

LEGAL UPDATES

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Guidance on registration and application of electronic invoices

Circular No. 68/2019/TT-BTC dated September 30, 2019 of the Ministry of Finance refers to the guidance on implementation of some articles of Decree No. 119/2018/ND-CP dated September 12, 2018 of the Government on electronic invoices (e-invoices) applied for sale of merchandise and provision of services.

The Circular provides guidelines on application for use and set-up of e-invoices in accordance with the regulations under the Decree No. 119/2018/ND-CP, including: contents of e-invoices, issuance dates, formats of e-invoices, application of e-invoices, handling of errors, etc.

Accordingly, names of goods and services must be written in Vietnamese on e-invoices. If the goods fall into different categories or brands, their names shall be detailed by each category or brand, e.g. Samsung phone, Nokia phone, etc. (Point d Clause 1 Article 3).

In addition, if the right to use or ownership of the goods has to be registered, the invoice shall bear the number or symbol of the goods that is needed for registration e.g. chassis number, engine number of a vehicle; address, level, dimensions and number of stories of a house, etc. (Point d Clause 1 Article 3).

In respect of the address of the buyer, in case of sale of goods/services to foreigners, the buyer's address may be replaced with information of their nationality and passport number or travel document. (Point c.2 Clause 1 Article 3).

An e-invoice does not necessarily have the buyer's electronic signature, even if goods/services are sold to overseas enterprises and customers. However, the seller is allowed to make an agreement on the signature used in e-invoices with the buyer being enterprises (Clause 3 Article 3).

The Circular takes effect from November 14, 2019 onwards. The following documents will be expired from November 01, 2020 onwards:

Circular No. 32/2011/TT-BTC dated 03/14/2011

Circular No. 191/2010/TT-BTC dated 12/01/2010

Circular No. 39/2014/TT-BTC dated 03/31/2014

Decision No. 1209/QD-BTC dated 06/23/2015

Decision No. 2660/QD-BTC dated 12/14/2016

Circular No. 37/2017/TT-BTC dated 04/27/2017

Enterprises with an equity of less than VND 15 billion and having one of the following signs are required to use e-invoices authenticated by the tax authorities: do not have the right to ownership of the factory, warehouse, store; have suspicious bank transactions; fail to submit the tax declaration on a timely basis; change the address of its business location 2 times or more within 12 months, etc. (Clause 3 Article 6).

Enterprises with more or less percentage of foreign owned capital are still considered foreign direct investment enterprises

Official letter No. 6918/BKHDT-PC dated September 23, 2019 of the Ministry of Planning and Investment refers to the criteria for determining an enterprise with the foreign investment capital.

As prescribed at Clause 14, 17 Article 3 of the Law on Investment No. 67/2014/QH13, an enterprise whose members or shareholders are foreign individuals, organizations is considered foreign direct investment (FDI) enterprise irrespective of the percentage of capital contribution.

In the case of an FDI enterprise falling in the case as stipulated in Article 23 of the Law on Investment (whose foreign owned capital accounts for 51% or more), the enterprise must meet the conditions and carry out the investment procedures in accordance with the regulations applicable to the foreign investors.



FDI enterprises are not allowed to use leased land for investment in commercial housing

Official letter No. 7023/BKHDT-DTNN dated September 26, 2019 of the Ministry of Planning and Investment refers to the sale of service apartments.

As prescribed at Clause 3 Article 55, Clause 1 Article 56 of the Land Law No. 45/2013/QH13, FDI enterprises are allowed to implement projects for the construction of houses for sale only when the enterprises are “allocated land” by the State. On the contrary, if the land is the “leased land”, then the enterprises are allowed to perform the projects for construction of houses for lease only, but not for sale.

Accordingly, in case the Company is an FDI enterprise who only has leased land and pays annual land rental for commercial purpose (rather than for residence), the Company shall be only allowable to make investment in houses for lease, not for sale.

In case the Company wishes to make investment in houses (apartments) for sale, the Company should contact with the provincial People’s Committee and the Department of Planning and Investment of the locality where the project takes place for having guidelines in details in relation to adjustment to planning, transfer of land use purpose and related investment procedures and order.



Information of foreign loans must be registered for changes upon merger of enterprise

Official letter No. 7850/NHNN-QLNH dated October 07, 2019 of the State Bank refers to the registration for changes of foreign loans in case of merger of enterprises.

As prescribed at Clause 1 Article 15 of the Circular No. 03/2016/TT-NHNN, if there is any change to contents relating to loans referred to in the confirmation of foreign loan registration given by the State Bank (unless otherwise provided for by Clause 2 and Clause 3 of this Article), the borrower shall be responsible for making registration for changes of his/her foreign loan.

According to this Letter, in case the Borrower is merged into another enterprise and the party receiving merging inherits rights and duties of the merged party including foreign loans, the party receiving merging must carry out the registration procedures for changes of foreign loans with the State Bank.

The Bank has the right to impose regulations on documents required upon disbursement in foreign currencies

Official letter No. 7490/NHNN-QLNH dated September 24, 2019 of the State Bank refers to the payment for import - export contracts.

As prescribed at Clause 2 Article 4 of Decree No. 70/2014/ND-CP, the person who purchases, transfers and carries of foreign currency overseas to perform current transactions is responsible for submitting required records as regulated by credit institutions as well as take legal responsibility for the authentication of these records provided for authorized credit institutions.

Accordingly, those vouchers that the enterprise must present upon making payment abroad shall belong to competence of the bank where the transaction is performed and the enterprise must follow in accordance with the bank's regulations.

For the case that the enterprise would like to be free from presenting customs declarations upon requesting for making payment abroad in foreign currencies, the enterprise needs to discuss and reach an agreement with the bank where the transaction is performed.



In case of revenue earned more than VND 50 billion per year, the value added tax (VAT) must be declared on a monthly basis

Official letter No. 4004/TCT-CS dated October 03, 2019 of the General Department of Taxation refers to the tax policies.

As prescribed at Article 15 of Circular No. 151/2014/TT-BTC, the enterprises which have just started their business operation are allowed to declare the VAT on a quarterly basis.

However, after the year with full 12 months of business production, the enterprise should base on the revenue of the year with full 12 months to determine whether the declaration will be made on a quarterly or monthly basis for the coming 3-year stable period.

If the revenue earned is more than VND 50 billion, the VAT declaration must be made on a monthly basis for a stable period of 3 years. If the enterprise still declares quarterly, the enterprise has to make adjustment to declare tax monthly. Simultaneously, the enterprise will be administratively sanctioned for acts of incompletely declaring the contents in tax dossiers.

Amendment of guidance on electronic declaration and payment of taxes

Circular No. 66/2019/TT-BTC dated September 20, 2019 of the Ministry of Finance refers to the amendment and supplement of some articles of Circular No. 110/2015/TT-BTC dated July 28, 2015 of the Ministry of Finance guiding on the electronic transaction in the taxation field.

According to new regulations in this Circular, each enterprise will be granted 01 key account and up to 10 subaccounts to decentralize for the electronic tax declaration and payment for each service by the tax authority. In which the key account is granted after the registration of electronic transactions and subaccounts are registered through the key account (Clause 1 Article 1).

When the tax deadline is reached, if the electronic taxation payment system fails, the enterprise can wait for the system to re-operate to pay or directly pay at the tax authority or banks. The late payment of tax in this case is exempt from the penalty (Clause 5 Article 1).

Regarding to the electronic tax payment procedures, the enterprise shall perform as prescribed at Article 6, Article 8 of Circular No. 84/2016/TT-BTC.

Many forms used in the registration of electronic tax declaration and payment will be replaced by forms issued accompanied with this Circular.

The Circular takes effect from November 05, 2019 onwards.

When should invoices have been issued for transferring an asset?

Official letter No. 4030/TCT-CS dated October 04, 2019 of the General Department of Taxation refers to the issue of invoices upon the transfer of assets.

When transferring an asset, whether or not the invoice is issued will be based on which following case the transferred assets belong to (Article 5 of Circular No. 219/2013/TT-BTC):

1 - For the case that fixed assets already has appropriated depreciation, transferred between the parent company with its subsidiaries and branches or between subsidiaries and branches, if fixed assets still have the correct value on accounting books, the Company is exempted from issuing invoices. On the contrary, if the value of fixed assets is re-evaluated before the transfer, the Company must issue invoices, declare and pay VAT.

2 - For the case that fixed assets transferred between dependent subsidiaries of the same enterprise, including the cases of transferring when the enterprise is divided, split, amalgamated, merged, or converted, the enterprise is exempted from issuing invoices, only needs to make an asset circulation order enclosed with documents about the asset origins.

3 - For the case that fixed assets transferred between independent units or member units having full legal entities, it is mandatory to issue invoices, declare and pay VAT.

NOTICE:

"The purpose of this news is to provide the clients with further information. Although we have focused much on the ensure of accuracy, the information that is given on this news is not absolutely thorough and the clients would better consult professional opinions before application."