

## LEGAL NEWS UPDATE

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11/2012/ND-CP	Decree No.11/2012/ND-CP dated 22/02/2012 of the Government on amendment, addition of a number of articles of Decree No.163/2006/ND-CP dated 29/12/2006 of the Government on security transaction
122/2011/ND-CP	Decree No. 122/2011/ND-CP dated 27/12/2011 of the Government on amendment, addition of a number of Decree No. 124/2008/ND-CP dated 11/12/2008 of the Government regulating in details and guiding the implementation of a number of articles of Law on Corporate Income Tax
<b>THE PRIME MINISTER</b>	
254/QD-TTg	Decision No. 254/QD-TTg dated 1/3/2012 of the Prime Minister on approving the plan "Restructuring the system of credit institutions in the period 2011-2015"
07/CT-TTg	Directive No. 07/CT-TTg dated 2/3/2012 of the Prime Minister on reorganizing management and increasing efficiency in the activities of economic zones, industrial zones, industrial clusters
05/2012/QD-TTg	Decision No. 05/2012/QD-TTg dated 19/01/2012 of the Prime Minister on pilot application of VAT refund in respect to the goods that the foreigners bought in Vietnam bring along when exiting through Noibai and Tan Son Nhat International Airport
03/2012/QD-TTg	Decision No. 03/2012/QD-TTg dated 16 January 2012 of the Prime Minister on amendment, addition of a number of articles of the Regulations on operation management of foreign contractor in the field of construction in Vietnam issued together with the Decision No.87/2004/QD-TTg of the Prime Minister

### CASE STUDY 01, 02,03

### NEWLY ISSUED DOCUMENTS



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## **OPERATION MANAGEMENT OF FOREIGN CONSTRUCTOR IN THE FIELD OF CONSTRUCTION**



### **COMMUNITY LAW FIRM**

On 16 January 2012, the Prime Minister issued Decision No. 03/2012/QĐ-TTg on amendment, addition of a number of articles of Regulations on operation management of foreign contractor in the field of construction in Vietnam issued together with Decision No. 87/2004/QĐ-TTg.

Under this Decision, the application documents of contractor license is regulated in details including 01 application set, directly submitted or sent via post by foreign contractor to the licensing authority in order to request for issuance of contractor license in Vietnam instead of listing in detailed as currently regulated.

The new Decision does not amend any requirement for application documents but the examination time for license issuance of foreign contractor is reduced 05 days and the license shall be issued in 15 working days as from the date of full reception of application documents. In the event of not issuing the license, the competent authority must respond the contractor in written and clarify the reason of denying license issuance.

The amendment, addition in this new Decision takes effect from 01 March 2012.

## **NEW REGULATIONS ON TAXABLE INCOME AND CALCULATION METHODS OF CORPORATE INCOME TAX**

On 27 December 2011, the Government issued Decree No. 122/2011/ND-CP amending, adding a number of articles of Decree No. 124/2008/ND-CP dated 11 December 2008 of the Government regulating in details and guiding the implementation of a number of articles of Law on Corporate Income Tax (CIT Law). Accordingly, many regulations relating to taxable income and calculation methods of CIT are amended and added.

Under this Decree, the regulation on “Taxable income” is amended and added several types of incomes. It is noteworthy that the income from deposit interests, interests of capital lending, including deposit interests at credit institutions, interest from capital lending under any form in accordance with the regulations of law, credit guarantee fee and other fee in the case of capital lending agreement shall be subject to income tax.

Apart from the above incomes, the new Decree regulates other types of taxable income as follows: The income from asset transfer, liquidation (except for real estate), other valuable papers, income from copyright under any form, income from intellectual property rights; income from technology transfer in accordance with the law; asset leasing under any form.

In respect to income from capital transfer, the enterprise having security transfer not in currency but by asset, other material benefits such as stock, fund certificate that arise income shall be subject to CIT.

The new amendment, addition in this Decree takes effect from 01 March 2012 and shall be applied for the tax calculation period from the year 2012.

### WITHDRAWAL OF INVESTMENT CERTIFICATE OF INEFFICIENT, SLOW PROGRESS



**COMMUNITY LAW FIRM**

In order to regulate the management and increase the operation productivity of the Economic Zones (EZ), Industrial Zones (IZ), Industrial Clusters (IC), on 02 March 2012, the Prime Minister issued the Directive No.07/CT-TTg. In this Directive, the Prime Minister request the Ministry of Planning and Investment to chair, collaborate with the relevant Ministries, agencies to execute the assessment of plan implementation, establishment, operation of EZ, IZ, IC and propose the treatment measures in the case that the EZ, IZ, IC operate inefficiently, waste land and cause environmental pollution.

Therefore, strictly treating the projects in EZ, IZ, IC that operate inefficiently, does not comply with the regulations of law; considering to withdraw the investment certificate of project that does not implement in compliance with the law, does not commence or commence to construct the infrastructure, warehouse, equipment in slow progress and applies for extension for many times. Meanwhile requesting the IZ to immediately complete the system of wasted water treatment in compliance with environmental standard.

This Directive also requires that the investment in EZ, IZ, IC must comply with the local conditions, taking priority for the support industry, high technology project, modern and friendly environmental projects.

### THE FOREIGNER WHEN BUYING GOODS IN VIETNAM WILL BE ALLOWED FOR VAT REFUND

The Prime Minister recently issued Decision No.05/2012/QĐ-TTg dated 19 January 2012 on the pilot application of VAT refund in respect to goods bought by the foreigners in Vietnam are brought along when exiting through Noibai and Tan Son Nhat International Airport.

The goods subject to VAT refund must be under the VAT taxable objects which have not yet been used and are allowed to brought on the airplan in accordance with the law on airway safety and security; are not under the list of goods prohibited from export or limited to export; has invoice and tax refund declaration issued within 30 days before the date of exit; the goods on the invoice/ custom declaration value minimum 02 million per day.

The business entity subject to pilot must be enterprise trading goods subject to tax refund that satisfy the above conditions; having business location in Hanoi, Hochiminh City or in the art and craft village centers where is a tourism destination; implementing system of accounting, invoice, bills in accordance with the law, taking VAT declaration, payment under the deduction methods.

When being refunded VAT, the customer must bear tax refund service fee according to the regulations of the Ministry of Finance but that service fee shall not exceed 15% of total VAT refundable amount and be collected by a commercial bank selected as a VAT refund agency to finance for the expenses of the tax refund activities.

This Decision takes effect as from 01 July 2012 and the pilot period will be 02 years (from 01 July 2012 to 30 June 2014).



## **AMENDED, ADDED REGULATIONS ON SIGNING, IMPLEMENTING SECURITY TRANSACTION**



**COMMUNITY LAW FIRM**

On 22 February 2012, the Government issued the Decree No.11/2012/ND-CP on amending, adding a number of articles of Decree No.16/2006/ND-CP on security transaction. Decree No. 11/2012/ND-CP has the following basic amendment, addition:

### *1. Giving more freedom right of engagement, negotiation and self-responsibility of the parties*

Decree No.11/2012/ND-CP details the right of self-responsibility, the freedom of engagement, negotiation of the parties on the security measures of implementation of civil, business, commerce obligations (including the field of loan security of credit institutions), and meanwhile enhances the principle of self-responsibility of the parties on engagement, negotiation.

### *2. Determining the priority order of payment in respect to many different types of party.*

Decree No. 11/2012/ND-CP details the open and transparent principle in the regulations of security transaction, and resolves the relation of the parties having direct interest relating to security assets.

### *3. Creating the favorable conditions in resolving the security assets to collect debt and simplifying the procedure of signing, implementing security contract.*

Decree No.11/2012/ND-CP regulates in details the measures to resolve security assets, adds the regulation in the case that the right of debt claims is transferred, the parties shall not resign the security transaction.

Meanwhile this Decree adds the regulation when the security transaction was signed before the division, separation, consolidation, merger or conversion of legal entity but still valids, the parties shall not resign such security transaction when reorganizing that legal entity. In respect to the registered security transaction, the new legal entity informs in written to the competent authority on the reorganization of legal entity to implementation of change registration in accordance with the law.

### *1. Strengthening the control mechanism of transferring, changing the security asset.*

Decree No.11/2012/ND-CP regulates the asset, transaction registration centers to send the certificate of security transaction registration to the registration management authorities of road and inland waterway means of transport to control the transfer, change of mortgaged assets without the consent of mortgagee.

## **RESTRUCTURING THE SYSTEM OF CREDIT INSTITUTIONS IN VIETNAM**

On 01 March 2012, the Prime Minister issued the Decision No. 254/QĐ-TTg on approving the Project “Restructuring the system of credit institutions in Vietnam in the period of 2011-2015” for basically and entirely restructuring the system of credit institutions.

The goals of this Project is develop a system of multifunctional credit institutions in the direction of modernization, safe operation, stable efficiency with diverse structure of ownership, having more competitive scale, form and basing on the modern banking technology, management in accordance with the international practices, standards on banking operation to satisfy better the demand for financial, banking services in the economy.

Under the Decision No.254/QĐ-TTg, in the period of 2011-2015, the Government will focus on transparency of financial situations and strengthening the operation of credit institutions, improve safety level and operation effect of credit institutions, improve order and discipline and market principle in banking activities. Striving at the end of 2015 to form at least 1-2 commercial bank that has scale and qualification equivalent to the bank in the region.

Meanwhile, the Government encourages the merger, consolidation, acquisition of credit institutions on the principle of voluntary, to ensure the interest of depositors and economic rights and obligations of relevant parties under the law.

This Decision takes effect on the date of execution.

### CASE STUDY 01:

#### FOREIGN INVESTED ENTERPRISES IN REAL ESTATE, PUT IN THE CROSSHAIRS

According to the request of the Ministry of Construction, the relevant entities of the real estate projects having the foreign invested capital must report their project progress report by 01 February 2012.

This report will help the Ministry of Construction better understand the situation of project preparation and improve investment quality and management efficiency in of FDI real estate projects in the coming years. This is made possible by Directive No. 1617 dated 19 September 2011 of the Prime Minister.

In 2011, FDI capital registration increased in Vietnam by 14.7 billion USD. In detail, the 2011 FDI capital registration structure was; 76.4% for the agriculture and construction sectors (in 2010 the rate was 54.1%), 5.8% for the real estate sector (in 2010 the rate was 34.3%). Meanwhile, the amount of cement, steel, real estate projects with the billions USD investment scale reduced. In the opinion of the Prime Minister, besides the obtained results, the management of foreign investment projects is still inadequate and inefficient.

The management problems occurred in golf, forest planning, steel metal, and mineral exploration projects.

Many projects have not been properly assessed so the reason for the low quality is unknown. However, the administrative duties on many projects are not well performed; this could be due to the lack of collaboration between the Ministries, branches, and local authorities.

### NOTE OF COMMUNITY LAW FIRM:

- **Case Study 01: The land leasing enterprise if having not yet implemented the project in compliance with the process should have some positive and motivated actions to inform with the local authority such as: proposal for support, re-assessment of geological conditions for implementation and other measures for improving that the project is still in operation.**
- **Case Study 02: No comment.**

**COMMUNITY LAW FIRM**

### CASE STUDY 02:

#### CONTROLLING LOANS FOR FDI ENTERPRISES

In order to support the preparation and drafting of the efficient improvement project of foreign invested capital management, the State Bank of Vietnam (SBV) recently issued the official letter No. 1355/NHNN-CST to request credit institutions, branches of foreign banks (including credit institutions) to report the capital loan situation of foreign invested enterprises.

Meanwhile, the credit institutions must assess the loan and debt collection situation of foreign invested enterprises as well as the difficulties and problems that may arise during the process of credit and debt collection for these enterprises.

Meanwhile, the SBV requested credit institutions to propose and recommend improvement measures for legal framework of capital loans to foreign invested enterprises. They also called for coordination enhancement among the Ministries, branches and local authorities, to accelerate the process.

### CASE STUDY 03:

#### REGULATIONS ON DISPUTE RESOLUTION IN THE FIELD OF INVESTMENT

Any dispute relating to investment activities in Vietnam shall be resolved through negotiation and conciliation, or shall be referred to arbitration or to a court in accordance with law.

Article 12 Law on Investment 2005 details the regulation on the dispute resolution in the field of investment as follows:

- Any dispute relating to investment activities in Vietnam shall be resolved through negotiation and conciliation, or shall be referred to arbitration or to a court in accordance with law;
- Any dispute as between domestic investor or as between a domestic investor and a State administrative body of Vietnam relating to investment activities in the territory of Vietnam shall be resolved at a Vietnamese court or arbitration body.
- Any dispute to which one disputing party is a foreign investor or an enterprises with foreign owned capital, or any dispute as between foreign investors shall be resolved by one of the following tribunals and organizations:
  - a. A Vietnamese court;
  - b. A Vietnamese arbitration body;
  - c. A foreign arbitration body;
  - d. An international arbitration body;
  - e. An arbitration tribunal established in accordance with the agreement of the disputing parties.
- Any dispute between a foreign investor and State administrative body of Vietnam relating to investment activities in the territory of Vietnam shall be resolved by a Vietnamese court or arbitration body, unless otherwise provided in a contract signed between a representative of a competent State body of Vietnam with the foreign investor or in an international treaty of which the Socialist Republic of Vietnam is a member.

#### NOTE OF COMMUNITY LAW FIRM:

**Has Your Company chosen the right body for dispute resolution in respect to each contract and each cooperation subject?**

**The clear regulations of dispute resolution in the signed contract is very important because in the event of wrong choice or unclear regulations of resolution body, it makes Your Company in trouble and cost much time and money for resolution if having dispute.**

COMMUNITY LAW FIRM

NO	TITLE
<b>GOVERNMENT</b>	
15/2012/ND-CP	Decree No. 15/2012/ND-CP dated 09 March 2012 of the Government on regulating in details the implementation of a number of articles of Law on Minerals
12/2012/ND-CP	Decree No. 12/2012/ND-CP dated 01 March 2012 of the Government on registration and operation management of foreign non governmental organizations in Vietnam
11/2012/ND-CP	Decree No. 11/2012/ND-CP dated 22 February 2012 of the Government on amending, adding a number of articles of Decree No. 163/2006/ND-CP dated 29 December 2006 of the Government on security transaction
<b>PRIME MINISTER</b>	
252/QD-TTg	Decision No. 252/QD-TTg dated 01 March 2012 of the Prime Minister on approval of Development strategy on security market in the period of 2011-2020
193/QD-TTg	Decision No. 193/QD-TTg dated 15 February 2012 of the Prime Minister on approval of Development of insurance market of Vietnam in the period of 2011-2020
04/2012/QD-TTg	Decision No. 04/2012/QD-TTg dated 19 January 2012 of the Prime Minister on extending the tax payment period to 03 months more in respect to the corporate income tax payable in first quarter, second quarter of 2011 of the small and medium enterprises, labor intensive enterprises
02/2012/QD-TTg	Decision No. 02/2012/QD-TTg dated 13 January 2012 of the Prime Minister on promulgating the list of essential goods, services subject to contract registration in standard form, general transaction condition.
<b>MINISTRY OF INDUSTRY AND TRADE</b>	
04/2012/TT-BCT	Circular No. 04/2012/TT-BCT dated 13/02/2012 of the Ministry of Industry and Trade on the regulation of chemical classification and labelling

### NOTE OF COMMUNITY LAW FIRM:

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### COMMUNITY LAW FIRM

NO	TITLE
<b>MINISTRY OF FINANCE</b>	
39/2012/TT-BTC	Circular No. 39/2012/TT-BTC dated 08 March 2012 of the Ministry of Finance on guiding the implementation of incentive rate of import – export tax in respect to a number of goods under the division 2710 of Preferential Import tariff
37/2012/TT-BTC	Circular No. 37/2012/TT-BTC dated 02 March 2012 of the Ministry of Finance on guiding the implementation of incentive rate of import – export tax in respect to a number of goods under the division 2711 of Preferential Import tariff
25/2012/TT-BTC	Circular No. 25/2012/TT-BTC dated 21 February 2012 of the Ministry of Finance on on guiding the implementation of incentive rate of import – export tax in respect to a number of goods under the division 2710 of Preferential Import tariff
15/2012/TT-BTC	Circular No. 15/2012/TT-BTC dated 08 February 2012 of the Ministry of Finance on promulgating the declaration form of import – export goods