

LEGAL NEWSLETTER



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Notable Activities in June, 2024

Soul of Law is a specialized competition for students with updated topics in Economics and Law, organized annually by the Law Consultant Club (LCC) of the Ho Chi Minh Communist Youth Union, Foreign Trade University. This is an inspiring contest, which is considered a place for knowledge sharing and learning, as well as to further motivate career development for students who are enthusiastic about the law in Ha Noi and across the country. NHQuang&Associates accompanies the contest as a Professional Sponsor and a Judge in the 2nd and Final Rounds.

Ms. Tran Thi Thanh Huyen, a Partner of NHQuang&Associates, is one of the Judges for the Final Round held on June 22, 2024. She had an excellent impression of the competing teams, especially the champion team, as well as appreciated all contestants' remarkable preparation and confidence. According to Ms. Huyen, the contest had been a great success and created a useful and memorable event for law students.

SOME NEW REGULATIONS ON NON-CASH PAYMENT

PHUONG UYEN

On May 15, 2024, the Government issued Decree 52/2024/ND-CP regulating non-cash payment (**Decree 52**), replacing Decree 101/2012/ND-CP, which was amended and supplemented by Decree 80/2016/ND-CP and Article 3, Decree 16/2019/ND-CP. Decree 52 takes effect from July 1, 2024, with several notable contents as follows:

Firstly, supplementing regulations on electronic money. For the first time, the concept of “electronic money” is recognized in an official legal document in Viet Nam. Decree 52 stipulates: “*Electronic money means the value of Viet Nam Dong stored in electronic means provided based on the corresponding amount prepaid by customers to banks, foreign bank branches, or intermediary payment service providers of electronic wallet service.*” Electronic money is stored in two means: electronic wallets and prepaid cards. Electronic wallets and prepaid cards are issued and provided by banks, and foreign bank branches. Meanwhile, for electronic wallet services offered by intermediary payment (IP) service providers, only electronic wallets linked with customers’ payment accounts or debit cards are accepted for the use of services. In short, the provision, issuance, and use of electronic wallets and prepaid cards must comply with the regulations of the State Bank of Viet Nam.

Secondly, amending and supplementing cases for account freezing. Accordingly, payment accounts shall have their balances partly or wholly frozen under the following circumstances:

- (i) As per the prior agreement between the payment account holder and the payment service provider or upon the account holder’s request;
- (ii) When there is a decision or written request from a competent authority in accordance with the law;
- (iii) When the payment service provider detects any error or mistake in crediting the customer’s payment account or carries out a refund order of the money transfer service provider due to errors or mistakes compared to the payment order of the transferring party after the amount has been credited to the customer’s payment account. The amount frozen in the payment account must not exceed the erroneous or



mistaken amount;

- (iv) When one of the joint payment account holders requests for freezing the account except for cases with a prior written agreement between the payment service provider and the joint payment account holders.

Thirdly, amending and supplementing conditions for IP service provision. Accordingly, to be licensed by the State Bank of Viet Nam to provide IP services, an organization other than commercial banks or foreign bank branches must fully meet and maintain the following new conditions during the provision of IP services:

- (i) Charter capital: The actual or allocated charter capital must be at least 50 billion Viet Nam Dong for electronic wallet services, collection and payment support services, and electronic payment gateway services; 300 billion Viet Nam Dong for financial switching services, international financial switching services, and electronic clearing services. The organization must bear full responsibility for the legality of the contributed or allocated capital sources.
- (ii) Personnel: The legal representative and General Director/Director of the organization must hold at least a university degree concerning economics, business administration, law, or information technology, and at least five years of experience as the manager or operator of an organization in financial and banking area and must not be among the banned subjects as prescribed by the law. At least one legal representative of the organization must reside in Viet Nam. The Deputy General Director/Deputy Director and the key personnel involved in the implementation of the IP service provision plan (including department heads or equivalents and technical staff) must hold at least an associate degree concerning economics, business administration, law, information technology, or specialized field related to their responsibilities.
- (iii) Technical requirements: The organization must

have a presentation of technical measures to serve IP service provision requested to be licensed, which is approved by the competent authorities according to the Charter of the approving organization with supplemented satisfaction of the requirements for assurance of information system safety at grade 3 as prescribed by the law.

(iv) The organization must also meet specific conditions for particular services, such as electronic wallet services and collection/payment support services for customers with accounts at various foreign bank branches (Article 22, clause 2, point e); financial switching services and electronic clearing services (Article 22, clause 2, point g); international financial switching services (Article 22, clause 2, point h).

COMMENTS AND RECOMMENDATIONS

It can be seen that Decree 52 has legislated the concept and legal nature of electronic money, creating a legal basis to distinguish it from digital currencies, virtual money, or other illegal payment instruments issued by unauthorized organizations. This establishes a legal foundation to manage and develop the electronic money market, ensuring safety and transparency in electronic transactions. The regulations on account freezing cases help minimize disputes, complaints, or misuse of account freezing that could affect customers' legitimate rights and interests. Particularly, allowing joint account holders to request account freezing is seen as practical, ensuring the fulfillment of civil obligations in business cooperation transactions, which are common in the market. Regarding the conditions for operating IP services, Decree 52 imposes stricter requirements on charter capital, personnel, and technical standards for IP service providers. This aims to enhance service quality, ensure information security, and strictly manage related activities, thus fostering a healthy and transparent competitive environment in the IP sector.

Related individuals and organizations need to proactively grasp new regulations and update the guidelines issued by the State Bank of Viet Nam in the upcoming period to ensure their legal interests. Additionally, payment and IP service providers should review and adjust their operations to meet the new licensing requirements under Decree 52 and pay attention to the transitional provisions in Article 36 of Decree 52 for compliance.

SOME HIGHLIGHTS OF THE DECREE ON TAX PAYMENT DEADLINE EXTENSION

TUE DANG

On June 17, 2024, the Government issued Decree 64/2024/ND-CP regulating the extension of the deadline for paying value-added tax, corporate income tax, personal income tax, and land rent in 2024 (**Decree 64**). Decree 64 includes some typical contents for several individuals and businesses engaged in production and business activities in Vietnam as follows:

Firstly, Decree 64 stipulates many types of taxpayers whose tax payment deadlines are extended:

1. Enterprises, organizations, households, business households, and individuals engaged in *production activities* in agriculture, forestry, and fisheries; food production and processing; costumes weaving and production; production of paper, rubber and plastics, metals, mechanical processing, electronics, computers, and optical products; production of automobiles and other motor vehicles; production of beds, cabinets, tables, chairs; construction; publishing; cinematographic activities, television program production, recording, and music publishing; crude oil and natural gas exploitation; beverage production; record printing and reproduction; production of coke, refined petroleum products, chemicals, etc. (See further in Article 3, clause 1)
2. Enterprises, organizations, households, business households, and individuals engaged in the *business* of transportation and warehousing; accommodation and food services; education and training; health and social assistance activities; real estate business activities; labor and employment services; tourism; creative composition, art, and entertainment; libraries, archives, museums, and other cultural activities; sport; broadcasting; television; coding; information services and mining support, etc. (See further in Article 3, clause 2)
3. Enterprises, organizations, households, business households, and individuals engaged in the *production* of **(i)** prioritized supporting industrial products, **(ii)** key mechanical products; small- and



micro-sized enterprises (See further in Article 3, clause 3, clause 4)

Secondly, Decree 64 stipulates the tax payment extension deadlines for each tax type as follows:

1. For value-added tax (except value-added tax at the import phase): Extend the tax payment deadline for the payable value-added tax of **(i)** tax period from May to September 2024 (in case of monthly declaring value-added tax) and **(ii)** tax period of the second and third quarter of 2024 (in case of quarterly declaring value added tax). Below are the specific extension periods:
 - 5 months for value-added tax amounts of May and June 2024 and the second quarter of 2024;
 - 4 months for value-added tax amounts of July 2024;
 - 3 months for value-added tax amounts of August 2024;
 - 2 months for value-added tax amounts of September 2024 and the third quarter of 2024.
2. For corporate income tax: Extend the tax payment deadline by 3 months for the temporarily paid corporate income tax amount of the second quarter of the corporate income tax period in 2024. If businesses and organizations have branches or affiliated units that declare corporate income tax separately to their direct managing tax authority, those branches and units are also eligible for corporate income tax payment extension.
3. For value-added tax and personal income tax of business households and individual businesses: Extend the deadline for paying value-added tax and personal income tax for the payable tax amounts arising in 2024 no later than December 30, 2024.
4. For land rent: Extend the land rent payment deadline by 2 months from October 31, 2024 for 50% of the land rent payable arising in 2024

(the payable amount in the second period of 2024) of businesses, organizations, households, and individuals that are directly renting land from the State according to a Decision or Contract of a competent state agency with annual land rental payment method.

Thirdly, taxpayers eligible for tax payment deadline extension need to send a request for an extension of tax and land rent payment (Request for extension) to the tax authority according to the form in the Appendix of Decree 64. If a taxpayer has amounts eligible for extension in several areas managed by different tax authorities, the tax authority directly managing the taxpayer is responsible for forwarding the Request for extension to other relevant tax authorities.

COMMENTS AND RECOMMENDATIONS

Decree 64 has provided several detailed regulations on (i) taxpayers whose tax payment deadlines are extended, (ii) tax payment extension deadlines for each type of tax, and (iii) procedures to apply for tax payment extension to facilitate businesses and individuals for reference and implementation. However, businesses and individuals should further study other relevant legal documents, such as Decision 27/2018/QĐ-TTg on promulgating Vietnam's economic sector system, Decree 111/2015/NĐ-CP on development of supporting industries; Law on support for small and medium-sized enterprises 2017, to know how to determine the regulated subjects and apply Decree 64 accordingly.

SOME NEW POINTS OF THE DRAFT LAW ON CORPORATE INCOME TAX (AMENDED)

THANH MAI

The Law on Corporate Income Tax (CIT) 2008 was approved by the 12th National Assembly at the third session on June 3, 2008 and took effect from January 1, 2009. So far, this law has been amended and supplemented 03 times by the Law on CIT amended and supplemented in 2013; the Law on amending and supplementing the Law on Taxation 2014, and the Law on Investment 2020. After more than 15 years of implementation, the Law on CIT has come to life and significantly impacted various aspects of society. However, certain provisions of the applicable Law on CIT have shown inadequacies and are no longer suitable for the current economic context. Consequently, the Ministry of Finance has developed a project dossier of the Law on CIT (amended) (the **Draft Law**) to submit to the Government with the goal of institutionalizing guidelines and policies on reforming the CIT policy system, meeting practical and new development requirements of the economy, and ensuring the synchronization of the legal system. The following are some notable new points of the Draft Law:

Supplementing regulations on global anti-base erosion rules

To ensure consistency with Resolution 107/2023/QH15 regarding the application of additional CIT in accordance with global anti-base erosion rules, the Draft Law sets forth the provisions on the collection of additional CIT in alignment with global anti-base erosion rules (Article 1 of the Draft Law), with notable contents as follows:

(i) Supplementing the group of taxpayers (Article 2 of the Draft Law) to include constituent units of multinational corporations with revenue equivalent to 750 million euros (EUR) or more in the consolidated financial statements of the ultimate parent company for at least 2 out of the 4 years immediately preceding the fiscal year, which are required to pay additional CIT in accordance with Chapter IV of the Draft Law, except for certain cases such as government organizations, international organizations, non-profit organizations, etc.



(ii) Supplementing Chapter IV on additional CIT in accordance with global anti-base erosion rules. This includes several key contents such as the interpretation of specific terms (e.g., corporations, multinational corporations, consolidated financial statements, etc.), regulations on qualified domestic minimum top-up tax (QDMTT), income inclusion rule (IIR), undertaxed payments rule (UTPR), and subject-to-tax rule (STTR).

The recognition and inclusion of the above regulations in the Draft Law aim to preserve Viet Nam's tax rights in the context of countries around the world implementing the application of Pillar 2 on global minimum tax; contribute to generating revenue for the state budget; at the same time, ensure a robust legal framework for the implementation of international tax issues of global nature related to the application of UTPR and STTR in Viet Nam once it is eligible according to the guidelines, agreements of OECD.

Adding CIT-exempt income from the transfer of carbon credits, interest, and the transfer of green bonds for the first time after issuance

The current Law on CIT stipulates 11 groups of corporate incomes that are exempt from CIT. However, in fact, a number of issues have arisen that need to be studied and supplemented to align with the country's socio-economic context. Compared to the current Law, the Draft Law adds tax-exempt income groups such as income from the transfer of carbon credits, interest, and the transfer of green bonds for the first time after issuance. This

regulation is supplemented to ensure consistency with the Law on Environmental Protection regarding carbon market development, regulations on incentives related to green bond issuance, thereby encouraging environmental protection, reducing greenhouse gas emissions, promoting green and sustainable development, contributing to the implementation of Viet Nam's commitments to the international community.

At the same time, the Draft Law also omits the abbreviation of "CERs" in the phrase of emission reduction certificate in clause 10, Article 4 of the current Law on CIT to ensure the application of tax exemption to the income from transfer of emission reduction certificates in general, not limited to CERs as currently specified. In practice, in addition to the Certified Emission Reductions (CERs), enterprises can also transfer Voluntary Emission Reductions (VERs). Accordingly, both CERs and VERs are essentially the same in terms of the goal of encouraging environmental protection through reducing greenhouse gas emissions and orienting towards sustainable development.

Abolishing the regulation on the threshold value of 20 million Viet Nam dong or more for goods purchase invoices, recognizing non-cash payment documents when determining expenses deductible from CIT

The current Law on CIT stipulates that enterprises are entitled to deduct all expenses if they fully meet the following conditions: **(i)** They are actual expenses incurred related to the enterprises' production and business activities; expenses for vocational education activities; or expenses for the enterprises' performance of national defense and security tasks in accordance with the law; **(ii)** Expenses are made with sufficient invoices and documents as prescribed by law. *Regarding invoices for each purchase of goods and services valued at 20 million Viet Nam dong or more, it is required to provide non-cash payment documents, except where such documents are not mandated under law.*

From practical implementation, the regulation on the 20 million Viet Nam dong threshold needs to be reconsidered to avoid adverse impacts on enterprises in remote areas, align with banking payment characteristics, and limit the situation of splitting bills. Additionally, according to Decision 1813/QĐ-TTg approving the Scheme for the development of non-

cash payment in Viet Nam, and non-cash payment in tax administration will be promoted in the coming time.

Therefore, in order to meet practical needs and ensure synchronization among legal regulations, especially the regulations on non-cash payment, the Draft Law has removed the threshold of 20 million Viet Nam dong or more and recognized non-cash payment documents to determine deductible expenses. Specifically, the Draft Law stipulates the conditions for invoices as follows: *"Expenses with sufficient invoices and documents (including non-cash payment documents), except for special cases as prescribed by the Government"*.

Amending and supplementing regulations on non-deductible expenses related to loan interest rates

Under point e, clause 2, Article 9 of the applicable Law on CIT, non-deductible expenses when determining taxable income include *"the payment of interests on production and business loans from entities other than credit institutions or economic organizations in excess of 150% of the basic interest rate announced by the State Bank of Viet Nam at the time of loan"*. The above regulation is promulgated on the basis of Article 476 of the Civil Code 2005, specifically: *"The loan interest rate shall be agreed upon by the parties but must not exceed 150% of the basic interest rate announced by the State Bank for the corresponding type of loan"*.

However, this provision of the Civil Code 2005 has been replaced by Article 468 of the Civil Code 2015 that: *"The loan interest rate is agreed upon by the parties. In the case that the parties have an agreement on the interest rate, the agreed interest rate must not exceed 20% per year of the loan amount unless otherwise provided for by other relevant laws"*. Therefore, the Draft Law has proposed amendments to point i, clause 2, Article 9 as follows: *"[...] The payment of interests on production and business loans from entities other than credit institutions or economic organizations in excess of 20% per year of the loan amount [...]"* to align with the provisions of the Civil Code 2015.

Supplementing regulations on CIT rates applicable to small and micro enterprises

Clause 1, Article 10 of the Law on Support for Small and Medium-sized Enterprises stipulates that *"Small*

and medium-sized enterprises may apply the CIT rate lower than the common tax rate applicable to enterprises for a limited period of time in accordance with the law on CIT". Under the applicable Law on CIT, medium, small, and micro enterprises are not included among those entitled to the preferential CIT rate lower than the common tax rate of 20%. Meanwhile, statistics show that the number of medium, small, and micro enterprises accounts for nearly 97% of the total number of enterprises in Viet Nam. Therefore, the Draft Law proposes regulations on CIT rates applicable to small and micro enterprises in order to support such enterprises, creating conditions for accumulating capital to develop production and business and promptly increase the scale of enterprises.

Specifically, the additional regulation on CIT rates applicable to small and micro enterprises is specified in clause 2, Article 10 of the Draft Law as follows: *"Corporate income tax rates for enterprises in the group of small and micro enterprises: (a) The tax rate of 15% applies to enterprises with total annual revenue of no more than 3 billion Viet Nam dong; (b) The tax rate of 17% applies to enterprises with total annual revenue from over 3 billion Viet Nam dong to no more than 50 billion Viet Nam dong; (c) The revenue used as the basis for determining the enterprise's eligibility for the tax rate of 17% and 15% in this clause is the total revenue of the preceding year. In the case of newly established enterprises, the total revenue as the basis for tax rate application shall be specified by the Government; (d) The tax rates of 15% and 17% specified in this clause do not apply to enterprises being subsidiaries or companies with associated and the enterprise in such associated relation does not meet the conditions for application of tax rates specified in this clause."*

In general, the provisions of the Draft Law are amended, supplemented, and improved in the direction of transparency, and ease of implementation, ensuring synchronization with the relevant legal system and in line with practical requirements, contributing to ensuring the interests and creating favorable conditions for businesses. The Ministry of Finance now continues to gather comments from domestic and international agencies, organizations, and individuals to complete the contents of the Draft Law before submission to the National Assembly for approval. Enterprises should update and study the amended and supplemented CIT policies in the Draft Law and follow up the drafting process to promptly apply new regulations in production and business activities after the Law on CIT (amended) is officially promulgated.

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