LEGAL UPDATES (July 09th, 2020)

In this issue, we would like to bring to your attention a brief overview of the recent legal news concerning the following:

- Some new points of the Law on amendments to a number of articles of law on entry, exit, transit and residence of foreigners in Vietnam;
- New regulations on cancellation of outstanding tax, late payment interest and fines;
- The Government widens the ceiling on interest expense for enterprises.

1. Some new points of the Law on amendments to a number of articles of the law on entry, exit, transit and residence of foreigners in Vietnam

On November 25th, 2019, the National Assembly has promulgated the Law on amendments to a number of articles of law on entry, exit, transit and residence of foreigners in Vietnam, which takes effect on July 1st, 2020. According to this Law, the form and validity of a visa have some points that foreign investors should pay attention to as follows:

For foreign investors enter Vietnam that will be issued with a DT visa in one of the following types:

- **DT1** - Issued to foreign investors in Vietnam and representatives of foreign organizations investing in Vietnam and contributing capital of VND 100 billion or more or investing in business lines benefitting from investment incentives, in administrative divisions benefitting from investment incentives decided by the Government - Duration: not exceed 05 years.

- **DT2** - Issued to foreign investors in Vietnam and representatives of foreign organizations investing in Vietnam and contributing capital of VND 50 billion to less than VND 100 billion or investing in business lines benefitting from investment incentives treatment decided by the Government - Duration: not exceed 05 years.

- **DT3** - Issued to foreign investors in Vietnam and representatives of foreign organizations investing in Vietnam and contributing capital of VND 3 billion to less than VND 50 billion - Duration: not exceed 03 years.

- **DT4** - Issued to foreign investors in Vietnam and representatives of foreign organizations investing in Vietnam and contributing capital of less than VND 3 billion - Duration: not exceed 12 months.
For foreign employees coming to Vietnam to work, they will be issued one of the following 2 types of visa:

- **LD1** – Issued to foreigners working in Vietnam and certified of eligibility for work permit exemption, unless otherwise specified by international agreements to which Vietnam is a signatory - Duration: not exceed 02 years.

- **LD2** – Issued to foreigners working in Vietnam requiring a work permit - Duration: not exceed 02 years.

2. **New regulations on deleting of outstanding tax, late payment interest and fines**

On June 13, 2019, the National Assembly promulgated the Tax Administration Law, which takes effect on July 1, 2020. According to the Tax Administration Law 2019, taxpayers may have been deleted outstanding tax, late payment interest, and fines in the following cases:

i. An enterprise or cooperative is declared bankrupt and, after making the payments in accordance with bankruptcy laws, has no other assets to pay tax, late payment interest or fines.

ii. An individual is dead or declared dead or incapacitated by the court and does not have any assets, including inheritance, to pay the outstanding tax, late payment interest or fines.

iii. Tax debts, late payment interest, and fines of taxpayers not falling into the cases prescribed in Items 1 and 2, which tax authorities have applied the coercive measures "Revocation of registration certificates enterprise registration, business registration certificate, cooperative registration certificate, investment registration certificate, establishment and operation license, practising license "and tax and tax debts For late payment, this fine is over 10 years after the deadline for paying tax but cannot be recovered.

iv. Taxpayers being individuals, business individuals, heads of households, heads of business households, owners of private enterprises and one-member limited liability companies have had the outstanding tax, late payment interest and fines cancelled before resuming the business operation or establishing a new business shall pay such debts must be paid to the State.

v. Taxes, late payment interest, and fines for cases of natural disasters, natural disasters, epidemics that have been considered for long-term exemption of late payment interest and extended tax payment time limit, are unable to recover production and business activities and are unable to pay taxes, late payment interest, and fines.

3. **The Government widens the ceiling on interest expense for enterprises**

On June 24th, 2020, the Government issued Decree 68/2020/ND-CP amending and supplementing Clause 3 Article 8 of Decree No. 20/2017/ND-CP dated February 24, 2017, of the Government. Regulations on tax administration for enterprises having
associated transactions, **which takes effect on June 24th, 2020.** According to this Decree, the Government raises the ceiling on interest expense for enterprises as follows:

- The Loan interest expense is deducted when calculating corporate income tax calculated after deduction of deposit interest and loan interest. This provision is wider than that in Decree 20/2017 (Loan interest expenses include both deposit and loan interests).

- The ceiling of the loan interest expense deducted when calculating corporate income tax arising in the period is raised from not exceeding 20% (as prescribed in Decree 20/2017) to not exceeding 30% of the net profit from business activities in the period plus interest expenses (after deducting interest on deposits and loan interests) arising in the period plus depreciation expenses incurred in the period.

- In addition, Decree 68/2020 further stipulates the loan interest costs which are not deducted (due to exceeding 30% or more) shall be carried forward to the next tax period when determining total loan interest cost to be deducted provided total loan interest cost to be deducted in the next tax period is lower than 30% as above. The loan interest costs may be carried forward for a maximum consecutive period of 05 years, counting from the year following the year in which such loan interest costs are not yet deducted.

However, this regulation does not apply to loans which the taxpayer is:

- Credit institutions;
- Insurance Business;
- Loans on-lent by the Government from ODA loans;
- Concessional loans of Government;
- Loans granted for implementing national target programs;
- Loans granted for investment in programs/projects for implementation of State social welfare policies.

Moreover, Decree 68/2020 also provides for the application of this new regulation in the tax period of 2019 and also retroactive for the tax period of 2017 and 2018. Specifically, taxpayers are allowed to declare and supplement their declarations corporate income tax finalization in 2017 and 2018 for determining loan interest costs and corporate income tax amounts payable (if any), and submit it to the supervisory tax authority before January 1, 2021. In case completing the additional declaration, if the total amount of the corporate income tax payable is reduced, a corresponding amount of late payment interests shall be also reduced (if any).
If taxpayers, in practice, have to pay the total amount of corporate income tax and a penalty for late payment of tax which is higher than that of the tax and penalty re-determined, the difference between these amounts shall offset against the corporate income tax in 2020. In case the corporate income tax of 2020 is insufficient for the offsetting, the remaining of the difference will be continued to be deducted from the payable corporate income tax of the following year. The offsetting, however, shall not excess 05 years from the year 2020. The remaining of the difference will not be kept processing after the 5-year period is ended.

We hope this short Letter of legal updates would bring you useful information.

Best regards.
Contributor(s):

Mr. LE TIEN DAT
Managing Partner
M (+84) 939 107 387 | E dat.le@apolatlegal.com

Ms. BUI BICH PHUONG
Associate
M (+84) 933 632 693| E phuong.bui@apolatlegal.com

Disclaimer: All materials have been prepared for general information purposes only. The information is not intended as, and should not be taken as, legal advice. Do not act or refrain from acting based upon information provided herein without first consulting our lawyers about your particular factual and legal circumstances. Apolat Legal can accept no responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate adviser.

ABOUT US,

Apolat Legal is a professional law firm with its offices in Ho Chi Minh city and Ha Noi city. The firm’s lawyer team specializes in almost all legal practice areas in Vietnam including: Enterprise and Investment; Labor and Employment; Intellectual Property; Dispute Resolution; Real Estate and Construction; Information and Communication; Natural Resources and Environment; Transport; Industry and Trade; Education and Training; Finance and Banking; Agriculture; Legal Document Translation; Legal Training.

Our reputation and the quality of its services are reflected by our clients. We are serving nearly 1,000 clients both local and multi-national companies.

We are also honored to receive numerous recognitions and/or articles posted by world-leading and local organizations and publications including: The Law Association for Asia and the Pacific (lawasia, 1966), The Legal500, IP Link, IP Coster, Lexology, Global Trade Review (GTR), The Saigon Times, etc.

Contacts:

HO CHI MINH CITY (Head office)

5th Floor, GIC Buidling
36A Nguyen Gia Tri, Binh Thanh District
Ho Chi Minh City, Vietnam

Tel/SDT: +84-28-3899 8683
Info@apolatlegal.com
Www.apolatlegal.com

SINGAPORE (Affiliated office)

#26-10, SBF Center,
160 Robinson Road
Singapore 068914
Tel: +84-93-2014 986
Info@apolatlegal.com
Www.apolatlegal.com