

# LEGAL NEWSLETTER



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## *Notable activity in April, 2022*

*According to several opinions of businesses, the regulatory compliance costs is a burden for businesses. Especially, in the context of being affected by the Covid-19 Pandemic, multiple costs arising from legal regulations such as administrative compliance costs, opportunity costs or unofficial costs make the businesses difficult to recover their production.*

*In the “Business and Law” program broadcasted on Channel VTV2 with the topic "Reducing the legal compliance costs in the context of Covid-19", Mr. Nguyen Hung Quang was one of the invited speakers to discuss the current issues of the regulatory compliance costs of businesses. According to Mr. Quang, although there are several positive changes in reducing regulatory compliance costs of businesses, more reform efforts are needed. During the program, Mr. Quang also made comments on the causes for the shortcomings and difficulties related to the regulatory compliance costs of businesses and made recommendations to overcome the above issues.*

To watch the full Program, visit the link:  
<https://www.youtube.com/watch?v=SbAF8WaZxRM>

# NEW REGULATIONS ON ESTABLISHMENT, REORGANIZATION, CONVERSION AND TRANSFER OF ENTERPRISES WHOLLY OWNED BY THE STATE

## THU TRANG

On April 5, 2022, the Government issued Decree 23/2022/ND-CP on the establishment, rearrangement, conversion and transfer of the right to represent the owners at enterprises wholly owned by the State (**Decree 23**). The Decree will take effect from June 1, 2022, replacing Decree 172/2013/ND-CP (**Decree 172**), Decree 128/2014/ND-CP (**Decree 128**) and abolishing Decree 69/2014/ND-CP. Some typical changes of Decree 23 compared with the previous Decrees are as follows:

*Firstly*, supplementing regulations related to the conditions and procedures for establishing enterprises with 100% charter capital held by the State. Accordingly, enterprises with 100% charter capital held by the State shall only be considered for establishment when they fully satisfy the following conditions:

- Having operation business lines or fields within the scope of state capital investment for enterprise establishment in accordance with the laws on management and utilization of state capital invested in enterprises' manufacturing and business activities;
- Ensuring sufficient charter capital as specified in Article 5 of Decree 23;
- Having valid dossier as specified in Article 6 of Decree 23;
- The enterprise establishment being consistent with the national socio-economic development strategy and plan, and the national industry planning.

For enterprises established under decision of the Prime Minister, Decree 23 supplements the condition to collect opinions of the Ministry of Justice and the governing ministry. For enterprises established by the decision of the owner's representative agency, the Ministry of Planning and Investment will be the appraisal agency and assume the prime responsibility for collecting opinions of ministries and managing agencies instead of the Ministry, provincial People's Committee as stipulated in Decree 172.

*Secondly*, amending and supplementing regulations on rearrangement of enterprises wholly owned by the State. According to Decree 23, the forms of rearrangement include: consolidation, merger, division, separation and dissolution of enterprises with 100% charter capital held by the State. Thus, compared with Decree 172, the rearrangement of enterprises does not include the form of conversion into a joint stock company (because the equitization of state-owned enterprises has been separately regulated in Decree 126/2017/ND-CP) and the form of conversion into a parent - subsidiary company. The following is some changes of this content:

(i) Amending and supplementing the conditions and procedures for consolidation, merger, division, separation and clearly stipulating the policies for employees and persons holding leadership and management positions in each case. Decree 23 supplements the condition that "*consolidation, merger of enterprises must comply with the Law on Competition regarding consolidation, merger of enterprises*" and removes the condition "*the reorganization does not reduce the charter capital of a single-member limited liability company*". Regarding the procedure of consolidation, merger, division and separation of enterprises established by the Prime Minister's decision, compared with Decree 172, Decree 23 supplements the Ministry of Justice, governing ministry and related agencies as the agencies to be consulted (if necessary). At the same time, Decree 23 clearly stipulates the policies for employees and persons holding leadership and management positions in each case of consolidation, merger, division or separation of enterprises.

(ii) Stipulating more specifically financial responsibilities of enterprises when temporarily ceasing their business.

(iii) Supplementing regulations on suspension of operation, termination of business of enterprises wholly owned by the State in compliance with new

regulations of the Law on Enterprises 2020.

(iv) Supplementing the condition that *"the enterprise is not in the process of settling disputes at court or arbitration"*, responsibilities of the managers for enterprises' debts in the event of dissolution.

*Thirdly*, amending and supplementing regulations on the sale of the whole enterprises with 100% charter capital held by the State. Decree 23 has revised some contents related to documents included in the plan to sell the whole of an enterprise compared with the provisions of Decree 128, typically supplementing *"the managing enterprise's plan for land use in accordance with the laws on land, laws on rearrangement and handling of state-owned houses and land from time to time, which has been approved by competent state agency"* in the component of the plan for selling the whole enterprise; requiring to clearly define *"the method, form and time of enterprise value determination"* instead of only requiring to *"determine enterprise value"* as specified in Decree 128.

Compared with Decree 128, Decree 23 has simplified internal responsibilities in the transferred enterprises, but also stipulates some additional responsibilities such as coordination in appraisal, agreement on documents and data between the parties involved. Decree 23 also removes the provisions on calculating severance allowance in Decree 128 and only keeps the provisions on employees continuing to work under new labor contracts.

*Fourthly*, amending the regulations on transfer of the right to act as the owner's representative in enterprises wholly owned by the State. Decree 23 has removed the form of transferring enterprises to the collective employees as specified in Decree 128. At the same time, according to Decree 23, the Owner's representative agency (Ministry, ministerial-level agency, agency under Government; provincial People's Committee) will replace the role of the Enterprise Innovation and Development Board as specified in Decree 128. Decree 23 also amends one of the three conditions for transfer among the Owner's representative agencies: *"The business, production lines of the transferred enterprise are **suitable** to the industry, field or management objectives of the Owner's representative agencies receiving the transfer"*, while Decree 128 stipulates that *"Being an enterprise operating in the **main***

*business lines or fields or closely related to the main business lines or fields of the economic groups, corporations, groups of companies receiving the transfer"*.

## COMMENTS AND RECOMMENDATIONS

Compared with the previous decrees, Decree 23 has many changes in regulations on the establishment, rearrangement, ownership conversion, transfer of the right to act as the representative of state ownership in the enterprises of which 100% of the charter capital is held by the State.

Therefore, enterprises wholly owned by the State that are in the process of being rearranged, sold, converted or transferred of the right to act as the owner's representative need to promptly update the changes in Decree 23 and at the same time, pay attention to the relevant provisions referred to, such as Law on Enterprises 2020, Law on Management and Utilization of state capital invested in enterprises' manufacturing and business activities 2014, Law on Property Auction 2016.



# HIGHLIGHTS OF THE RESOLUTION ON INCREASING OVERTIME HOURS OF EMPLOYEES

HUYEN THU

On March 23, 2022, the Standing Committee of the National Assembly approved Resolution 17/2022/UBTVQH15 on employees' annual and monthly overtime hours in the context of Covid-19 pandemic prevention and control and socio-economic recovery and development (**Resolution 17**). The Resolution takes effect from April 1, 2022, with typical contents including:

*Firstly*, increasing annual overtime hours. Resolution 17 stipulates that employers may assign their employees to work overtime for more than 200 hours but not exceeding 300 hours per year if they have demands and obtain the employees' consents. Compared with point c, clause 2, Article 107 of the Labor Code 2019, Resolution 17 has increased the total employees' maximum annual overtime hours from 200 hours to 300 hours. However, it should be noted that the increase in annual overtime hours does not apply to:

- (i) Employees aged between full 15 and under 18;
- (ii) Employees having mild disabilities with work capacity reduction of at least 51%, employees with severe disabilities or extremely severe disabilities;
- (iii) Employees doing heavy, hazardous, dangerous or extremely heavy, hazardous or dangerous work;
- (iv) Female employees in their 7th month of pregnancy onward or the 6th month of pregnancy onward if they work in the highland, remote, far-flung, border or island areas;
- (v) Female employees nursing children aged under 12 months.
- (vi) Industries and jobs for which the annual overtime hours have been limited to 300 hours a year under clause 3, Article 107 of the Labor Code 2019, namely:
  - Manufacture, processing of textile, garment, leather, footwear, electric, electronic products, processing of agricultural, forestry, aquaculture products, salt production;
  - Electricity production and supply,

telecommunications, refinery operation; water supply and drainage;

- Work requiring highly skilled employees that cannot be provided adequately and timely from the labor market;
- Urgent work that cannot be delayed due to seasonal reasons, availability of materials or products, or work arising due to unexpected causes, bad weather, natural disasters, fire, hostility, shortage of power or raw materials, or technical break-down of production lines;
- Other cases prescribed by the Government.

*Secondly*, increasing monthly overtime hours. Accordingly, if the employers that are permitted to assign their employees to work overtime up to 300 hours per year have demands and obtain the employees' consents, they can assign their employees to work overtime for more than 40 hours but not exceeding 60 hours per month. Thus, compared with the provisions at point b, clause 2, Article 107 of the Labor Code 2019, the maximum number of employees' overtime hours per month has been increased from 40 hours to 60 hours.

*Thirdly*, stipulating the responsibilities of employers when organizing overtime, including:

- (i) Fully complying with relevant provisions of the Labor Code on overtime organization;
- (ii) Notifying in writing the labor authority of the provincial People's Committee as prescribed in clause 4, Article 107 of the Labor Code 2019 in the case they increase the overtime hours to 300 hours per year.
- (iii) Applying measures to improve labor productivity and other measures to reduce overtime work; providing welfare regimes to ensure more favorable conditions for the employees than those prescribed by labor law when they are subject to work overtime.



## Comments and Recommendations

Compared with the applicable regulations of the Labor Code 2019, the increase of overtime hours under Resolution 17 is expected to support businesses to recover production, expand job opportunities, and increase income for employees after being affected by the Covid-19 pandemic. When organizing overtime for employees, employers should pay attention to the exclusions and only assign employees to work overtime upon their consents and ensure such requirements as compliance with the law, written notification to the competent authority. During the period of socio-economic recovery, support policies are still being proposed, promulgated and possibly amended. Therefore, businesses need to regularly update information, study newly issued documents for timely approach and application, ensuring the maximum rights and benefits entitled from the State's policies and support.

# HIGHLIGHTS OF THE DRAFT DECREE ON EXTENSION OF THE TIME LIMIT FOR PAYMENT OF TAX, LAND RENTS AND WATER SURFACE RENTS IN 2022

KIM ANH

In the context of on-going complicated and unpredictable development of the Covid-19 pandemic, which adversely impacts several businesses, the Government is developing a Draft Decree on extension of the time limit to pay value added tax (VAT), corporate income tax, personal income tax, land rents and water surface rents in 2022 (**Draft Decree**), which will be issued under simplified procedure. Inheriting the spirit of Decree 52/2021/ND-CP on extension of the time limit for payment of tax and land rents in 2021 (**Decree 52**), the Draft Decree continues with the policy on extension of the time limit to pay VAT, corporate income tax, personal income tax and land rents in 2022, and supplements water surface rent. In this Legal Newsletter, NHQuang&Associates will address some outstanding provisions of the Draft Decree (2nd Draft) and analyze their impacts on business operations.

## **Subject of application of the Draft Decree**

Basically, the subject of application of the Draft Decree is similar to Decree 52, which are enterprises, organizations, business households and individuals directly and severely affected by Covid-19 pandemic, for instance:

- (i)** Enterprises, organizations, business households and individuals in manufacturing and service industries such as agriculture, forestry and fisheries; textile; leather and footwear; accommodation, food and beverage, etc. The list of these economic sectors is determined under Decision 27/2018/QĐ-TTg of the Prime Minister on promulgation of Vietnam Standard Industrial Classification.
- (ii)** Small and micro enterprises (of all industries);
- (iii)** Enterprises, organizations, business households and individuals manufacturing supporting industrial products with development priority or manufacturing key mechanical products;
- (iv)** Credit institutions and foreign bank branches providing support for enterprises, business households and individuals affected by Covid-19 pandemic.

It is found that the subject of application of the Draft Decree is relatively wide, covering most business lines, areas and fields, regardless of domestic or foreign enterprises. The above regulation is expected to have a large and widespread impact on enterprises, organizations and individuals.

## **Policy on extension of the time limit for payment of tax, land rents, and water surface rents**

*For VAT*, the extension is applied for the tax period from March to August 2022 (for monthly VAT declaration) and Quarter I, Quarter II of 2022 (for quarterly VAT declaration). Enterprises and organizations eligible for extension shall declare and submit monthly and quarterly VAT declarations as prescribed by laws, but are not obligated to pay the VAT incurred on the declared VAT declarations instantly. The time limit for paying VAT of March, April, and May as stipulated in the Draft Decree is extended by one month longer than that provided in Decree 52. The time limit for VAT payment is extended as follows:

- Tax period of March 2022: no later than October 20, 2022;
- Tax period of April 2022: no later than November 20, 2022;
- Tax period of May, June, July and August 2022: no later than December 20, 2022
- Tax period of Quarter I/2022: no later than October 31, 2022;
- Tax period of Quarter II/2022: no later than December 30, 2022.

*For corporate income tax*, eligible enterprises and organizations may have an extension for the temporarily paid corporate income tax amount of Quarter I and II of the corporate income tax period 2022, with an extension of 03 months from the time limit for paying corporate income tax as prescribed by laws.

*For the land rents, water surface rents*, eligible enterprises, organizations, business households and

individuals that lease land or water surface from the State in the form of paying annual land rent or water surface rent under decisions or contracts are entitled to an extension for 50% of the payable land rents and water surface rents in 2022. The extension period is 06 months from May 31, 2022. Compared to Decree 52, the supplement of this regulation is considered a prominent new point which generates positive impacts on enterprises, organizations and individuals when expanding the extension scope.



### **Sequences and procedures to apply for an extension**

Taxpayers shall send a request for extension of the time limit for payment of tax, land rents and water surface rents, using the form in the Appendix issued with the Draft Decree, by either submitting online, submitting a hardcopy directly or sending via post to tax authorities. The application for extension is submitted once for the entire amount of tax, land rents, and water surface rents, and can be submitted either at the same time with the monthly/quarterly tax return filing or no later than September 30, 2022. In the case where the application for extension is submitted after September 30, 2022, taxpayers will not be entitled to the extension as mentioned above. When receiving an application for extension, if the taxpayer is not eligible for the extension, the tax authority is obliged to notify the taxpayer of this matter along with the obligation to pay the full amount of tax, land rents, water surface rents and late payment amount during the extension period.

With the preferential policy under the Draft Decree, enterprises can enjoy the same benefits as an interest-free loan for the payable tax, land rents and water surface rents. Enterprises can rely on this amount to solve their difficulties in the short term, thereby stabilizing and developing business in the future. This is considered one of the support policies that enterprises can easily access. The Draft Decree will take effect immediately upon promulgation; therefore enterprises need to update the provisions of the Draft for timely application for extension of the time limit to pay taxes, land rents, and water surface rents under regulations, ensuring their rights and interests as well as minimizing unnecessary legal risks.

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