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Legal news

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HIGH LIGHT

1. New regulations on asset auction

On March 4, 2010, the Government issued Decree No. 17/2010/ND-CP requiring that all asset auctions must be conducted by auctioneer in compliance with order and procedures for asset auction.

While under the former regulations, qualified auctioneers must only be university graduate with moral virtues, the new Decree requires that they must be bachelor of law or economy and have passed a 3-month training course with some exceptions.

To be able to do business in the field of auction, an enterprise has to meet the following conditions: its legal representative must be an auctioneer and the enterprise has its head office, facilities and other equipment and furniture to provide auction operations. Within a time limit of 7 working days as from the date of issuance of its business registration certificate, the enterprise has the responsibility to notify the Department of Justice of the province or central-run city where its head office is located in writing of asset auction service registration.

This Decree will take effect as from July 1, 2010 and will replace Decree No. 05/2005/ND-CP dated January 18, 2005 on asset auction.

2. Guidelines on asset revaluation

On March 23, 2010, the Ministry of Finance issued Circular No. 40/2010/TT-BTC providing guidelines for the determination of taxable income with respect to asset revaluation-derived difference amounts.

Pursuant to this Circular, when an enterprise conducts its asset revaluation as required to contribute capital and to transfer asset under division, separation, unification, merger or conversion of enterprise form (except for State-owned enterprise conversion), it has to calculate and submit its corporate income tax; the enterprise receiving fixed assets as capital contribution or transferred assets under division, separation, unification, merger or conversion of enterprise form, can depreciate such fixed assets based on its revaluation price (except for land use rights that cannot be depreciated).

Where there is a difference resulting from the revaluation of fixed assets to contribute capital and to transfer asset during division, separation, unification, merger and conversion of enterprise form, it will be included into other incomes in determination of taxable corporate income. The difference generated from the revaluation of the value of long-term land use rights to contribute capital and transfer during division, separation, unification, merger and conversion of enterprise form, will temporarily not be subject to corporate income tax calculation, if the transferee of land use rights incorporates the value of such land use rights into his production and business operations, and that value is not depreciated as prescribed. Where the enterprise continues to transfer land use rights or to use such land use rights

for capital contribution to (an) other entity(ies), after the capital contribution of land use rights, the enterprise receiving such capital contribution will have to declare and pay its corresponding corporate income tax.

This Circular will come into force after 45 days from the signing date and will be applicable to the finalization of corporate income tax as from 2009.

3. Simplification of administrative procedures in construction

On March, 4, 2010, the Ministry of Construction issued Decision No. 250/QĐ-BXD cancelling 5 administrative procedures for application of foreign construction standards in construction activities in Vietnam, published in Decision No. 838/QĐ-BXD dated August 12, 2009 of the Minister of Construction promulgating a set of administrative procedures under the State management competence of the Ministry of Construction.

The cancelled procedures include: approval for application of foreign construction standards in the field of construction of civil engineering work, industrial work (except those managed by the Ministry of Industry and Trade), urban technical infrastructure work and works required by the Prime Minister, works applying foreign construction standards that have contents not yet mentioned in Vietnamese construction standards of projects funded by the State budget; approval for application of foreign construction standards in irrigation and dyke works of projects funded by the State budget; approval for application of foreign construction standards in traffic works of projects funded by the State budget; approval for application of foreign construction standards in mining, petroleum oil and gas works, electricity plants, transformer stations, and specialized industrial works of projects funded by the State budget, and approval for application of foreign construction standards in relation to fire prevention and fighting in construction works of projects funded by the State budget.

This Decision took effect as from the signing date.

4. Detailing State's compensation responsibility

On March 3, 2010, the Government issued Decree No. 16/2010/ND-CP detailing and providing guidelines for the implementation of a number of articles of Law on the State's Compensation Responsibility.

In this Decree, only damages prescribed in the Law on the State's Responsibility for Compensation can be compensated. Damage that is objectively occurred, unpredictably, and unable to remedy, despite all necessary measures taken by the public official in charge to the best of his ability, will not be compensated.

The Decree clearly states that in case where in order to avoid an actual risk threatening directly interests of the State and collectivity, rights and interests of others, the official on duty has no other choice than to take action that causes a damage smaller than the same needs to be prevented, he will not have to compensate for such arisen damage.

Under the Decree, agencies take the responsibility to compensate in two activities: administrative management and civil judgment enforcement.

If the causer of a damage is a public official or servant of an agency at levels of Ministry, General Department and Department or is a member of provincial People's Committee, the agency bearing the responsibility for compensation will be that agency at such level of Ministry, General Department, Department or provincial People's Committee.

In case where the causer of damage is a member of People's Committee of district and is directly managed by specialized agencies under People's Committee of district, the agency bearing the responsibility for compensation will be the People's Committee of district. The People's Committee of commune will take the responsibility for compensation when its official on public duties, public official or servant causes damage.

Regarding civil judgment enforcement, if the causer of damage is a public official of the General Department for Civil Judgment Enforcement, provincial Department for Civil Judgment Enforcement, Department for Judgment Enforcement of the Ministry of National Defense or Office for Judgment Enforcement at levels of district and military region, these agencies will have to take the responsibility for compensation.

If the damaged person cannot confirm the agency responsible for compensation, within 5 working days as from the date of receiving a written request from the damaged person, the State management authority for compensation must set forth a written document to determine the agency responsible for compensation.

Within 5 days from the effective date of the judgment or decision resolving the compensation, the agency responsible for compensation will have to forward the dossier to request for compensation to the financial agency at the same level in order to make compensation payment.

In case where the official on duty commits an intentional tort that causes damage, but not subject to criminal liability, he/she will have to refund all amounts compensated by the State to the victim, but at maximum the refund will not exceed 36 month salary of this person at the time of the decision on refund.

This Decree will take effect as from April 20, 2010.

Other Sectors

Banking

- Decision No. 618/QD-NHNN dated March 25, 2010 of the State Bank of Vietnam on the basic interest rate in Vietnamese Dong.
- On March 26, 2010, the State Bank of Vietnam issued Circular No. 10/2010/TT-NHNN on the amendment to Clauses 2 and 3 of Article 2 of Circular No. 01/2010/TT-NHNN dated January 6, 2010 on the cancellation of Decision No. 03/2006/QD-NHNN dated January 18, 2006 on gold trading on overseas accounts and Decision No. 11/2007/QD-NHNN dated March 15, 2007 amending and supplementing Decision No. 03/2006/QD-NHNN.
- Circular No. 09/2010/TT-NHNN dated March 26, 2010 of the State Bank of Vietnam providing for the issuance of license for establishment and operation of joint stock commercial banks.
- On March 22, 2010, the State Bank of Vietnam stipulated Circular No. 08/2010/TT-NHNN providing for the special control on credit institutions.

Securities

- Circular No. 43/2010/TT-BTC dated March 25, 2010 of the Ministry of Finance amending and supplementing the Regulation on registration, depository, clearing and settlement of securities, which has been issued along with Decision No. 87/2007/QD-BTC dated October 22, 2007 of the Minister of Finance.
- On March 4, 2010, the Ministry of Finance issued Circular No. 29/2010/TT-BTC on Guidelines for financial management mechanism with respect to the Stock Exchanges and Securities Depository Center.

Taxation

- Decision No. 504/QD-TCT dated March 29, 2010 of the General Department of Taxation providing for the functions and duties of the Squads under the Tax Offices.
- On March 29, 2010, the General Department of Taxation stipulated Decision No. 503/QD-TCT providing for the functions, duties, powers and organizational structure of the Tax Offices under Departments of Taxation.
- Decision No. 502/QD-TCT dated March 29, 2010 of the General Department of Taxation providing for the functions and duties of the divisions under the Departments of Taxation.
- On March 2, 2010, the Ministry of Finance issued Decision No. 458/QD-BTC correcting Circular No. 216/2009/TT-BTC dated November 12, 2009 of the

Minister of Finance prescribing tax rates in the preferential export and import tariffs according to the list of taxable items.

- Circular No. 39/2010/TT-BTC dated March 22, 2010 of the Ministry of Finance providing guidelines for the implementation of Decision No. 12/2010/QD-TTg dated February 12, 2010 of the Prime Minister on the extension of the time limit for corporate income tax payment for the purpose of continuously solving difficulties for enterprises, thus contributing to boost the economic development in 2010.
- On March 19, 2010, the Ministry of Finance stipulated Circular No. 38/2010/TT-BTC providing guidelines for the implementation of tax regulations regarding organizations and individuals transferring the right to mineral exploration, exploitation and processing.
- Circular No. 37/2010/TT-BTC dated March 18, 2010 of the Ministry of Finance providing guidelines for the issuance, use and management of computer print-out documents for personal income tax deduction.
- On March 12, 2010, the Ministry of Finance issued Circular No. 35/2010/TT-BTC providing guidelines for the export tax applicable to woods and cokes made from imported raw materials.
- Circular No. 34/2010/TT-BTC dated March 12, 2010 of the Ministry of Finance providing for writing-off tax debts and other amounts payable to the State Budget by State-owned enterprises under conversion arrangement before July 1, 2007.
- On March 9, 2010, the Ministry of Finance stipulated Circular No. 31/2010/TT-BTC amending and supplementing preferential import tax rates applicable to a number of commodities in Circular No. 216/2009/TT-BTC dated November 12, 2009.

Trade

- Decree No. 15/2010/ND-CP dated March 1, 2010 on sanctioning administrative violations in production of and trade in fertilizers.
- On March 16, 2010, the Ministry of Industry and Trade issued Decision No. 1282/QD-BCT on the authorization to sign the automatic import licenses.
- Decision No. 437/QD-TCHQ dated March 9, 2010 of the General Department of Customs amending and supplementing the customs process and procedures for commercial exported and imported goods, which has been issued along with Decision No. 1171/QD-TCHQ dated June 15, 2009 of the General Department of Customs.
- On March 3, 2010, the Prime Minister stipulated Decision No. 16/2010/QD-TTg on the amendment to and cancellation of a number of provisions in the decisions on operations of border-gate economic zones.

- Circular No. 11/2010/TT-BCT dated March 29, 2010 of the Ministry of Industry and Trade promulgating the Regulation on agents trading in liquefied petroleum gas.
- On March 29, 2010, the Ministry of Industry and Trade issued Circular No. 10/2010/TT-BCT providing for the import of goods manufactured in the countries sharing the common borders with the Socialist Republic of Vietnam in the form of purchase, sale and exchange between border residents for the period from 2010 to 2012.

Health

- Decree No. 22/2010/ND-CP dated March 9, 2010 amending and supplementing Article 3 of Decree No. 188/2007/ND-CP dated December 27, 2007 providing for the functions, duties, powers and organizational structure of the Ministry of Health.
- On March 17, 2010, the Ministry of Finance and the Ministry of Health jointly stipulated Inter-ministerial Circular No. 36/2010/TTLT-BTC-BYT providing guidelines for the management and use of expenditures for implementation of projects on the Prevention and Control of dengue fever, Prevention and Control of diabetes, and Prevention and Control of hypertension within the national target program on prevention and control of a number of social diseases, dangerous epidemics and HIV/AIDS for the period from 2006 to 2010.
- Circular No. 05/2010/TT-BYT dated March 1, 2010 of the Ministry of Health providing guidelines for testing data protection in drug registration.

Transport

- On March 18, 2010, the People's Committee of Ho Chi Minh City issued Decision No. 15/2010/QĐ-UBND promulgating the regulations on encouragement of investments in land-road transport stations and yards in the area of Ho Chi Minh City.
- Decision No. 494/QĐ-BGTVT dated March 2, 2010 of the Ministry of Transport announcing the list of legal documents on transportation of which the validity is expired.
- On March 19, 2010, the Ministry of Transport stipulated Circular No. 08/2010/TT-BGTVT providing for the duties and powers of land road inspector.
- Circular No. 30/2010/TT-BTC dated March 5, 2010 of the Ministry of Finance providing guidelines for the financial management for the duty of supplying public products and services in the field of inland roads and waterways.

Land

- On March 15, 2010, the Ministry of Natural Resources and Environment, the Ministry of Interior, and the Ministry of Finance jointly issued Inter-ministerial Circular No. 05/2010/TTLT-BTNMT-BNV-BTC providing guidelines for the functions, duties, authority, organization, staff and financial mechanisms of the Office for registration of land use rights.
- Inter-ministerial Circular No. 06/2010/TTLT-BTP-BTNMT dated March 1, 2010 of the Ministry of Justice and the Ministry of Natural Resources and Environment on amendment and supplement to a number of provisions of Inter-ministerial Circular No. 05 / 2005/TTLT-BTP-BTNMT dated June 16, 2005 of the Ministry of Justice and the Ministry of Natural Resources and Environment providing guidelines for the registration of mortgage or guarantee in the form of land use rights and assets attached to land and Interministerial Circular No. 03/2006/TTLT-BTP-BTNMT dated June 13, 2006 of the Ministry of Justice and the Ministry of Natural Resources and Environment amending and supplementing some provisions of Inter-ministerial Circular No. 05/2005/BTP-BTNMT dated June 16, 2005 of the Ministry of Justice and the Ministry of Natural Resources and Environment providing guidelines for the registration of mortgage or guarantee in the form of land use rights and assets attached to land.

Environment

- On March 22, 2010, the Government stipulated Decree No. 26/2010/ND-CP amending and supplementing Clause 2 of Article 8 of Decree No. 67/2003/ND-CP dated June 13, 2003 on the environmental protection fee for waste water.
- Decree No. 19/2010/ND-CP dated March 5, 2010 on the amendment and supplement to the points c, d, g, h and i, Clause 5, Article 2 of Decree No. 25/2008/ND-CP dated February 4, 2008 providing for the functions, duties, powers and organizational structure of the Ministry of Natural Resources and Environment.
- On March 2, 2010, the Ministry of Industry and Trade issued Decision No. 1059/QĐ-BCT on the classification of mines based on their methane gas in 2010.
- Circular No. 08/2010/TT-BTNMT dated March 18, 2010 of the Ministry of Natural Resources and Environment providing for the development of the report on the national environment, report on the environmental impacts of the sector and domain, and status report on the environment at provincial level.

Education

- On March 1, 2010, the Ministry of Education and Training stipulated Circular No. 08/2010/TT-BGDDT providing for the use of free open source software in education establishments.

- Circular No. 07/2010/TT-BGDDT dated March 1, 2010 of the Ministry of Education and Training providing for the operational organization and use of electronic mails and websites of the university education establishments.

Judiciary

- On March 16, 2010, the National Assembly's Standing Committee issued Ordinance No. 11/2010/UBTVQH12 on procedures for aircraft arrest.
- Joint Resolution No. 15/NQLT/CP-TANDTC-VKSNDTC dated March 31, 2010 of the Government, the People's Supreme Court and the Supreme People's Procuracy promulgating the Rules on working coordination between the Government and the People's Court Supreme and the People's Supreme Procuracy.
- On March 2, 2010, the Government Inspectorate stipulated Circular No. 02/2010/TT-TTCP providing for the process to conduct an inspection.

Home Affairs

- Decision No. 19/2010/QD-UBND dated March 29, 2010 of the People's Committee of Ho Chi Minh City promulgating the Working Rules (model) of the People's Committees of districts where the People's Council is not organized for pilot implementation.
- On March 17, 2010, the People's Committee of Ho Chi Minh City issued Decision No. 14/2010/QD-UBND promulgating the Rules (model) on organization and operation of office of People's Committee of district.

Agriculture

- Decree No. 33/2010/ND-CP dated March 31, 2010 on the management of activities of aquatic product exploitation by Vietnamese organizations and individuals in the marine areas.
- On March 30, 2010, the Government stipulated Decree No. 32/2010/ND-CP on the management of aquaculture activities of foreign fishing vessels in Vietnam's sea areas.
- Decree No. 31/2010/ND-CP dated March 29, 2010 on sanctioning administrative violations in the field of fishery.
- On March 15, 2010, of the Prime Minister issued Decision No. 346/QD-TTg approving of the planning on system of fishing ports and wharfs towards the year of 2020, with orientation to 2030.
- Circular No. 13/2010/TT-BNNPTNT dated March 12, 2010 of the Ministry of Agriculture and Rural Development promulgating the additional list of mixed foods for use in aquaculture permitted for marketing in Vietnam.

- On March 11, 2010, the Ministry of Agriculture and Rural Development stipulated Circular No. 12/2010/TT-BNNPTNT promulgating the additional list of products for treating and improving the environment for aquaculture permitted for marketing in Vietnam.
- Circular No. 11/2010/TT-BNNPTNT dated March 10, 2010 of the Ministry of Agriculture and Rural Development promulgating the additional list of plant varieties permitted for production and trade in Vietnam.

Enterprise

- On March 19, 2010, the Government issued Decree No. 25/2010/ND-CP on the transformation of State-owned companies into one-member limited liability companies, and organization and management of State-owned one-member limited liability companies.
- Decision No. 671/QD-BTC dated March 30, 2010 of the Ministry of Finance announcing the list of valuation consulting organizations excluded from the list of service providers for enterprise valuation for equitization.
- On March 30, 2010, the Ministry of Finance stipulated Decision No. 670/QD-BTC announcing the list of valuation consulting organizations suspended from providing enterprise valuation services for equitization.
- Decision No. 669/QD-BTC dated March 30, 2010 of the Ministry of Finance announcing the list of valuation consulting organizations allowed to continue enterprise valuation service provision after having been suspended under Decision No. 1007/QD-BTC dated May 15, 2009 of the Minister of Finance.
- On March 30, 2010, the Ministry of Finance issued Decision No. 668/QD-BTC announcing the list of valuation consulting organizations newly registered in 2010 and allowed to provide enterprise valuation services for equitization.
- Circular No. 33/2010/TT-BTC dated March 11, 2010 of the Ministry of Finance promulgating the Charter on organization and operation of the Debt and Asset Trading Corporation.

Miscellaneous

- On March 25, 2010, the Government stipulated Decree No. 28/2010/ND-CP on the common minimum salary.
- Decision No. 31/2010/QD-TTg dated March 19, 2010 of the Prime Minister promulgating the regulation on management of the State's petroleum oil and gasoline reserves.
- On March 30, 2010, the Ministry of Planning and Investment issued Circular No. 07/2010/TT-BKH providing guidelines for the implementation of Decree No.

93/2009/ND-CP dated October 22, 2009 promulgating the Regulation on management and use of foreign non-governmental aids.

- Circular No. 06/2010/TT-BKH dated March 9, 2010 of the Ministry of Planning and Investment detailing the preparation of Tender Invitation Dossier for consulting services.
- On March 3, 2010, the Ministry of Industry and Trade stipulated Circular No. 09/2010/TT-BCT providing for the order and procedures for developing, approving and supervising the implementation of the operational plan of the National Electricity System.
- Circular No. 07/2010/TT-BTTTT dated March 2, 2010 of the Ministry of Information and Communications amending and supplementing Circular No. 13/2009/TT-BTTTT dated March 30, 2009 on common postal service charges.

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