

## LEGAL UPDATE (November 15th, 2021)

In this issue, we would like to bring to your attention to the following:

- The draft Circular guiding the contents of foreign exchange management for enterprises' foreign borrowing and debt repayment.
- Draft Decree on the management of export and import goods transacted via e-commerce.

### **1. The draft Circular guiding the contents of foreign exchange management for enterprises' foreign borrowing and debt repayment**

On October 18th, 2021, the State Bank of Vietnam enacted a Draft Circular guiding several contents on foreign exchange management for foreign borrowing and repayment of enterprises. The main overview of the Draft that amendment towards simplifying administrative procedures, increasing the application timeline, expanding the method of application submission, and cases which not require registration or registration for changes in foreign loans; supplementing instructions on using the lender's account opened at a commercial bank, guiding the foreign exchange management for foreign loan security measures; modify the frequency of monthly statistical reports,...Some notable contents of the Draft are:

#### **a. Scope of regulation of the Draft Circular**

This Draft is expected to be an essential state management instrument to regulate foreign borrowing and debt repayment activities with a wide range of adjustments, including:

- Procedures for registration and registration of changes to foreign loans of enterprises that the Government does not guarantee.
- The opening and use of the Borrower's foreign loan and repayment account; the beginning and use of the Lender's payment account at an authorized credit institution in Vietnam to make foreign loans.
- Capital withdrawal, debt repayment and other money transfers related to the performance of foreign loans.

- Managing foreign exchange for payment and money transfer transactions related to the performance of security obligations and repayment of debt receipts between the Borrower and the guarantor related to foreign loans.
- Providing, using and managing information on the website to manage foreign loans and repayments not guaranteed by the Government (hereinafter referred to as the website).
- Statistical reporting regime on foreign borrowing and repayment activities of enterprises that the Government does not guarantee.

#### **b. Documents will be replaced**

When this Draft Circular takes effect, a substantial number of documents will be replaced, including:

- Circular No. 03/2016/TT-NHNN dated February 26th, 2016 of the State Bank Governor guiding foreign exchange management for borrowing and paying foreign debts of enterprises.
- Circular No. 05/2016/TT-NHNN dated April 15th, 2016, of the Governor of the State Bank amending and supplementing several articles of Circular 03/2016/TT-NHNN dated February 26th, 2016 of the Governor The State Bank guides on foreign exchange management for borrowing and paying foreign debts of enterprises.
- Circular No. 05/2017/TT-NHNN dated June 30th, 2017 of the Governor of the State Bank amending and supplementing several articles of Circular 03/2016/TT-NHNN dated February 26th, 2016 of the Governor The State Bank guides on foreign exchange management for borrowing and paying foreign debts of enterprises.

With the consolidation and combination of numerous current regulations on foreign borrowing and debt repayment in the Draft Circular, this will be a document that brings a lot of consistency and convenience for corporations to implement.

## **2. Draft Decree on management of export and import goods transacted via e-commerce**

In the current context, our state management agencies do not have a separate mechanism for managing imported and exported goods transacted through e-commerce. It leads to many legal obstacles in the control of imported and exported goods through e-commerce transactions. Therefore, on September 18th, 2021, the

Draft Decree on managing export and import goods transacted through e-commerce (hereinafter referred to as the "**Draft**") was issued to create a legal corridor for firmer management import-export activities. Some notable points of the Draft can be mentioned as follows:

**a. Additional regulated subjects**

The Draft adds the subjects who are the owners of e-commerce trading floors, e-commerce websites for sales. Accordingly, if the Draft is approved, the major e-commerce exchanges in Vietnam can be mentioned, such as Shopee, Tiki and Lazada will be subject to regulation on export and import transactions via e-commerce.

**b. New tax regulations**

Each organization or individual purchasing goods is only entitled to tax exemption for imported goods specified at points a and b below, with no more than 1 order/day and no more than 4 orders/month:

- Imported goods with a customs value of 1,000,000 VND or less for each order;
- Imported goods have a customs value of over 1,000,000 VND per order but the total amount of import tax payable is less than 100,000 VND.

If imported goods transacted via e-commerce have a customs value of more than 1,000,000 Vietnam dong per order, and the total payable import tax amount is over 100,000 Vietnam dong, they must pay import tax for the entire value of imported goods.

Stimutenously, to limit the abuse of tax incentives for goods sent via express delivery and postal services as prescribed in Decree No. 18/2021/ND-CP, as well as to synchronize policies with tax incentives between goods sent via courier and postal services and goods transacted via e-commerce, the Ministry of Finance has proposed a quota of import tax exemption for goods shipped via postal services must be applied according to the norms for imported goods transacted via e-commerce as proposed above.

We hope this Monthly Newsletter would bring you useful information.

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