

# ACCOUNTING & LEGAL NEWSLETTER

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# LAW ON ENTERPRISE

## Decree No. 47/2021/ND-CP (“Decree 47/2021”) elaboration of some articles of the Law on Enterprise

On 01 April 2021, the Government issued Decree No. 47/2021/ND-CP (“Decree 47/2021”) elaboration of some articles of the law on enterprise. Decree No. 47/2021 takes effect from the date of signing, i.e. 01 April 2021 and features some new points as follows:

### Scope and regulated entities

1. This Decree elaborates some Articles of the Law on Enterprises on social enterprises, state-owned enterprises, groups of companies, defense and security enterprises and disclosure of information of state-owned enterprises.
2. This Decree applies to the enterprises, organizations and individuals specified in Article 2 of the Law on Enterprises.

### Social enterprises

- 1) Social enterprises shall maintain pursue of social and environmental objectives, retained earnings for re-investment and other contents in the commitment to pursue social and environmental objectives throughout their operation. Unless the social and environmental objectives are terminated ahead of schedule, the social enterprise shall return all incentives, aids and sponsorships it received to pursue social and environmental objectives if it fails to fulfill the commitment to pursue social and environmental objectives and maintain retained earnings for re-investment.
- 2) Owners of sole proprietorships, general partners of partnerships, members of limited liability companies and related entities that are shareholders of joint stock companies, members of the Board of Directors, the Director/General Director holding office or within a specific period of time shall be jointly responsible for the damage caused by the social enterprise’s violations.
- 3) Social enterprises may receive foreign non-governmental aids to pursue their social and environmental objectives in accordance with regulations of law on receiving foreign non-governmental aids.
- 4) Social enterprises may receive sponsorships in the form of property, finance or technical assistance to pursue their social and environmental objectives from domestic organizations and individuals and foreign organizations that have registered their operation in Vietnam.

### State-owned enterprises and groups of companies

- 1) The ratio of charter capital or total voting shares held by the State in an enterprise means the total ratio of charter capital or voting shares held by the state ownership representative bodies in that enterprise.

- 2) Board of Controllers, Controllers at wholly state-owned enterprises: Salaries, remunerations, bonuses, working conditions, costs of business trip and other operating costs of the Board of Controllers and Controllers shall be decided by the state ownership representative body, at least equal to those of the Board of Members or Deputy General Director/Deputy Director of the enterprise; will be included in the enterprise's business costs and presented in a separate section in the enterprise's annual financial statement.
- 3) Super-voting shares: The period of voting preference of the super-voting shares being held by founding shareholders is 03 years from the issuance date of the Certificate of Enterprise Registration, except super-voting shares held by the organizations authorized by the Government.
- 4) An enterprise within at least 65% state capital mentioned in Clause 3 Article 195 of the Law on Enterprises is a state-owned enterprise at least 65% of charter capital or voting shares of which are held by the State.
- 5) The business registration authority shall reject registration of change of the company's members/shareholders if violations against Clause 2 and Clause 3 Article 195 of the Law on Enterprises are found while processing the application.

#### **Defense and security enterprises**

- 1) An enterprise will be identified as a defense and security enterprise in the following cases:
  - All of the following conditions are satisfied:
    - ✓ The enterprise is a single-member limited liability company in which state ownership is represented by the Ministry of National Defense or the Ministry of Public Security.
    - ✓ The enterprise's sector and location is included in the List of sectors and areas directly serving defense and security in Appendix 1 of this Decree.
    - ✓ The enterprise is assigned by the Ministry of National Defense or the Ministry of Public Security to produce, supply defense and security-related products and services or perform defense and security tasks using resources of the State of the enterprise that are suitable for the objectives of the enterprise.
  - Other cases decided by the Prime Minister to meet defense and security requirements at the time.
- 2) Defense and security enterprises have the rights and obligations prescribed in Article 9 of the Law on Enterprises and the following regulations:
  - Defense and security enterprise shall be provided by the Ministry of National Defense or the Ministry of Public Security with adequate resources and charter capital to perform assigned defense and security tasks.
  - Defense and security enterprises may use the provided resources to engage in additional business activities other than defense and security tasks.

- Manage the use of provided resources for performance of defense and security tasks in accordance with applicable regulations on the management and use of state property in the people's armed forces and relevant laws.
  - Comply with decisions of the Ministry of National Defense or the Ministry of Public Security on transfer of capital or assets serving performance of defense and security tasks of the enterprise to other enterprises for performance of defense and security tasks where necessary. In this case, the Ministry of National Defense or the Ministry of Public Security shall be responsible for the debts and other liabilities of the enterprise.
  - Changes or addition of business lines are subject to approval by the Ministry of National Defense or the Ministry of Public Security.
  - Comply with regulations of law on international cooperation and regulations of the Ministry of National Defense or the Ministry of Public Security during association with foreign organizations and individuals in performance of defense and security tasks.
- 3) Organizational structure and managerial positions of defense and security enterprises
- Organizational structure of defense and security enterprises shall comply with regulations of the Law on Enterprises and relevant laws.
  - The standards, conditions, procedures for designation, dismissal, removal from office, commendation, disciplining of people holding managerial positions in defense and security enterprises shall comply with regulations of the Ministry of National Defense and the Ministry of Public Security.

# TAX ADMINISTRATION

## **Circular 19/2021/TT-BTC (“Circular 19/2021”) guiding electronic transactions in the tax sector**

On 18 March 2021, the Ministry of Finance issued Circular 19/2021/TT-BTC (“Circular 19/2021”) guiding electronic transactions in the tax sector. Circular 19/2021 will take effect from 03 May 2021, replacing Circular 110/2015/TT-BTC and Circular 66/2019/TT BTC. Accordingly, in order to conduct electronic tax transactions, taxpayers should note the following provisions:

### **Conditions for electronic tax transactions**

Taxpayers who conduct electronic tax transactions must be able to access and use the Internet, have email addresses, digital signatures or mobile phone numbers issued by a telecommunications company in Vietnam (for individuals who have not been granted digital certificates) which have been registered to use in transactions with tax authorities, except for taxpayers who choose to pay tax via the electronic payment service provided by a bank or an intermediary payment service provider, then, they will follow the regulations of the bank or the intermediary payment service provider.

### **Methods for electronic tax transactions**

Taxpayers can perform electronic tax transactions by one of the following 5 methods:

- 4) Web portal of the General Department of Taxation.
- 5) The National Public Service Portal, web portal of the Ministry of Finance which has been connected to the web portal of the General Department of Taxation.
- 6) The web portals of other competent state agencies which have been connected to the web portal of General Department of Taxation.
- 7) The T-VAN service provider which is accepted by the General Department of Taxation to connect with the web portal of General Department of Taxation.
- 8) Electronic payment service of a bank or intermediary payment service provider to make electronic tax payments.

### **Time for conducting electronic tax transactions**

Taxpayers can make electronic tax transactions 24 hours a day (from 00:00:00 to 23:59:59) and 7 days a week, including weekly days off, public holidays and New Year holidays. The time recorded on the notices, decisions and documents sent to taxpayers is determined to be within the same day if the dossiers are successfully deposited during the period from 00:00:00 to 23:59:59 of the day.

### **Looking up taxpayer information**

Taxpayers can use electronic tax transaction accounts to access the web portal to look up, view and print all information about documents, vouchers, notices, decisions, dossiers received/sent between tax authorities and taxpayers; to look up declaration requirements, and other obligations based on the codes of dossiers, vouchers and decisions; to look up the tax amount to be paid. Information on the notices, decisions and documents issued by tax authorities on the web portal of General Department of Taxation is as valid for recognition as paper documents of tax authorities.

# CONSTRUCTION CONTRACTS

## **Decree No. 50/2021/ND-CP (“Decree 50/2021”) amending and supplementing a number of articles of Decree 37/2015/ND-CP stipulating the details of a construction contract**

On 01 April 2021, the Government issued Decree No. 50/2021/ND-CP (“Decree 50/2021”) amending and supplementing a number of articles of Decree 37/2015/ND-CP stipulating the details of a construction contract. Decree No. 50/2021 takes effect from the date of signing, i.e. 01 April 2021 and features some new points as follows:

### **Subjects of application in construction contracts**

Decree 50/2021 applies to organizations and individuals involved in the establishment and management of construction contracts under construction investment projects using public investment capital or non-public investment capital of the State, and construction contracts between enterprises performing PPP projects and construction contractors implementing bidding packages of PPP projects.

### **Projects in which EPC contracts are prioritized**

- EPC contracts are prioritized to apply to complex projects with high technical and technological requirements, whose uniformity and consistency must strictly be ensured from the design stage to the stages of equipment supply, construction, technology transfer training.
- Before deciding to apply the type of EPC contract, the investment decision maker is responsible for assessing the technical and technological requirements, shortening the project implementation time, and the uniformity from the design stage, equipment supply, construction work to the stage of operation training and technology transfer to meet the objectives and requirements of the approved project and ensuring the feasibility of an EPC contract compared to other types of contracts.

### **Principles for amending construction contracts**

Compared with Decree 37/2015, Decree 50/2021 has added a number of contents on the principle of amending construction contracts as follows:

- The amendments may be made throughout the extension period of construction contracts.
- For a fixed unit price contract, the contract unit price may be amended in the following cases:
  - ✓ When the State changes the policies that directly affect the performance of a contract, unless otherwise agreed by the contracting parties.
  - ✓ When the adjusted project affects a contract, unless otherwise agreed by the contracting parties.



- ✓ Force majeure cases as prescribed by law.
- For a package contract, there are two additional cases where a contract may be amended:
  - ✓ When the State changes the policies that directly affect the performance of a contract, unless otherwise agreed by the contracting parties.
  - ✓ When the adjusted project affects a contract, unless otherwise agreed by the contracting parties.

### **Adding two new types of construction contracts**

Decree 50/2021 adds two new types of construction contracts:

- Simple and small-scale construction contracts; and
- Cost-plus-cost contracts

In which, simple and small-scale construction contract is a construction contract for the implementation of bidding packages and the value does not exceed the limit of small-scale bidding packages in accordance the law on bidding and at the same time the content of work within the scope of the contract is of a simple technical nature, easy to perform.

# CONTACT US

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# Thank you



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