

## LEGAL UPDATES (March 22<sup>nd</sup>, 2021)

In these legal updates, we would like to send clients the legal updates on some following issues:

- Regulations providing guidance on determination of high-tech enterprises;
- New guidance on tax for household business, individual business;
- Two administrative procedures in labour field – salary are revoked.

### 1. Regulations providing guidance on determination of high-tech enterprises.

On March 16<sup>th</sup>, 2021, the Government promulgated the Decision No.10/2021/QĐ-TTg regulating criterias for determination of high- techn enterprises, particularly:

To be determined as high - tech enterprises, in addition to satisfaction of criterias as prescribed in point a, point b Clause 1 Article 18 the Law on High Technology No. 21/2008/QH12 amended, supplemented by Article 75 of the Law on Investment No. 67/2014/QH13 and Clause 3 Article 76 the Law on Investment No. 61/2020/QH14, enterprises also need to satisfy the following criterias:

1. Revenue from high-tech products must be at least 70% of the enterprise's total annual net revenue.
2. The ratio of charge for enterprises' research and development activities (includes depreciation of infrastructure investment, fixed assets, annual recurrent expenditures on research and development activities; expenditures for training and training support for the enterprise's research and development staff members, Vietnam-based science and technology organizations, and training institutions; royalties, fees for transfer of ownership right, and licensing of industrial property objects in service of research and development activities; registration fees for recognition or protection of inventions and utility solutions conducted in Vietnam) per total net revenue value minus input value (including price value of raw materials, components for annual import production and domestic purchase).
  - a. For enterprises with a total capital of VND 6,000 billion or more and 300 employees or more: at least 0.5%;
  - b. For enterprises other than those specified at Point a, Clause 2 of this Article and having a total capital of VND 100 billion or more and employing 200 employees or more: at least 1%;
  - c. For enterprises other than those specified at Points a and b, Clause 2 of this Article: at least 2%.

3. Portion of the number of research and development staff members holding a degree of associate or higher of the enterprise (is the number of workers with a labor contract with a definite term of 01 year or more or an indefinite-term contract, in which, the number of workers possessing degree of associates accounts for 30% at most) per the enterprise's total number of workers:
  - a. For enterprises with a total capital of VND 6,000 billion or more and 300 employees or more: at least 1%
  - b. For enterprises other than those specified at Point a, Clause 3 of this Article and having a total capital of VND 100 billion or more and employing 200 employees or more: at least 2.5%
  - c. For enterprises other than those specified at Points a and b, Clause 3 of this Article: at least 5%.

This Decision shall be effective on April 30<sup>th</sup>, 2021 and replace the Decision No.19/2015/QĐ-TTg.

## **2. New guidance on tax for household business, individual doing business**

Vietnamese Ministry of Finance is collecting citizen feedback on the Draft of the Circular guiding tax and tax administration for household businesses, individual doing business. The Draft provides guidances on Value-Added Tax, personal income tax and tax administration for individuals, groups of individuals, household businesses that are residents having business activities; household businesses, individual doing business at bordering markets, markets at border gates, markets in border-gate economic zones in Vietnam's territory; individuals having assets for lease in Vietnam's territory; individuals transferring Vietnamese internet domain names.

Tax Scales in the Draft of the Circular is remade from Value-Added Tax Tariff (VAT) and added some fields that were not prescribed explicitly in VAT Scales.

Accordingly, Tax Scales in the Draft is specified as follows:

- "Bonuses, sales aid, promotion, commercial discounts, payment discounts, cash or non-cash supports to individuals doing business" shall have the portion for VAT calculation is 1% and personal income tax rate is 0.5%.
- For services including sauna, massage, karaoke, dance hall, billiards, internet, game service,...; tailoring, laundry; hair-cutting, hair-styling, hair-washing; repair of computer and household tools service shall be applied tax rate of 5% for VAT and 2% for personal income tax.
- Leasing assets services such as stores, factories, real estate,... have tax rate of 5% for both VAT and personal income tax.

- Freight transportation and passenger transportation service; catering service, repairing and maintaining machines, devices, vehicles, cars, motorcycles, light motorcycles,... shall have tax rate of 3% for VAT and 1,5% for personal income tax.

Additionally, the Draft also specifies tax calculation bases for individuals doing business are the taxable revenue and tax rate on turnover. Accordingly, the Draft also provides definition and guidances for the concept of "taxable revenue" and "tax calculation rate on revenue"

### 3. Two administrative procedures in labour – salary field are revoked

On March 17th, 2001, the Vietnamese Ministry of Labour, War invalids and Social Affairs published Decision No.338/QD-LDTBXH announcing new administrative procedures promulgating, amending, supplementing, and abrogating in the labor - salary field that is under control of the Vietnamese Ministry of Labour, War invalids and Social Affairs (hereinafter referred to as "**Decision 338/QD-LDTBXH**")

Accordingly, the most remarkable content of Decision 338/QD-LDTBXH is the abrogation of two (02) administrative procedures in labor - salary field. Particularly:

- (i). For the administrative procedure at provincial level: employers do not need to send collective labour agreement to the provincial level State administrative body for labour within 10 days from the signing date.
- (ii). For the administrative procedure at district level: when formulating wage scales, wage tables and labour rates, employers only need to make a public announcement of such items at workplaces before implementing and do not need to send them to the district-level State administrative authority for labour in the locality where the employer has its production and business establishment

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

Best regards.

**Contributor(s):****Mr. LE TIEN DAT****Senior Partner****M** (+84) 939 107 387 | **E** [dat.le@apolatlegal.com](mailto:dat.le@apolatlegal.com)**Ms. BUI BICH PHUONG****Associate****M** (+84) 933 632 693 | **E** [phuong.bui@apolatlegal.com](mailto:phuong.bui@apolatlegal.com)**Ms. LE TRINH ANH THU****Paralegal****M** (+84) 962 941 160 | **E** [thu.letrinh@apolatlegal.com](mailto:thu.letrinh@apolatlegal.com)

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**Contacts:****HO CHI MINH CITY (Head office)**

5<sup>th</sup> Floor, IMM Building  
99-101 Nguyen Dinh Chieu, District 3  
Ho Chi Minh City, Vietnam

**THE BRANCH IN HA NOI CITY**

Room A8, 29th Floor, East Tower, Lotte Center  
54 Lieu Giai, Cong Vi Ward, Ba Dinh District  
Hanoi City, Vietnam

Tel: +84-28-3899 8683

Email: [info@apolatlegal.com](mailto:info@apolatlegal.com)

Website: [www.apolatlegal.com](http://www.apolatlegal.com)

**SINGAPORE (Affiliated office)**

#26-10, SBF Center,

160 Robinson Road

Singapore 068914

Tel: +84-93-2014 986

Email: [info@apolatlegal.com](mailto:info@apolatlegal.com)

Website: [www.apolatlegal.com](http://www.apolatlegal.com)

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