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## 1. Guidelines on implementation of the Regulations on Foreign Experts

**On May 28, 2010, the Ministry of Planning and Investment and the Ministry of Finance issued Joint Circular No. 12/2010/TTLT-BKHDT-BTC providing for in details and guiding the implementation of the Regulations on Foreign Experts executing ODA programs and projects, promulgated with Decision No. 119/2009/QĐ-TTg dated October 1, 2009 of the Prime Minister.**

This Circular applies to foreign experts stipulated in Clause 5 of Article 3 of the aforementioned Regulations and only applies to experts whose contracts are effective as of November 20, 2009.

The Circular includes regulations on confirmation and management of experts; procedures, dossier on exemption of personal income tax and time-limit for resolution by tax authorities; customs procedures, etc. Specifically, within 30 working days as of the effective date of experts' contracts, the project owner shall send an official letter along with their dossiers to the governing authority, requesting for confirmation of such experts; within 15 working days from the date of receipt of sufficient valid dossiers from the project owner, the governing authority shall confirm the experts in the form attached to this Circular.

Depending on whether experts sign contracts with the project owner or with a contractor, the project owner or the contractor will send dossiers requesting for exemption of personal income tax for experts to the local tax authority of the locality where their office is based. Such a dossier shall include the request letter of the project owner or the contractor requesting for exemption of personal income tax of the experts, confirmation of the governing authority that such experts are qualified for incentives and exemption; documents related to the experts' incomes exempted from taxes (contracts, income payment evidence, etc.)

Within 15 working days from the date of receipt of sufficient valid dossiers, the tax authority shall confirm exemption of personal income tax for such experts.

This Circular is enforceable 45 days after the signing thereof and shall supersede the Circulars: No. 02/2000/TT-BKH dated January 12, 2000 of the Ministry of Planning and Investment, No. 52/2000/TT-BTC dated June 5, 2000 of the Ministry of Finance and Circular No. 01/2001/TT-TCHQ dated February 9, 2001 of the General Department of Customs.

## 2. New guidelines on business registration procedures

From July 20, 2010, business registration procedures shall be performed in accordance with the guidelines provided in Circular No. 14/2010/TT-BKH dated June 4, 2010 of the Ministry of Planning and Investment.



Accordingly, an enterprise founder may elect to perform the enterprise registration directly with the provincial-level business registration office or through the Internet. In order to perform the enterprise registration procedures through the Internet, the enterprise founder may or the authorized representative shall access the national enterprise registration portal, fill in sufficient and accurate information as required. An electronic registration dossier sent through the national enterprise registration portal shall be deemed as successfully sent upon receipt by the server of the National Enterprise Registration System. The enterprise may receive its enterprise registration certificate directly at the provincial-level business registration office of the province where the head office of the enterprise is located, or register and pay a fee to receive its enterprise registration certificate through a courier service.

Enterprises registered before Decree No. 43/2010/ND-CP is effective have their names identical or confusingly similar to each other shall negotiate by themselves for change of enterprise names; enterprises may add place names to their name for differentiation of enterprise names may shall only add the name of the place where their head office is located. The additional registration of place names to enterprise names for differentiation of enterprise name shall not violate the laws on industrial property.

Information on enterprise registration shall be disclosed publicly and freely on the national enterprise registration portal with 4 basic contents: name of the enterprise, address of the head office,

the legal representative and the business lines. Organizations and individuals in need of inquiry on business registration information of enterprises must pay fees for information beyond the above 4 basic contents, except for inquiries in writing by the competent State authorities.

This Circular is enforceable as of July 20, 2010. This Circular shall supersede Circular No. 03/2006/TT-BKH dated October 19, 2006 of the Ministry of Planning and Investment providing guidelines on sequence and procedures for business registration; Joint Circular No. 05/2008/TTLT-BKH-BTC-BCA dated July 29, 2008 and Circular No. 01/2009/TT-BKH dated January 13, 2009 providing amendment of and addition to Circular No. 03/2006/TT-BKH.

### **3. Investment in concentrated information and technology parks enjoys exemption from Corporate Income Tax for 4 years**



**The Ministry of Information and Communications is collecting constructive opinions from Ministries and Branches for the Draft Decree of the Government making provisions on Concentrated Technological and Information Zones.**

Accordingly, enterprises investing in concentrated technological and information zones shall be entitled to exemption from corporate income tax for 4 years and reduction of 50% of the tax amount payable for 9 subsequent years as of the first year when the enterprises earn profits.

In addition, the Draft also stipulates that individuals and subjects being Vietnamese and foreigners shall enjoy equal reduction of 50% personal income tax. In addition, the Draft Decree also sets out VAT rate of 0% applicable to exported software products; VAT exemption applicable to equipment, machinery and components imported for creating fixed assets. VAT exemption shall be applicable to materials imported for manufacturing software products and digital content and domestic computer products which cannot be manufactured.

#### 4. Guidelines on financial disposition upon conversion from a State-owned enterprise into a single-member limited Liability Company

**On May 24, 2010, the Ministry of Finance promulgated Circular No. 79/2010/TT-BTC providing guidelines on dealing with financial issues upon conversion of a State-owned company into a one-member limited liability company.**

Accordingly, the subjects converted into one-member limited liability companies shall include: Independent State-owned company; State-owned company which is a parent company of a State economic group, parent company in a State-owned corporation, parent company in a corporation belonging to State economic group, parent company in a model of parent company and subsidiary; a member company independently accounting of a State-owned corporation, State economic group; member unit accounting and depending on a State-owned corporation, a parent company of a State economic group, a parent company of a State-owned corporation, agricultural company, forestry company, State-run farm and State-run plantation.

In particular, enterprises which are subjects converted into limited liability companies shall be responsible for inventory of their existing assets, capital sources and funds and preparation of financial statements (consolidated financial statements with their parent companies) as at December 31, 2009 for formulating a conversion project and recording in a decision on conversion. Pursuant to the results of inventory and classification of assets, capital and data reported in financial statements, the company shall prepare a plan for dealing with financial issues for reporting to a competent authority for approval. After approval of the conversion project, the company shall take the initiative in

dealing with financial issues in accordance with the provisions.

With respect to convertible enterprises which have sufficiently satisfied the conditions stipulated and have no longer State capital (the owner's capital showing a negative figure), such convertible enterprises must prepare a plan for submission to the body making decision on conversion stipulated in Article 11 of Decree No. 25/2010/ND-CP for reporting to the Prime Minister for decision. In addition, in the case where the enterprises are not additionally financed, forms of conversion of ownership of enterprise shall be conducted in accordance with the provisions.

With respect to an enterprise which is subject to privatization and privatization of which has not been conducted or being conducted in accordance with the order and procedures for conversion of an enterprise into a joint stock company; and which up to July 1, 2010, has not obtained a decision to determine the enterprise value by a competent body, upon conversion into a limited liability company, it is not required to prepare a plan and dispose of assets, finance, re-organize employees and use land in accordance with the provisions. The time of formal conversion of a State-owned company into a limited liability company is the time when the company is issued with a business registration certificate reflecting that the company is a limited liability company.

## 5. Guidelines on preparation and management of investment costs for construction of works

The Ministry of Construction recently issued Circular 04/2010/TT-BXD dated May 26, 2010 providing guidelines on preparation and management of investment costs for construction of works. This Circular shall supersede Circular No. 05/2007/TT-BXD and Circular No. 18/2008/TT-BXD of the Ministry of Construction.

Accordingly, preparation and management of investment costs for construction of works, including: Total investment for construction of works (total investment, shortly), cost estimate for construction of works (cost estimate), construction rate and price for construction of works of projects using 30% or more of funds from the State, including State budget fund, ODA fund, development investment credit fund from the State, credit fund guaranteed by the State and other investment funds of the State.

For ODA-funded projects, if treaties to which Vietnam is a member have regulations on management of investment costs for construction of works different from the regulations of this Circular, the regulations of such treaties shall prevail.

Applicable subjects consist of organizations and individuals related to the preparation and management of investment costs for construction of works, inspection, check, auditing, payment of investment capital for construction of works of projects using 30% or more of funds from the State.

Organizations and individuals related to the preparation and management of investment costs for construction of works of projects using 30% or less of funds from the State are encouraged to apply this Circular.

Compared with Circular No. 05/2007/TT-BXD and Circular No. 18/2008/TT-BXD, Circular No. 04/2010/TT-BXD has many things new. The composition of the Circular consists of many changes and is divided into articles, clauses, sections. Contents on preparation and management of costs like Total investment, cost estimate for construction of works, rates, unit prices, etc. are indicated clearly; the compilers of the Circular added and amended many issues in accordance with the reality of investment in construction of works over the past time. There are many new points in calculation and determination of total investment, cost estimates for construction of works, rates, unit prices, etc. In the review report of total investment and cost estimates, it is stipulated to specify the full name, and signature of the executing person, the checking person and the head of the organization must sign and seal these documents. In addition, the checking person is obliged to specify the number and class of his/her value engineer certificate.

This Circular is effective as of July 15, 2010.

## Legal Advice

### QUESTIONS:

#### **Is a Foreign Arbitration Award enforceable in Vietnam?**

Yes, it is.

A foreign arbitration award is one rendered outside of Vietnam or within the territory of Vietnam by foreign arbitrators selected by the parties concerned, to resolve disputes arising from business, commercial or labour issues. Such enforcement shall be subject to the recognition and approval of Vietnamese court.

Vietnamese court may consider, recognise and enforce in Vietnam foreign arbitration award if such award is declared in a country or by arbitrators of a country which has together with Vietnam signed or acceded to international treaties on this matter. Vietnam is a signatory to the 1958 New York Conventions on Recognition of Foreign Arbitration Awards.

Vietnamese court may also consider, recognise and enforce foreign arbitration awards on a reciprocal basis without the condition that Vietnam and the relevant country are a signatory or participant of a relevant international treaty.

Under Vietnamese law, a foreign arbitration award shall not be recognised or enforced in Vietnam in the following cases:

- (a) The parties to the arbitration agreement did not have the capacity to sign the agreement in accordance with the applicable law of each party;
- (b) The arbitration agreement is unenforceable or invalid in accordance with the governing law, or the laws of the country in which the award was made where the arbitration agreement does not stipulate the governing law;
- (c) The individual against whom, or body or organisation against which, enforcement is sought had not been notified properly and in a timely manner of the appointment of the arbitrator or the procedures for resolving the dispute by foreign arbitration, or had reasonable cause for failing to exercise its, or his or her, right to legal proceedings;
- (d) The foreign arbitration award was made in respect of a dispute which was not referred to arbitration by the concerned parties, or which goes beyond the request of the parties to the arbitration agreement. Where it is possible to sever the arbitration award, that part which was referred to arbitration by the parties shall be recognised and enforced in Vietnam;

(e) The composition of the foreign arbitration panel, or the foreign arbitration procedure, was inconsistent with the arbitration agreement or the laws of the country in which the foreign arbitration award was made, in cases where such matters are not stipulated in the arbitration agreement;

(f) The foreign arbitration award is not yet enforceable or binding on the parties

(g) The foreign arbitration award has been revoked or suspended by a competent body of the country in which the foreign arbitration award was made or of the country the law of which is the governing law;

(h) The relevant dispute cannot be resolved by arbitration in accordance with Vietnamese law; and

(j) The recognition and enforcement of the foreign arbitration award in Vietnam is contrary to the basic principles of Vietnamese law.

It should be noted that the review as to whether the award is contrary to the basic principles of Vietnamese law does give the judge's wide discretion to determine what this means, because currently there is no guidelines as to how this assessment is to be made.

The process for recognition and enforcement of foreign arbitration awards in Vietnam is as follows:

- Petitions for the recognition and enforcement of foreign arbitration awards in Vietnam shall be lodged with the Ministry of Justice. Petitions in a foreign language must have attached to them a duly notarised or certified Vietnamese translation.
- Within 7 days from the date of receipt of a petition and the attached papers and documents, the Ministry of Justice shall transfer the file to the appropriate court.
- Within 3 working days from the date of receipt of a file from the Ministry of Justice, the court shall be responsible for checking the file and notifying the individual against whom, or body or organisation against which, enforcement is sought and the inspectorate of the same jurisdiction.
- The court shall have the authority to require the individual, body or organisation as the petitioner lodging the petition to clarify any unclear matters in the file.



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