U&I AUDIT
CPA & Business Advisors

LEGAL UPDATES

Some guidance regarding to the commercial rights of FDI enterprises

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For those companies with 100% domestic-invested capital, it is no need to bother about the right to export or import as it is acknowledged as a legal right under Article 7 of the Law on Enterprises, as long as the enterprises do not export and import (IMEX) prohibited goods.

However, for those companies with foreign direct investment (FDI), although the foreign-invested capital accounts for just a small amount, they are still restricted the right of IMEX and distribution (wholesale or retail). Because they are kinds of commercial activities, such activities of FDI enterprises are governed by the Law on Commerce No. 36/2005/QH11 and Decree No. 23/2007/ND-CP.

In summary, if FDI enterprises who even have been granted the enterprise registration certificate under the new Law on Enterprises wish to IMEX for the commercial purpose (buy and sell - resell), they must apply for permission of some relevant rights. For example, if they want to import, they must apply for the right of import; if they want to export, they must apply for the right of export; if they want to do wholesale and retail to sell products directly to the consumers, they must apply for the right of distribution in addition to the right of import. If not, the enterprises must conduct their sales through another enterprise (a domestic-invested capital enterprise or an FDI enterprise who already has the right of distribution).

Some related guidelines on the commercial rights of FDI enterprises are as follows:

RELATED GUIDELINES

1. **Whether FDI Export Processing Enterprises need to apply for the license when selling goods domestically or not.**
2. **Goods manufactured by the FDI enterprises themselves are allowed to be sold retail.**
3. **Goods sold under the right of export are not allowed for on-spot export.**

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1. Whether FDI Export Processing Enterprises (EPEs) need to apply for the license when selling goods domestically or not

According to the Ministry of Industry and Trade, the issue that an FDI EPE sells goods that is manufactured in Vietnam by such enterprise to the domestic market is not governed by the Decree No. 09/2018/ND-CP.

Therefore, the FDI EPEs do not need to apply for the business license or a license to set up retail outlet under the provisions of the Decree No. 09/2018/ ND-CP when selling goods manufactured by themselves to the domestic market.

However, the sale in this case is still subject to the regulations on the management of the foreign trade, which are being applied to goods imported into Vietnam from overseas and must be in compliance with the obligations of taxation, finance, customs procedures (Article 57 of the Law on the management of the foreign trade No. 05/2017/QH14).

(Official letter No. 1372/BCT-KH dated March 04, 2019)

2. Goods manufactured by the FDI enterprises themselves are allowed to be sold retail

According to the Ministry of Industry and Trade, the wholesale and retail distribution of goods manufactured following the registered investment project and target by the FDI enterprises in Vietnam market is the right to consume goods of the FDI enterprises and it is not governed by Decree No. 09/2018/ND-CP.

Accordingly, for wholesale and retail of goods which are manufactured by FDI enterprises themselves, the FDI enterprises do not need to apply for the business license or a license to set up retail outlet under the provisions of the Decree No. 09/2018/ND-CP. However, the conditions of business and production in compliance with the specialized laws (if any) must be satisfied.

(Official letter No. 9810/BCT-KH dated November 30, 2018)

3. Goods sold under the right of export are not allowed for on-spot export

Although Decree No. 09/2018/ND-CP has removed the regulation that FDI enterprises must apply for the right of export when purchasing goods in Vietnam to sell overseas, such goods must be ensured to be exported to overseas rather than delivering in Vietnam, which is then considered on-spot export.

The on-spot export is currently acceptable only for goods manufactured or processed by the FDI enterprises themselves and machinery, equipment serving for processing.

(Official letter No. 130/XNK-CN dated January 31, 2018)

Whether foreigners are allowed to rent office combined with accommodation (officetel) or not

Official letter No. 131/BXD-QLN dated June 14, 2019 of the Ministry of Construction refers to the type of office in combination with accommodation (officetel).

According to Clause 2, Article 14 of the Law on Real estate trading No. 66/2014/QH13, overseas Vietnamese or foreign entities may rent real estate for use; may purchase, rent, lease purchase houses as prescribed in laws on housing.

Accordingly, foreign individuals may rent officetel in Vietnam for use in line with utilities of such officetel.

Although Clause 11, Article 6 of the Law on Housing No. 65/2014/QH13 regulated that it is prohibited from "using the apartments not for residential purposes", this regulation provides for apartments (housing) rather than other works (not housing).

According to Clause 2, Article 10 of the Law on real estate trading No. 66/2014/QH13 and Clause 1, Clause 7, Article 5 of the Decree No. 76/2015/ND-CP, any households, individuals that lease their own real estate shall not be required to set up enterprises.

Therefore, individuals that lease their own officetel to foreigners do not have to set up enterprises either, but they shall make tax declaration and payment.

Electronic invoice adjusting minutes must be signed by both the seller and the buyer

Official letter No. 2296/TCT-DNL dated June 06, 2019 of the General Department of Taxation refers to the guidance on the implementation of electronic invoices.

According to the guidance at Official letter No. 2402/BTC-TCT dated February 23, 2016, the buyer is free to sign electronic invoices if there are enough records, documents proving the sale and purchase of goods such as economic contracts, warehouse output vouchers, delivery statements, payment receipts, receipt voucher, etc.

Invoices related to banking services are exempt from stamping according to Clause 2b, Article 5 of Circular No. 119/2014/TT-BT. Accordingly, when the bank converts e-invoices into paper invoices, it is not necessary to stamp on paper invoices.

For the cases where after delivering the e-invoices to the buyer, the seller finds out that there are mistakes, then the seller must make a written confirmation of the errors with full of signatures of the parties (this document can be made in paper), at the same time, the seller must make an e-invoice for correction of mistakes as stipulated at Article 9 of Circular No. 32/2011/TT-BTC.

Paper invoices and e-invoices are allowed to be used parallel before November 01, 2020

Official letter No. 37790/CT-TTHT dated May 24, 2019 of Hanoi City's Department of Taxation refers to the parallel use of paper invoices and e-invoices.

As stipulated at Clause 3, Article 35 of Decree No. 119/2018/ND-CP, during the period from November 01, 2018 to October 31, 2020, the Decree No. 51/2010/ND-CP and the Decree No. 04/2014/ND-CP on paper invoices still remain enforceable.

At the same time, as stipulated at Clause 1, Clause 2, Article 36 of Decree No. 119/2018/ND-CP, order-printed invoices, self-printed invoices, e-invoices which are already registered for issuing before the effective date of Decree No. 119 are still allowed to use.

On the other hand, according to Clause 2, Article 1 of Decree No. 04/2014/ND-CP, enterprises are allowed to simultaneously use different forms of invoices.

Accordingly, during the period from November 01, 2018 to October 31, 2020, if the Company has yet to use up its order-printed invoices, e-invoices already registered for issuing according to Circular No. 39/2014/TT-BTC and Circular No. 32/2011/TT-BTC, the Company is allowed to continue using them.

However, it should be noted that, for each occasion of sale or provision of goods and services, the Company is only allowed to use one form of invoice (either order-printed invoice or e-invoice).

Whether or not employers have to take responsibility for the compensation for occupational accident caused to employees by other people's faults

The Ministry of Labor, Invalids and Social Affairs has released the Official letter No. 2010/LDTBXH-ATLD dated May 24, 2019.

According to the Ministry of Labor, Invalids and Social Affairs, an employee's occupational accident investigation record is the basis for settlement of occupational accident regime for the employee, i.e. if the employees want to enjoy the occupational accident regime, then it is mandatory to obtain the occupational accident investigation record.

As stipulated at Clause 1, Article 39 of the Law on occupational safety and hygiene No. 84/2015/QH13, "If an employee suffers from an occupational accident when he/she is performing tasks or conform to the directive of the employer outside the premises of the agency, enterprise, organization or cooperatives through other people's faults or through the fault of an unidentifiable person, the employer shall still pay compensation for the employee as prescribed in Clause 4, Article 38 of this Law".

The employer shall pay occupational accident compensation for the employee based on the employee's percentage of impaired work capability and salary according to Clause 3 of Circular No. 04/2015/TT-BLDTBXH of the Ministry of Labour - Invalids and Social Affairs, not relating to the settlement between the person who causes the accident and the person who suffers from the accident .

NOTE:
"The purpose of this news is to provide the clients with further information. Although we have focused much on the ensure of accuracy, the information that is given on this news is not absolutely thorough and the clients would better consult professional opinions before application".