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Foreign Investment

Comments on the Scheme of pilot equitization of Foreign Invested Enterprises by the Ministry of Trade

We have already provided you with a couple of brief on the draft Decree on pilot equitization of foreign investment enterprises ("FIEs") which are prepared and proposed by the Ministry of Planning and Investment in our previous Issue. For following up to this matter, we list below some major comments made by the Ministry of Trade on such draft Decree as set out in Dispatch No. 4733 TM/TCCB dated 20 November 2001:

- Forms of equitization should be classified, including: (i) mobilizing capital via issuance of shares; and (ii) equitizing a part of value of FIEs;
- As to the provision on newly established FIEs, applicable laws of Vietnam still do not provide for such form. Hence, the Law on Foreign Investment in Vietnam should be supplemented prior to guidance by a Decree;
- Determination of the value of FIEs should not rely upon accounting books; and
- Procedures for the equitization should be clarified;

Import-Export

Incentives to domestic investment.

To encourage domestic investment under the Law on Promotion of Domestic Investment, Decree No. 51/1999/ND-CP dated 8 July 1999 of the Government allows exempting from the import duty on the imported goods for domestic projects which are granted with Certificate of incentives on investment. Decree 51 is recently guided by Ministry of Finance's Circular No. 22/2001/TT-BTC dated 3 April 2001.

Since the issuance of Dispatch No. 48000/TCHQ-KTTT by the General Department of Customs on 30 October 2001 regarding preferential on import duty granted to domestic investment, customs offices and enterprises have now detailed guidelines for their execution, for which, currently, neither Decree 51 nor Circular 22 provides.

Other documents

- Decision No. 110/2001/QD-BTC dated 31 October 2001 of the Ministry of Finance amending and adding to name and duty rate of items under Group 2710 in the preferential import duty Tariff;
- Decision No. 120/2001/QD-BTC dated 26 November 2001 of the Ministry of Finance amending and adding to names and duty rates of items under Group 2710 in the preferential import duty Tariff;

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- Dispatch No. 4461/TM-DB dated 1 November 2001 of the Ministry of Trade regarding the cooperation in customs formalities reform in ASEM;
- Inter-Circular No. 25/2001/TTLT-BTM-BKHCMNT dated 9 November 2001 of the Ministry of Trade and the Ministry of Science, Technology and Environment on providing guidelines for the implementation of quota of textiles and garments exported to EU, Canada and Turkey markets in the year 2002;
- Decision No. 116/2001/QD-BTC dated 20 November 2001 of the Ministry of Finance on amending and adding to preferential import duty rate according to tax preferential regime applicable to motorcycles as stipulated in the preferential import duty Tariff attached to Ministry of Finance's Decision No. 1944/1998/QD-BTC dated 25 December 1998;
- Decision No. 117/2001/QD-BTC dated 20 November 2001 of the Ministry of Finance issuing method for calculating of import duty price of component sets of machine installed two wheel vehicles.

Banking

Step to amend Regulation on loans security.

The State Bank of Vietnam is in the process of gathering opinion from various branches and enterprises for replacement of Decision No. 284/2000/QD-NHNN dated 25 August 2000 promulgating the Regulations on lending by credit institutions to customers and petition to the Government for amendment of Decree No. 178/1999/ND-CP dated 29 December 1999 on the Regulations on loans security extended by credit institutions.

Aiming to renew regime on lending and loans security extended by credit institutions, the State Bank of Vietnam and VCCI have jointly chaired a Conference on Reform of Regimes on Lending and Loans Security for public comments on the proposal of replacement of Decision 284 and alteration of Decree 178.

The purposes of the proposed amendment and replacement are to deal with problems that borrowers have been encountering with, to simplify procedures for lending from banks and to create favorable conditions for the banks to use efficiently its mobilized capital. The most significant proposed provisions made by the State Bank of Vietnam are as follows:

- Subjects that credit institutions are not allowed to lend;
- Lending term;
- Value of land use right to be mortgaged;
- Mortgaging of one asset at various credit institutions for various loans;
- Mortgaging of land use right and assets attached to the land.

Other documents

- Decision No. 163/2001/QD-TTg dated 23 October 2001 of the Prime Minister approving the Regime on reorganization of the Industrial Commercial Bank of Vietnam in the 2001-2010 period;
- Decision No. 164/2001/QD-TTg dated 23 October 2001 of the Prime Minister approving the Regime on reorganization of the Bank for Investment and Development

in the 2001-2005 period;

- Decision No. 162/2001/QD-TTg dated 23 October 2001 of the Prime Minister approving the Regime on reorganization of the Bank for Foreign Trade of Vietnam in the 2001-2005 period;
- Decision No. 160/2001/QD-TTg dated 23 October 2001 of the Prime Minister approving the Regime on reorganization of the Bank for Houses Development in CuuLong River Delta in the 2001-2010 period;
- Decision No. 1310/2001/QD-NHNN dated 29 October 2001 of the State Bank of Vietnam promulgating the Regulation on borrowing between credit institutions;
- Decision No. 1346/2001/QD-NHNN dated 29 October 2001 of the State Bank of Vietnam promulgating the Regulation on procedures for collection of commercial bills payment via banks;
- Decision 1432/2001/QD-NHNN of the State Bank of Vietnam issued on 16 November 2001 amending and adding to a number of items in Circular 03/1999/TT-NHNN7 dated 12 August 1999 guiding for borrowing and repayment of foreign loans by enterprises;
- Decision No. 1389/2001/QD-NHNN dated 7 November 2001 of the State Bank of Vietnam promulgating the Regulation on establishment of debts and assets management Companies under the commercial banks;
- Decision No. 1390/2001/QD-NHNN dated 7 November 2001 of the State Bank of Vietnam promulgating the standard Charter of organization and operation of debts management and assets exploitation Companies under the commercial banks;
- Dispatch No. 1006/CP-QHQT dated 6 November 2001 of the Government regarding the renewal of the WB Credit Agreement.

Law on Enterprises

The List of Business Sectors used for business registration is now available for enterprises to select in the business registration.

Business sectors used for business registration of enterprises are all listed in Inter-Circular No. 07/2001/TTLT/BKH-TCTK dated 1 November 2001 of the Ministry of Planning and Investment and the General Department of Statistics. According to Circular 07, the competent authorities are not allowed to refuse registration for the sectors of business which are not under the list of business sectors. However, it should be noted that a general description as "Business in all sectors that are not banned by laws" is unlikely permitted in the business registration.

Trade

Conditions for doing business in aquatic products are provided in Governments Decree No. 86/2001/ND-CP dated 16 November 2001.

Decree 86 provides for the conditions for trading in: (i) exploitation of aquatic products within the sea territory of Vietnam; (ii) production of aquatic races (iii) aquaculture; (iv) processing of aquatic products for foods; (v) production of foods used for aquaculture; and (vi) production of veterinary medicines used for aquaculture. Detail conditions and procedures for trading in these sectors are set out in Decree 86. Decree 86 takes effect 15 days after the signing date.

Labelling of forestry products

The Minister of Agriculture and Rural Development issued guidance for the labeling of forestry products, cereal and agricultural seeds in Circular No. 102/2001/TT-BNN dated 26 October 2001.

Products subject to the guidance in accordance with Circular 102 include: forestry products; products processed from forestry products; cereal and agricultural seeds. The methods for labeling are in compliance with Decision No. 178/1999/QĐ-TTg dated 30 August 1999 of the Prime Minister. Major guidance in Circular 102 are quality criteria, expiry and preservation duration.

Development of SMEs

The Government of Vietnam issued on 23 November 2001 Decree No. 90/2001/NĐ-CP on supporting the development of small and medium enterprises ("SMEs").

According to Decree 90, SMEs are independent business, production entities, having business registration and with registered capital of not over 10 billion VND or with annual average number of laborers of not over 300 persons. SMEs subject to Decree 90 include: (i) enterprises incorporated and operating under the Law on Enterprises; (ii) enterprises incorporated and operating under the Law on State owned enterprises; (iii) cooperatives incorporated and operating under the Law on Cooperatives; and (iv) business households registered in accordance with Government's Decree No. 02/2000/NĐ-CP dated 3 February 2000 on business registration.

Under Decree 90, the Government shall provide SMEs with the following assistance:

- Assisting for the investment activities in SMEs via financial and credit measures;
- Establishing credit guaranty Fund to assist SMEs for bank loans;
- Granting SMEs with favorable conditions having the land for expansion of production;
- Other matters related to information, human resource training, enhancement of competition, expansion of markets and export promotion.

Other documents

- Decision No. 172/2001/QĐ-TTg dated 5 November 2001 of the Prime Minister on dealing with extension, roll-up and write-off of tax debts and amount payable to the State budget as to enterprises and business entities which are encountering with difficulties due to objective reasons;
- Decision No. 170/2001/QĐ-TTg dated 30 October 2001 of the Prime Minister approving the Vietnam-Zimbabwe Trade Agreement;
- Decision No. 169/2001/QĐ-TTg dated 30 October 2001 of the Prime Minister approving the Vietnam-Tanzania Trade Agreement;
- Decision No. 171/2001/QĐ-TTg dated 1 November 2001 of the Prime Minister regarding the establishment of the Steering Committee for Technical Assistant Program Implementing the VN-US Bilateral Trade Agreement;
- Dispatch No. 1011/CP-QHQT dated 6 November 2001 of the Government regarding the investment cooperation with foreign freight agents;

Taxation

The Ministry of Trade is preparing to apply a new measure for management of the imported goods, tariff quota.

Tariff quota, together with some other non-tariff measures such as specific duty, anti dumping duty, was stipulated in Article 12 of Decision No. 46/2001/QD-TTg dated 4 April 2001 of the Prime Minister on management of import and export in the 2001-2005 period. As provided in Decision 46, the Ministry of Trade in association with relevant ministries and branches will prepare principles and the lists of items subject to these measures. In implementation of this provision, the Ministry of Trade has drafted the Program on application of tariff quota with respect to goods imported into Vietnam. According to this Program, technically, tariff quota is explained as follows:

Tariff quota allows Vietnam to apply two levels of duty rate on an item imported into Vietnam. In detail, below table examples the imposition of import duty under the application of tariff quota measure:

Item A is imported into Vietnam from country B.

Import Quantity	Import duty rate	Total import duty
Less than M1	a1%	a1% x Import quantity
M2 (=M1+Y)	a2% (a2 > a1)	(a1% x M1) + (a2% x Y)

The Program further explains the situation of and demands for the application of tariff quota management methods and definition of tariff quota, authorization in provision of tariff quota and other relevant petitions.

Other documents

- Circular No. 86/2001/TT-BTC dated 29 October 2001 of the Ministry of Finance guiding for refund of the paid special consumption tax of the exported cigarettes;
- Inter-Circular No. 89/2001/TTLT-BTC-BCA dated 8 November 2001 of the Ministry of Finance and the Ministry of Police guiding for the payment, use and finalization of corporate income tax applicable to non-profits State owned enterprises of the Ministry of Police;
- Inter-Circular No. 92/2001/TTLT-BTC-BCN-TCHQ dated 20 November 2001 of the Ministry of Finance, the Ministry of Industry and the Ministry of Science, Technology and Environment guiding for the implementation of tax preferential as to production of machine installed two wheel vehicles and machines thereof;
- Dispatch No. 4636 TCT/CS dated 15 November 2001 of the Ministry of Finance on tax regimes applicable to the softwares development.

Land

Overseas Vietnamese to buy houses in Vietnam

The Government issued on 5 November 2001 Decree No. 81/2001/ND-CP on overseas Vietnamese citizens to purchase houses in Vietnam, taking effect from 20 November 2001.

According to Decree 81, from November 20, 2001, the overseas Vietnamese making long term investment in Vietnam under the Law on Foreign Investment and the Law on Promotion of Domestic Investment; or those making contribution to the country; scientists cultural scholars, having permanent activities in Vietnam; and those permanently residing in Vietnam, shall be entitled to buy one residential house in Vietnam in accordance with conditions as stipulated in Decree 81.

Those overseas Vietnamese must have the following documents: (i) Proper Vietnamese Passport or foreign Passport and other documents granted by the foreign competent authorities. In case where the overseas Vietnamese using the Passport or other documents of foreign country, they must have the Vietnamese Citizenship Certificate or the Certificate of non-Vietnamese Citizenship or the Citizen Registration Certificate; and (ii) Documents granted by the competent authorities evidencing that they are subject to Decree 81. Decree 81 further provides that house purchase contracts must be made under the standard form provided by the Ministry of Construction.

For implementation of Decree 81, the Ministry of Construction issued Decision No. 29/2001/QD-BXD on guidance for the procedures for overseas Vietnamese to purchase houses in Vietnam. To which, overseas Vietnamese who wish to be granted the certificate of land use right and house ownership right certificate must explain clearly their purposes of residing in Vietnam and must submit their investment license, or business registration certificate etc. Application for granting of certificate of land use right and house ownership right certificate must be made in Vietnamese and must be notarized

Amendment of Decree 17 on land matter

Decree No. 17/1999/ND-CP dated 29 March 1999 on the procedures for the transform, transfer, lease, sub-lease, inheritance of land and mortgaging, capital contribution of land use right was amended and supplemented by Government's Decree No. 79/2001/ND-CP dated 1 November 2001;

Decree 79 makes amendments and additions to a number of Articles of Decree 17 in the light of amendments and additions of the Law on Land as adopted in June this year. Contents of Decree 17 being amended and added include: Scope of applicable; Implementation of rights of land users; Dossier of transformation and assignment of the land use rights; Formalities in implementation of land use rights transfer and assignment of the land use right; Dossier of lease and sub-lease of land; Conditions for and dossier of mortgaging of land use rights; and other provisions on guaranty of the land use rights.

Other documents

- Circular 1842/2001/TT-TCDC dated 1 November 2001 of the General Department of Cadastral detailing the implementation of Government's Decree No. 68/2001/ND-CP dated 1 October 2001 on scheme and plans for the use of land;
- Circular No. 1883/2001/TT-TCDC dated 12 November 2001 of the General Department of Cadastral guiding for standard forms of contract to perform rights of the land users;
- Circular No. 95/2001/TT-BTC dated 23 November 2001 of the Ministry of Finance providing additional guidelines for Ministry of Finance's Circular No. 41/2001/TT-BTC dated 12 June 2001 on exemption, reduction of agricultural land use tax for the year 2001 in accordance with Resolution No. 05/2001/NQ-CP of the Government;

Other Documents

Labor

- Circular No. 20/2001/TT-BGTVT dated 12 November 2001 of the Ministry of Transport guiding the implementation of working time and rest time regime applicable to ship-man working on means of sea transportation;
- Notification No. 147/TB-VPCP dated 29 October 2001 of the Government's Office regarding the instructions of Deputy Prime Minister Pham Gia Khiem on consolidation of the export of laborers and experts.

Bidding

- Circular No. 94/2001/TT-BTC dated 22 November 2001 of the Ministry of Finance providing additional guidelines for stipulations in Ministry of Finance's Circular 121/2000/TT-BTC dated 29 December 2000 guiding for the implementation of bidding for procurement of materials, equipment and means of working applicable to the State organs, military forces, corporate and State owned enterprises using the State budget.

ODA

- Decision No. 112/2001/QD-BTC dated 9 November 2001 of the Ministry of Finance providing a number of limitations of expenditures applicable to ODA loan projects;

Securities

- Circular No. 02/2001/TT-UBCK of the State Securities Committee issued on 28 September 2001 detailing Decree No. 48/1998/ND-CP dated 11 July 1998 on issuance of shares and bonds to the public;

Circular 02 takes effect from 13 October 2001 and replaces Circular No. 01/1998/TT-UBCK dated 13 October 1998 of the State Securities Committee and Decision No. 08/2000/QD-UBCK dated 29 December 2000 amending and adding to Circular No. 01/1998/TT-UBCK;

- Circular No. 96/2001/TT-BTC dated 23 November 2001 of the Ministry of Finance detailing the implementation of Decision No. 69/2001/QD-TTg dated 3 May 2001 of the Prime Minister regarding the selling of preferential shares of processing industrial enterprises to raw materials growers and seller;

Science-Technology

- Circular No. 84/2000/TT-BTC dated 24 October 2001 of the Ministry of Finance guiding for disbursement and balance of 2001 expenditures as to important scientific and technological programs at the State level in the 2001-2005 period;
- Circular No. 56/2001/TT-BKHCMNT dated 26 October 2001 of the Ministry of Science, technology and Environment detailing the implementation of foreign cooperation on the sectors of science and technology as stipulated in Government's Decree No. 06/2000/ND-CP dated 6 March 2000.

Marriage-Family

- Decree No. 87/2001/ND-CP dated 22 November 2001 of the Government on sanction against administrative violations in marriage and family field;

Education-Training

- Decree No. 88/2001/ND-CP dated 22 November 2001 of the Government on the implementation of universalization of basic secondary education;

Telecommunication

- Decision No. 897/2001/QD-TCBD of the General Department of Posts issued on 30 October 2001 promulgating the table of charges for international telephone calls;
- Circular No. 04/2001/TT-TCBD of the General Department of Posts issued on 20 November 2001 guiding for the implementation of Government's Decree No. 55/2001/ND-CP on management, provision and use of the Internet accession service, the Internet connection service and the Internet providing service in posts and telecommunication sectors.

Construction

- Decision No. 109/2001/QD-UB dated 20 November 2001 of Hanoi People's Committee promulgating the Regulation granting of construction license to construction works within Hanoi City;

Miscellaneous

- Decree No. 80/2001/ND-CP dated 5 November 2001 of the Government on guiding to control lawful domestic activities relating to drugs;
- Decree No. 82/2001/ND-CP dated 6 November 2001 of the Government on the State ceremonies and receiving of foreign guests;
- Decision No. 59/2001/QD-BKHCMNT dated 13 November 2001 of the Ministry of Science, Technology and Environment promulgating "the Regulation on inspection seal, inspection stamps and inspection certificate";
- Decision No. 180/2001/QD-TTg dated 16 November 2001 of the Prime Minister on positions being Deputy General Director, Chief Accountant and Director of 100% State owned Corporations;
- Decision No. 1489/2001/QD-TTg dated 21 November 2001 of the Prime Minister regarding the establishment of the Group for implementation of transforming State owned enterprises, enterprises of politic, socio-politic organization into one member liability limited Company.

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