



**Newsletter**  
**07/2020**

**HIGHLIGHTS**

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- Adjusting family circumstance-based deduction of Personal Income Tax
- Supplementing industries which benefit investment incentives

**DRAFT LAW  
COMMENTARY**

Draft Decree detailing the implementation of the Labor Code's regulations on labor management, labor contracts, wages, labor discipline, and material responsibility

## RESEARCH AND POLICY ADVOCACY ACTIVITIES



On June 20, 2020, Mr. Nguyen Hung Quang was invited to *the Business and Legal Talk Show: Lessons from internal business disputes*, which was broadcast on VTV2 (Vietnam Television). Also participating in the Talk Show were Mr. Phan Duc Hieu - Deputy Director of Central Institute for Economic Management. During this Talk Show, Mr. Quang identified the causes leading internal business disputes, and made some recommendations to minimize the dispute risks from the very first step of starting business as well as the most effective way to resolve such disputes.

In addition, Ms. Tran Thanh Huyen - NHQuang&Associates' Partner participated in the online seminar on *Introduction of the model of Social Enterprises to the creative hubs, individuals and organizations working in arts, culture and creativity sector in Viet Nam*. At this seminar, Ms. Huyen shared a comprehensive view on a number of most concerned issues on the activities of social enterprises (establishment of social enterprises, transition from regular business models to social enterprise models, rights and obligations of a social enterprise after establishment, etc.). This seminar is a part of the Culture Connects, an activity of the Creative Hubs Initiative project funded by the European Union (EU) and the British Council.



## Highlights

## Tax

### Adjusting family circumstance-based deduction of Personal Income Tax

*Khanh Quynh*

**Document:** Resolution 954/2020/UBTVQH14 on adjustment of family circumstance-based deduction of Personal Income Tax (**Resolution 954**)

**Effective date:** July 1, 2020

- **Key contents:**

*Firstly*, Resolution 954 adjusts the family circumstance-based deduction stipulated in the Law on Personal Income Tax (**PIT**) 2007<sup>1</sup> as follows<sup>2</sup>:

(i) Increase the deduction level for taxpayers from 9 million Viet Nam Dong per month (equivalent to 108 million Viet Nam Dong per year) to 11 million Viet Nam Dong per month (equivalent to 132 million Viet Nam Dong per year);

(ii) Increase the deduction level for each dependent from 3.6 million Viet Nam Dong per month to 4.4 million Viet Nam Dong per month.

*Secondly*, Resolution 954 guides the time to apply the new family circumstance-based deduction. Accordingly, the new deduction level will apply from the tax period of 2020<sup>3</sup>. In the case that taxpayers have paid provisional tax amount based upon the former deduction level for the period of January - June 2020, when conducting tax finalization in early 2021, tax authorities will recalculate the tax payable amount for such months according to the new family circumstance-based deduction and refund the overpayment tax amount to the taxpayers.

- **Comments and recommendations:**

Pursuant to the amended Law on PIT 2012, when the Consumer Price Index (**CPI**) fluctuates more than 20% compared to the time when the Law on PIT takes effect or when the latest family circumstance-based deduction applies, the Government will submit to the National Assembly Standing Committee for adjusting the deduction level in conformity with price fluctuation to apply for the next tax period<sup>4</sup>.

In fact, from July 1, 2013 (the time when the amended Law on PIT 2012 took effect) till the end of 2019, the CPI climbed up to 23.2%<sup>5</sup>. Regarding the new family circumstance-based deduction, the Ministry of Finance explains that with this calculation method, the new deduction for taxpayers (11 million Viet Nam Dong) and dependents (4.4 million Viet Nam Dong) has risen by approximately 22.2% compared to the old rates (correspondingly 9 million Viet Nam Dong for taxpayers and 3.6 million Viet Nam Dong for dependents)<sup>6</sup>. Therefore, the above-mentioned adjustment is compliant to the laws and may lay the groundwork for reducing the burdens of taxpayers in the context of climbing prices and inflation compared to 2013.

However, there are still many controversies about this deduction. Some opinions state that the new family circumstance-based deduction has been decided upon CPI results of 2013-2019 period; and the application of such deduction to the present is deemed untimely and inappropriate since it should have been applied at the time when CPI approached the threshold of 20% in early 2019<sup>7</sup>. According to another view, the current deductions are “flat rates” among regions, cities as well as rural areas etc. despite the regional disparities in income and living standard. The application of similar deduction for all subjects will result in inequality among taxpayers<sup>8</sup>.

Dealing with the new provisions of Resolution 594, enterprises should prepare necessary documents upon tax finalization to ensure the rights and benefits of their employees. Additionally, in essence, the procedures of PIT declaration do not change; consequently, it will cause no difficulty for enterprises in performing relevant administrative procedures.

# Investment

## Supplementing industries which benefit investment incentives

Gia Khanh

**Document:** Decree 37/2020/ND-CP on supplementation to the List of industries subject to investment incentives, which is attached to Decree No. 118/2015/ND-CP providing guidelines for the Law on Investment (**Decree 37**)

**Effective date:** June 12, 2020

- **Key contents:**

For ensuring compliance with Law on Support for Small and Medium-sized Enterprises 2017 (**SME Support Law**)<sup>9</sup> and completing the legal backgrounds for application of investment incentives to support small and medium-sized enterprises (**SMEs**), the Government has promulgated Decree 37, adding 4 industries subject to investment incentives, which include:

- (i) Business investment in “product distribution chain of SMEs” - a network of intermediaries held by enterprises, business and investment organizations to distribute SMEs’ products to consumers<sup>10</sup>.
- (ii) Business investment in “SME incubators” - the facility to provide necessary technical infrastructure, resources and services for organizations and individuals to accomplish their business ideas and develop the enterprises in the initial establishment<sup>11</sup>.
- (iii) Business investment in “technical facilities supporting SMEs” - the facility to provide common-use equipment for supporting SMEs in the design, testing, measurement, analysis, validation, assessment and inspection of products, goods and materials<sup>12</sup>.
- (iv) Business investment in “co-working spaces for innovative start-up SMEs” - the area to provide space for concentrated working, product display, and provide utilities to support and associate innovative start-up SMEs<sup>13</sup>.

- **Comments and recommendations:**

*Firstly*, the formulation of Decree 37 has filled up the “gap” in the time to apply incentive provisions for SMEs development support between Law on Investment 2014 and Law on Investment 2020. To be specific, the List of industries benefitting investment incentives under the later already comprises 4 lines listed above; however, it is not until January 1, 2021 that this Law will come into effect. As a result, according to the expected roadmap, at least until the first half of 2021 could the policies on investment incentives and support for projects of incubators, technical facilities, co-working spaces for innovative start-up SMEs and product distribution chains for SMEs under SME Support Law be practically applied<sup>14</sup>. In such situation, Decree 37 has generated legal bases for SMEs supporting innovative start-ups to enjoy investment incentives while Law on Investment 2020 and its guiding Decree have yet to come into effect. At the same time, the promulgation of this decree also contributes to set the seal on implementing the Government’s SMEs supportive policies under Resolution No. 19/NQ-CP, Resolution No. 02/NQ-CP on major tasks and

solutions to improve business environment and enhance national competitiveness and Resolution No. 35/NQ-CP on enterprise support and development to 2020<sup>15</sup>.

*Secondly*, particularly for the innovative start-up SMEs group, it can be seen that the support is provided through not only direct supportive mechanisms but also preferential policies for enterprises doing investment or business in the industries considered as the infrastructure and environment promoting innovative start-ups. In fact, taking the demand of innovative start-up SMEs, the quantity of technology hatchery models, innovative start-up centers or working hubs in Viet Nam is still low<sup>16</sup>. The transparency and concretization of incentive mechanisms and other investment supportive policies are expected to spur the development wave of “infrastructure” fields, creating the momentum for formation of sustainable start-up ecosystem.

From the present up to the effective date of Law on Investment 2020, enterprises, especially those intending to invest in 4 additional sectors under Decree 37, should update the criteria for identifying business lines in accordance with SME Support Law as well as the relevant conditions, forms, incentive levels and procedures under Law on Investment 2014 and other specialized guiding documents. Besides, enterprises should also pay attention to the composition of documents under Circular 83/2016/TT-BTC corresponding to each form of incentives, as well as forms issued with guiding documents for prompt and convenient implementation of administrative procedures.



## Draft Law Commentary

### **Draft Decree detailing the implementation of the Labor Code's regulations on labor management, labor contracts, wages, labor discipline, material responsibility**

*Tue Dang*

*The Labor Code 2019 shall officially come into force on January 1, 2021, replacing the Labor Code 2012. In order to furnish more detailed provisions for the Labor Code 2019, the Ministry of Labor, War Invalids and Social Affairs of Viet Nam (**MOLISA**) has planned to draft 21 guiding documents, among them includes the Draft Decree providing details for implementation of some articles of the Labor Code on labor management, labor contracts, wages, labor discipline, material responsibility (**the Decree/Draft Decree**)<sup>17</sup>. In this Legal Newsletter, NHQuang would provide our analyses for the Decree's some salient subject matters which may impact the rights and interests of employees as well as employers.*

#### **Additional regulations on remedies for handling invalid labor contracts**

Previously, pursuant to the Labor Code 2012 and Decree 44/2013/ND-CP detailing the implementation of the Labor Code regarding labor contracts, the main remedies applied for cases of partial invalid labor contracts includes amendment, supplementation of the labor contracts declared partially invalid or conclusion of a new labor contract<sup>18</sup>. The current Draft Decree has supplemented the provision on cases where the parties can agree to terminate the labor contract declared invalid and perform some other additional obligations with each other. It can be seen that this provision provides the parties with flexibility in handling invalid labor contracts meanwhile related rights and obligations are still assured under applicable laws.

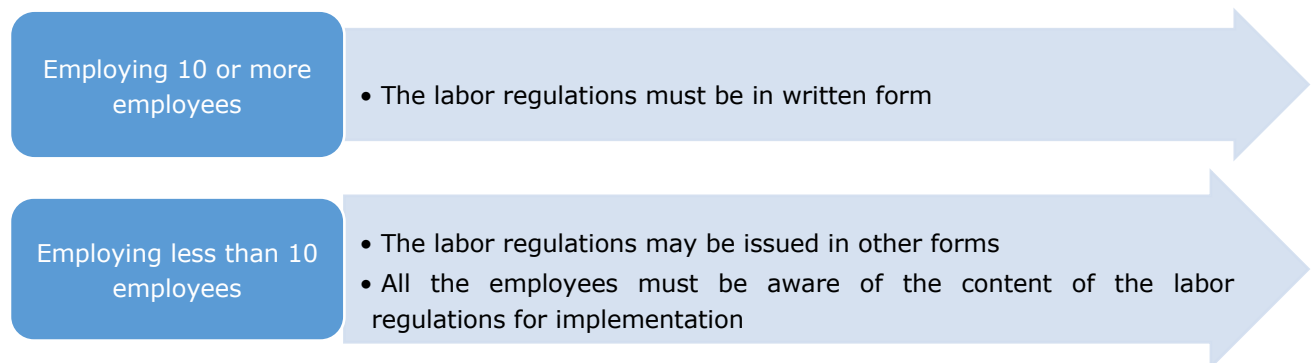
However, it appears that the Draft Decree has yet to comprehensively resolve some major shortcomings in handling invalid labor contracts. In particular, the reality over the past years indicates the situation where the employee deceives the employer by providing false information, diplomas, credentials upon recruitment, or vice versa, the employer provides the employee with false information in order for the employee to conclude the labor contract. The Labor Code 2012 has yet to address the situation of invalid contracts due to deception, threat or coercion, which causes difficulties for the contractual parties in dealing with such situations<sup>19</sup>. In the course of drafting the Labor Code 2019, albeit the Drafting Committee of this code has recognized to add the regulation on "remedies for the cases where the employee deceives or falsifies personal information to

*engage in a labor contract*"<sup>20</sup>, this content has not been reflected in the Draft Decree. It should be noted that the acts of deception, threat or coercion may originate from either of the two parties (including employees and employers), not be merely derived from the employee as noted by Drafting Committee as mentioned above.

### **Notable new contents relative to labor regulations**

Clause 1, Article 119 Labor Code 2012 reads that "An employer employing 10 or more employees must have the labor regulations in writing". Accordingly, any unit/organization employing less than 10 employees does not necessarily have to issue written labor regulations. Since it is not compulsory in issuing written labor regulations in such unit/organization, the labor discipline imposed on the employees shall merely depends on the employer's will. This may result in a possibility that the employers, at their discretion, establish exceedingly strict labor regulations and use the same as the grounds to discipline the employees in an arbitrary manner, which may violate labor laws and negatively affect the employees' rights<sup>21</sup>.

It is noticeable that the promulgation of labor regulations is the employer's right as well as mandatory obligation, which not only helps the employer form and maintain labor discipline but also ensures the employees' interests. As such, recognizing the shortcomings of Labor Code 2012 regarding the provisions on labor regulations, Labor Code 2019 requires employers to issue labor regulations ensuring several certain contents as prescribed by law. The Draft Decree recognizes this requirement of Labor Code 2019 and provides more details for the form of labor regulations<sup>22</sup>.



The foregoing provision ensures both the requirement for formulation of labor regulations and the flexibility of the labor regulation form for the employer's issuance in complying with the law. It should be noted that since promulgation of labor regulations is a mandatory obligation under Labor Code 2019, employers may have to prove their actual performance of this obligation. Therefore, although the provision reads that labor regulations may be issued in other forms other than written form (in case that the Draft Decree comes into force in future), employers should consider utilizing any form which can be filed in order to serve as evidences such as electronic data (via email, messenger, etc.) and ensure to send the labor regulations to all employees (with receipt confirmation by employees of the labor regulations).

### **Additional regulations on material responsibilities**

Firstly, with regard to the settlement of material damage compensation, the applicable labor regulations regulate that the employer has to prove the "fault" of the employee<sup>23</sup> when the employee causes any asset damage<sup>24</sup>. According to the Draft Decree, the "fault" is no longer a basis for



employers to determine the occurrence of employees' material liability but only a basis to consider and decide the compensation level against the employees<sup>25</sup>. This provision reduces employers' burden of proof on the employees' acts causing damage.

Secondly, the Draft Decree supplements a separate provision on the procedure of handling damage compensation, which is currently implemented following the procedure of labor discipline treatment under the Labor Code 2012<sup>26</sup>. According to the procedure provided by the Draft Decree, "The employee and the employer shall agree to change the time and venue of the meeting for handling damage compensation"<sup>27</sup>. This provision is more progressive and better protects the employees in comparison to the meeting procedure under the applicable Labor Code 2012 in which the meeting time and place is set by employers<sup>28</sup>.

At the moment, the Draft Decree is still being finalized and may be further amended and supplemented after receiving comments. Therefore, enterprises should pay attention to frequently monitor the drafting process of the Draft Decree for timely and accurate update of its regulations.

**Note:** The article is written based on the Draft Decree detailing the implementation of some regulations of the Labor Code on labor management, labor contracts, wages, labor discipline, material responsibility.

Link for reference: <http://duthaovanban.molisa.gov.vn/detail.aspx?tab=2&vid=731>  
(as of June 25, 2020).

All analyses and comments herein are for reference only. This article is not considered as an official legal opinion to apply in any specific case. For further particular advices, please contact us directly.

## List of newly promulgated legal documents

No.	Document	Release date	Effective date
1.	Decree 67/2020/ND-CP amending the Decree 68/2016/ND-CP regulating conditions for trading in duty-free goods, warehouses and places for customs clearance, gathering, custom inspection and supervision	15/6/2020	10/8/2020
2.	Circular 54/2020/TT-BTC regulating the rates and fees for verification of papers and documents at the request of domestic organizations and individuals, and the fee for granting the Operation licenses of sending workers to work abroad for a specific term	12/6/2020	12/6/2020
3.	Circular 58/2020/TT-BTC regulating rates, collection, remittance, management and use of fees for handling competition cases	12/6/2020	27/7/2020
4.	Circular 13/2020 / TT-BCT amending the regulations on business investment conditions under the state management of the Ministry of Industry and Trade	18/6/2020	3/8/2020
5.	Decision 863/QD-BTC dated 2020 on announcing new administrative procedures, amended and supplemented administrative procedures in the field of tax under the scope of state management functions of the Ministry of Finance	18/6/2020	10/7/2020
6.	Decree 68/2020/ND-CP amending the clause 3, Article 8 of the Decree 20/2017/ND-CP regulating tax administration of enterprises having associated transactions	24/6/2020	24/6/2020

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<sup>1</sup> The content specified in clause 1, Article 19, Law on PIT 2007 and amended by clause 4, Article 1, amended Law on PIT 2012

<sup>2</sup> Resolution 954, Article 1

<sup>3</sup> Resolution 954, Article 2

<sup>4</sup> Amended Law on PIT 2012, Article 1, clause 4

<sup>5</sup> *The Government's regular meeting - February 2020*, E-Portal of the Government, March 3, 2020. See further at:

<http://vpcp.chinhphu.vn/Home/Noi-dung-hop-bao-Chinh-phu-thuong-ky-thang-22020/20203/27270.vgp>

<sup>6</sup> Quang Thang, *How do the increase family circumstance-based deduction affect the Personal Income Tax?*, Financial Times, March 2, 2020. See further at: <http://tapchitaichinh.vn/su-kien-noi-bat/nang-giam-tru-gia-canh-anh-huong-the-nao-toi-thue-thu-nhap-319533.html>

<sup>7</sup> Thach Binh, *Disagree with the family circumstance-based deduction*, Financial Times, March 9, 2020. See further at: <https://thoibaonganhang.vn/chua-dong-thuan-voi-muc-giam-tru-gia-canh-98782.html>

<sup>8</sup> Xuan Hai, *Increase the family circumstance-based deduction: Why still 11 million Viet Nam Dong?*, Banking Times, April 23, 2020. See further at:

<https://thoibaonganhang.vn/nang-muc-giam-tru-gia-canh-sao-van-la-11-trieu-100917.html>

<sup>9</sup> SME Support Law, Article 33, clause 1, point a

<sup>10</sup> SME Support Law, Article 3, clause 4

<sup>11</sup> SME Support Law, Article 3, clause 6

<sup>12</sup> SME Support Law, Article 3, clause 5

<sup>13</sup> SME Support Law, Article 3, clause 8

<sup>14</sup> Statement on Decree on amendments, supplements to some articles of Decree No. 118/2015/ND-CP providing guidelines for some articles of the Law on Investment, page 2

<sup>15</sup> Thuy Quyen, *Amending Decree No. 118/2015/ND-CP to supplement industries benefitting from investment incentives*, Ministry of Planning and Investment Portal, July 29, 2019.

See more at: <http://www.mpi.gov.vn/Pages/tinbai.aspx?idTin=43738&idcm=188>

<sup>16</sup> *Promoting support for innovative start-ups*, National Agency for Science and Technology Information, June 5, 2020. See more at: <http://www.vista.gov.vn/news/khoi-nghiep-doi-moi-sang-tao/day-manh-ho-tro-khoi-nghiep-sang-tao-2539.html>

Khoi Nguyen, *Shared offices in Viet Nam: Hot but not crowded*, Forbes Vietnam Magazine, November 17, 2018. See more at: <https://forbesvietnam.com.vn/kinh-doanh/van-phong-lam-viec-chung-tai-viet-nam-nong-nhung-chua-chat-4786.html>

<sup>17</sup> Decision No. 24/QD-TTg on the List and assigned authorities in charge of drafting documents guiding Laws, Codes and Resolutions approved by the 14<sup>th</sup> National Assembly at the 8<sup>th</sup> session of the Prime Minister issued on January 6, 2020

<sup>18</sup> Articles 10 to 12 of the Decree 44/2013/ND-CP detailing the implementation of the Labor Code's provisions on labor contracts do **not** stipulate the cases where the parties agree to terminate the labor contracts declared invalid.

<sup>19</sup> Nguyen Thi Bich, *Complete the provisions on labor contract in Labor Code 2012*, People's Court e-Journal, June 30, 2018. See more at:

<https://www.tapchitoaan.vn/bai-viet/phap-luat/hoan-thien-quy-dinh-ve-hop-dong-lao-dong-trong-bo-luat-lao-dong-2012>

<sup>20</sup> Report No. 94/BC-LDTBXH on consolidating, receiving and explaining comments on the Labor Code project (amended) - Annex: Comments of ministries, agencies, localities and people regarding the draft Labor Code (amended), section No. 31

<sup>21</sup> Hoang Thi Thanh Hoa & Le Dang Dao, *Labor regulations – legal and practical issues*, Civil law information, March 23, 2018. See more at: <https://thongtinphapluatdansu.edu.vn/2018/03/23/loi-quy-lao-dong-mot-so-van-de-phap-ly-va-thuc-tien/>

<sup>22</sup> Draft Decree, Article 15, clause 1

<sup>23</sup> Draft Decree, Article 17

<sup>24</sup> Incorporated Document No. 4753/VBHN-BLDTBXH in 2018 incorporating the Decrees guiding the Labor Code, Article 30, Article 32, clause 5

<sup>25</sup> Labor Code 2019, Article 130, clause 1

<sup>26</sup> Incorporated Document No. 4753/VBHN-BLDTBXH in 2018 incorporating the Decrees guiding the Labor Code, Article 30, Article 32, clause 5

<sup>27</sup> Draft Decree, Article 16, clause 2, point b; Article 17, clause 2, point b

<sup>28</sup> Incorporated Document No. 4753/VBHN-BLDTBXH in 2018 incorporating the Decrees guiding the Labor Code, Article 30