

FRASERS NEWSLETTER - OCTOBER 2017

In this edition of our newsletter we report on the following:

- i) New Circular on the issuance of work permits to foreign employees working in Vietnam;
- ii) Draft Law amending several tax laws;
- iii) New Decree on Registration of Secured Transactions;
- iv) New Law on supporting Small and Medium-sized Enterprises; and
- v) New Decision from the Ministry of Industry and Trade to cut 675 business and investment conditions.

1. **New Circular on the issuance of work permits to foreign employees working in Vietnam**

On 15 August 2017, the Ministry of Labour, Invalids and Social Affairs (**MOLISA**) issued Circular No. 23/2017/TT-BLĐTBXH (**Circular 23**) providing guidelines on the issuance of work permits online to foreign employees working in Vietnam.

- Circular 23 took effect on 2 October 2017, and will introduce online procedures for the issuance of work permits which are accessible via the website <http://dvc.vieclamvietnam.gov.vn/>.
- The system introduced by Circular 23 is a so-called “level-three online public service”, which means that the employer can submit the application documents online. However, the employer still needs to submit the application dossier (by hand or by post) in paper form to the relevant authorities.
- The new online procedure allows employers to submit their applications online in respect to:
 - i) approval of demand for employment of foreign workers;
 - ii) issuance and re-issuance of work permits; and
 - iii) certification of foreign workers’ eligibility for exemption from the work permit requirements.

- In general, the documents required for the relevant applications remain unchanged. Circular No. 40/2016/TT-BLDTBXH of the MOLISA dated 25 October 2016 provides guidance on the implementation of a number of articles under Decree No.11/2016/ND-CP (**Circular 40**). However, if the documents are submitted using the new online procedures, the timeline for submission is shorter. For example, pursuant to Article 4 of Circular 40, employers must submit the demand for employment of foreign workers at least 30 days before the planned date of the employment, however, pursuant to Article 6 of Circular 23 if the demand is made through the new online procedure it only needs to be submitted 20 days in advance.
- With respect to the issuance of work permits (Article 7 of Decree 23), the new online procedure provides that employers intending to hire foreign workers should:
 - i) At least seven business days before the date on which the relevant foreign worker plans to start working for the employer, the employer must electronically submit through the website the declaration and application for the work permit;
 - ii) Within five business days from the receipt of a complete application dossier for the work permit, the issuing authority shall respond via email to the employer confirming whether the application is complete and compliant with the applicable regulations.
 - iii) After receiving the response indicating that the application is compliant, the employer shall submit the original application documents by hand or by post to the work permit issuing authority.
 - iv) Not later than 8 business hours from the receipt of the original application, the work permit issuing authority must send the work permit to the employer's registered address.
 - v) In a case where the original application documents do not match those submitted through the online application, the work permit issuing authority shall notify the employer of this issue in writing or via email.
- Article 16.2 of Circular 23 specifies that this new online procedure is not mandatory, and employers will still have the option to submit paper applications by hand or by post if they prefer to do so.

2. Draft Law amending several tax laws

The Ministry of Finance (**MOF**) recently issued a Draft Law on Amendments of Laws on Value Added Tax, Special Consumption Tax, Corporate Income Tax, Personal Income Tax, and Natural Resources Tax (**Draft Tax Law**), as attached to Official Letter No. 10958/BTC-CST dated 17 August 2017. The Draft Tax Law is expected to be submitted to the National Assembly for approval in 2018 and shall take effect from 01 January 2019 (except for a few provisions regarding the Special Consumption Tax which shall take effect from 01 January 2020).

Significant provisions of the Draft Tax Law include the following proposals:

- **Value Added Tax (VAT):**
 - i) Commencing from 1 January 2019, the current standard VAT rate of 10% will increase to 12%;
 - ii) The current category of VAT at 5% will increase to 6%. In addition, certain goods and services which are currently under the 5% VAT category will be moved to the standard VAT category;
 - iii) Certain items will be removed from the category of goods and services not subject to VAT. Specifically, the transfer of land use rights, which is currently under the non-VAT category, will be subject to standard VAT rates;

- iv) A VAT refund will be permitted where enterprises are engaged in producing goods or providing services, which are subject to a VAT rate of 6%, and have accumulated VAT inputs not fully credited continuously for at least 12 months from the first month, or at least 4 quarters from the first quarter.

- **Special Consumption Tax (SCT):**

- i) A SCT at the rate of 10% will be imposed on soft drinks, including carbonated, non-carbonated, sports drinks, tea, and instant coffee packed using industrial production chains (except for fruit juice, 100% natural vegetable juice, milk and dairy products) from 01 January 2019;
- ii) The SCT tax rate for automobiles with 9 seats or less shall remain the same, but from 01 January 2020, the taxable price of automobiles which are manufactured in Vietnam will be exclusive of the value of the parts produced domestically;
- iii) The SCT on cigarettes and cigars which is currently 75% remains unchanged. However, in addition to the tax payable as currently calculated, a new SCT calculation method will be introduced, being a fixed amount of VND1,000 per pack of 20 cigarettes and VND1,500 per cigar, from 01 January 2020.

- **Corporate Income Tax (CIT):**

The standard CIT tax rate remains 20% as per the current laws. However, special CIT rates of 15% or 17% may apply in the following cases:

- a) Enterprises with an annual revenue of less than VND 03 billion shall enjoy a CIT rate of 15%; and
- b) Enterprises having an average number of employees in the relevant year participating in social insurance not exceeding 200 persons, and having an annual income from VND3 billion up to VND50 billion, shall enjoy a CIT rate of 17%.

On deductible and non-deductible expenses:

- i) The interest expense incurred from loans shall be non-deductible if it exceeds by five times the equity of the owner of an enterprise operating in the manufacturing sector (or four times with respect to other enterprises, or 12 times in the case of credit institutions and banks);
- ii) Input VAT which has not been fully credited and which is also not eligible for a VAT refund, can be recorded as a deductible expense;

On CIT incentives:

- i) Economic zones located in areas with favorable socio-economic conditions will be excluded from the list of areas eligible for tax incentives;
- ii) CIT incentives will be introduced for specific software services and digital content producers, for investment projects for the renovation of old condominiums, and for some other industries in line with the provisions of the Law on Investment and the Law on SMEs.

The Draft Tax Law also amends the current regulations under Decree No. 218/2013/ND-CP as follows:

- i) 1% CIT on the revenue from capital transfers (instead of 20% on income, as provided for under the current regulations); and

- ii) 0.5% CIT for the supply and distribution of goods in Vietnam in the case of spot import/export (instead of the current 1% CIT, which is the same as the tax for the supply and distribution of goods involved in other forms of import and export).

- **Personal Income Tax (PIT):**

- iii) Similar to the CIT regulations for the capital transfer of enterprises, a PIT rate of 1% for capital transfer transactions of individuals (both residents or non-residents) will apply;
- iv) Changes to the progressive tax rates on income from salary and wages will apply providing only 5 tax brackets and expanding the threshold income gaps (up to VND10 million, from VND10 to VND 30 million, from VND 30 to VND50 million, from VND50 to VND80 million and from VND80 million upwards, with the respective rates being 5%, 10%, 20%, 28%, and 35%);
- v) Income from winning prizes will be subject to a progressive tax rate (10%, 20% or 30%) instead of the current flat rate of 10%;
- vi) The PIT payable in the case of high-tech personnel who work in the fields of information technology, agriculture and agricultural processing projects will be reduced by 50%. This is provided that these projects apply high-technology or produce high-technology products and are included in the priority list for investment and development. The Government will provide further detailed guidance on this point.

3. **New Decree on Registration of Secured Transactions**

On 1 September 2017, the Government issued Decree No. 102/2017/ND-CP (**Decree 102**) on the registration of secured transactions, replacing the current regulations under Decree No. 83/2010/ND-CP. Decree 102 will take effect on 15 October 2017.

Decree 102 combines the regulations on registration of security interests for aeroplanes, vessels, land use rights and assets attached to land and other movable property in a single document. It also provides a clear legal ground for searches of information on security interests.

Some notable provisions contained under Decree 102 include the following:

- **Requirement for registration of security interests**

Decree 102 specifies security interests that are required to be registered, and those for which registration is not mandatory.

Security interests that are required to be registered include:

- i) Mortgage of land use rights;
- ii) Mortgage of assets attached to the land for which the ownership is certified under the land use right certificate;
- iii) Pledge of aeroplanes, mortgage of aeroplanes; and
- iv) Mortgage of vessels.

The state authority will register the following security interests upon request of the parties to the relevant transaction:

- i) Mortgage of immovable properties;
- ii) Mortgage of future assets attached to the land;

- iii) Liens in the following transactions: (1) purchase of assets attached to the land and future assets attached to the land; (2) purchase of aeroplanes or vessels; (3) purchase of other movable assets where the title is retained.

- **Authority responsible for registering security interests**

Decree 102 clearly sets out the authority responsible for registering security interests:

- i) The Civil Aviation Authority of Vietnam under the Ministry of Transport (**MOT**) shall register security interests for aeroplanes;
- ii) The Vietnam Marine Administration under the MOT or its provincial department shall register security interests for vessels;
- iii) The Land Registration Offices under the Ministry of Natural Resources and Environment shall register security interests for land use rights and assets attached to the land;
- iv) The National Registration Agency of Secured Transactions (**NRAST**) under the Ministry of Justice shall register security interests for movable properties and other properties that are not under the responsibility of the authorities mentioned in items (i) to (iii) above.

The above mentioned authorities are also responsible for providing information about security assets upon request.

- **Effective date of security interest registration**

Decree 102 also specifies the date on which the registration of the security interests becomes effective. The security interest registrations with respect to land use rights, assets attached to the land, aeroplanes and vessels are effective from the date on which they are recorded in the registry book by the relevant authority. The registration of security interests for other assets is effective from the date when the information is updated in the relevant national database.

The registration of security interests is valid from the registration date until it is removed and de-registered.

- Decree 102 sets out the procedures and documents required for the registration of security interests with respect to each type of asset. The applicant for the registration may choose to submit documents for the registration via the relevant online platform, via email, by courier or by direct submission at the relevant authority. The regulatory timeline for the registration of a security interest is one to three business days from the date the relevant authority fully receives the required documents.

4. **New Law on supporting Small and Medium-sized Enterprises**

On 12 June 2017, the National Assembly issued Law 04/2017/QH14 on supporting small and medium-sized enterprises (**Law on SMEs**), which will take effect on 1 January 2018. The Law on SMEs provides the criteria that must be satisfied by an enterprise in order to qualify as a small and medium size enterprise (**SME**), and sets out guidelines, principles and resources for supporting SMEs as well as the responsibilities of the relevant authorities. Significant provisions of the Law on SMEs include the following:

- **Criteria for qualifying as SME**

The definition of SME includes micro enterprises, small enterprises and medium sized enterprises. Under Article 4 of Law on SMEs, in order to qualify as SME an enterprise must have no more than 200 employees (calculated based on the annual average

number of employees contributing to social insurance) and must satisfy at least one of the following criteria:

- i) the total capital of the enterprise must not exceed VND100 billion (equal to approximately USD4.4 million); or
- ii) the total revenue for the previous year must not exceed VND300 billion (equal to approximately USD13.2 million).

- **Incentives and assistance for SMEs**

Under Chapter II of the Law on SMEs, assistance to SMEs shall include, among others, the following measures:

- i) Tax incentives, in the form of lower corporate income tax rates for a certain period of time;
- ii) Assistance in the access to credit and to credit guarantees;
- iii) Simpler accounting regimes and tax administrative procedures applicable to micro enterprises;
- iv) Rent subsidies for up to five years for SMEs in industrial zones, hi-tech zones and industrial clusters;
- v) Assistance to incubators, technical establishments and co-working spaces in the form of reduced land rentals and lower corporate income tax rates for a certain period of time;
- vi) Assistance for expansion into markets;
- vii) Assistance in accessing information, consultancy services and legal support;
- viii) Assistance in developing human resources.

Relevant guidelines and detailed implementing legislation will need to be enacted in order to give effect to the above provisions and incentives.

- **Additional support measures for certain types of SMEs**

In addition to the above listed incentives, the Law on SMEs provides further support measures with respect to the following kinds of SMEs:

- i) **Innovative start-ups** (defined as 'SMEs established to implement business ideas based on the exploitation of intellectual property, technology and new business models, and that are able to grow quickly') may be entitled to:
 - a) receive assistance with respect to the application and transfer of technologies, use of equipment, advanced training for the development of products, fundraising, intellectual property, technical regulations, communication, publicity, promotion and other sectors;
 - b) have access to loans from credit institutions at preferential interest rates; and
 - c) investors in startups will be entitled to a reduction on corporate income tax on revenues from their investment in startups for a certain period of time.
- ii) **Business clusters:** SMEs participating in business clusters and value chains in the field of production and processing may be entitled to:
 - a) receive advanced technology training, consultancy and information with

respect to technical regulations, and assistance with brand development, expansion into product markets, test production, assessment, verification, certification of product quality and other sectors; and

b) have access to loans from credit institutions at preferential interest rates.

- iii) **Women-owned SMEs:** Pursuant to Article 5 of the Law on SMEs, 'women-owned SMEs' (defined as 'SMEs in which one or more women own at least 51% of the charter capital and at least a woman is the executive director') and SMEs employing more women employees, will be given priority access to the assistance measures provided for under the Law on SMEs.

5. New Decision from the Ministry of Industry and Trade to cut 675 business and investment conditions

On 21 September 2017, the MOIT issued Decision 3610a/QD-BCT (the **Decision**) providing for a plan to cut down a number of business and investment conditions during the period of 2017-2018.

Specifically, under the Decision, a total of 675 business and investment conditions in 17 areas have been proposed to be cut down. These include petroleum; gas; chemicals; wine and spirits; cigarettes; food safety; electricity; frozen food temporarily imported for re-export; franchising; logistics; industrial precursors; explosive precursors; goods transaction office; commercial appraisal; multi-level marketing; e-commerce; and industrial explosive materials (including destruction activities). Among these areas, food safety, gas, cigarettes, chemicals, and wine and spirits are the ones which will face the most significant changes, with a cut-down of 215, 76, 47, 43 and 31 business and investment conditions, respectively. After this cut-down, the remaining conditions that are under the authority of the MOIT will be 541.

This marks the biggest cut-down of conditions ever in the history of the MOIT, and many observers are expecting that this Decision will bring about a better business environment for the whole country.

We trust that you found this edition of our newsletter an interesting read and welcome any feedback or comments you may have on any of our topics. Our address for comments is legalenquiries@frasersvn.com.

Whilst we aim to provide a useful update on new legislation, this newsletter does not constitute formal legal advice. Should you feel that you require further information on any of the issues in this edition of our newsletter, please contact us at the address above or via your usual Fraser's legal adviser.

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