

GUIDELINES ON IMPLEMENTATION OF CERTAIN MEASURES TO DEAL WITH ACCUMULATED UNPAID TAX DEBTS

On 15 September 2008, the Ministry of Finance issued Circular No. 77/2008/TT-BTC providing guidelines for the implementation of certain measures to deal with the accumulated amount of unpaid taxes and those payable to the State Budget (hereinafter collectively called "tax debt") which arose before 01/07/2007 and has been accumulated and remain uncollected to the State Budget.

Extension of the tax debt

Those who receive the tax debt extension are the enterprises carrying out their business and owe the tax debt due to the difficulties of finance, business losses within three consecutive years from years of 2005 to 2007) including:

(i) the enterprises who had to move their business location to outside of city or hometown in accordance with the Plan of State and their business facing difficulties during the time of movement to the new location that caused the losses and do not have enough financial capacity to pay tax on time;

(ii) the enterprises have been risked in business causing the finance difficulties and therefore have not enough financial capacity to pay tax on time in cases such as business partners being bankrupted without collection of debts or their markets are lost due to the change

of policy of the importing countries; sudden accidents or the other force majeure;

(iii) the enterprises who are carrying out an infrastructure investment project, land and housing project using the land in the form of allocation, bidding or lease but such land has not been cleared, assigned and therefore such enterprises have no financial resource to pay its obligations to the State Budget.

When the extended period for the tax debt payment expires but the enterprise has not completed its payment for tax debts, such an enterprise shall be penalized by the tax office or the customs office for the late payment of its tax debt. The competent authorities shall apply any method on debt collection to collect the debts in accordance with the laws and regulations.

The time limit for resolution

The application file for the extension of the payment of tax debts shall be submitted to the tax administration office which directly administers the enterprises and business being incurred tax debts. Within ten (10) days from the date of receiving the full application file, the tax administration office shall answer to the tax debtors. In the case where the application file is incomplete, within three (03) working days from the date of

receiving application file, the tax administration office shall inform the tax debtors to complete the application file.

This Circular shall take effect after 15 days from the date of its publication in the Official Gazette.

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ENTERPRISES

GUIDELINE ON IMPLEMENTATION OF THE LAW ON CHEMICALS

On 7 October 2008, the Government has issued the Decree No. 108/2008/ND-CP providing detailed provisions and guidelines for the implementation of a number of provisions of the Law on Chemicals.

Conditions applicable to chemical production and business

The chemical producing business enterprises must meet the following conditions: the Directors, the Technical Deputy Director must hold a bachelor degree which is suitable with the chemical production and business; having staffs who specializing in the safety management of chemicals and the labour forces available for immediate-urgent matter; holding a certificate for registration of poisonous chemical used for industrial line or the standard production facilities; having adequate tools, equipment and method of the safety management in fire control in accordance with the current regulations.

Production and storage must be in places where it is in a safe distance from the community, public works, historical areas, landscapes, and fresh water sources. In the case of poisonous chemicals, the safety distance shall be determined separately for each chemicals and the

maximum distance shall be maintained.

The responsibility for declaration for production and business of chemicals

Other than organizations, individuals producing chemicals under the List of Chemicals are required to file written declaration to the Industry and Trade Department before January 30 each year; the organizations and individuals importing chemicals must declare in writing to the Ministry of Industry and Trade within 15 working days from the date of customs clearance of chemicals. A certification of declaration by the Ministry of Industry and Trade is the condition for organizations and individuals to continue import the chemicals in the future.

Organizations or individuals are exempted from declaration if the producing or importing chemicals is carried out only one time for security purpose, resolving acts of God, urgent disease, or the production or importation of chemicals is less than 100 kg per year and not under the list of the chemicals restricted for production, business and the list of the controlled chemicals in accordance with the International Conventions.

This Decree shall take effect after 15 days from the date of its publication in the Official Gazette and shall replace the provisions of Chapter I, II, Articles 12, 13 and 20 of Chapter II and Chapter IV of Decree No 8/2005/ND-CP dated 20/5/2005.

TAXATION, FINANCE AND BANKING

THE NEW PROVISIONS ON STRUCTURE AND OPERATION OF THE FINANCE LEASING COMPANIES

On 25 August 2008, the Government has issued Decree No. 95/2008/ND-CP to amend and supplement a number of provisions under the Decree No 16/2001/ND-CP on the structure and operations of finance leasing companies.

The forms of the finance leasing companies

A finance leasing company is a non-banking credit institution, which can be established and operate as a Vietnamese legal entity in three (03) forms: a limited liability finance leasing company with two members and more; a limited liability finance leasing company with one member, or a joint stock finance leasing company. A conversion of ownership or change of company form shall be carried out in accordance with the regulations of the State Bank of Vietnam.

A joint venture finance leasing company can be established in Vietnam with capital contribution from the Vietnamese party(ies) and foreign party(ies) based on joint venture contract. The joint venture finance leasing company shall only be established in the form of a limited liability company with two members and more.

A foreign wholly owned finance leasing company can be established in Vietnam with 100% of the charter capital owned by one or a number of the foreign credit institutions in the form of a limited liability company

The transfer of the contributed capital in the finance leasing company shall be carried out in accordance with the laws and regulations of the State Bank of Vietnam.

A company shall be considered to be controlled by the finance leasing company if : 50% of charter capital or total ordinary shares of such company are owned by a finance leasing company; the appointment of the majority or all members of the board of management or general director of such a company is decided by a finance leasing company; or the amendment, supplementation of the charter of the company is decided by a finance leasing company.

The conditions applicable for the foreign invested finance leasing company operating in Vietnam

Other than the applicable conditions provided, a joint venture finance leasing company or a foreign wholly owned finance leasing company wishing to

legally operate in Vietnam must first obtain an approval from the competent authorities in the jurisdiction where the foreign party carries out its business in order to conduct the finance leasing operations in Vietnam; the total asset is more than US\$10 billion at the end of the year preceding the submission of the application in Vietnam, except where a bilateral investment treaty between Vietnam and the country of such foreign company provides otherwise.

This Decree shall take effect after 15 days from the date of its publication in the Official Gazette.

TAXATION, FINANCE AND BANKING

GUIDELINES TO THE LAW ON PERSONAL INCOME TAX

On 8 September 2008 the Government has issued Decree No 100/2008/ND-CP providing detailed provisions for implementation of the Law on Personal Income Tax.

Taxable income

The ten incomes that are subject to the Personal Income Tax, are the taxable incomes derived from:

- (i) production and business activities;
- (ii) salaries and wages receivable by an employee from his or her employer;
- (iii) capital investments;
- (iv) capital transfers;
- (v) real property transfers;
- (vi) winnings or prizes in money or kind;
- (vii) royalties;
- (viii) commercial franchises;
- (ix) inheritance being securities, capital portion in an economic organization or business establishment, real property and other assets for which ownership or use rights must be registered;
- (x) gift being securities, capital portion in an economic organization or business establishment, real property and other assets for which ownership or use rights must be registered.

Income which is exempted from tax

Fourteen types of income are exempted, which are the incomes from those including

- (i) real property transfers as

between husband and wife; as between parents and children including foster parents and adopted children; as between parents-in-law and children-in-law as between grandparents and grandchildren; and as between siblings;

(ii) transfer of a residential house or right to use residential land and the assets attached to the land by an individual who owns only one sole residential house and residential land use right in Vietnam;

(iii) the value of a land use right of an individual to whom the State allocated such land without payment of, or with reduced land use fees in accordance with law;

(iv) receipt of an inheritance or gift of real property as between husband and wife; as between parents and children including foster parents and adopted children; as between parents-in-law and children-in-law as between grandparents and grandchildren; and as between siblings;

(v) production by the family household or individual directly engaged in agricultural production, forestry, salt mining, raising animals, cultivating crops, fishing or aquaculture where the produce has not yet been processed into other products or has only been preliminarily processed;

(vi) conversion of agricultural land by a family household or individual to whom the State allocated such land for produc-

tion;

(vii) interest on money deposited at a bank or credit institution, and income being interest from life insurance policies;

(viii) foreign currency remitted by overseas Vietnamese; Income being that part of night shift or overtime salary payable which is higher than the day shift or normal working hours salary stipulated by law;

(ix) pensions paid by the Social Insurance Fund pursuant to the Law on Social Insurance; Income being scholarships;

(x) compensation payments from life and non-life insurance contracts, compensation for labour accidents, State compensation payments and other compensation payments paid pursuant to law;

(xi) receivable from charitable funds which the State authorities permit to be established or which they recognize, and which are for charitable or humanitarian purposes and not for profit-making purposes; and

(xii) receivable from foreign aid sources for charitable or humanitarian purposes in both Government and non-Government forms and approved by the State authorities.

TAXATION, FINANCE AND BANKING

GUIDELINES TO THE LAW ON PERSONAL INCOME TAX

The calculation of income tax

The scale of progressive tax tariff on each portion of income shall be as follows:

Tax Bracket	Portion of Annual Assessable Income (million dong)	Portion of Monthly Assessable Income (million dong)	Tax Rate (%)
1	Up to 60	Up to 5	5
2	Over 60 to 120	Over 5 to 10	10
3	Over 120 to 216	Over 10 to 18	15
4	Over 216 to 384	Over 18 to 32	20
5	Over 384 to 624	Over 32 to 52	25
6	Over 624 to 960	Over 52 to 80	30
7	Over 960	Over 80	35

Assessable business income and assessable income being salaries and wages shall be determined as equal to taxable income from business, salaries, and wages less the following items: compulsory insurance premiums pursuant to law comprising social insurance, medical health insurance, and professional indemnity insurance in those industries and business lines in which insurance is compulsory; deductions for family circumstance and deductions for contributions to charitable and humanitarian funds and study promotional funds

The level of deduction for family circumstances shall be as follow: the level of deduction applicable to taxpayers shall be forty eight million dong (VND48,000,000) per year; the level of deduction for each dependant whom a taxpayer is responsible to rear or care for, shall be VND1.6 million/per month as from the month when such responsibility arises. Each dependant may only be assessed for deduction on one occasion in respect of one taxpayer within the tax calculation year. If a taxpayer has a dependant in common with other taxpayers, then all such taxpayers must agree on registration of the dependant of only one taxpayer.

This Decree shall take effect from 1 January 2009.

LABOUR

SUPPLEMENTING, AMENDING REGULATIONS OF SALARY

The Ministry of Labour, War Invalids and Social Affairs issued Circular No. 18/2008/TT-BLDTBXH to amend and supplement Circular No. 12/2003/TT-BLDTBXH date 30 May 2003 guiding the implementation of a number of articles of the Government's Decree No. 114/2002/ND-CP dated 31 December 2002 on wages and salaries.

Conditions to upgrade pay level of salary

The conditions to upgrade the level of salary for employees who are directly involved in the production, trading are the technical standards and level of their performing works. For professional employees, executive staffs and service staffs, the conditions for upgrading level of salary are the professional and seniority standard. To be eligible for an upgraded salary, the employees have to satisfy the conditions such as completing the assigned jobs, not in the time of implementing labour punishment.

For the professional employees, executive staffs and service staffs, they must have a current

salary period of at least 2 years (24 months) for the beginning level of salary of Level 1 which is lower than 2,34 or must have a current salary period of at least 3 years (36 months) for the beginning level of salary of Level 1 which is higher than 2,34.

Early upgrade of salary scale

The Circular also has stipulated a number of cases where it provides for early upgrade salary pay scale, and for shortening time to upgrade salary pay scale: the employees who are awarded the first prize, the second prize at international competitions shall be upgraded 2 levels of salary; those who are awarded the first prize at national competitions, the third prize at international competitions and granted the Honor Labour Hero Awards, Labour Awards at level 1, 2, 3, or national emulating soldiers shall be upgraded by 1 level of salary.

Those employees who are being labour punished, their period to upgrade salary scale shall be lengthened but not more than 6 months.

This Circular shall take effect after 15 days from the date of its publication in the Official Gazette.

LABOUR

NEW GUIDELINES ON THE COMPULSORY SOCIAL INSURANCE

The Ministry of Labour, War Invalids and Social Affairs issued Circular No. 19/2008/TT-BLDTBXH dated 23 September 2008 to amend and supplement Circular No. 03/2007/TT-BLDTBXH providing guidelines for the implementation of a number of articles of the Government's Decree No. 152/2006/ND-CP of 31 December 2002 guiding the implementation of a number of articles of the Law on Social Insurance providing the compulsory social insurance.

Insurance coverage

In the case where an employee, at the same time, has 2 children who are under the age of 7 years old and are both ill, the employee's time off under the insurance for caring for the sick children shall be calculated as the factual time's leave that the employee has taken to care for the sick children. The maximum period for leave that the employee is allowed to take in a year for each child shall be based on current regulations.

For employees who enjoyed their monthly allowances for labour accident, occupational disease, after re-examination,

based on the decreased level of workability, such employees shall enjoy a monthly allowance from the minimum level of 0.4 of the government minimum salary if the workability decreased from 31% to 40%, to the maximum level of 1.6 of the government minimum salary if the workability decreased from 91% to 100%.

Those employees who are injured in labour accidents or suffer from the occupational diseases and the injury operational functions of body, based on the status of injury or disease they shall be allowed an amount for buying the means to help their daily activities and orthopedics instrument at the appointed orthopedics and rehabilitation agencies under the Ministry of Labour, War Invalids and Social Affairs or at the hospitals from provincial level.

The officials at the community level who have from 15 years of social insurance contribution, had the off-work decision of, and waiting for enough age to receive the monthly allowance, shall enjoy the monthly allowance if they reach the age of 50 for males and the age of 55 for

females. During the time off to wait for receiving monthly allowance if such person dies the person who pays for burial could be granted allowance equivalent to 10 months of the official minimum salary.

This Circular shall take effect after 15 days from the date of its publication in the Official Gazette.

CONSTRUCTION

EXAMINATION, CERTIFICATION ON THE CONSTRUCTION WORKS QUALITY COMPLIANCE

On 11 September 2008, the Ministry of Construction has issued Circular No. 16/2008/TT-BXD providing the guidelines for examination, certification on the sufficiency of conditions to ensure for safety and certification of the construction works quality compliance.

The applicable subjects

Construction works must be certified for sufficiency of conditions to ensure for safety before being used including:

- (i) crowded public construction works from level III and above: theatres, cinemas, dance halls, stations, meeting halls, sporting event halls, stadiums, commercial centers, supermarkets, libraries, museums, and other public construction works with the same sizes and functions;
- (ii) hospitals, kindergartens, day care centers, schools with a size of 2 floors and total area of floor of as and above 300m²;
- (iii) apartment blocks, hotels, working places, and centers of telecommunication, broadcast, televisions with the same or above level 3.

Examination and Certification

The construction works owner/investor shall be responsible to select the organization for carrying out the examination, certification on the prevention.

The selected organization must meet the following conditions:

- (i) does not have any violation in construction within the past three years;
- (ii) is not involved in the survey, design, implementation, supplying materials, equipments, or project management and supervising the project implementation for works or a part of works which are the subject of being certified;
- (iii) is independent in terms of structure, not under the same company ownership with the owner/investors, surveyors, designers, implementers, consultant, supervisors and consultant for project management of the construction works which are being certified;
- (iv) For the investors, they do not have shareholdings or capital contribution from 50% in each other's companies. For the surveyors, designers, implementers, consultant, supervisors and consultant for project management, they do not have shareholdings or capital contribution from 30% of in each other's companies

During the time of examination, if there is any doubt as to the result of survey, structure of the safe standard for prevention, the examining organization can request the owner/investor, the surveyor, and the designer for clarification. In the necessary cases, the examining organiza-

tion can request the owner/investor to double-check the result of survey.

The right to request the owner/investor to certify the construction works quality

Those who have the right to request the owner/investor to certify the construction works quality compliance are the local competent authorities on construction works management, the construction works insurance organizations, the organizations, individuals who buy, manage, or use the construction works. The contents needed to be certified are the prevention, the safety standard for operation, and the quality of completed construction parts.

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