

LEGAL AID FOR ENTERPRISES

On 28 May 2008, the Government passed Decree No. 66/2008/ND-CP on Legal Aid for Enterprises.

Principles

Legal aids shall be provided to every enterprise regardless the formation, ownerships, sizes and business lines.

The forms providing legal aid for enterprises

This Decree provides in detail the forms, content, methods and duties of the state authorities on providing the legal aids for enterprises. All enterprises are be

entitled to obtain free information posted in the websites and shall be entitled to request the Ministries, provincial People's Committees to update the new legal documents.

Enterprises are entitled to request the specialized departments of the People's Committees of provinces, the Ministries to answer their legal questions and issues relating to the operation of enterprises. The specialized departments of the provincial People's Committees, the Ministries must response the enterprises' questions within 15 to 30 days either: in writing or on its website, face to face or by telephone and by the other

appropriate forms in accordance with laws.

This Decree is for purpose of enterprise support other than the profit purpose and shall take full effect from the date published on the Official Gazette.

GUIDELINES FOR EXPORTING OF MINERALS

On 18 June 2008, the Ministry of Industry and Trade issued Circular No. 08/2008/TT-BCT which provides the guidelines for exporting minerals.

Under this Circular, the only enterprises that are permitted to export minerals are those that satisfy one of the following conditions: Possessing valid mineral exploitation permits or mineral full-extraction permits, granted by compe-

tent state agencies; Possessing valid mineral processing permits and contracts on the purchase of minerals for processing, signed with organizations that or individuals who possess their valid mineral exploitation permits or mineral full-extraction permits; possessing contracts on the purchase of minerals for export attached by a copy of value added invoices or contracts on entrusted export of minerals, signed with organizations that or individuals

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who possess their valid mineral exploitation permits, mineral full-extraction permits or mineral processing permits; possessing required valid documents on the purchase of (or auction of) minerals which are confiscated and liquidated by the State competent agencies.

In the case of importing minerals for processing and export, the exporting enterprises must have all valid documents to prove that the exported minerals were imported according to the provisions of law.

Minerals exporting enterprises have to report the results of export of minerals and take the responsibility on the accuracy and truthfulness of the reported data and information. The contents of export reports include categories; quantity; export turnover; the sources of exported minerals, and the implementation of the stipulations on export of minerals.

The reports on export of minerals shall be made semi-annually and annually. In addition, on request of the concerned

State management agencies for management purposes, the minerals export enterprises must irregularly report on the export of minerals as requested.

This Circular takes effect after 15 days after its publication in the Official Gazette.

NEW LAW ON CORPORATE INCOME TAX APPROVED

On 03 June 2008, the National Assembly of the Socialist Republic of Vietnam approved the Law on Corporate Income Tax (the "New CIT Law") replacing the Law on Corporate Income Tax 2003.

Applicable entities

According to the New Law, the applicable entities are only organizations conducting activities of production [and/or] business in goods and services which earn taxable income. Individuals, households are not subject to the New Law but shall pay tax under the Law on Personal Income Tax from 01 January 2009.

Tax rates

According to the New CIT Law, the tax rate of corporate income tax shall be reduced from twenty eight (28) percent to twenty five (25) per cent. The rate of corporate income tax applicable to activities of prospecting, exploration and mining of petroleum and gas and other rare and precious natural resources shall be reduced from thirty two (32) per

cent to fifty (50) per cent, depending on each specific project and business establishment.

Tax Incentives

The New CIT Law provides clearly on the tax incentives including tax rates, the duration of tax exemption and reduction. The tax rate of ten (10) per cent shall apply for fifteen (15) years to newly established enterprises with investment projects in areas in specially difficult socio-economic conditions, in economic zones and in high-tech zones; and to newly established enterprises with investment projects in the sectors of high technology, scientific research and technological development, investment in development of specially important infrastructure facilities of the State, and manufacturing of software products.

The tax rate of ten (10) per cent shall apply to enterprises operating in the sectors of education and training, occupational training, health care, culture, sport and the environment.

The tax rate of twenty (20) per cent shall apply for ten (10) years to newly estab-

lished enterprises with investment projects in areas with difficult socio-economic conditions.

The New CIT Law also provides in detail the duration of tax exemption and reduction.

Tax payment

The New CIT Law adds the provision on tax payment combining between the head office of an enterprise and a dependently accounting production establishment. If an enterprise has a dependently accounting production establishment which operates in a province or city under central authority other than that in which such enterprise has its main head office, then the amount of corporate income tax assessable and payable shall be determined in accordance with a ratio of expenses as between the place where the enterprise has the production establishment and the place where the enterprise has its main head office.

This Law will take full effect from 01 January 2009.

TAX - FINANCE - BANKING**PROMUGATION OF NEW LAW ON VALUE ADDED TAX**

On 03 June 2008, the National Assembly of the Socialist Republic of Vietnam approved the Law on Value Added Tax (the "New VAT Law") that shall replace the Law on Value Added Tax 1997, the Law 2003 on Amendments to the Law on Value Added Tax and the Law 2005 on Amendments to the Law on Value Added Tax.

Non-taxable objects

According to the New VAT Law, non-taxable objects shall be narrowed from twenty eight (28) goods and services groups to twenty five (25). Securities

business activities services; assignment of capital services; and derivative financial services shall not be subject to value added tax.

Tax rates

Tax rates are significantly adjusted. The tax rate of zero (0) per cent is applicable to the international transportation service.

The tax rate of five (5) per cent is applicable only to goods and services that serve essential needs of people, or is input of agricultural production as clean water, curative medicines, and medical instruments.

The tax rate of ten (10) per cent is applicable mainly to goods and services that are input of business and production. The tax rate of five (5) per cent as current regulations are applicable to goods and services which are input of production of children's games; books serve children, pupils and students.

This Law will take full effect from 01 January 2009.

DETERMINATION OF CUSTOM VALUATION TO THE IMPORTED AND EXPORTED GOODS

On 12 May 2008, the Ministry of Finance issued Circular 40/2008/TT-BTC guiding the provisions of Decree 40/2007/ND-CP dated 16 March 2007 on determination of the customs valuation to the imported and exported goods.

Determination of dutiable value to the imported and exported goods

Dutiable value of exports shall be the selling price at the bordergate (FOB price, DAF price) excluding insurance (I) and freight (F). In the case that there has been no sale contract, the dutiable value shall be the value declared by the customs declarant.

The dutiable value of imports shall be the price actually paid by the purchaser at the first bordergate.

The time of determining the dutiable value of imports and exports is the date of registration of the customs declaration for imports and exports by the declarant. Where determination of the dutiable value is delayed, the time of determining of the dutiable value of imports and exports is the date of the custom office or the declarant determines the dutiable value.

The duration of payment of duties to imports and exports

The duration of payment of duties shall be subject to provisions of the Law on

Tax Administration. For the difference of duties determined by the customs office and declared by the declarant, the duties shall be paid within 10 days from the date of the customs office signs the decision on tax imposition.

This Circular shall take full effect after 15 days from the date published on the Official Gazette and shall replace Annex I attached to Circular No. 113/2005/TT-BTC dated 15 December 2005.

LABOUR

COMPENSATION PAYABLE FOR ILLEGAL STRIKES CAUSING LOSS TO EMPLOYERS

On 30 May 2008, the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Finance issued Joint Circular No. 07/2008/TTLT-BLDTBXH-BTC providing guidelines for implementation of Decree No. 11/2008/ND-CP dated 30 January 2008 on compensation payable for illegal strikes causing loss to employers.

This Circular regulates liability to compensate for loss, the amount of compensation and the forms for making compensation for loss, by organizations that and individuals who participated in a strike causing loss to the employer, where the People's Court declares such strike to be illegal pursuant to Article 1 of Decree No. 11/2008/ND-CP.

Payment of compensation for loss and damage to assets by any person taking advantage of a strike (whether such strike is legal or not) to deliberately infringe upon assets of an enterprise shall be regulated by the provisions of the Civil Code on damages for non-contractual loss, and not by the provisions of Decree No. 11/2008/ND-CP and this Circular.

Liability to compensate for loss

If the trade union at the enterprise lead the strike which the People's Court declares to be illegal, and if the strike caused loss to the employer, then the executive committee of the trade union of the enterprise shall be liable to compensate for the loss.

If the labour collective representatives lead the strike which the People's Court declares to be illegal, and if the strike caused loss to the employer, then the persons appointed to act as labour collective representatives and the employees who participated in the strike shall be severally liable to discharge the obligation of compensating for loss caused to the employer.

The employer shall have the right to demand, within a time-limit of one year from the date of effectiveness of the decision of the People's Court declaring the strike illegal, that the trade union or the labour collective representatives and the employees who participated in the strike compensate for loss.

Amount of compensation for loss

The amount of compensation for loss shall be agreed by the two parties and shall not exceed three (3) consecutive months' salary prior to the date on which the strike took place. In a case where the trade union at the enterprise which lead the illegal strike must pay compensation for loss to the employer by the funding source of the trade union at the enterprise.

In a case where the labour collective representatives lead the strike which the People's Court declares to be illegal, the amount of compensation for which each employee is severally liable shall be determined as equal to the total amount of compensation for loss divided by the total number of employees who participated in the strike.

In a case where the labour collective representatives lead the strike which the People's Court declares to be illegal, then the labour collective representatives and the employees who participated in the strike shall be severally liable to pay compensation for loss. The amount of compensation for which each employee is severally liable shall be determined as equal to the total amount of compensation for loss divided by the total number of employees who participated in the strike (including the leader of the strike). The payment of compensation for loss by employees shall be gradually deducted from their monthly salary.

The amount of any one deduction shall not exceed thirty per cent (30%) of the salary stipulated in the labour contract and providing the basis for payment of social insurance premiums and social insurance entitlements.

The Circular will take full effect after 15 days from the date published on the Official Gazette.

HOUSING - CONSTRUCTION AND REAL ESTATE BUSINESS

FOREIGN ORGANIZATIONS AND INDIVIDUALS TO PURCHASE AND OWN APARTMENT IN VIETNAM

On 3 March 2008, The National Assembly passed the Resolution No 19/2008/NQ-QH12 permitting foreign organizations and individuals, on a pilot basis, to purchase and own residential houses in Vietnam. Accordingly, the foreign organizations and individuals who are eligible as described in the Resolution will be permitted to purchase and own the apartments.

Entities eligible to purchase and own apartments in Vietnam

Five types of foreign organizations and individuals are under the pilot scheme permitted to purchase and own the apartment in Vietnam:

- A foreign individual with a direct investment in Vietnam in accordance with the Law on Investment, or who is hired by an enterprise currently operating in Vietnam to hold a managerial position in such enterprise;
- A foreign individual whose contribution to Vietnam has been rewarded with a decoration or medal from the President of the Socialist Republic of Vietnam; and a foreign individual who has made a special contribution to Vietnam as stipu-

lated in a decision of the Prime Minister of the Government;

- A foreign individual currently working in the socio-economic sector with a university or higher equivalent qualification and [being] a person with special technical knowledge [and/or] technical skills which Vietnam requires;

- A foreign individual married to a Vietnamese citizen;

- An enterprise with foreign owned capital currently operating in Vietnam without the function of conducting real estate business and which has a need for residential housing for people working at such enterprise.

Conditions for foreign organizations and individuals to purchase and own apartments in Vietnam

- Foreign individuals must be currently living in Vietnam, must have permission from the competent State body of Vietnam to reside in Vietnam for a period of one or more years, and must not belong to the category of persons entitled to diplomatic or consular immunity and privilege as stipulated by the law of Vietnam;

- Enterprises with foreign owned capital must have an investment certificate or certificate of investment activity corresponding to their form of investment as stipulated by the Law on Investment issued by the competent State body of Vietnam.

Period of ownership of apartments in Vietnam by foreign organizations and individuals

- Any foreign individual shall be permitted to own a apartment for a maximum period of fifty (50) years as from the date of issuance of the apartment ownership certificate;

- Any enterprise with foreign owned capital shall be permitted to own a apartment for a period corresponding to the duration stipulated in its issued investment certificate including any extended duration; and the period of ownership shall be calculated from the date on which the enterprise is issued with the ownership certificate.

GUIDELINES FOR CLASSIFICATION OF APARTMENT BUILDINGS

On 02 June 2008, the Ministry of Construction issued Circular No. 14/2008/TT-BXD providing guidelines for classification of apartment buildings.

Applicable entities

Entities being investors of real estate business projects who construct apartment buildings for commercial purposes;

entities with a need to purchase, rent or lease an apartment or apartments in a new urban zone project or in a residential housing development project; entities participating in real estate

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business services; and entities involved in the work of managing and developing apartment buildings in new urban zone projects and in residential housing development projects.

This Circular shall not apply to apartment buildings being civil servant housing or social housing in which the State or other economic sectors invest and construct.

Grades apartment buildings

Apartment buildings shall be classified in accordance with groups of criteria: zoning and architecture; technical and social infrastructure; quality of finish and fitout of the apartment building; quality of management and use services of the apartment building.

Apartment buildings shall be classified into four grades: Grade 01 (the top grade) being for the apartment building of the highest use quality; and which satisfies in an excellent manner the requirements on zoning and architec-

ture, technical and social infrastructure, quality of finish and fitout, and conditions for provision of management and use services. Grade 02 is for apartment building, which shall be the grade with a high use quality; and which satisfies in a relatively excellent manner the requirements on zoning and architecture, technical and social infrastructure, quality of finish and fitout, and conditions for provision of management and use services; Grade 03 is for apartment building that is the grade with a fairly high use quality; and which satisfies in a fairly good manner the requirements on zoning and architecture, technical and social infrastructure, quality of finish and fitout, and the conditions for provision of management and use services. Grade 04 is for apartment building that is grade with average use quality; which satisfies therequirements on zoning and architecture, technical and social infrastructure, quality of finish and fitout, and conditions for provision of management and use services; and which fulfils the conditions in order to be commissioned into use.

The specific requirements applicable to each grade of apartment building are set out in the Appendix attached to this Circular.

This Circular stipulates that the resolution of disputes regarding housing transaction contracts relating to the classification of apartment building by conciliation, and if conciliation fails, then the disputes should be resolved in accordance with the civil law.

The Circular will take full effect after 15 days from the date published on the Official Gazette.

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