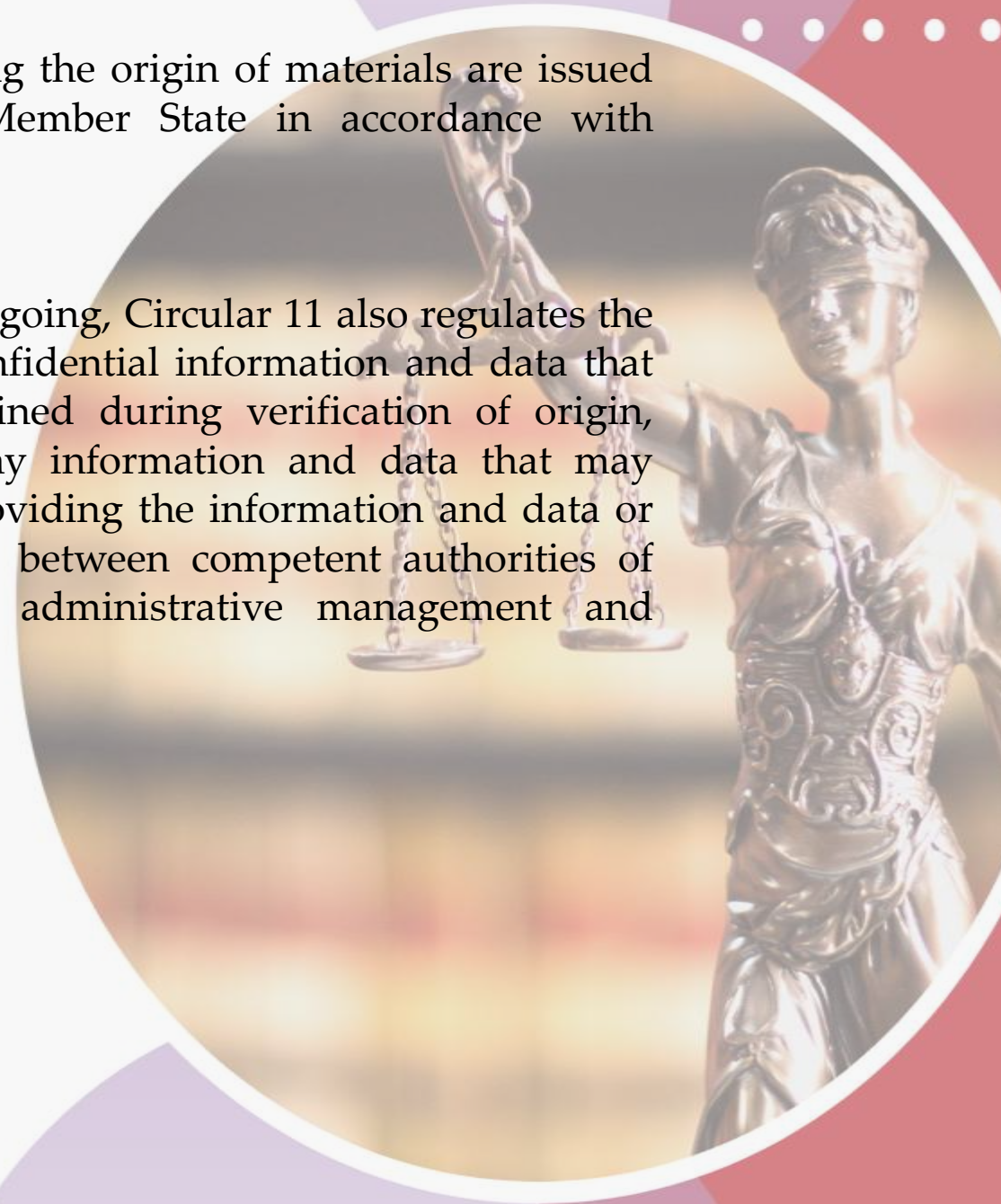
▪ Documents proving any manufacturing process or processing part carried out by the exporter or manufacturer, for example, internal reports or accounting books.

▪ Documents used to prove the origin of materials are issued or declared in a Member State in accordance with current regulations.

▪ Documents proving that the processing or manufacture of raw materials is issued or declared in a Member State in accordance with applicable regulations.

▪ Documents certifying the origin of materials are issued or declared in a Member State in accordance with Circular 11.

In addition to the foregoing, Circular 11 also regulates the protection of any confidential information and data that Member States obtained during verification of origin, non-disclosure of any information and data that may harm any person providing the information and data or the same exchanged between competent authorities of Member States for administrative management and verification of origin.





2 ARTICLE

GV Lawyers would like to bring you an article written by Lawyers Hoang Thi Hoai Thu, Ho Thi Tram, and Expert Luong Van Ly with the title “Provisions of other laws and codes over the jurisdiction to settle a number of disputes in specialized fields” posted on Vietnam Lawyers Online on May 08, 2020.



Expert Luong Van Ly

Lawyer Hoang Thi Hoai Thu

Lawyer Ho Thi Tram

(LSO) – It is further to the previous article about the topic “The jurisdiction to resolve disputes in commercial contracts given the changing situation caused by Covid-19”. So how do other laws and codes regulate the jurisdiction to resolve some disputes in specialized fields? The Vietnam Lawyers Online is pleased to bring you the next article on this topic.

Commercial Law 2005.

In line with the 2015 Civil Code which stipulates that the jurisdiction to resolve disputes is only given to the Court, or to the Court and Arbitration and/or other competent authorities, Commercial Law 2005 also regulates the authority to resolve disputes between parties as in Article 317 on the forms of resolving disputes in commercial activities as follows: negotiations or mediations between the parties conducted by an agency, organization or individual agreed upon by the parties to act as an intermediary; or settling disputes at arbitration centers or courts.

Instead of stipulating that the jurisdiction to resolve disputes belongs to the “Court” so that readers can understand and interpret the “Court” in this case as the Court and Arbitration, Article 317 clearly specifies that the jurisdiction to resolve disputes in commercial activities is given to both the Court and Arbitration (subject to the agreement of the parties, in accordance with the relevant provisions).

Land Law 2013

Article 203 of the 2013 Land Law states that “Land disputes that have been mediated at communal People’s Committees but unsuccessfully, are resolved as follows: 1. Land disputes in which the concerned persons have certificates or one of the papers specified in Article 100 of the 2013 Land Law and disputes over properties attached to land are settled by the people’s courts; 2. Land disputes where the concerned persons do not have certificates or one of the papers stipulated in Article 100 of the 2013 Land Law, they may only choose one of the two forms of land dispute resolution as follows: (i) Filing a request for dispute resolution at the People’s Committee of competent level in accordance with Clause 3 Article 203 of the 2013 Land Law; (ii) Initiating a lawsuit at a competent People’s Court in accordance with the law on civil procedures.

Thus, the 2013 Land Law clearly regulates this issue, depending on each situation involving legal documents of the disputed land, People’s Committee or the Court will have the jurisdiction to resolve the land dispute. When making references to Article 203 of the Land Law, it cannot be interpreted that the “Court” referred to in the Law includes both the Court and Arbitration.

In our opinion, the 2013 Land Law does not grant the jurisdiction to resolve land disputes to an Arbitration body, because the “Court” referred to in Article 203 of the 2013 Land Law needs to and must only be interpreted in its most general sense and consistent with its inherent meaning (in accordance with the Law on Organization of People’s Courts 2014 and other laws/codes), which means “Court” is simply a Court (a judicial body with the authority to adjudicate disputes of the Socialist Republic of Vietnam) without including the Arbitration body (a mode of dispute resolution as agreed by the parties and proceeded in accordance with the Law on Commercial Arbitration 2010) or any other bodies



2 ARTICLE

Provisions of other laws and codes over the jurisdiction to settle a number of disputes in specialized fields

Labour Code 2012

According to Article 200 of the 2012 Labour Code, agencies and individuals competent to settle individual labour disputes include: Labour mediators and People's Courts.

According to Article 203 of the 2012 Labour Code, agencies, organizations and individuals competent to settle collective labour disputes (disputes over rights) include: Labour mediators; Chairmen of district People's Committees; People's courts.

Apart from the above-mentioned agencies, the 2012 Labour Code does not grant the authority to resolve labour disputes to any other agencies. In fact, arbitration bodies also do not accept and resolve labour disputes.

In short, from the above analysis, we can see that when the current law indicates that the jurisdiction to resolve disputes in general or disputes arising in a fundamentally-changed environment belongs to the "Court", it can only be interpreted that the law is referring to the Court instead of including an Arbitration body or other competent authorities. If contracts between the parties (merchants or at least one party is a merchant and the contract is for profit) contain a provision to resolve disputes by arbitration, then this provision is deemed to apply only to the disputes arising out of a contract and under "normal" conditions. This arbitration clause will not be applied in the event of a dispute arising from a fundamentally changed environment. If the arbitration clause in the contract clearly states that the arbitration body will resolve the dispute when the environment changes fundamentally, then that point will likely be nullified.

Why is there a view that arbitration bodies have the authority to resolve disputes arising from a fundamentally changed situation?

Why is there a view that arbitration bodies have the authority to resolve disputes arising from a fundamentally changed situation? Perhaps this view comes into existence as a result of some references to the process of interpreting and applying laws in some parts of the world regarding the jurisdiction to resolve disputes arising from fundamentally changed situations.

For example, the case law applying PICC in the ICC International Court of Arbitration (No. 7365/FMS, No. 8873, 9994, 12446 ...) and the practice of arbitration in many countries (Netherlands, Germany, ...) show that although the law designates a "Court" as the adjudicating body, the term "Court" here is interpreted to include Arbitration Court and still allows Arbitrators to have jurisdiction over the disputes arising from fundamentally changed situations.

Should the arbitration body be given the authority to resolve disputes arising from fundamentally changed situations?

In practice, the settlement of commercial disputes by arbitration, one of the alternative dispute resolution methods ("ADR"), has been very effective over the past time. In addition, Article 2 of the 2010 Commercial Arbitration Law also stipulates quite "open" on the jurisdiction to settle disputes by arbitration, including:

- (1) Disputes arising from commercial activities;
- (2) Disputes between parties in which at least one party has commercial activities;
- (3) Other disputes which the law allows to be resolved by arbitration.

Moreover, when the situation changes, the relationship between the parties to a commercial contract remains unchanged and the dispute between them is inherently one arising from commercial activities, satisfying the conditions for settlement by arbitration in accordance with Clause 2, Article 2 of the 2010 Commercial Arbitration Law. Thus, with the effectiveness of ADR and the open regulation of the 2010 Commercial Arbitration Law, it is evident that Article 420 of the 2015 Civil Code should be supplemented.

Proposing to amend the 2015 Civil Code and supplement the 2005 Commercial Law

Therefore, in order to ensure consistency between the Civil Code and the Commercial Arbitration Law as well as in line with international practice, we propose to supplement Article 420 of the 2015 Civil Code 2015 in the direction of allowing arbitration bodies to resolve disputes arising from fundamentally changed situations. At the same time, the 2005 Commercial Law should be supplemented with the regulation on contract performance in fundamentally changed situations. Accordingly, arbitrators will have full authority to amend or terminate contracts as Courts now do.





3 READING FOR YOU

□ Ho Chi Minh City: Strengthening the management of investment, construction and business of apartments and tourist villas

The Ho Chi Minh City People's Committee has just requested functional authorities to strictly follow the Prime Minister's Directive No. 05/CT-TTg of March 01, 2019 on strengthening and streamlining the work of planning and management of urban development and construction under the approved planning and the Governmental Resolution No. 116/NQ-CP of December 06, 2019 on implementing the National Assembly's Resolution No. 82/2019/QH14 of June 14, 2019 on further completing, improving the effectiveness and efficiency of the implementation of policies and laws on urban land management and use planning.

The Ho Chi Minh City People's Committee also directed the competent authorities to perform the management of investment, construction, certification of land use rights, ownership of houses and other properties associated with the land for the type of tourist apartments and villas according to current regulations on investment, land and construction, ensuring their compatibility with construction planning, land use planning and tourism development planning already approved by competent state agencies.

To manage and operate tourist apartments and villas according to the provisions on real estate business, tourism and the Regulations on management and trading of tourist apartments and villas issued by the Ministry of Culture, Sports and Tourism as well as civil economic agreements on investment cooperation to distribute business profits with regard to tourism apartments.

Projects in need of converting tourist apartments and tourist villas into residential housings must be carefully considered and strictly comply with current regulations on investment, urban planning and construction to ensure compliance with the approved construction planning, land use planning, local housing development planning and plans; at the same time in line with the capacity to tolerate the population, the ability to meet the technical and social infrastructure of the region; compliance with regulations, standards and construction standards.

The Ho Chi Minh City People's Committee also asked the authorities to carry out inspections, checks, reviews of any adjusted planning, functional conversion, design of real estate projects in general, tourist apartment projects in particular to handle and overcome violations; organize propaganda and dissemination of laws on investment, construction, business and regulations and standards related to the type of tourist apartment building.

Deploying delegations to regularly inspect and control abnormal business activities, contrary to regulations in real estate business in general and type of tourist apartments in particular to prevent and take timely handling measures.

By Nam Phong, cafef.vn





3 READING FOR YOU

□ 14 items enjoying EU tariff quotas under EVFTA

The Multilateral Trade Policy Department (Ministry of Industry and Trade) informed that, within the framework of the Vietnam – EU Free Trade Agreement (EVFTA), the European Union (EU) was committed to dedicating tariff quotas (TRQ) to Vietnam for 14 items including eggs and poultry egg yolks; garlic; sweet corn; polished rice; ground rice; ground rice of certain fragrant rice varieties; tapioca; tuna; surimi; sugar and other products containing high sugar content; special sugars; mushrooms; ethanol; Mannitol, Sorbitol, Dextrin and other modified starches.

In order for Vietnamese enterprises to comply with these commitments, take advantage of the market opportunity opened from EVFTA, they need to be aware of the EU TRQ allocation and management mechanism for the said items.

For rice, upon being exported to the EU market, fragrant rice shipments must comply with EU implementation regulations on opening and receiving imported TRQ for rice originating from Vietnam.

The EU focal point for the issue in question is the G.4 unit (Arable crops and olive oil) under the General Department of Agriculture and Rural Development.

The enterprise will need to apply for an import license with a Member State competent authority and must deposit a security amount of 30 Euro/tonne at the time of application. In the event that the number of registrations exceeds the amount available under the TRQ for the period, the EU will fix an allocation factor.

Aromatic rice shipments subject to TRQ when being exported to the EU market, in order to enjoy the tax rate of 0% according to the quotas, must have an authenticity certificate issued by a competent Vietnamese authority stating that rice belongs to one of the rice categories eligible for preferential treatment under the TRQ of the Agreement.

Currently, the Ministry of Agriculture and Rural Development and the Ministry of Industry and Trade are working together to prepare documents guiding the registration process of this certificate to issue right after the EVFTA Agreement comes into effect.

Specifically, the draft decree guiding the registration process for certification of rice varieties exported to the EU to enjoy preferential quotas of the Vietnam-EU Free Trade Agreement (EVFTA) has just been approved by the Ministry of Agriculture and Rural Development for purposes of seeking comments and submitting to the Government for approval.

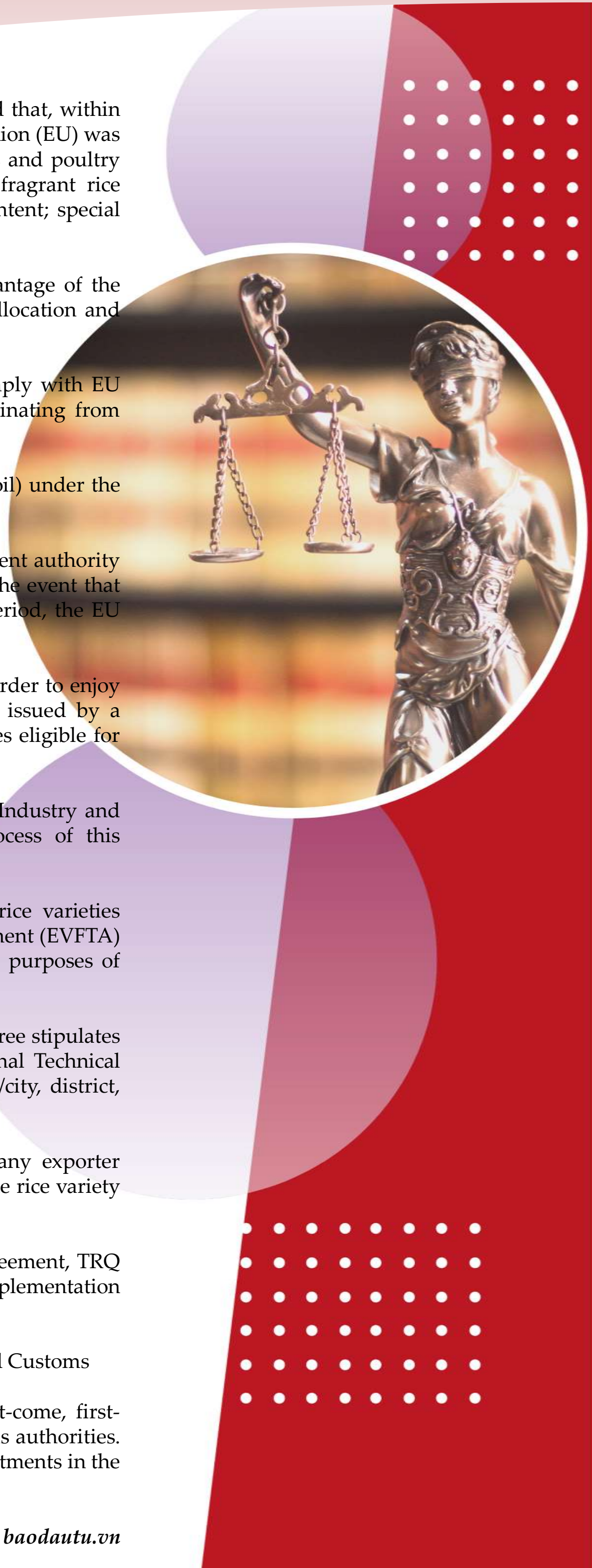
With regard to criteria for being granted a certificate of rice variety, the said draft decree stipulates that rice is produced from rice seeds with grain quality in line with to the National Technical Regulations; that it is cultivated on an area of land with a clear address (province/city, district, ward/commune, group/village).

In addition, the criteria for granting a rice variety certificate also stipulate that any exporter wishing to be issued a certificate must notify the certificate issuing organization of the rice variety before producing according to the form stated in the appendix to this Decree.

Meanwhile, pursuant to TRQ mechanism for the remaining items in the EVFTA Agreement, TRQ will be allocated and managed in accordance with Articles 49 to 54 of the Implementation Regulations (EU) 2015/2447.

The EU focal point for the issue in question is the General Department of Taxation and Customs

Imports into the EU under TRQ mechanism will be allocated in principle of “first-come, first-served”, based on the date of the import license application approved by EU customs authorities. The EU is currently in the process of developing guidelines to implement TRQ commitments in the EVFTA Agreement.





4 ANSWERS TO QUERIES

❑ Rules for declaring value-added tax and corporate income tax

- The billing date for service provision is the date when the service has been fully provided, regardless of whether the payment has been made or not. In case the service provider collects the fees before or during the service provision, the billing date is the date of fee collection.
- Based on the issued invoices, enterprises will declare and deduct the input VAT as instructed in Article 14.8 of Circular No. 219/2013/TT-BTC.
- Expenses corresponding to the taxable revenue will be added into deductible expenses when determining the taxable income if they meet the requirements in Article 4.1 of Circular No. 96/2015 / TT-BTC.
- After expiry of the time limit for submitting tax declaration dossiers, if enterprises detect that the tax declaration dossier submitted to the tax authority has errors, they may make an additional declaration as instructed in Article 10.5 of Circular No. 156/2013/TT-BTC.

Ha Noi City Tax Department replies to Construction Investment and Infrastructure Development Company Ltd. in Official Letter 53798/CT-TTHT dated 18 June 2020.

❑ Guidance on paternity benefits for foreign male employees

- The maternity regime for employees as foreign citizens participating in compulsory social insurance in Vietnam is stipulated in Article 7 of Decree No. 143/2018/ND-CP dated 15 October 2018 of the Government detailing the Law on Social Insurance and the Law on Occupational Safety and Hygiene regarding compulsory social insurance for employees as foreign citizens working in Vietnam.
- In Article 7.1 of Decree No. 143/2018/ND-CP, the conditions for enjoying maternity benefits are specified in Article 31 of the Law on Social Insurance, including male employees who are paying social insurance premiums and has a wife giving birth.
- Regarding the lump-sum allowance, Article 38 of the Law on Social Insurance stipulates that *"If the wife of a male employee gives birth but only the father participates in social insurance, he will be paid a lump-sum allowance equal to 2 times the basic salary at the month of birth giving for each child"*.

Therefore, pursuant to the above provisions, in case where a foreign male employee participates in social insurance and has a wife giving birth who does not participate in social insurance in Vietnam, he will be entitled to a lump-sum allowance in accordance with Article 38 of the Law on Social Insurance.

Ministry of Labour, War Invalids and Social Affairs replies to Unihwasin Vina Company Limited in Official Letter 2161/LĐT BXH-BHXH dated 16 June 2020.

❑ Tax declaration during business suspension

- In case where the taxpayer, during the business suspension period, incurs obligations for the activities specified in Article 200.3 of the Law on Enterprises 2014, he/she must submit tax declaration dossier for the suspension period as stipulated by law.
- In case where the taxpayer, during the business suspension period, incurs obligations for the activities not specified in Article 200.3 of the Law on Enterprises 2014, he/she must notify the agency where the suspension has been registered that business activities are resumed earlier than expected, and must fully comply with the provisions on tax declaration and payment.
- From 01 July 2020, tax administration during the period of temporary suspension of operations will be conducted in accordance with Article 37 of Law on Tax Administration No. 38/2019/QH14 dated 13 June 2019.

General Department of Taxation replies to Ninh Thuan Province Tax Department in Official Letter 2621/TCT-KK dated 26 June 2020.

❑ Use of e-invoices

- The Company has used invoices purchased from tax authorities in June 2018 (up to now has expired for 12 months). In case where the Company meets the conditions required of organizations that are allowed to create e-invoices as prescribed in Article 4.2 and Article 7.1 of Circular No. 32/2011/TT-BTC, the Company may use e-invoices. Before using e-invoices, the Company must comply with the regulation on notification of e-invoice issuance as prescribed in Article 7.2 of Circular No. 32/2011/TT-BTC of the Ministry of Finance.
- The Company must stop using the invoices purchased from tax authorities from the date the Company starts to use e-invoices, and destroy the invoices purchased from tax authorities as stipulated in Circular No. 39/2014/TT-BTC of the Ministry of Finance.
- The Company must submit a monthly report on the use of invoices from the the first day of the month to the end of the day when enterprises stop using invoices purchased from tax authorities, and switch to submitting quarterly reports on invoice usage from the next day as prescribed in Article 27 of Circular No. 39/2014/TT-BTC above.
- The company must fully take legal liabilities for the accuracy of the creation, making and use of electronic invoices.

Ha Noi City Tax Department replies to Yu Ming Investment Technology Company Limited in Official Letter 56267/CT-TTHT dated 23 June 2020.





5 LIST OF LEGAL DOCUMENTS ISSUED IN THE MONTH

No.	Document title	Issuance date	Effective date	No.	Document title	Issuance date	Effective date
NATIONAL ASSEMBLY				SUPREME PEOPLE'S COURT			
1	Law No. 65/2020/QH14 on amending and supplementing a number of articles of the Law on Organization of the National Assembly	19/06/2020	01/01/2021	1	Official Letter 101/TANDTC-HTQT on the sending of civil procedure documents abroad	25/06/2020	25/06/2020
2	Law No. 64/2020/QH14 on Investment in the Form of Public Private Partnership	18/06/2020	01/01/2021	2	Circular 01/2020/TT-TANDTC regulates the settlement of complaints and denunciations in the People's Courts	18/06/2020	10/08/2020
3	Law No. 63/2020/QH14 on amending and supplementing a number of articles of Law on promulgation of legal documents	18/06/2020	01/01/2021				
4	Law No. 62/2020/QH14 on amending and supplementing a number of articles of Law on Construction	17/06/2020	01/01/2021	MINISTRY OF INDUSTRY AND TRADE			
5	Law on Investment No. 61/2020/QH14.	17/06/2020	01/07/2021	1	Circular 13/2020/TT-BCT on amending, supplementing and abolishing some regulations on business conditions under the management of the Ministry of Industry and Trade	18/06/2020	03/08/2020
6	Law No. 60/2020/QH14 on amending and supplementing a number of articles of the Law on Natural Disaster Prevention and Control, and the Law on Dikes	17/06/2020	01/07/2021	2	Circular No. 11/2020/TT-BCT providing for the rules of goods origin under the European Union - Vietnam Free Trade Agreement	15/06/2020	01/08/2020
7	Law on Enterprises No. 59/2020/QH14	16/06/2020	01/01/2021				
8	Law No. 58/2020/QH14 on Mediation and Dialogue in the court	16/06/2020	01/01/2021	MINISTRY OF PLANNING AND INVESTMENT			
9	Law on Youth No. 57/2020/QH14	16/06/2020	01/01/2021	1	Circular 05/2020/TT-BKHDT on amending and supplementing a number of articles of the Circular 04/2017/TT-BKHDT dated 15 November 2017 of the Ministry of Planning and Investment on prescribing in detail the contractor selection via the National E-Public Procurement system	30/06/2020	01/09/2020
10	Law No. 56/2020/QH14 on amending and supplementing a number of articles of the Law on Judicial Expertise	16/06/2020	01/01/2021				
11	Resolution 113/2020/QH14 on the recognition and enforcement of judgments issued by the Investment Dispute Settlement Body under the Investment Protection Agreement between the Socialist Republic of Vietnam, of one part, and the European Union and its Member States, of the other part in Vietnam	18/06/2020	18/06/2020	MINISTRY OF FINANCE			
12	Resolution 107/2020/QH14 on extension of the time limit for agricultural land use tax exemption prescribed in the Resolution No. 55/2010/QH12 dated November 24, 2010 of the National Assembly on agricultural land use tax exemption and reduction amended and supplemented by Resolution No. 28/2016/QH14 dated November 11, 2016 of the National Assembly	10/06/2020	01/01/2021	1	Circular 58/2020/TT-BTC prescribing the collection rates, and the regimes of collection, remittance, management and use of the fees received from handling of competition cases	12/06/2020	27/07/2020
13	Resolution 104/2020/QH14 on the accession to Convention No. 105 of the International Labor Organization on the Elimination of Forced Labor	08/06/2020	08/06/2020	2	Circular 57/2020/TT-BTC prescribing the collection rates and remittance of fees for granting passports and laissez-passers, exit permits and AB stamps, and the fees for granting management permits of firework, weapons, explosives and supportive tools	12/06/2020	12/06/2020
14	Resolution 103/2020/QH14 on ratifying the Investment Protection Agreement between the Socialist Republic of Vietnam, of one part, and the European Union and its Member States, of the other part	08/06/2020	08/06/2020				
15	Resolution 102/2020/QH14 on ratification of the Free Trade Agreement between the Socialist Republic of Vietnam and the European Union	08/06/2020	08/06/2020	3	Circular 55/2020/TT-BTC on guiding the management of training expenditure for international students under the agreement on studying in Vietnam	12/06/2020	30/07/2020
NATIONAL ASSEMBLY STANDING COMMITTEE				4	Circular No. 54/2020/TT-BTC prescribing the collection rates and remittance of fees for verification of papers and documents at the request of domestic organizations and individuals, and the fees for granting licenses for sending workers abroad for a definite time	12/06/2020	12/06/2020
1	Resolution 954/2020/UBTVQH14 on adjusting the reduction rate of personal income tax based on family circumstances	02/06/2020	01/07/2020	5	Circular 52/2020/TT-BTC guiding a number of measures for implementing State statistics of customs for exported and imported goods	10/06/2020	01/08/2020
GOVERNMENT				6	Circular No. 50/2020/TT-BTC prescribing the collection rates and remittance of fees for appraisal of business conditions in labor safety technical inspection activities, and occupational safety and hygiene training	01/06/2020	01/06/2020
1	Decree 73/2020/ND-CP on immigration control in respect of the persons entering or exiting Vietnam on national defense and security vehicles for the purposes of national defense and security	30/06/2020	01/07/2020	7	Circular No. 49/2020/TT-BTC on prescribing the collection rates and remittance of fees in the field of registration of secured transactions	01/06/2020	01/06/2020
2	Decree 72/2020/ND-CP detailing a number of articles of the Law on Militia and Self-Defense Force on organizing and building forces, and the regimes and policies for militia and self-defense forces	30/06/2020	15/08/2020	STATE BANK OF VIETNAM			
3	Decree 71/2020/ND-CP on providing the roadmap for raising qualification standards for teachers of nursery, primary and lower secondary schools	30/06/2020	18/08/2020	1	Circular 06/2020/TT-NHNN on the regulations on internal control and internal audit in the State Bank of Vietnam	30/06/2020	15/08/2020
4	Decree 70/2020/ND-CP on providing the registration fee rates for domestically manufactured and assembled automobiles until the end of 31 December 2020	28/06/2020	28/06/2020				
5	Decree 69/2020/ND-CP on amending and supplementing a number of articles of the Government's Decree 08/2016/ND-CP of 25 January 2016, stipulating the number of Vice Presidents of People's Committees, the processes and procedures for electing, resigning, dismissing, transferring and removing members of the People's Committee	24/06/2020	01/07/2020				
6	Decree 68/2020/ND-CP on amending and supplementing Clause 3 Article 8 of the Decree No. 20/2017/ND-CP dated February 24, 2017 of the Government on tax administration in respect of enterprises having associated transactions	24/06/2020	24/06/2020				
7	Decree 67/2020/ND-CP on amending and supplementing a number of articles of the Government's Decree No. 68/2016/ND-CP dated July 01, 2016 on the conditions for trading duty-free goods, operation of warehouses, storing yards, and places for customs clearance, goods gathering and inspection, and customs supervision	15/06/2020	10/08/2020				
8	Decree 66/2020/ND-CP on amending and supplementing a number of articles of the Government's Decree No. 68/2017/ND-CP dated 25/5/2017 on the management and development of industrial clusters	11/06/2020	01/08/2020				
9	Decree 65/2020/ND-CP providing for the management, organization and regimes for people staying at accommodation establishments while waiting for their exit	10/06/2020	15/06/2020				
10	Decree 64/2020/ND-CP on providing guidance on the implementation of the temporary admission mechanism under the Istanbul Convention	10/06/2020	30/07/2020				
11	Decree 63/2020/ND-CP on Security Industry	08/06/2020	01/08/2020				
12	Decree 62/2020/ND-CP on job positions and civil servant payrolls	01/06/2020	20/07/2020				



GLOBAL VIETNAM
LAWYERS



GLOBAL VIETNAM
LAWYERS

CONTACT US

info@gvlawyers.com.vn

HCMC - Head Office

8/F, Centec Tower
72 – 74 Nguyen Thi Minh Khai
Ward 6, 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

www.gvlawyers.com.vn

LEGAL NEWSLETTER
Issue No. 07 | July 2020

The contents of the newsletter do not constitute legal advice and do not necessarily reflect the opinions of our firm or any of our attorneys or consultants. The newsletter provides general information, which may or may not be correct, complete or current at the time of reading. The content is not intended to be used as a substitute for specific legal advice or opinions. Please seek appropriate legal advice or other professional counselling for any specific issues you may have. We, GV Lawyers, expressly disclaim all liability relating to actions taken or not taken based on any or all contents of the newsletter.