



# LEGAL UPDATE

November 2022

*Our monthly Legal Update is to provide the summary of key regulatory news that potentially impact your investment and business activities in Vietnam.*

*This November Legal Update covers the following:*

- *Provisional corporate income tax of 04 quarters as from 30 October 2022.*
- *New tax regulations applied to owners of e-commerce exchanges.*
- *New case of tax non-declaration.*
- *Principles of developing electricity generation price range in transitional period.*

## **1. Provisional corporate income tax of 04 quarters is at least 80% of annual tax**

On 30 October 2022, the Government promulgated Decree No. 91/2022/ND-CP amending Decree No. 126/2020/ND-CP elaborating the Law on Tax Administration ("*Decree 91*").

In previous regulations, Decree No. 126/2020/ND-CP required that the total corporate income tax ("*CIT*") amount already temporarily paid for the first 03 quarters of a tax year must not be lower than 75% of the CIT amount stated in the annual finalization statement. In case a taxpayer has paid an amount smaller than the amount required to be temporarily paid for the first 03 quarters of a year, it shall pay a late payment interest on the deficit, which shall be calculated from the date following the last day of the time limit for temporary payment of CIT of the third quarter to the date of actual payment of the deficit into the state budget. It has been causing problems for enterprises as they couldn't know how their business performance of the fourth quarter shall be, but they still have to pay temporary tax amount and may be unjustly fined despite of full declaration and payment.

Now, Decree 91 prescribes that the total CIT amount already temporarily paid for 04 quarters must not be lower than 80% of the payable CIT amount stated in the annual finalization statement.

Pursuant to Decree 91, enterprises will not have to pay the temporary tax for whole year from the third quarter. As a result, the estimate of payable tax amount will be closer to business reality.

The CIT of tax period 2021 will be paid as follows:

- Up to 30 October 2022, if the provisional CIT paid by the taxpayer in the first 03 quarters is not lower than 75% of the annually finalized tax, regulations of Decree 91 on the minimum ratio of provisional CIT of 04 quarters (at least 80% of annually finalized tax) shall not apply.
- Up to 30 October 2022, if the provisional CIT paid by the taxpayer in the first 03 quarters is lower than 75% of the annually finalized tax, regulations of Decree 91 on the minimum ratio of provisional CIT of 04 quarters (at least 80% of annually finalized tax) may be applied if it does not lead to an increase in late payment interest.

Decree 91 comes into force from 30 October 2022.

## **2. New responsibility of owners of e-commerce exchanges**

Decree 91 supplements the regulations that owners of e-commerce exchanges established and operating under Laws of Vietnam shall be responsible for providing sufficient and accurate information about traders, organizations and individuals conducting a part or entire process of purchase and sale of goods and services on the e-commerce exchanges to the tax offices according to the prescribed time limits. Such information includes: the salesman's name, tax identification number or personal identification number or identity card or citizen's identity card or passport number, address, telephone number; sales turnover gained through the function of online order of the exchange.

The provision of information shall be carried out online on the General Department of Taxation's portal according to the file format announced by the General Department of Taxation on a quarterly basis, no later than the last date of the first month of the next quarter.

## **3. New case of tax non-declaration**

In accordance with Decree 91, income payers subject to monthly or quarterly declaration of personal income tax are not required to submit tax declaration dossiers if personal income tax withholding is not applied to the income recipients in that month or quarter.

## **4. Principles of developing electricity generation price range**

On 03 October 2022, Ministry of Industry and Trade promulgated Circular No. 15/2022/TT-BCT prescribing methods for determining electricity generation price range of solar power plants and wind power plants in transitional period ("*Circular 15*").

Circular 15 applies to eligible entities which invest in solar power plants in part or in whole and have signed power purchase agreement with the EVN before 01 January 2021, **or** invest in wind power plants in part or in whole and have signed power purchase agreement with the EVN before 01 November 2021 but do not meet the conditions for electricity purchase price under relevant Decisions of the Prime Minister on regulations incentivizing the development of solar power or wind power in Vietnam.

Accordingly, the electricity generation price range of ground-mounted solar power plants, floating solar power plants, onshore wind power plants, and offshore wind power plants refers to prices from the minimum value (0 VND/kWh) to the maximum value. In which, the maximum value is the electricity generation price of either the

standard solar power plants or wind power plants determined by the methods detailed in Circular 15.

Within 15 days from the effective date of Circular 15, project developers of ground-mounted solar power plants and floating solar power plants that have entered into power purchase agreements before 01 January 2021 and of onshore wind power plants and offshore wind power plants that have entered into power purchase agreements before 01 November 2021 are required to submit the feasibility study or technical design to EVN. Based on such documents, EVN shall take necessary actions to determine the electricity generation price range for standard solar power plants and wind power plants. Within 45 days from the effective date of Circular 15, EVN is responsible for developing electricity generation price range of ground-mounted solar power plants, floating solar power plants, onshore wind power plants, and offshore wind power plants to be submitted for the appraisal of Electricity Regulatory Authority.

Circular 15 takes effect from 25 November 2022.

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