



**LEGAL, LABOR AND  
TAX UPDATES  
April 2020**

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## A. NEW LEGAL INSTRUMENT

### ❖ GOVERNMENT

#### **24/03/2020| DECREE NO. 35/2020/NĐ-CP ON ELABORATING ON SEVERAL ARTICLES OF COMPETITION LAW**

Accordingly, an enterprise will have control and influence over an enterprise or a business activity or industry of another enterprise if it falls into the following situations:

- The acquirer receives the ownership interest that makes up more than 50% of the acquiree's charter capital or more than 50% of the acquiree's total voting shares;
- The acquirer holds the right to own or use more than 50% of the acquiree's total assets, out of all or a single business sector or industry of that acquiree;

Also, the acquirer has one of the following rights:

- Directly or indirectly making decisions on appointment, dismissal or discharge from office of most or all of members of the Governing Board, president of the Board of Directors, director or general director of the acquiree;
- Making decisions on revision or modification of the acquiree's corporate charter;
- Making decisions on the acquiree's important business matters

*(This Decree shall take effect from 15 May 2020)*

#### **24/03/2020| DECREE NO. 36/2020/NĐ-CP ON PENALTIES FOR ADMINISTRATIVE VIOLATIONS AGAINST REGULATIONS AGAINST REGULATIONS ON WATER RESOURCES AND MINERALS**

##### **Scope of adjustment**

1. This Decree provides for administrative violations, penalties, fines, remedial measures against administrative violations, the power to impose penalties against administrative violations and the power to make records of administrative violations against regulations on water resources and minerals.
2. Administrative violations against regulations on water resources prescribed in this Decree include: Violations against regulations on survey, planning, exploration, extraction and use of water resources; violations against regulations on reservoirs and operation of reservoirs; violations against regulations on water resource protection; violations against regulations on prevention and remediation of damage caused by water; violations against regulations on seeking opinions of residential communities and other violations against regulations on water resource management, which are specified in Chapter II of this Decree.
3. Administrative violations against regulations on minerals prescribed in this Decree include: Violations against regulations on mineral exploration and mining; violations against regulations on auctioning of mineral rights; violations against regulations on use of figures and results of geological surveys of minerals, and mineral exploration; violations against regulations on interests of local governments and people at places

where minerals are mined; violations against regulations on protection of unmined minerals; violations against regulations on technical safety of mines and other violations pertaining minerals, which are specified in Chapter III of this Decree.

4. Other Government's Decrees on penalties for corresponding administrative violations shall apply to administrative violations pertaining water resources and minerals which are not regulated by this Decree.

### **Regulated entities**

1. This Decree applies to domestic and foreign organizations and individuals (hereinafter referred to as “entities”) that commit administrative violations against regulations on water resources and minerals within the territory, contiguous zones, exclusive economic zones and continental shelves of the Socialist Republic of Vietnam; the persons that have the power to record violations and the ones competent to impose penalties for administrative violations against regulations on water resources and minerals and relevant entities.

2. Organizations facing penalties for administrative violations regulated by this Decree include:

a) Business entities that are duly established under the Law on Enterprises and Law on Cooperatives, consisting of: Sole proprietorships, joint-stock companies, limited liability companies, partnerships and their affiliates (including branches and representative offices), cooperatives, cooperative unions;

b) Foreign investors; foreign-invested business entities; representative offices and branches of foreign traders in Vietnam; representative offices of foreign trade promotion organizations in Vietnam;

c) Regulatory authorities committing violations which are not within their assigned scope of management;

d) Socio-political organizations, socio-political-professional organizations, social organizations and socio-professional organizations;

dd) Public service providers and other organizations established as per the law.

*(This Decree shall take effect from 10 May 2020)*

## **03/04/2020| DECREE NO. 38/2020 / ND-CP DETAILING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF VIETNAMESE LABOR LAW ON WORKING OVERSEAS UNDER EMPLOYMENT CONTRACTS**

### **Scope of adjustment**

This Decree prescribes the areas and jobs that workers must not work abroad; licenses, conditions and procedures for the grant or replacement of licenses or deposits of enterprise providing overseas employment services; deposits, management and use of deposits of enterprises performing the internship employment contract; conditions for sending workers to work in Taiwan (China), to practice skills in Japan and to work as a house helper/ housekeeper in the countries of the Middle East; as well as responsibilities of the agencies.

### **Regulated entities**

1. Enterprises and business organizations sending Vietnamese laborers to work abroad under employments contracts.
2. Laborers working abroad in the forms prescribed in Article 6 of Vietnamese labor law on working overseas under employment contracts.
3. Agencies, organizations and individuals involved in sending Vietnamese laborers to work abroad under employment contracts.

*(This Decree shall take effect from 20 May 2020)*

**24/04/2020 | DECISION NO. 15/2020/QĐ-TTG IMPLEMENTATION OF POLICIES ON ASSISTANCE FOR PEOPLE AFFECTED BY COVID-19 PANDEMIC**

Accordingly, detailing the conditions of support and procedures to receive subsidy for groups of people affected by Covid-19 in Resolution No. 42 / NQ-CP of 09 April 2020.

A worker will be eligible for assistance if the following conditions are fully satisfied:

- The duration of contract suspension or unpaid leave during the effective period of the employment contract is at least 01 consecutive month during the period from April 01 to June 30, 2020 and the suspension or unpaid leave begins during the period from April 01 to June 01, 2020.
- He/she is participating in social insurance right before the beginning date of suspension or unpaid leave.
- The enterprise for which he/she is working is not making any revenue or does not have sufficient funds to pay the wages (after the backup wage fund, post-tax profits and other lawful sources have been used according to the records on March 31, 2020) due to the impact of Covid-19 pandemic.

Procedures are as follow:

- The enterprise shall compile a list of eligible workers satisfied the conditions thereof; request the internal trade union (if any) and the social insurance authority to verify the list (within 03 working days).
- The enterprise shall submit the application (under the Appendix enclosed with the Decision) to the People's Committee of the district where the enterprise is headquartered.

*(This Decision shall take effect from 24 April 2020)*



## B. OFFICIAL INSTRUCTIONS

### ✚ OFFICIAL DISPATCH ON TAXATION

#### 27 March 2020 | OFFICIAL DISPATCH NO. 1304 / TCT-CS ON VAT REFUND

In case the enterprise terminates its operation, the enterprise must fulfill tax liabilities before the invalidation of tax code. Accordingly, **the termination of operation of the export-import right of an enterprise is not an enterprise's termination, so the enterprise is not eligible for VAT refund** specified in Clause 6, Article 1 of Decree No. 100/2016. / ND-CP dated 01 July 2016 of the Government amending and supplementing Clause 4 Article 10 of Decree No. 209/2013 / ND-CP dated 18 December 2013 of the Government.

#### 31 March 2020 | OFFICIAL DISPATCH NO. 1388 / TCT-DNL ON FOREIGN CONTRACTOR TAX (FCT) POLICY

In case Flywire Company (hereinafter referred to as the Company) is a foreign contractor generating income in Vietnam based on a contract or agreement with Vietnam Prosperity Joint-Stock Commercial Bank on **collection of tuition fees from customers** in Vietnam taking courses at foreign educational institutions, the income of the Company is subject to FCT. Accordingly, the Bank is responsible for deducting, declaring and paying FCT on behalf of the Company at the rate of 5% VAT and 5% CIT on the revenue from services of Flywire Company (**excluding tuition fees, collection on behalf of foreign educational institutions because of training overseas**).

#### 29 April 2020 | OFFICIAL DISPATCH NO. 28549/CT-TTHT ON TAX DEFERRAL UNDER THE DECREE NO. 41/2020/NĐ-CP

In case of Taikisha Vietnam Engineering Inc (hereinafter referred to as the Company) **manufactures in the construction industry and incurs revenue in 2019 or 2020, the Company shall be eligible for tax and land rent deferral** in accordance with the provisions of Decree No. 41/2020 / ND-CP of 08 April 2020 of the Government.

If the Company is subject to the extension, **the Company shall send the Deferral Request to Hanoi Tax Department no later than 30 July 2020**. Currently, the Etax of the General Department of Taxation (<https://thuedientu.gdt.gov.vn>) has supported businesses to submit the Deferral Request. The enterprise should submit the Deferral Request via the Etax system and do not need to submit the paper to the Tax Authority.

On the website of the Department of Taxation has posted articles, video clips on how to set up, send, look up the Deferral Request, etc. The Company could possibly access the website <http://hanoi.gdt.gov.vn> for more details.

## OTHER OFFICIAL INSTRUCTIONS

### **16/04/2020 | OFFICIAL DISPATCH NO. 2698/BCT-ĐTĐL ON ELECTRICITY PRICE REDUCTION AND DISCOUNTS FOR CUSTOMERS AFFECTED BY COVID-19**

- For residential customers: 10% reduction will apply to retail rates of level 1 to 4 for residential customers in Decision No. 648/QD-BCT dated 20 March 2019.
- For commercial customers and industrial customers: 10% reduction will apply to the retail rates for commercial customers and industrial customers in Decision No. 648/QD-BCT
- For tourist accommodation establishments: Retail rates for industrial customers will apply to tourist accommodation establishments instead of commercial rates.
- For wholesale rates in rural areas, dormitories or residential clusters; wholesale rates for commercial-residential complexes: 10% reduction will apply to residential rates of level 1 to 4; 10% reduction will apply to wholesaling of electricity for other purposes according to Decision No. 648/QD-BCT.
- For wholesale rates for industrial zones and markets: 10% reduction will apply to the wholesaling tariff in Decision No. 648/QD-BCT.

Total reduction and discount period is 03 months:

- For residential customers, the reduced prices will apply to the billing periods of May, June and July 2020 for the cycles that begin in April, May and June respectively.
- For non-residential customers: from the nearest billing period from 16 April 2020.

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