**LEGAL UPDATES**

**VOL 37, FEBRUARY 2022**

**Dear Valued Clients and Partners,**

ADK Vietnam Lawyers would like to introduce to you the Legal Updates, Vol 37 of February 2022 with new legal provisions with notable contents as follows:

1. **Draft Circular regulating methods of constructing electricity generation price bracket, determining electricity generation price, and power purchase agreement value for solar power plant, transitional wind power plant projects**

The Ministry of Industry and Trade has recently issued a Draft Circular regulating methods of constructing electricity generation price bracket, determining electricity generation price, and power purchase agreement value for solar power plant, transitional wind power plant projects. When this draft is completed, issued, and taken effect, it will be applied to wind power and solar power projects failing to complete the schedule in time to receive the fixed selling price of electricity (FIT) in accordance with provisions of Decision No. 13/2020/QD-TTg and Decision No. 39/2018/QD-TTg.

Accordingly, this Draft Circular stipulates a number of notable contents as follows:

* Article 7.4 of the Draft Circular prescribes that the investor shall negotiate the electricity generation price and sign the power purchase agreement with the power buyer based on the data of the feasibility study report or the technical design granted by the authority at the time of negotiation. The price of the power purchase agreement that shall be negotiated, agreed and agreed by the parties, must not exceed the maximum price of the electricity generation price bracket applying to the transitional solar and wind power plants;
* Article 7.1 of the Draft Circular provides the electricity generation price of solar power plants and transitional wind power plants shall be constructed on the basis of:
* Reasonable expenses of the Investor in the whole economic life of the project;
* The maximum of the financial internal rate of return (IRR) is 12%.

Therefore, for the approved and investment policy projects until 26 January 2022 and remaining unqualified to apply FIT according to Decision No. 13/2020/QD-TTg and Decision No. 39/2018/QD-TTg, this Draft Circular allows the investor to negotiate with the electricity of Vietnam (EVN) to determine the electricity purchase and sale price within the electricity generation price bracket with the financial internal rate of return (IRR) maximizes to 12%.

1. **Guideline on determining the HS code for receiving 2% VAT reduction**

On February 18, 2022, The General Department of Customs issued Letter No. 521/TCHQ-TXNK guiding the implementation of Decree No. 15/2022/ND-CP on VAT reduction.

Accordingly, this Official Letter guides a number of notable contents as follows:

* For determining VAT rates for goods:
* Imported goods of the goods and services list are not eligible for VAT reduction, meeting the criteria stated in column 8 "Product's name", column 9 "Content" of Appendix 1 and Part A of Appendix III, column 3 "Goods" of Part B Appendix III, imported goods are subject to special consumption tax of Appendix II issued herewith Decree No. 15/2022/ND-CP, shall be applied 10% VAT;
* In the case imported goods are not stated in the goods and services list are not eligible for VAT reduction (Appendix I, Appendix II, Appendix III issued herewith Decree No. 15/2022/ND-CP), shall be applied 8% VAT.
* For determining the HS code: In the case imported goods are stated in Appendix I, and Appendix II, determined the HS code as follows:
* Chapter (02 digits), without detailing groups (04 digits), subheadings (06 digits) or codes (08 digits), all 08-digit product codes of that chapter shall be applied 10% VAT;
* Chapter (02 digits), with details up to headings (04 digits), without details of subheadings (06 digits) or codes (08 digits), all 08-digit product codes belonging to that group shall be applied 10% VAT;
* Chapter (02 digits), with details up to subheadings (06 digits), without detailing codes (08 digits), the whole and 08-digit rows in that subheading shall be applied 10% VAT;
* Chapter (02 digits), with details to the HS 08 digits, the code of 08 digits shall be applied 10% VAT.

For instance: In the case a row has the row name "Plastic in the primary form" (column 8), the HS code (column 10) is 39, with details of HS codes to groups of 04 digits, from groups 39.01 to 39.13 and codes number 3914.000.00, all 08-digit product codes of groups 39.01 to 39.13 and code 3914.00.00 shall be applied 10% VAT, the remaining 4-digit groups of Chapter 39 shall be applied 8% VAT.

1. **The Ministry of Health issued the Circular stipulating the latest maximum payment rates for testing services**

On February 18, 2022, the Ministry of Health issued Circular No. 02/2022/TT-BYT stipulating the price of SARS-CoV-2 testing service. This Circular amends the price of SARS-CoV-2 testing service in case it is subject to the payment scope of the Health Insurance Fund as follows:

* SARS-CoV-2 Rapid Antigen Test: The service price includes the direct cost, the cost of salaries and wages as prescribed in column 1 section I Appendix issued herewith plus the cost of biologicals for testing SARS-CoV-2 as provided for in clause 3 Article 2 hereof. The maximum price is VND 78,000/test.
* Testing for SARS-CoV-2 by automatic or semi-automatic immunoassay machine: The service price includes the direct cost, the cost of salaries and wages as prescribed in column 1 section II Appendix issued herewith plus the cost of biologicals for testing SARS-CoV-2 as provided for in clause 3 Article 2 hereof. The maximum price is VND 178,900/test.
* Testing for SARS-CoV-2 using Real-time PCR technique:
* For individual specimens: The service price includes the direct cost, the cost of salaries and wages as prescribed in column 1 section III Appendix issued herewith plus the cost of biologicals for testing SARS-CoV-2 as provided for in clause 3 Article 2 hereof. The maximum price is VND 501,800/test;
* For pooled specimens: The service price includes the direct cost, the cost of salaries and wages as prescribed in column 1 section IV Appendix issued herewith plus the cost of biologicals for testing SARS-CoV-2 as provided for in clause 3 Article 2 hereof, in which the biological are divided equally according to the total number of pooled specimens. The maximum price shall not exceed the price of pooled specimen testing as prescribed in column 2 section 4 Appendix issued herewith.

Thus, the payment rates are all reduced compared to Circular 16/2021/TT-BYT, in which SARS-CoV-2 Rapid Antigen Test reduced about 30% from VND 109,700/test to VND 78,000/test.

Circular No. 22/2022/TT-BYT took effect from 21 February 2022.

We hope you found this brief legal update informative.

Kind regards./.

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