

LEGAL NEWSLETTER



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Notable activity in April, 2023

On April 18, 2023, the Supreme People's Court (SPC), together with the European Union (EU) and the United Nations Children's Fund (UNICEF) held the "**Review Workshop on the establishment and operation of Family and Juvenile Court**". The Workshop was organized in Nha Trang City with the participation of representatives from relevant agencies and ministries, typically Dr., Associate Prof. Nguyen Hoa Binh, Member of the Politburo, Secretary of the Vietnamese Party's Central Committee, Chief Justice of the SPC; representatives of the EU and UNICEF Viet Nam; representatives of the Department of Legal Affairs and Research Administration, SPC, the People's Courts of some provinces and centrally-run cities and experts in juvenile justice, etc. Aiming to strengthen the efficiency of the operation of Family and Juvenile Courts (F&JC) in Viet Nam, the Workshop obtained many practical analyses and assessments in establishing and operating F&JCs. Also, domestic and international good practices and initiatives to reform the F&JC system were recognized.

As an independent expert of UNICEF, Mr. Nguyen Hung Quang gave a brief presentation on "**Research on Formative Evaluation of Family and Juvenile Courts in Viet Nam**". In particular, the presentation focused on the evaluation results related to establishing and operating F&JCs in Viet Nam. Mr. Quang also shared with the Workshop the recommendations and roadmap for strengthening the development and operation of F&JCs.

EXTENSION OF PAYMENT DEADLINE OF VALUE-ADDED TAX, CORPORATE INCOME TAX, PERSONAL INCOME TAX, AND LAND RENT FOR 2023

THU TRANG

On April 14, 2023, the Government promulgated Decree 12/2023/ND-CP on extending the deadline for payment of value-added tax (VAT), corporate income tax (CIT), personal income tax (PIT), and land rent for 2023 (**Decree 12**) to support people, enterprises, promote production and business. Decree 12 takes effect from April 14, 2023 until the end of December 31, 2023. The following are some notable contents of this Decree:

First, the Decree regulates the subjects eligible for an extension of payment deadline for tax and land rent. According to Article 3, Decree 12, these subjects include:

(i) Enterprises, organizations, households, household businesses, and individuals engaging in manufacturing activities in economic sectors as regulated in clause 1 and clause 2, Article 3, Decree 12. Accordingly, the lists of economic sectors are defined under Decision 27/2018/QĐ-TTg dated July 6, 2018 of the Prime Minister on Vietnam Standard Industrial Classification. Some specific economic sectors mentioned in Decree 12 include:

- Agriculture, forestry, and fishery;
- Food processing and production; apparel production;
- Construction;
- Transport and storage; accommodation and food and drink; education and training; medical and social assistance; real estate trading;
- Labor and employment services; operation of travel agents, tour operators, and services assisting, relating to advertisement and organization of travel tours;
- Computer coding, consulting services, and other activities relating to computer; communication operations.

(ii) Enterprises, organizations, households, household



businesses, and individuals manufacturing supporting industry products prioritized for development; key mechanical engineering products as regulated in clause 3, Article 3, Decree 12. Accordingly, supporting industry products prioritized for development are determined in accordance with Decree 111/2015/ND-CP on development of supporting industry; and key mechanical engineering products are determined in accordance with Decision 319/QĐ-TTg dated March 15, 2018 of the Prime Minister approving the Development strategy of Viet Nam's mechanical industry to 2025, with vision to 2035. It should be noted that economic sectors, areas of enterprises, organizations, households, household businesses, and individuals as regulated in clause 1 to clause 3, Article 3, Decree 12 are those in which enterprises, organizations, households, household businesses, and individuals have production and business activities and generate revenue in 2022 or 2023.

(iii) Small and micro enterprises as regulated in clause 4, Article 3, Decree 12. Accordingly, this subject is determined in accordance with the Law on Assistance for Small and Medium Enterprises 2017 and Decree 80/2021/ND-CP elaborating some articles of the Law on Assistance for Small and Medium Enterprises.

Second, the Decree extends the payment deadline for 03 types of tax (including VAT, CIT, PIT) and land rent. The analysis below will focus on the extension of payment deadline for VAT (except for import VAT), CIT, and land rent for taxpayers who are enterprises and organizations, specifically:

(i) Extension of the deadline for VAT payment (except for import VAT). Clause 1, Article 4, Decree 12 permits to extend the payment deadline for VAT payables of the tax period ranging from March to

August of 2023 (if VAT is declared on a monthly basis) and tax period of the first quarter and the second quarter of 2023 (if VAT is declared on a quarterly basis) of eligible enterprises and organizations. Besides, the extended period shall apply with 6 months for the VAT incurred during the period from March to May 2023 and in the first Quarter of 2023; 5 months for the VAT incurred in June 2023 and the second Quarter of 2023; 4 months for the VAT incurred in July 2023; 3 months for the VAT incurred in August 2023.

It should be noted that the enterprises and organizations mentioned above are still obliged to declare and submit their tax returns monthly, quarterly in accordance with applicable laws but not yet required to pay VAT payables on the filed tax return. The deadline for payment of monthly, quarterly VAT is specified in clause 1, Article 4, Decree 12.

(ii) Extension the deadline for CIT payment. Clause 2, Article 4, Decree 12 allows eligible enterprises and organizations to extend the deadline for paying CIT of the first Quarter and second Quarter in the tax period of 2023. The extended period shall be 3 months from the payment deadline of CIT in accordance with tax administration laws.

It should be noted that in the case that an enterprise or organization conducts production and business activities in various economic sectors, including those specified in clauses from 1 to 3, Article 3, Decree 12, that enterprise or organization is entitled to the extension of payment deadline for the entire VAT and CIT payables.

(iii) Extension of the deadline for land rent payment. Clause 4, Article 4, Decree 12 extends the payment deadline for 50% of land rents payable in 2023 by eligible enterprises, organizations that are directly leasing land from the Government under competent authority's Decision or Contract in form of paying annual land rent. The extended period shall be 6 months, from May 31, 2023 to November 30, 2023.

COMMENTS AND RECOMMENDATIONS

It can be seen that the extension of payment deadline for taxes and land rents is one of the important policies to support and reduce difficulties for enterprises and organizations so that they can focus on production and business. It should be noted that the tax and land rent payment deadline extension must be carried out according to the procedures specified in Article 5 of Decree 12. Accordingly, taxpayers must determine and assume responsibility to apply for an extension in accordance with this Decree. If the application for extension of enterprises, organizations is not filed at the same time as the monthly (or quarterly) tax return, **the deadline for submitting the Application will be September 30, 2023. If taxpayers send the Application for extension to the tax authority after September 30, 2023**, they shall not be eligible for tax and land rent payment deadline as prescribed in Decree 12. Please further note that after the extended periods under Decree 12, the payment deadline of taxes and land rents shall conform to applicable laws. Therefore, enterprises, organizations that are eligible for extension of payment deadline need to study the contents of Decree 12 and be proactive in carrying out procedures to ensure their legitimate rights and interests. In case of any problems during implementation, they should contact the competent tax authority for specific instructions.

NEW REGULATIONS ON GUIDING IMPLEMENTATION OF LAW ON LAND

HOANG HAI

On April 3, 2023, Decree 10/2023/ND-CP (**Decree 10**) was issued to amend and supplement several articles of Decrees providing guidelines for implementation of the Law on Land, which will take effect from May 20, 2023. Decree 10 introduces notable amendments and supplements regarding investment projects regulated by Decree 43/2014/ND-CP, as amended and supplemented by Decree 01/2017/ND-CP (**Decree 43**), as follows:

Firstly, amending and supplementing provisions on land recovery in case of terminating investment projects as prescribed in laws on investment. Previously, in the case where the 24-month deadline for extension of land use rights has expired, and the investor fails to transfer the land use rights or sell the legal land-attached property to another investor (if the State assigns land subject to land use levies, or leases land for a lump-sum land rent) or fails to sell the legal land-attached property to another investor (if the State leases land and collects land rent on an annual basis), in accordance with Article 15b of Decree 43, regulated land recovery shall be conducted under point i, clause 1, Article 64 of the Law on Land 2013. However, currently, according to Decree 10, in the two cases mentioned above, the State will carry out land recovery without compensation for the land and legal land-attached property, except for the force majeure events specified in clause 1, Article 15 of Decree 43.

Secondly, supplementing regulations on granting ownership certificates for construction works developed to serve tourism accommodation purposes. The implementation of procedures for granting such ownership certificates under the Law on Land 2013 and Decree 43 encounters numerous difficulties due to the lack of consistency in understanding and implementation among localities. Therefore, Decree 10 has provided specific regulations on granting ownership certificates for this type of construction work. Accordingly, construction works for tourism accommodation purposes as regulated by the laws on tourism in commercial and service land (such as hotels,



tourist villas, tourist apartments, etc.) that meet the conditions prescribed by the laws on land, construction, and real estate business shall be *granted with ownership certificates for the land-attached construction works according to commercial or service purposes*. The ownership certification shall comply with the regulations on ownership certification of non-residential construction works in Article 32 of Decree 43. Land use term for these types of construction works is determined under regulations of clause 3, Article 126, and clause 1, Article 128 of the Law on Land. Besides, the owners of these construction works are legally responsible for satisfying the conditions prescribed by the laws on construction and the laws on the real estate business.

Thirdly, supplementing conditions and criteria for granting permission to change the use purpose of land for rice cultivation, protection forest or special-use forest to implement investment projects. The new regulation aims to detail the content regarding the change in the use purpose of land for rice cultivation, protection forest, and special-use forest as stated in Resolution 39/2021/QH15 of the National Assembly on National Land Use Planning for the 2021-2030 period, with a vision to 2050, and the 5-year National Land Use Plan 2021-2025. Accordingly, the criteria are specified in Decree 10 as follows:

- (i) The investment project needs to obtain approval of investment policy or certificate of investment registration according to the laws on investment.
- (ii) The change in the use purpose must comply with the district-level land use plannings, and the investment project must be subject to the list of district-level annual land use plans that are approved by law;
- (iii) There are alternative afforestation plans or written notifications on discharge of obligations to pay for alternative afforestation under the laws on forestry in case of change in the use purpose of land

for protection forest or special-use forest; there are topsoil use plans and written notifications on discharge of obligations to pay for protection and development of rice cultivation land under the laws on crop production in case of changing the use purpose of rice cultivation land.

(iv) A preliminary environmental impact assessment or environmental impact assessment is conducted under the laws on environmental protection (if any).

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 10 is to improve land-related regulations and addresses some obstacles faced by localities, people, and businesses in the implementation of the Law on Land 2013 and its guiding decrees. In addition to clearer regulations on land recovery in the cases of land assignment and lease by the State, new regulations on granting the ownership certificate for construction works developed to serve tourism accommodation purposes and conditions to change the use purpose of land for rice cultivation, protection forest, and special-use forest, Decree 10 also introduces new points on land procedures. Therefore, enterprises should update and study Decree 10 to ensure compliance with new land-related regulations.

HIGHLIGHTS OF PROPOSAL FOR AMENDED SPECIAL CONSUMPTION TAX LAW

MAI PHUONG

In order to meet the practical situation and ensure compatibility with the reform direction of special consumption tax (SCT) in other countries, the Ministry of Finance is currently developing a project of Amended SCT Law (Project). The Project is in the proposal development phase, thus the available amendment contents are just proposed policies and subjects without regulations on specific measures (for example, tax rates). However, given the significance and impact of SCT-related regulations on production and business activities, enterprises need to update information related to the Project development process in order to devise and implement suitable business plans accordingly. In this month's Legal Newsletter, NHQuang&Associates would like to introduce some notable contents of the Project that may impact business activities of enterprises so that Clients can get an overview about this document.

Extending the scope of taxable objects (supplementing taxable objects with appropriate tax rates)

The subjects to be supplemented in the scope of SCT imposition are products and services that are not beneficial to health or the environment and services that need to be restricted from using according to the guidelines of the Party and State, including:

(i) *Sugar-sweetened beverages (SSBs)*: The supplementation of SSBs to special consumption taxable objects is based on the provisions of the National Nutrition Strategy for the period of 2021-2030 with a vision to 2045 and the National Plan on prevention and control of non-communicable diseases and mental health disorders in the period of 2022-2025. In addition, the tax imposition is also consistent with WHO's recommendations to governments on taxing SSBs to guide consumption, encourage people to use healthy foods as well as taxing practice in the world in general and in the ASEAN region in particular (by 2021, at least 50 countries have imposed a tax on SSBs; among which



are 6/10 ASEAN countries).

(ii) *Barley drinks and non-alcoholic beverages*: Regarding non-alcoholic beverages, though alcohol has been separated during fermentation and natural flavors are added, this type of beverage has a similar production process and ingredients to those of beer - an item subject to SCT. Regarding barley drinks, besides the similarities in the production process and ingredients, these drinks retain both the appearance and the characteristic taste of beer. Therefore, the Ministry of Finance claims that it is necessary to include these two types of beverages in special consumption taxable objects to orient the consumption of these items.

(iii) *New tobacco products (for example, e-cigarettes, heated tobacco products, and hookahs) and new tobacco devices, parts and solutions*: According to WHO, the Ministry of Health and other health protection organizations, e-cigarettes, heated tobacco products, and hookahs all contain toxic ingredients that are as harmful to direct users and the people around them as traditional tobacco products, thus they can be recognized as forms of tobacco consumption. With such reason, WHO has recommended that countries (i) prohibit e-cigarettes or (ii) take measures to control these items by taxation as the current tax imposition on traditional tobacco products to increase product prices and reduce demand, thereby protecting public health. The above proposal is also based on the practice of imposing taxes on these items when there are more than 70 countries collecting SCT on e-cigarettes and more than 60 countries collecting tax on heated

tobacco products.

(iii) *Online video games* are considered items with great revenue and high profits compared to other types of businesses, attracting the population of all ages, especially young people. Therefore, the Ministry of Finance is currently studying to supplement the items to the objects subject to SCT to orient the consumption.

Adjustment of SCT rates for items harmful to health and items contributing to environmental protection

First, increasing SCT rate on products harmful to health (tobacco products, liquor products, beers): According to the Strategy on Tax System Reform to 2030, regarding SCT, it is necessary to "build a road map for increasing taxes on tobacco products, liquor products, beers to restrict the production and consumption thereof and to fulfill international commitments; review and adjust the special consumption tax rates on a number of items to suit socio-economic conditions in the 2021-2030 period". Accordingly, although the tax rate for these items has been recently increased according to the current roadmap, the consumption rate of tobacco products, liquor products, beers in Viet Nam is still high. It can be seen that the current roadmap to increase SCT has not yet reached the set-out target of reducing consumption, which requires further control of the use of these items. In addition, the SCT share in the retail price of tobacco products, liquor products, and beers in Viet Nam is still low compared to recommendations from WHO and the tax share reported in other countries. Currently, the SCT share of the retail price of tobacco products in Viet Nam is about 38.85%. Meanwhile, WHO recommends a minimum 75% tax share of the retail price of these products; this tax proportion in some regional countries is also relatively high, with Brunei at 81%, Thailand at 70%, and Singapore at 69%. Regarding liquor products and beers, currently the tax share in Viet Nam only accounts for about 30% of the retail price, while in many countries, the share accounts for 40-85% of the retail price.

Second, adjusting the SCT rate for some environmentally friendly products and overcoming the inadequacies arising in practice: Current SCT regulations are encouraging consumers to use automobiles powered by gasoline combined with electric energy and bio-energy (in which the proportion of gasoline used does not exceed 70% of the energy used) by applying a tax rate to this item equal to 70% of the applicable tax rate for other vehicles of the same type. In addition to automobiles powered by gasoline combined with electric energy and bioenergy, the Ministry of Finance claims that it is necessary to supplement tax incentives for vehicles using natural gas to encourage the production and use of these products.

The proposed amendments to the Amended SCT Law have received diverse opinions on the proposed items in the taxable object scope extension. For example, for SSBs, there are many opinions in favor of taxing, considering this a measure to guide consumption and reduce the rate of obesity and non-communicable diseases. However, there are also views that SCT imposition without a specific definition of SSBs can lead to the fact that many other healthy products, such as milk, special foods for children, pregnant women, may also be subject to SCT. Similarly, for new tobacco products, the legal system has not yet provided any definition of new tobacco and nicotine products. These products have not been officially circulated in Viet Nam and the management mechanism is still unclear. As a result, SCT imposition on new tobacco products may lead to the confusion that these products have been allowed to circulate in Viet Nam. Regarding online video games, the SCT is unlikely to have a consumer-oriented effect because players may not choose tax-imposed games licensed in Viet Nam and play games from other regions with cheaper fees and uncensored content instead. As mentioned above, the Project is still in the developing phase, so enterprises need to keep updating the Project's regulations to have early access to new policy changes.

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