



ClientAlert

Introduction

Dear Reader,

This month saw a handful of new regulations that affect business in Vietnam. We've briefed them and outlined the most important changes from each new regulation. They cover topics ranging from electronic visas to IPRs taxes to import/export rules to new tax regulations for farmland use and from management of investment projects to commercial mediation.

As always we hope you find this Client Alert helpful and wish you prosperity in the coming month. We look forward to working with you.

Kind regards,
Indochine Counsel

In this issue

Electronic Visas for foreigners entering Vietnam	2
Guidance on withholding tax in respect of IPR licenses.....	2
New Decree clarifying the Law on Import and Export duties	3
Amendment of salaries and monthly incomes for which social insurance premiums have been paid in 2017	5
Farmland use tax exemptions	6
Management of Construction Investment Projects.....	7
Commercial Mediation	8
Face and Violence	9
A Musical Connection	10

Electronic Visas for foreigners entering Vietnam

On 25 January 2017, the Government issued Decree No. 07/2017/ND-CP (“**Decree 07**”) stipulating the processes and procedures for a pilot program allowing the issuance of electronic visas to foreigners entering Vietnam. Decree 07 took effect as of 01 February 2017 and the pilot program will last two years.

Countries from which foreigners are eligible to receive electronic visas

The citizens of 40 countries, listed in Annex 1 of Decree 07, are mentioned as the subject of application for the pilot issuance of electronic visas. In addition, a list of border gates, which consist of international airport border gates, international road border gates and international seaport border gates, has been stipulated by Annex 2 of Decree 07. Citizens of the countries mentioned in Annex 1 can thus use the electronic visas to enter or exit Vietnam through the border gates mentioned in Annex 2.

Processes and procedures on electronic visa issuance upon the request of foreigners

Foreigners who request the issuance of electronic visas must conduct the following steps: First the foreigners access the electronic visa webpage. Once there they must complete the application form, upload the image of the passport data page and personal photograph. Once this is done the foreigners will receive a confirmation code and payment for the fee of visa issuance shall be made to the account that is listed on the webpage. The immigration department then has three days to verify the application via electronic visa website. In the event of acceptance, electronic visas may be printed by using the confirmation code.

Electronic visa issuance upon the request of a sponsoring entity or organization

Organizations are required to have an electronic account in order to access the electronic visa webpage. Furthermore, a digital signature of the organization is also required. Otherwise, the procedure for obtaining the electronic visa is the same as for foreigners. Nonetheless, the electronic account could be eliminated due to the fact that the organizations violate the regulations on electronic transactions and immigration management.

Guidance on withholding tax in respect of IPR licenses

Under the prevailing laws and regulations of Vietnam, royalty payable to a foreign licensor in respect of an IPR license is subject to the withholding tax comprising value added tax (VAT) and corporate income tax (CIT). This amount is to be withheld by the Vietnamese licensee and must ultimately be paid to the government from such withholding. According to Article 5.21 of the current Law on Value Added Tax (Law on VAT), franchise activity, transfer of technology, and assignment of IPRs are

subjects exempted from VAT. However, in practice, Vietnamese enterprises involved in IPR transfers may lead to confusion between IPRs license (i.e. transfer of rights to use the IP subject) and assignment of IPRs (i.e. transfer of IPR ownership). This confusion could easily lead to the wrong declaration of taxes, especially, withholding taxes imposed on royalties payable to the foreign licensors in respect of IPR licenses. Therefore, the Ministry of Finance (**MOF**) has issued Official Document No. 15888/BTC-CST dated 07 November 2016 (**Document 15888**) to clarify Article 5.21 of the Law on VAT as well as to provide enterprises with guidance on withholding tax policy in respect of obtaining trademark licenses from foreign licensors.

The MOF confirms that under the current Law on Intellectual Property (**IP Law**), the trademark license is neither franchise activity, technology transfer nor assignment of IPRs as referred to Article 5.21 of the Law on VAT. The MOF also confirms that royalties payable to foreign licensors under a trademark license agreement are subject to withholding tax as provided in Circular No. 103/2014/TT-BTC dated 6 August 2014, which comprises VAT and CIT at the prescribed rates as follows:

- (i) CIT: 10%; and
- (ii) VAT: 10% if registration of VAT deduction method or 5% if registration of VAT direct method

For withholding taxes in respect of trademark licenses which have been declared and paid by enterprises before the effective date of Document 15888 shall not be required to comply until such time as they withhold additional funds and/or declare the same.

New Decree clarifying the Law on Import and Export duties

On 1 September 2016 the Government issued Decree No. 134/2016/ND-CP ("**Decree 134**") providing guidelines on the implementation of the Law on export and import duties.

Below are some new and significant regulations of Decree 134:

Application of export and import duties

Under Decree 134, export and import duties are applied in accordance with Articles 5, 6 and 7 of the Law on Export and Import duties. In case the concessional rate of duty on a commodity specified in a Concessional Tariff Schedule is lower than the special concessional rate specified in the Special Concessional Tariff Schedule, the former will apply. If the special concessional rate is higher than the concessional rate, the agent paying the special concessional rate will be reimbursed for the difference according to the law on tax.

Exempting the import duty in certain circumstances

Under Decree 134, people with passport or passport substitutes (except for the travel document of

entry and exit) issued by the competent authority of Vietnam or of foreign governments shall be granted duty-free allowance for their luggage provided that the total custom value does not exceed VND10,000,000. In case the total custom value exceeds such quota, the luggage shall be subject to duties. The traveler may choose what items be treated as duty-free items if the accompanied luggage contains different items.

As for alcohol from 20% ABV; alcohol below 20% ABV; alcoholic beverages, beer; cigarettes; tobacco and cigars, the imported duty-free quotas for each respectively is 1.5 liters; 02 liters; 03 liters; 200 cigarettes; 250 grams and 20 cigars. If the traveler carries a bottle of alcohol exceeding the limit by less than one liter, the entire bottle will be duty free. If the bottle exceeds the limit by more than one liter, the excessive amount shall be dutiable.

Foreigners and Vietnamese residents residing abroad who come to Vietnam on business trips or work in Vietnam for at least 12 months; Vietnamese organizations and citizens who operate or work overseas for at least 12 months and then return to Vietnam; and Vietnamese citizens who reside overseas and have applied for permanent residence registration in Vietnam for the first import of belongings, will be exempted from import duty for movable assets including 01 item/piece/set of each type of item of daily life or work. Such assets may be used or new (except for automobile vehicles and motorcycles).

With respect to the tax exemption applicable to gifts, Decree 134 provides that gifts given to local organizations and individuals by foreign organizations or individuals and vice versa are non-dutiable, if the custom value does not exceed VND2,000,000. Gifts with a custom value exceeding VND2,000,000 but for which the duty is under VND200,000 will be exempted from duties four times per year.

Border residents residing permanently in the border areas and people permitted by the police authority of the border province to reside in the border areas, are allowed a maximum duty-free quota for commodity trading and exchange up to VND2,000,000 per day per time and no more than four times per month.

Validity of Decree 134

Decree 134 took effect on 1 September 2016 and replaced Decree No. 87/2010/ND-CP dated 13 August 2010. In addition, Decree 134 revoked the provisions of exemption of export and import duties of the following regulations:

- (a) Decision No. 31/2015/QD-TTg dated 4 August 2015;
- (b) Decision No. 52/2015/QD-TTg dated 10 October 2015;
- (c) Decision No. 53/2013/QD-TTg dated 13 September 2013; and
- (d) Article 7 of Decision No. 219/2009/QD-TTg dated 1 October 2009.

Amendment of salaries and monthly incomes for which social insurance premiums have been paid in 2017

The adjustment rate of salaries and monthly incomes for which the social insurance premiums have been paid in 2017 is 1.00.

The Ministry of Labor, War Invalids and Social Affairs issued Circular No. 42/2016/TT-BLDTBXH dated 28 December 2016 stipulating the adjustment rate of salaries and monthly incomes for which the social insurance premiums have been paid.

This Circular took effect from 11 February 2017 through the regulations of this Circular apply as of 1 January 2017.

Amendment of monthly salary for which social insurance has been paid

Entities subject to the amendment of salary for which social insurance premiums have been paid as stipulated in Article 10.2 of Decree No. 115/2015/ND-CP are employees who are paying social insurance or have their period of social insurance premium payment preserved, having paid social insurance according to wage regimes as decided by employers, eligible for retirement pension, lump-sum allowance upon retirement or lump-sum social insurance or employees whose relatives are eligible for lump-sum survivorship allowance upon their death in the period from 1 January 2017 to 31 December 2017.

The monthly salary for which the social insurance premiums have been paid applicable to entities specified in Article 1.1 of this Circular are amended as follows:

$$\begin{array}{l} \textit{Amended monthly} \\ \textit{salary as the basis for} \\ \textit{social insurance} \\ \textit{payment of a year} \end{array} = \begin{array}{l} \textit{Total monthly salary as the basis} \\ \textit{for social insurance} \\ \textit{payment according to wage regime} \\ \textit{set by employers of the year} \end{array} \times \begin{array}{l} \textit{Amending factor of} \\ \textit{the year} \end{array}$$

For employees who pay both the social insurance according to the wage regime prescribed by the State and the social insurance according to the wage regime set by the employers, then the monthly wage for which the social insurance premiums have been paid according to the wage regime set by the employers shall be amended according to the above regulations.

Amendment of monthly income for which social insurance premiums have been paid

Monthly income for which the social insurance premiums have been paid applicable to entities specified in Article 1.2 of this Circular shall be amended as follows:

$$\begin{array}{l} \text{Amended monthly income} \\ \text{as the basis for social} \\ \text{insurance payment of a} \\ \text{year} \end{array} = \begin{array}{l} \text{Total monthly income as the} \\ \text{basis for social insurance} \\ \text{payment of a year} \end{array} \times \begin{array}{l} \text{Amending factor of} \\ \text{the year} \end{array}$$

The average monthly income for which the voluntary social insurance premiums have been paid or the average salary and monthly income for which social insurance premiums have been paid as the basis for calculation of retirement pension, lump-sum allowance upon retirement, lump-sum social insurance and lump-sum survivorship allowance shall be determined according to regulations in Article 11.4 of Decree No. 115/2015/ND-CP and Article 5.4 of Decree No. 134/2015/ND-CP.

Farmland use tax exemptions

The Government issued Decree No. 21/2017/ND-CP (“**Decree 21**”) on amendment and addition to a number of articles of Decree No. 20/2011/ND-CP guiding the National Assembly’s Resolution 55/2010/QH12 of 24 November 2010 on the exemption and reduction of the farmland use tax. Accordingly, Decree 21 amends and adds some entities to the list of exemptions and reductions of the farmland use tax, specifically the exemption of land use fees for all the area of agricultural land with the following entities:

- (a) Family households and individuals using agricultural land, residential land for agricultural production, receipt of agricultural land use right (including inheritance or gifts that include the agricultural land use right).
- (b) Family households and individuals that are members of agricultural production co-operatives, farm members, forestry members who receive stable land allotment from the co-operatives, state farm, state forestry, and family households, individuals who receive stable land allotment from agricultural and forestry companies for agricultural production in accordance with law.
- (c) Family households and individual agricultural production exercising capital contribution by their agricultural land use right to establish agricultural production co-operatives in accordance with the law on co-operatives.

Additionally, Decree 21 amends and adds a tax declaration and adjustment and amendment of the tax book. Particularly, the tax declaration, adjustment, and amendment of agricultural land use tax books with respect to entities paying agricultural land use tax shall be tax-exempted from 2017 to the end of 2020, as follows:

First, based on tax numbers of the agricultural land use tax book in 2016 and the actual local situation, the District tax department will coordinate with the Commune People’s Committee

to review and identify the agricultural land use tax exempted entities as stipulated with law for moving from record book to original tax book.

Second, taxpayers who have already recorded in the agricultural land use tax book and are now entitled to tax exemption as prescribed, shall not have to re-declare and re-examine the tax exemption consideration dossiers. The tax office shall carry out the monitoring book according to the guidelines.

In cases where new subjects are entitled to agricultural land use tax exemption, tax offices shall coordinate with commune-level People's Committees and concerned organizations and units in guiding taxpayers to make tax returns and exemption dossiers according to regulations. At the same time, the tax authorities add the agricultural land use tax book.

Third, in cases where changes in tax base arise within a given year, taxpayers must re-declare and submit to commune-level People's Committees for adjustment of tax books.

Management of Construction Investment Projects

Circular No. 24/2016/TT-BXD of the Ministry of Construction dated 1 September 2016 amending and supplementing a number of articles of Circular No. 17/2016/TT-BXD of the Ministry of Construction dated 30 June 2016 guiding on capacity of organizations and individuals participating in construction activities ("**Circular 17**") and Circular No. 18/2016/TT-BXD of the Ministry of Construction dated 30 June 2016 detailing and guiding some contents of the assessment and approval of the project, design and estimate for constructing the project ("**Circular 18**") (hereinafter referred to collectively as "**Circular 24**").

Under Circular 17, individuals possessing Practice Certificates for Construction issued by the competent authorities and dated before 1 September 2016 may continue to use such Practice Certificates until the expiry date is reached, as in the case of recording the expiry date or upon 30 June 2018 if there is no recording of the expiry date. In this case, the conversion of such Practice Certificate as demanded will be conducted in accordance with Circular 17. This means such conversion is not a statutory procedure and the individuals may not convert its Practice Certificates. However, there is no regulation determining a Practice Certificates' level, which is the basis for participation in construction activities. Hence, Article 1.1 of Circular 24 regulates that in such case, each individual possessing a Practice Certificate based on the general conditions under Article 45.1 and 45.2 of Decree No. 59/2015/ND-CP of the Government dated 18 June 2016 on construction project management ("**Decree 59**") and conditions for issuing the Practice Certificates under respective Articles 46, 47, 48, 49 and 52 of Decree 59 will declare and determine by themselves the level of Practice Certificates. Such level determination will be the basis of participation of construction activities.

There is a new appendix amending and supplementing codes at the issuance location of the Practice

Certificate of Construction and Capacity Certificate of Construction.

Under Article 13.3 of Circular 18 and Article 26.1 of Decree No. 15/2015/ND-CP of the Government dated 14 February 2015 stipulating public-private partnership (“**PPP**”) investment, the project assessment and the design and estimate for constructing the project which will be conducted under the PPP contract will be assessed by the central units in charge of PPP execution as appointed by the Ministers, Head of Ministry-level bodies, and the Chairman of the provincial-level People’s Committee (“**PC**”). Assessment of the basic design and design estimate for constructing the project will be conducted using out-of-budget state capital.

Accordingly, subject to the project scale to which (i) construction authority of the Ministry of Construction, Ministry in charge of field-based construction management; (ii) Department of Construction, Department in charge of field-based construction management; or (iii) Division of the district-level PC in charge of construction management as assigned by the provincial-level PC will preside at the assessment of the basic design and design and estimate for constructing the PPP project (Article 13.3 of Circular 18). However, under Article 3 of Circular 24, such regulation has been revoked as from the effective date of this Circular. Therefore, the determination of the competent authorities to preside over the assessment of the project under PPP contracts will be in accordance with Decree 59 which is guided by Circular 18. Under Article 11.2 of Decree 59, the competent authorities to preside over the assessment of the basic design will be determined as mentioned above. Under Article 25.2 of Decree 59, the investor of PPP projects will be in charge of the approval of the design and estimate for constructing such project.

Circular 24 took effect on 1 September 2016.

Commercial Mediation

The Government issued Decree No. 22/2017/ND-CP (“**Decree 22**”) dated 24 February 2017 on commercial mediation. Decree 22 took effect on 15 April 2017. Commercial mediation is regarded as another effective dispute resolution method, which shall be applied to resolve commercial dispute between enterprises.

The key points of Decree 22 are as follows:

Scope of commercial disputes shall be resolved by commercial mediation

Commercial mediation is only applied as a dispute resolution method if (i) disputes arise from commercial activities; (ii) at least one (1) party is involved with commercial activities, or (iii) disputes otherwise are regulated in other legislations to be resolved by commercial mediation;

Requirement condition to initiate a commercial mediation

Both parties participating in mediation are completely voluntary and equal in rights and duties; and

The parties may agree in writing, either as a part of a commercial contract or separate contract for the purpose of settling disputes by mediation before or after disputes occur or at any time during the dispute resolution process.

Enforcement

When the parties archive a resolution as a result of a successful mediation, they must prepare a written document to record the successful mediation. This successful settlement agreement shall be executed by both parties and the mediator and be binding on the parties. Furthermore, parties shall have their rights to request the Vietnamese court to recognize the effectiveness of this settlement agreement. According to Chapter XXXIII of the Law on Civil Procedure 2015, the settlement agreement shall be enforceable upon being recognized by a Vietnamese Court.

Face and Violence

Face. I've written about it before. But reading through some research I'm doing for a personal project, I came across an interesting bit of knowledge that once sat in the forefront of my thoughts but has since filtered its way to the back where it sits on a burner with barely enough heat to warm an egg.

Face and violence. That's the thing. There are two different ways that I've experienced this. One, in watching violence. Walking around the streets of Ho Chi Minh City on several occasions I have come to witness violence between some Vietnamese people. This usually happens when they are drunk, or they feel cheated, or feel a loss of Face. After years in Asia, though, I know not to participate, but I also know that to stop and watch from a safe distance is okay.

The second instance is in participation. This is a no, a great big no unless you're Vietnamese yourself. I've managed to refrain from fighting, though there have been one or two instances where things could have escalated. I have a friend who is fond of saying, "Beat up a Viet in the middle of the street and they all come after you."

But the common core of all of these incidents comes back to Face. I won't belabor the point, as I have already discussed Face in other issues. I do want to emphasize, though, that Face is vital to doing business or living in Vietnam or other SE Asian countries. I've seen it demonstrated in Vietnam, Cambodia, Laos, Thailand, and elsewhere. One example from Laos: I had an employee return from a task that shouldn't have taken more than a few minutes, though he spent several hours in completing it. I asked him about it, questioning his timing. I made the mistake of asking that simple question in the presence of other employees. He quickly turned into a rage and stormed out of the office. The reaction on his part was perhaps too big for the mistake on my part, but it was involved with his Face. I had questioned his decision in front of others and that, in turn, affected his Face. I apologized when

he returned the next day, making sure that the apology was public, and things quickly returned to normal.

Face is vital to this part of the world. In Cambodia I watched as my managing partner met with a foreigner who had a legitimate claim against a rather wealthy and well-positioned Cambodian. He outlined a series of steps, from one on one meetings, to adding a lawyer, maybe two, to filing a lawsuit, to actually pursuing the lawsuit. It was a gentle escalator of Face threatening behaviors that was intended to eventually wring the proper response from the local.

So Face. Remember it. Follow it. Expect it to affect your life and business. The end.

A Musical Connection

I recently finished reading a book about Sam Phillips, the man who created rock & roll. There was one lesson above all that came from this biography: if you're going to do something wrong, or new, or different, do it with all of yourself. If you don't manage that, then you can only blame yourself if it fails. This is worth discussing because it came from the man who discovered Elvis, Roy Orbison, Ike Turner, Johnny Cash, and half a dozen other hit stars.

So what if you want to hit a star in your business in Vietnam? You can always hang the flag, that's got a star, but that doesn't do much for the bottom line.

Vietnam is filled with hard working, and reasonably well educated people waiting to better themselves through employment. You can find the people who want to work hard, who are willing to put their best into the work, and who are willing to shoot for the stars.

Even at Indochine Counsel this exists. I've seen several people make sacrifices to ensure that they issue the best advice, the freshest contracts, and the hardest due diligences you might find. It's a law firm that believes in putting the client first, and in doing that, it's willing to put in the work you expect.

I know this sounds rather self-serving, but it's true. Indochine Counsel is one of the hardest working law firms in Vietnam. And that is what you want. A law firm capable of handling your business quickly and accurately.

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 35 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

- Inward Investment
- Corporate & Commercial
- Mergers & Acquisitions
- Securities & Capital Markets
- Banking & Finance
- Property & Construction
- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

A full list of partners, associates and other professionals is available on our website. |

Contact Us

For further information or assistance, please contact the following Indochine professionals:

Dang The Duc

Managing Partner
duc.dang@indochinecounsel.com

Dang The Duc

Managing Partner
duc.dang@indochinecounsel.com

Le Nguyen Huy Thuy

Partner
thuy.le@indochinecounsel.com

Dang Dinh Truong

Junior Associate
truong.dang@indochinecounsel.com

To Xuan Tinh

Partner
tinh.to@indochinecounsel.com

Phan Anh Vu

Partner
vu.phan@indochinecounsel.com

Nguyen Thi Hong Anh

Partner, Head of IP&T Practice Group
anh.nguyen@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72 -74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +848 3823 9640
F +848 3823 9641
E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +844 3795 5261
F +844 3795 5262
E hanoi@indochinecounsel.com

www.indochinecounsel.com

Indochine Counsel Client Alert provides a general overview of the latest developments in Vietnam's regulatory framework, without the assumption of a duty of care by Indochine Counsel. The information provided is not intended to be nor should it be relied upon as a substitute for legal or other professional advice. Professional advice should be sought for any specific case or matter.

© 2017 Indochine Counsel. All Rights Reserved.