

LEGAL NEWSLETTER



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Notable activity in August, 2022

The Program on Legal Ethics and the Profession was established by the UCLA School of Law of the University of California with the goal of addressing difficulties and challenges facing today's lawyers and serving as a forum examining professional issues drawn from across areas of legal practice. From August 13 to 15, 2022, the Program and the UCLA School of Law hosted the International Legal Ethics Conference 2022: Lawyers in a World in Crisis. The conference took place in Los Angeles, USA in hybrid form of offline and online combination, with the participation of research experts and lawyers from many countries. At the Conference, international experts delivered contents on responsibilities of lawyers in various activities for society from theoretical and practical perspectives.

On August 13, 2022, Mr. Nguyen Hung Quang had a speech on "**Statutory and bar requirements of Vietnamese lawyers to participate in legal aid activities and mandatory criminal cases**" at this Conference. In his presentation, Mr. Quang shared in-depth analyzes of the legal framework as well as the practice of Viet Nam's lawyers in carrying out the above activities, and also made recommendations to promote judicial reform in Viet Nam.

NOTABLE CONTENTS ON VALUE-ADDED TAX

HUYEN THU

On July 29, 2022, the Government issued Decree 49/2022/ND-CP amending Decree 209/2013/ND-CP guiding the Law on Value-Added Tax, which was amended and supplemented by Decree 12/2015/ND-CP, Decree 100/2016/ND-CP and Decree 146/2017/ND-CP (**Decree 49**). The document will take effect from September 12, 2022 and has some typical contents as follows:

Firstly, amending regulations on determining land price permitted to be deducted for value-added tax (VAT) calculation in real estate transfer. Specifically, Decree 49 supplements regulations on expenses for compensation and ground clearance in the land price permitted to be deducted for VAT calculation. Accordingly, expenses for compensation and ground clearance are the compensation and ground clearance payment according to the plan approved by the competent State agencies, and shall be deducted from the land use levy and land rental payable as prescribed in the regulations on collection of land use levy, land rental and water surface rental. Also, under Decree 49, in the case that business establishments acquire land use rights from organizations or individuals, the land price permitted to be deducted for VAT calculation is the land price at the time of transfer, exclusive of the infrastructure value. However, business establishments may declare and credit the input VAT on the infrastructure (if any). If it is impossible to separate the infrastructure value at the time of transfer, the land price to be deducted for VAT calculation is the land price set by the People's Committee of provinces or centrally-run cities at the time of signing the transfer contract.

Secondly, amending and supplementing the cases of investment projects eligible for VAT refund. Accordingly, Decree 49 permits VAT refund for business establishments which register to pay VAT by tax credit method and have new investment projects divided into many investment stages or investment items with at least 300 million Viet Nam Dong of input VAT amount of goods and services arising in the accumulated investment stage, which have not yet been deducted in full. Moreover, this

document also abolishes the regulation of no VAT refund permitted for investment period of less than 1 year and allows business establishments to get VAT refund for projects located in areas other than the province or city where their headquarters is located.

For investment projects of business establishments engaged in conditional business lines, Decree 49 supplements 03 cases eligible for VAT refund, including:

- (i) Investment projects in the investment stage that the business establishment is granted with a business license for conditional business lines by competent State agency in accordance with investment law and specialized law;
- (ii) Investment projects in the investment stage that the business establishment has not yet been required to apply for a business license for conditional business lines in accordance with investment law and specialized law; and
- (iii) Investment projects which are not required to have a business license for conditional business lines in accordance with investment law and specialized law.

Thirdly, allowing to apply VAT refund for investment projects of business establishments with conditional business lines under this Decree from the effective date of Decree 100/2016/ND-CP (July 1, 2016). Accordingly, in the case that business establishments with conditional business lines have been refunded VAT in the investment stage by tax authorities without having to apply for or a certificate of business condition satisfaction as prescribed by investment law and specialized law, these tax refund amounts will not be recovered; in the case that tax refunds have been recovered, they shall be handled according to tax administration regulations on handling overpaid money.



Comments and recommendations

Decree 49 is issued to solve the problems arising in the implementation of Decree 209/2013/ND-CP due to the lack of specific regulations, leading to different interpretations in practice. Decree 49 creates more favorable conditions for businesses in declaring and paying VAT, specifically determining the taxable price to pay VAT in real estate transfer activities and supplementing tax refund cases to help businesses reduce costs in their production and business. Therefore, businesses need to research and have plan to apply these new regulations to ensure their maximum rights and interests.

REGULATIONS ON THE ISSUANCE OF BONDS TO THE INTERNATIONAL MARKET BY ENTERPRISES THAT ARE NOT GUARANTEED BY THE GOVERNMENT

THUY MAI

On July 29, 2022, the State Bank of Vietnam (**SBV**) promulgated Circular 10/2022/TT-NHNN guiding the foreign exchange management for the issuance of bonds to international markets by enterprises that are not guaranteed by the Government (**Circular 10**), which replaces Circular 17/2013/TT-NHNN (**Circular 17**). The following demonstrates several noteworthy contents in Circular 10:

Firstly, simplifying procedures when organizations issue international bonds. According to Circular 17, the procedures vary depending on the organization issuing international bonds, for example, the procedures to confirm international bond issuance limit for State commercial banks, procedures to confirm international bond issuance limit for enterprises not being State commercial banks and procedures for registering international bond issuance of enterprises that are not guaranteed by the Government. Circular 10 has simplified these procedures and stipulates to apply only the procedures for registering international bond issuance of enterprises that are not guaranteed by the Government to all organizations demanding to issue international bonds. At the same time, regarding the procedures for registering international bond issuance of enterprises that are not guaranteed by the Government, Circular 10 supplements the component of the application dossier registering international issuance in Article 6, and stipulates the implementation thereof in 2 stages:

- *Before offering bonds*, the issuing organization must apply for approval of the international bond issuance plan and submit the approved issuance plan to the State Bank (Foreign Exchange Management Department) for confirmation of the issuance limit as prescribed in Clause 1, Article 7



of Circular 10.

- *During the offering of bonds*, in the case where the issuance value meets the conditions on the issuance limit, the issuing organization shall submit an application for registration of the international bond issuance to the State Bank in accordance with the provisions of Clause 2, Article 7 of Circular 10. The issuing organization can submit the application in one of the following three methods: online submission via the National public service portal or the SBV's public service portal; direct submission at the SBV's one-stop section; or submission by post.

Secondly, supplementing the grounds for considering and certifying the registration of international bond issuance. In detail, when registering international bond issuance, the issuing organization must meet the following conditions:

- (i) The value of the international bond issuance must not exceed the total annual limit of external commercial loans by the mode of self-borrowing and self-payment approved by the Prime Minister;
- (ii) The issuing organization must fully comply with and satisfy the applicable regulations on conditions for foreign loans, foreign exchange management for foreign borrowing and payment without governmental guarantee, and applicable laws on offering of corporate bonds to international market.

Thirdly, supplementing cases that the issuing organization does not need to register changes in international bond issuance but only needs to notify in writing to the State Bank. Circular 10 stipulates that the issuing organization only makes a written notice (by post or directly) to the State Bank (Foreign Exchange Management Department) and

does not need to register the changes in the following 07 cases:

- (i)** Changing the time of capital withdrawal, and principal payment within 10 working days compared to the plan approved by the State Bank;
- (ii)** Changing the address of the issuing organization;
- (iii)** Changing the commercial transaction name of the bank providing account services where the issuing organization opens foreign loan or payment accounts;
- (iv)** Changing the schedule to pay interest and fees of the international bond issuance compared to the plan certified by the State Bank in several written documents stipulated in point d, clause 2, Article 9 of Circular 10;
- (v)** Changing (increasing or decreasing) the amount of capital withdrawal, payment of principal, interest, and fees within 100 currency units of the foreign loan currency, compared to the amount stated in several written documents stipulated in point dd, clause 2, Article 9 of Circular 10;
- (vi)** Changing the amount of principal payment due to the converted or swapped bonds into shares for international bond issuance with elements of conversion or swap of public companies, securities companies, and securities investment fund management companies;
- (vii)** Changing the actual amount of capital withdrawal and principal payment of a specific period that is less than the amount stated in the schedule for capital withdrawal and debt repayment.

COMMENTS AND RECOMMENDATIONS

The promulgation of Circular 10 has contributed to synchronizing the legal system on management of foreign loan borrowing and repayment when the applicable regulations on corporate bond issuance have undergone many changes. In addition, Circular 10 has simplified related administrative procedures, provided flexible regulations and expanded the manners to carry out procedures (adding online method). Circular 10 takes effect from September 15, 2022 (except for the regulations on submitting online dossiers which will be effective from January 1, 2023). Enterprises wishing to register for the issuance of international bonds without guarantee by the Government should pay attention to updating the provisions of Circular 10 and other relevant legal documents to carry out their activities in compliance with laws.

NOTABLE PROVISIONS OF THE DECREE ON PENALTIES FOR ADMINISTRATIVE VIOLATIONS IN THE FIELD OF ENVIRONMENT

KIM ANH

In order to provide the penalties compatible with the provisions of the Law on Environmental Protection 2020, Decree 08/2022/ND-CP (**Decree 08**) and Decree 06/2022/ND-CP (**Decree 06**), the Government has issued Decree 45/2022/ND-CP on penalties for administrative violations in the field of environmental protection (**Decree 45**), taking effective from August 25, 2022. Compared to the previous Decree 155/2016/ND-CP amended by Decree 51/2020/ND-CP (**Decree 155**), Decree 45 supplements regulations on penalties against many new administrative violations and amends the regulations on penalties against existing administrative violations to match management requirements and practices of application. In this Legal Newsletter, NHQuang&Associates will analyze the new regulations of Decree 45 that may affect business operations of enterprises. It should be noted that the penalties mentioned in this article are meant for organizations, so they **double the penalties for individuals** specified in Chapter II of Decree 45.

Firstly, supplement regulations on penalties for administrative violations of manufacturers and importers' responsibilities on recycling products and packages. New regulations on manufacturers and importers' responsibilities related to recycling and processing products and packages have been supplemented to the Law on Environmental Protection 2020 and Decree 08, which took effect on January 10, 2022. Specifically, for the products and packages specified in Column 3 of Appendix XXII attached to Decree 08, manufacturers and importers will choose to carry out one of the two obligations: (i) Recycle them in compliance with the compulsory proportion, specification and roadmap set out for each type of product and package; at the same time, register the recycling plan and report the recycling



results to the Ministry of Natural Resources and Environment, or (ii) Make a financial contribution to the Environmental Protection Fund. Decree 45 stipulates the penalties for administrative violations related to the above obligations, for example:

- Violations against regulations on registration of recycling plans, declaration of contributions to support recycling, and reporting recycling results shall be fined from 300 million to 2 billion Viet Nam Dong;
- Violations against regulations on compulsory recycling proportion, compulsory recycling specifications and payment of recycling support contributions shall be fined from 900 million to 2 billion Viet Nam Dong;
- Violations against regulations on self-recycling, signing of recycling contracts, authorization contracts for recycling organization shall be fined from 1.7 billion to 2 billion Viet Nam Dong.

Secondly, increase the penalties for acts of building or installing equipment, pipes or other discharging systems to discharge untreated waste to the environment. Previously, under Decree 155, an organization's act of building or installing equipment, pipes or other discharging systems to discharge untreated waste to the environment can be subject to a fine within the range of 2 million to 300 million Viet Nam dong. Decree 45 has significantly increased the range of fine for this act, from 70 million Viet Nam Dong to a maximum of 2 billion Viet Nam Dong.

Thirdly, supplement regulations on violations related to mitigation of greenhouse gas (**GHG**) emission and protection of the ozone layer. The regulations on these two contents have been newly supplemented to the Law on Environmental Protection 2020, specifically guided by Decree 06, which took effect

on January 7, 2022. Decree 06 stipulates that establishments subject to GHG emission mitigation will be obliged to implement GHG emission mitigation methods; measure GHG emission mitigation; prepare GHG emission mitigation report, GHG inventory, GHG emission mitigation plan, etc.; and follow specific roadmaps. Correspondingly, Decree 45 provides penalties related to the preparation of GHG inventory reports and GHG emission mitigation reports, such as non-submission of reports (subject to warning), provision of incorrect and incomplete information in reports (to be fined from 10 million to 20 million Viet Nam Dong), failure to make reports (subject to a fine from 60 million to 100 million Viet Nam Dong).

Regarding ozone layer protection, Decree 45 has supplemented provisions on administrative sanctions for such violations as failing to register the use of controlled substances; failing to develop an appropriate roadmap to replace or eliminate controlled ozone-depleting substances and substances causing greenhouse effect under regulations; failing to submit or make reports on the use of controlled substances within the prescribed time limit; providing incorrect or incomplete information in the report on the use of controlled substances, etc. Depending on each specific violation, corresponding penalties are provided in Decree 45, including warning, fines and additional penalties (if any).

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 45 is considered as one of the measures to ensure that the provisions of the Law on Environmental Protection 2020, Decree 08, Decree 06 and related documents are strictly and efficiently enforced. From the new points analyzed above, Decree 45 deems to be an important document containing many heightening penalties compared to the old documents, which enhances deterrence in sanctioning. Enterprises need to update the new contents of Decree 45 to ensure the implementation and operation of their projects in accordance with the law. At the same time, they should also pay attention to the transitional provision of this Decree to understand the specific regulations on handling administrative violations occurring within the transition period from Decree 155 to Decree 45.

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