

LEGAL UPDATES (April 19th, 2021)

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

- Determining deductible expenses as calculating the Corporate Income Tax for the amount of supporting and financing the Covid-19 pandemic prevention and control.
- New forms of documents and reports pertaining to procedures for investment in Vietnam, outward investment and investment promotion activities.
- Amending and supplementing the procedure for the enforcement of transferring maintenance fees and charges of common spaces of apartment buildings.

1. **Determining deductible expenses as calculating the Corporate Income Tax for the amount of supporting and financing the Covid-19 pandemic prevention and control**

On March 31st, 2021, the Government issued Decree 44/2021/ND-CP on guidance on deductible expenses as determining the Corporate Income Tax for the amount of supporting and financing activities of Covid-19 pandemic prevention and control. Accordingly, enterprises are entitled to deduct expenses as determining the Corporate Income Tax for the material or in-kind amount of supporting and financing activities of Covid-19 pandemic prevention and control via the following units and organizations in charge of receiving Covid-19 supports and sponsorships:

- Vietnam Fatherland Front Committees at all levels;
- Health units;
- Armed force units;
- Units and organizations assigned by competent state authorities to be in charge of centralized isolation bases;
- Educational units;
- Press agencies;
- Ministries, Ministerial-level authorities, Government-attached agencies;
- Central and local agencies of the Communist Party, youth unions, trade unions at all levels;
- Local state authorities and units at all levels having fundraising function;

- Covid-19 pandemic prevention funds at all levels;
- National Humanitarian Portal;
- Charities, humanitarian funds, and organizations having fundraising function established and operating in accordance with the laws.

Proving documents or dossiers for the supporting and financing Covid-19 amount comprise: the sample of written confirmation of supporting and financing under Decree 44/2021/ND-CP, or documents or dossiers, regardless of paper or electronic forms, certifying the donations and fundings signed and stamped by representatives of the sponsors and sponsees, enclosed with legally valid invoices and bills of the donations or fundings.

Decree 44/2021/NĐ-CP of the Government is of full force and effect as of March 31st, 2021 and applied to the CIT period of 2020 and 2021.

2. New samples of documents and reports related to investment procedures in Vietnam, outward investment and investment promotion activities

On April 9th, 2021, the Ministry of Planning and Investment issued Circular 03/2021/TT-BKHDT on forms of documents and reports pertaining to procedures for activities of investment in Vietnam, outward investment and investment promotion. Accordingly, the new forms are issued on the basis of the regulations of the Law on Investment 2020, Decree 31/2021/ND-CP and Decree 86/2017/ND-CP, specifically as follows:

- Forms of documents and reports for investors;
- Forms of documents and reports for management state authorities in charge of investment;
- Forms of documents and reports for outward investment activities;
- Forms of documents and reports for activities of investment promotion.

The Circular also provides guidance on signing documents and reports as follows:

- For investment in the form of establishing an economic organization in Vietnam: Before establishing an economic organization, the investor signs documents on investment procedures; after the establishment of the economic organization, the legal representative of such organization signs documents on implementing the investment procedures.
- For investment in the forms of contributing capital, purchasing shares or capital contribution in Vietnam: documents on implementing the investment procedures shall be signed mutually by foreign investors and the legal representative of economic organizations.

- For investment in the form of entering into a business cooperation contract in Vietnam: the parties of a business cooperation contract mutually sign documents on the implementation of investment procedures and other documents related to activities of investment;
- Investors specified in Article 68 of Decree No. 31/2021/ND-CP of the Government dated March 26, 2021 on the implementation of a number of articles of the Law on Investment for outward investment registration sign documents and reports pertaining to activities of outward investment.

The Circular 31/2021/TT-BKHĐT is of full force and effect as of the signing date of April 09th, 2021 as well as replacing Circular 16/2015/TT-BKHĐT and Circular 03/2018/TT-BKHĐT.

3. Amending the procedure for the enforcement of transferring maintenance fees and charges of common spaces of apartment buildings

On March 26th, 2021, the Government issued Decree No. 30/2021/ND-CP amending and supplementing a number of articles of Decree 99/2015/ND-CP dated October 20th, 2015 on detailed guidance on the implementation of Law on Housing. Specifically, the Decree amends and supplements Article 37 on the procedure for the enforcement of transferring maintenance fees and charges of common spaces of apartment building. Some notable points include:

- i. Accordingly, in the event that investors are not willing to transfer maintenance fees and charges under the laws, the Board of Management of the apartment building shall send a written request to the provincial-level People's Committee where the apartment building is located to require the investors to transfer maintenance fees and charges in accordance with the laws. Then, based on the information provided by the credit institutions on the number and amount of the deposit account of the investors on maintenance fees and charges, the provincial-level People's Committee issues a decision on enforcement. After receiving the enforcement decision, the credit institution shall be obligated to transfer the said amount to the account opened by the Board of Management of the apartment building to manage and use in accordance with the laws.
- ii. In the event that the amount of the said deposit account of the investors is not sufficient or nothing left to transfer, the provincial-level people's committee shall issue and send a written request to the credit institution to provide information on the number and amount of the business account of the investors. Based on the information provided by the credit institution, the provincial-level people's committee issues a decision on the enforcement of withdrawing the amount of maintenance fees and charges from the business account of the investors to proceed to transfer to the account opened by the Board of Management of the apartment building. After receiving the enforcement decision, the credit institution shall be obligated to transfer the said amount to the account of the Board of Management of the apartment building in strict conformity with the amount written on the enforcement decision.

- iii. In the event that the investors do have the business account but the account is not sufficient or nothing left to deduct, the provincial-level people's committee instructs the Department of Construction as well as coordinating with the Public Security agency and other relevant authorities to examine and determine the detailed area of houses and lands of the investors at the location of the project where the apartment building is located or at the location of other projects to distraint and proceed to open an auction to recover the maintenance fees and charges.

During the implementation of the enforcement of transferring maintenance fees and charges to the Board of Management of the apartment building, if detecting any criminal infringement of the investor, the provincial-level people's committee shall request competent authorities to inspect and handle in accordance with the laws.

The Decree 30/2021/ND-CP is of full force and effect as of the signing date of March 26th, 2021.

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

Best regards.

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