

LEGAL NEWSLETTER

NHQuang&Associates



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Notable activity in June 2021

To implement the online training of business law, the Management Board of the Interdisciplinary legal assistance program for enterprises under the Ministry of Justice has developed electronic lectures. The program is implemented to improve the management and administration capacity of enterprises and avoid legal risks in business. The deployed electronic lectures have long-term value, and their contents are common issues among the Vietnamese business community, which are easily accessible, flexible.

With the above goal, the associates of NHQuang&Associates participated in the development of electronic lectures on legal issues of enterprises. The content of the lectures focuses on issues that enterprises care about in the process of operation, such as tax, labor, investment, dispute resolution.

The lecture of Lawyer Tran Thi Thanh Huyen in the series is "Some legal issues in the stage of investment implementation and termination of investment projects".

Watch the lecture at: <https://www.youtube.com/watch?v=CHAXkaBWtR0>

Other lectures of NHQuang's associates: shorturl.at/rtAG4

SOME IMPACTS OF CIRCULAR NO. 03/2021/TT- NHNN ON ENTERPRISES

THU TRANG

On April 2, 2021, the State Bank of Viet Nam promulgated Circular No. 03/2021/TT-NHNN on amendment and supplement to some articles of Circular No. 01/2020/TT-NHNN providing instructions for credit institutions and branches of foreign banks on debt rescheduling, exemption or reduction of interest and fees, retention of debt category to assist borrowers affected by the Covid-19 pandemic (**Circular 03**). This Circular has received much attention from credit institutions and business community because the previous provisions of Circular No. 01/2020/TT-NHNN (**Circular 01**) have yet to actually address the difficulties for both credit institutions and enterprises under the impacts of the Covid-19 pandemic. Some new provisions of Circular 03 are as follows:

Firstly, amendment to conditions of debt rescheduling. Previously, Circular 01 stipulates that debts can be rescheduled for repayment when 3 conditions are fully satisfied: (i) The debt arises from financial lending or lease; (ii) The principal and/or interest arises during the period from January 23, 2020 to the next day after 3 months from the date when the Prime Minister declares the end of the Covid-19 pandemic and (iii) The borrower is unable to repay the principal and/or interest on schedule under the loan/finance lease agreement due to decrease in revenue or income caused by Covid-19 pandemic. However, in fact, condition (ii) made it difficult for credit institutions to determine eligible debts for rescheduling, as well as to track and recognize them in accounting when the milestone date may not coincide with the accounting period of banks. Therefore, Circular 03 has amended the above conditions and one of the conditions for debts to be rescheduled for repayment is "The principal and/or interest incurs during the period **from January 23, 2020 to December 31, 2021**".

Secondly, supplement of regulations on allocation of provision for bad debts gradually in 03 years. According to Circular 01, for outstanding debts with

rescheduled repayment term, credit institutions must classify these debts and make provision for risks according to the rescheduled term in accordance with regulations of laws rather than apply the principle of allocating them to the group of debts with higher risk. Therefore, at the end of the rescheduling period, credit institutions will have to use a large amount of money to make provision for risks and their profits will be significantly reduced. Since the end of 2020, many commercial banks have stopped expanding their debt list with rescheduled payment term due to concerns about the above provisions of Circular 01. Specifically, according to the State Bank of Viet Nam, by mid-November 2020, credit institutions rescheduled the repayment term for more than VND 341,800 billion of outstanding debts, not much higher than the figure of VND 321,000 billion reported in mid-September 2020. Circular 03 has solved the above difficulty for credit institutions, by adding regulations on allocation of provision for bad debts gradually in 3 years, specifically: (i) As of December 31, 2021: At least 30% of the specific provision amount must be additionally made; (ii) As of December 31, 2022: At least 60% of the specific provision amount must be additionally made; (iii) As of December 31, 2023: 100% of the specific provision amount must be additionally made.

Thirdly, extension of time limit for exemption and reduction of interest and fees. According to internal rules and regulations of credit institutions, they can decide the exemption and reduction of interest and fees for the outstanding debts arising before June 10, 2020 from credit grant activities (except purchase and investment of corporate bonds) for which the obligation to repay the principal and/or interest is due within the period from January 23, 2020 to December 31, 2021 and the borrowers are not able to repay the principal and/or interest by the deadline specified in the original agreement due to decrease in revenue or income caused by the Covid-19 pandemic. Previously, Circular 01 stipulates that credit institutions are entitled to decide the exemption and reduction of interest and fees on debts arising during the period from January 23, 2020 to the next day after 3 months from the date when the Prime Minister declares the end of the Covid-19 pandemic.

Some comments and recommendations

Firstly, the amendment to conditions of debt rescheduling helps enterprises and credit institutions easily identify debts eligible for rescheduling. At the same time, it helps the companies with borrowed capital reduce the pressure on financial costs. According to experts, difficulties for tourism and accommodation service will last longer than those of other industries. Even if the State Bank of Viet Nam allows rescheduled repayment term to be extended by 12 months, tourism and accommodation enterprises have not yet been able to repay their debts. According to a representative of the State Bank of Viet Nam, based on the actual situation, after the expiry of Circular 03, if enterprises still face difficulties, the State Bank of Viet Nam may continue to adjust the regulations on the rescheduled repayment term.

Secondly, the supplement of regulations on allocation of provision for bad debts has reduced the pressure on provision expenses for credit institutions, especially in 2021, when the provisioning rate for bad debts is only at least 30% of the specific provision amount to be additionally disbursed. In fact,

only in the first quarter of 2021, commercial banks' profit growth reached double digits, even doubled, or tripled the rate of the same period last year. In which, the reduction in provisioning expenses contributed significantly to the profit growth. This will encourage credit institutions to use their retained earnings to enhance capital adequacy and promote lending to enterprises for production and business.

Finally, the extension of time limit for exemption and reduction of interest and fees helps enterprises reduce some of the pressure on financial costs in the current difficult situation.

It can be seen that with the above 3 remarkable amendments, Circular 03 has promptly supported both credit institutions and businesses, accordingly, credit institutions can reduce the pressure of provisioning and enterprises can reduce financial costs, thereby, it will be more favorable for them in the recovery of production and business. Enterprises interested in this issue should keep updated on Circular 03's provisions and announcements of the State Bank of Viet Nam as well as of relevant credit institutions to develop appropriate financial plans.



GUIDANCE ON TAX DECLARATION AND PAYMENT FOR INDIVIDUALS HAVING INCOME FROM DIGITAL INFORMATION CONTENT PRODUCTS AND SERVICES

HUYEN THU

On June 1, 2021, the Ministry of Finance issued Circular 40/2021/TT-BTC guiding value added tax, personal income tax and tax administration of household businesses and individual businesses (**Circular 40**). Compared to Circular 92/2015/TT-BTC, Circular 40 has some changes in subject classification, tax calculation methods, determination of relevant organizations' responsibilities, etc. Especially, Circular 40 has expanded the applicable subjects, typically individuals having income from digital information content products and services; individuals doing business at border markets and border-gate markets; organizations and individuals declaring and paying tax on behalf of other individuals, etc. However, this article will only focus on individuals having income from digital information content products and services.

In practice, individuals having income from digital information content products and services are commonly YouTubers, TikTokers, individuals providing advertising services on digital platforms such as Google, Facebook or programmers having income from application sales, etc. In essence, tax declaration and payment of these subjects is being performed in accordance with regulations of Circular 92/2015/TT-BTC. However, with the strong development of the business of digital information content products and services, Circular 40 has recognized and provided specific guidelines for these subjects (hereinafter referred to as "**individual businesses**"), details are as follows:



Firstly, regarding tax calculation rule: Individual businesses must pay value added tax (VAT) and personal income tax (PIT) if the turnover from business activities within a calendar year is over 100 million Viet Nam Dong.

Secondly, regarding tax calculation basis: Individual businesses will calculate taxes according to the taxable turnover, tax rate and tax calculation formula as follows:

- Taxable turnover is the tax-inclusive turnover (in taxable case) from all sale of goods, processing fees, commissions, and service provision payments during the tax period from production and sales of goods and services, including bonuses, sale supports, promotions, commercial discounts, payment discounts, cash or non-cash supports; price subsidies, surcharges, extras, and additional fees entitled under regulations; compensations for contract breaches and other compensations (only included in the taxable turnover subject to PIT); other turnovers earned by individual businesses regardless of whether they have been collected or not.
- Individuals must pay tax at the rate of 5% VAT/taxable turnover and 2% PIT/taxable turnover.
- Tax payable amount is determined according to the following formula:

- VAT payable amount = Taxable turnover subject to VAT x VAT rate

- PIT payable amount = Taxable turnover subject to PIT x PIT rate

Thirdly, regarding tax calculation methods: According to Circular 40, individual businesses can choose either the method of unscheduled declaration (upon incurrance of tax) on actual turnover arisen or the method of monthly or quarterly declaration (periodic declaration). The contents of periodic declaration method are specified in Article 5 and Article 11 of Circular 40. However, this method requires

taxpayers to comply with the accounting regime and have sufficient invoices and documents – one of the requirements which is difficult for some small individual businesses to follow. Thus, in fact, unscheduled declaration method is used more commonly due to its flexibility, ease of application, and conformity with business characteristics of many taxpayers. The followings are some notable contents when individual businesses apply unscheduled declaration method:

- Taxpayers applying the unscheduled declaration method to declare tax whenever their taxable turnover is earned. Although the accounting regime is not compulsory to follow, taxpayers still have to file invoices, documents, contracts, records proving the legality of their goods and services and enclose them with the unscheduled tax declaration records.
- Tax declaration records include:
 - Tax return for household businesses and individual businesses according to form No. 01/CNKD enclosed with Circular 40;
 - Documents attached to the unscheduled tax declaration records include: Copy of the economic contract for provision of goods/services; copy of the acceptance, contract liquidation minutes; relevant documents to prove if the goods are self-produced; etc.
- Agency receiving tax declaration records: Tax sub-department of the area where an individual resides (permanently or temporarily).
- Deadline for submitting tax declaration records: no later than **the 10th day from the date incurring tax obligation, instead of the 30th day of the quarter following the quarter with arising taxable turnover under Circular 92/2015/TT-BTC.**
- Deadline for paying tax: no later than the last day of the time limit for tax declaration record submission.

COMMENTS AND RECOMMENDATIONS

In early 2019, NHQuang&Associates organized a workshop on Guidance for PIT payment for individual businesses having income from

abroad – a social activity to support individual businesses to declare and pay taxes in accordance with the law. With the new provisions of Circular 40, it can be seen that there are not many changes in tax declaration and payment instructions for individuals having income from digital information content products and services. The biggest change is the deadline for submitting unscheduled tax declaration records – the 10th day from the date incurring tax obligation, instead of the 30th day of the quarter following the quarter with arising taxable turnover under Circular 92/2015/TT-BTC. Besides, the frequency of tax payment can be increased to 12 times per year (monthly) instead of 4 times per year (quarterly) in the case where individuals have regular monthly income from trading digital information content products and services.

It should be further noted that individuals contracting with a partner company in Viet Nam of an overseas digital platform provider shall not declare tax themselves, instead, it will be declared and paid by such organization. This is also a new point of Circular 40 when expanding the subjects that are responsible for declaring and paying tax on behalf of individuals. Accordingly, the organization that owns an e-commerce platform must also perform the above obligation, but this regulation seems inappropriate in practice. Specifically, representatives of some e-commerce platforms reveal that e-commerce platforms are not income payers, and only provide technology infrastructure to connect sellers and buyers. In addition, e-commerce platforms do not have any database to control the income of individuals, etc. From the above shortcomings, in the General Department of Taxation's webinar on June 15, 2020, several e-commerce platform representatives recommended the competent authority to revise the roadmap for applying this new regulation so that these organizations can prepare for data collection and reporting as required by tax authority.

Circular 40 will take effect from August 1, 2021. Therefore, individual businesses having income should notice the above regulations to declare and pay tax correctly and fully, preventing related legal risks. To facilitate tax declaration and payment, especially when the frequency of tax declaration and payment increases significantly, individual businesses can declare and pay taxes online via the National Public Service Portal and the General Department of Taxation's Portal.

NEW REGULATIONS IN THE DRAFT DECREE PROVIDING DETAILS FOR SOME ARTICLES OF THE LAW ON ENVIRONMENTAL PROTECTION

NGOC HA



In order to concretize some provisions of the Law on Environmental Protection 2020 (**LEP 2020**) approved by the National Assembly on November 17, 2020, the Government is drafting a Draft Decree providing details for some articles of this law (**Draft Decree**). So far, the collection of comments from concerned experts and agencies to complete the contents of these regulations has finished. In this Legal Newsletter, NHQuang&Associates will analyze some regulations that affect businesses based on the spirit of the LEP 2020.

Regulations on procedures for environmental impact assessment (EIA)

EIA procedures are always one of the concerns of many businesses. The Draft Decree focuses on the regulations on consultation procedures during EIA, especially the addition of new forms of consultation to make the process transparent and accessible to specific consultees. Accordingly, investors must conduct consultations through 3 forms (i) posting information about the project and EIA report on the website of the standing agency appraising EIA reports for at least 30 days before submitting to competent authorities for appraisal of the project's EIA report; (ii) presiding and coordinating with the communal People's Committee of the locality where the project is implemented to hold a meeting to collect opinions from the

residential community directly affected by implementation after posting project information and EIA report on the website; (iii) collecting opinions in writing from agencies and organizations directly related to the investment project such as the communal People's Committee, the management agency of the concentrated production, business and service zones where the project is located, etc. Investors are responsible for receiving the results of the consultation through the 3 methods mentioned above and taking them as a basis to come up with solutions to minimize the project's impacts and complete the EIA report before submitting to competent authorities for appraisal. The investors must be responsible to the law for the contents and results of the consultation in the EIA report.

The Draft Decree's focus on consultation procedures in EIA is considered as one of the important regulations, helping project investors absorb opinions from specific subjects directly affected by the environmental impacts of the project as well as relevant state management agencies. This makes EIA process consistent with the reality, measures environmental risks, and at the same time helps investors come up with measures to minimize environmental incidents during project implementation. This regulation also helps to strengthen the possibility to implement EIA and investors' responsibility in environmental protection.

Regulations on procedures for environmental license (EL)

With the procedure for EL issuance for the first time, depending on the type of projects, the investors will have to prepare the dossier and send to relevant licensing authority to apply for the license. The licensing authority will consider and handle the application for EL within 10 days after the results of actual inspection or the results of investment project appraisal are available. For investment projects with multiple phases or multiple works and work items, the EL may

also be issued by phase, by work or by work item that generates wastes, and the subsequently issued EL will integrate the contents of the previous one which is still valid. This regulation helps investors carry out EL procedures by phase in accordance with the set schedule of the investment project while still being able to control environmental issues of the project. The time limit for handling the procedures for replacement, adjustment, and re-issuance of EL is also regulated in the Draft Decree in the same direction as the time limit for the first issuance or from 7 to 10 days, depending on the relevant licensing authority.

The uniform regulation of using a single type of EL as prescribed in the LEP 2020 is an important advance in the process of strengthening the management of environmental related projects and saving costs for enterprises in investment, project implementation. However, the time limit for first issuance or adjustment of the EL specified in the Draft Decree may be prolonged because the Draft Decree has not specified the time limit for appraisal or actual inspection of investment projects after the licensing authority receives the EL application from investors. The systematization and simplification of these procedures will be a big challenge for environmental authorities in licensing and managing projects.

Regulations on liability insurance against environmental damage

The subjects that must buy liability insurance for environmental damage compensation stipulated in Article 154 of the Draft Decree are quite similar to those in Article 31 Decree 19/2015/ND-CP as amended by Decree 40/2019/ND-CP, including: (i) Petroleum activities including prospecting, exploration, field development and oil and gas exploitation; (ii) Use of dedicated vessels with over 1,000 GT capacity to transport petroleum, petroleum products and other dangerous goods when operating in seaport waters and Viet Nam's waters; (iii) Production, business of chemicals, petroleum; (iv) Production of

basic chemicals with the capacity of 10,000 tons of products/year or more; (v) Production of chemical fertilizers (except for mixing) with the capacity of 200,000 tons of products/year or more; (vi) Production of pesticides with the capacity of 10,000 tons of products/year or more; (vii) Manufacture of batteries with the capacity of 300,000 KWh/year or more or 600 tons of products/year or more; (viii) Refining and manufacture of petrochemical with 10,000,000 tons of products/year or more; (ix) Transport and treatment of hazardous wastes. However, the Draft Decree has not yet specified the minimum value of compensation liability in insurance contracts that the above subjects must engage. This may lead to the situation that organizations and individuals buy liability insurance for environmental damage at the lowest premium just to maintain insurance contracts in accordance with the provisions of law, but the insurance coverage may not be commensurate with the possible damage to the environment caused by their investment projects. At the same time, the Draft Decree has removed the contents related to setting up a reserve fund for environmental risks and damage compensation specified in previous legal documents. This may lessen the significance of compulsory insurance for projects with high environmental risks and prolong the process of resolving consequences when environmental incidents occur.

It can be seen that the Draft Decree is being developed in the direction of synthesizing and unifying environmental regulations in a single specific document, instead of scattering regulations in many various Decrees as before (e.g. the regulations on EIA are specified in Decree 18/2015/ND-CP, while the regulations on determining damage to the environment are provided for in Decree 03/2015/ND-CP, etc. in addition to the general decrees guiding some articles of the LEP 2014). This will help the environmental provisions be unified and reduce overlaps among different documents. At the same time, the Drafting Committee is also making efforts to develop and complete the Draft Decree in accordance with the spirit of the LEP 2020 to intensify environmental responsibility of the investors during project implementation as well as to strengthen the state management role of environmental authorities.

Enterprises should continue updating the drafting process of this Draft Decree to ensure that the implementation and operation of their projects comply with the law. In particular, it is necessary to pay attention to the grandfather clauses of the Draft Decree if projects are in the process of preparing and finalizing documents to carry out environmental related procedures in accordance with former regulations. This Decree is expected to be approved by the Government in September 2021. NHQuang&Associates will continue updating and analyzing the environmental regulations so that businesses can apply these regulations effectively.

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