



LAC DUY & ASSOCIATES

NEWSLETTER

08/2023




**DRAFT ON PRECEDENT NO.
13/2023 – DECISION ON
TERMINATION OF LABOUR
CONTRACT FOR
EMPLOYEES BEING PART-
TIME TRADE UNION CADRES**



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CONTACT WITH US**

 : <http://lacduy-associates.com>

 : lacduy@lacduy-associates.com

 : +84917275572/+842836221603

 : 6th Floor, Centec Tower, 72-74 Nguyen Thi Minh Khai Street, Vo Thi Sau Ward, District 3, Ho Chi Minh

**RISKS AND CONSIDERATIONS
FOR BUSINESSES RELATED
TO THE USE OF ILLEGAL
INVOICES**

Dear Clients,

Lac Duy & Associates would like to send you the legal newsletter of August 2023 with some notable updates and articles as follows:

- Risks and considerations for businesses related to the use of illegal invoices
- Draft on Precedent No. 13/2023 – Decision on termination of labour contract for employees being part-time trade union cadres
- Legal Document in 08/2023





RISKS AND CONSIDERATIONS FOR BUSINESSES RELATED TO THE USE OF ILLEGAL INVOICES

On July 11th, the General Department of Taxation issued Press Release No.10 regarding the management of illegal invoices for tax evasion purposes. In this regard, the General Department of Taxation mentioned 524 enterprises suspected of employing illegal invoices to evade tax obligations to the state. From both legal and business perspectives, the act of utilizing illegal invoices constitutes a serious violation of Vietnamese law and will be subject to penalties according to the level and nature of the offense. To prevent contravention of the prohibited actions mentioned above, businesses should take into consideration the following risks associated with engaging in activities related to invoices, including:



1. In addition to facing administrative penalties, businesses may also be subject to criminal prosecution for utilizing illegal invoices, engaging in the illegal use of invoices

Pursuant to Article 28 of Decree No. 125/2020/NĐ-CP, enterprises shall be subject to a monetary penalty ranging from VND 20,000,000 to VND 50,000,000 for the act of utilizing unlawful invoices, employing unlawfully regulated invoices as stipulated in Article 4 of this Decree, including:

“1. Using the invoices or evidencing documents mentioned hereunder constitutes the act of using illegal invoices or evidencing documents:

a) Counterfeit invoices and evidencing documents;

b) Invoices and evidencing documents not yet valid or expired;

c) Invoices suspended during the period of enforcement of the invoice suspension penalty, except those permitted for use according to a tax authority's notice;

d) E-invoices which are not registered with any tax authority;

dd) E-invoices of which tax authority's codes have not yet been granted if they are subject to the regulation under which e-invoices with tax authority's codes are required;

e) Invoices for purchase of goods or services with the invoicing date specified thereon which falls within the period from the date on which a tax authority determines that the seller is not doing business at the address registered with a competent regulatory authority;



g) Invoices or evidencing documents for purchase of goods or services with the invoicing date before the date on which it is determined that the invoicing party are not doing business at the address registered with a competent regulatory authorities or, though the invoicing party's notification of the closing of their business at the address already registered with the competent regulatory authority has not been sent to the tax authority, the tax authority or the police authority or other regulatory agency establishes that they are illegal.

2. Using the invoices or evidencing documents in the following cases constitutes the act of illegally using invoices or evidencing documents:

a) Invoices or evidencing documents that do not contain all compulsory contents as prescribed; invoices on which information is erased or corrected in breach of regulations;

b) Fraudulent invoices or evidencing documents (i.e. invoices or evidencing documents containing details about goods and services which are not partially or entirely rendered); invoices incorrectly reflecting amounts due, or invoices issued as fraudulent, false or fake ones;

c) Invoices with discrepancies in amounts paid for goods or services rendered, or discrepancies in required data fields between an invoice's copies;

d) Issued invoices reused with fictitious information for the purpose of transporting goods at the circulation stage or invoices for goods or services which are used for evidencing the

rendering of the other goods or services;

dd) Invoices or evidencing documents of other entities or persons (except if invoices are received from tax authorities and issued under trust) used for certifying the purchased goods or services or the sold goods or services;

e) Invoices or evidencing documents in the case where the tax, police or other regulatory authority concludes that they are used illegally.”

However, please note that this provision does not apply to cases stipulated in point d, clause 1, Article 16 (instances where unauthorized invoices or documents are used for recording the value of purchased goods or services to reduce the amount of tax payable or to increase the amount of tax refund, tax exemption, or tax reduction; however, when tax authorities discover the violation during inspection or examination and the purchaser can demonstrate that the unlawful use of invoices or documents belongs to the seller and the purchaser has accounted for them fully as required) and point d, clause 1, Article 17 of this Decree (cases of utilizing unauthorized invoices; using illegal invoices or documents for tax declaration purposes to reduce the tax payable or increase the amount of tax refund, tax exemption, or tax reduction, provided the taxpayer has mitigating circumstances). These two scenarios will be subject to administrative sanctions, including specific forms of penalties as prescribed under these respective provisions.

In the event that a business has previously been administratively sanctioned for violations and continues to commit the same offenses, the business owner and/or individuals in leadership positions within the business may be subject to criminal sanction, based on Clause 1 of Article 200 of the 2015 Penal Code as amended and supplemented in 2017, specifically:

“1. A person who commits any of the following acts of tax evasion with an amount of from VND 100,000,000 to under VND 300,000,000 or under VND 100,000,000 despite the fact that he/she has incurred an administrative penalty for tax evasion or has an unspent conviction for any of the offences specified in Article 188, 189, 190, 191, 192, 193, 194, 195, 196, 202, 248, 249, 250, 251, 252, 253, 254, 304, 305, 306, 309 and 311 hereof shall be liable to a fine of from VND 100,000,000 to VND 500,000,000 or face a penalty of 03 - 24 months' imprisonment:

[...]

d) Use of illegal invoices or vouchers to record purchased goods and raw materials that results in reduction of tax payable or increase exempt, reduced, deductible or refundable tax;

dd) Use of other illegal documents to falsify the amount of tax payable or increase exempt, reduced, deductible or refundable tax;

[...]

5. Punishments incurred by a corporate legal entity that commits any of the offences specified in

this Article:

a) Any corporate legal entity that commits an offence specified in Clause 1 of this Article despite the fact that it has incurred an administrative penalty or has an unspent conviction for the same offence shall be liable to a fine of from VND 300,000,000 to VND 1,000,000,000; [...]”

For corporate legal entities, the highest penalty can be as high as VND 10 billion and may also entail a permanent suspension of activities depending on the severity of the violation. This penalty framework is considered to carry a strong deterrent effect, leading to a gradual reduction and a positive shift in the prevalence of invoice fraud over the past years. However, there is still a number of businesses that, is driven by short-term gains, willing to trade risk, putting them at the risk of facing criminal prosecution in accordance with the aforementioned provisions.





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2. Businesses may encounter a situation of "more harm than good" and considerations when receiving invoices to mitigate risks.

Currently, the deliberate use of illegal invoices, as well as the use of invoices to increase tax refunds or evade taxes, continues to occur frequently and with varying degrees of complexity¹. Many businesses, even if the value of the invoices is only a few hundred thousand to a few million VND, claim that they are unable to issue invoices and therefore resort to temporarily using invoices from another business for their customers. This behavior is deemed illegal according to point d, clause 2 of Article 4 of Decree No. 125/2020/NĐ-CP and will be subject to legal consequences. It can be observed that although the value of the invoices is not high, engaging in such unlawful activities places businesses that issue invoices and businesses that receive invoices for tax reporting at risk of facing administrative penalties reaching several tens of millions of dong, as mentioned in Section 1 above. If a business that receives invoices for tax reporting lacks clear understanding or does not pay attention to the origin of the invoices, the consequences that the business might face can be substantial.

Therefore, to proactively mitigate potential risks, there are several key considerations that businesses receiving invoices should pay special attention to when declaring and settling taxes. This is to prevent possible penalties by the relevant tax authorities, as outlined below:

- Firstly, businesses must rigorously manage all invoices generated within the course of their operations to avoid the risk of penalties or tax underpayment by the relevant authorities. Training the procurement team, establishing a monitoring and verification system, and ensuring synchronization throughout the entire business are crucial steps to undertake.
- Secondly, businesses need to carefully verify the legality of invoices before finalizing tax settlements, and they should only accept invoices from partners that have genuinely engaged in transactions with the business. In reality, many companies, despite thorough invoice verification, only become aware of their wrongdoing when penalized by tax authorities, realizing that they had issued invoices for unauthorized purposes to their own businesses.
- Thirdly, businesses should avoid using services related to illegal invoices, even if they are offered at a lower cost. In some cases, the amount saved by engaging in unlawful practices may pale in comparison to the penalties imposed by tax authorities when discovered and penalized.

¹ Luật sư Nguyễn Ngọc Thuận (2023), “Để ngăn chặn mua bán hóa đơn bất hợp pháp”, Tạp chí Kinh tế Sài Gòn online, <https://thesaigontimes.vn/de-ngan-chan-mua-ban-hoa-don-bat-hop-phap/>, truy cập lần cuối 10/08/2023.

DRAFT ON PRECEDENT NO. 13/2023 – DECISION ON TERMINATION OF LABOUR CONTRACT FOR EMPLOYEES BEING PART-TIME TRADE UNION CADRES



1. Source of the case law:

Decision No. 06/2022/LD-GDT dated September 26, 2022 of the High People's Court in Ho Chi Minh City on the labour case "Dispute on unilateral termination of labour contract" between the plaintiff, Mr. Vuong Quoc A and the defendant, K Vietnam Co., Ltd.

2. Location of the case law's content: Paragraphs 3 and 4 of section "Judgment of the Court".

3. Summary of the case law's content:

- The case law's situation:

The employee and the employer sign a fixed-term labour contract. When the term of the labour contract is only 1 month left, the employee is elected as the President of the primary Trade Union Committee but the self-nominating and election **are invalid in terms of standards of the candidate, the elected candidate because the employee does not have enough working time to serve at least ½ tenure of the Executive Board.** When the labour contract expires, the employer issues a decision to terminate the labour contract with the employee.



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- Legal solution:

In this case, the Court must determine that the employer's termination of the labour contract with the employee is in accordance with the provisions of Clause 1, Article 36 the Labour Code 2012 on the case of expiration of the labour contract. In other words, and this employee cannot refer to the the case specified in Clause 6, Article 192 of the Labour Code 2012: “When an employee who is a part-time trade union representative is still in his/her trade union tenure while his/her labour contract expires, that labour contract must be extended until the end of the trade union tenure.” because he was elected to the position of President of the primary Trade Union Committee of employee that is not in accordance with the standards of candidates and elected candidates regulated in Section A.3 of Instruction No. 398/HD-TLD dated March 28, 2012 of the Vietnam General Confederation of Labour: “Regarding the re-election of the committee: Being of working time at least ½ tenure [...]”.

4. Provisions of law related to the case law:

- Article 36 of the Labour Code 2012 (corresponding to Article 34 of the Labour Code 2019); Article 192 of the Labour Code 2012.

- Article 25 of the Law on Trade Union 2012.

- Instruction No. 398/HD-TLD dated March 28, 2012 of the Vietnam General Confederation of Labour .

5. Keywords of case law:

“Labour contract”; “Termination of labour contract”; " Trade union cadres "

6. Comments on case law

In the case law, the Court judged that the termination of the labour contract of Company K was lawful. The Court has applied Section A.3 of Instruction No. 398/HD-TLD dated March 28, 2012 of the Vietnam General Confederation of Labour, in which, in terms of re-election of the committee, participants must have the remain working time to serve at least half of the tenure. However, at the time the Trade Union Committee held the Trade Union Conference, Mr. A's labour contract was only valid for 1 month, but



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Mr. A was still included in the election list for the primary Trade Union Committee to be elected. This is considered as inconsistent with the regulations. This is a progressive regulation to ensure and balance the benefits for the employer because in fact there are some cases where the employee takes advantage of the provisions in Clause 1, Article 36, Clause 6, Article 192 of the Labour Code 2012 to extend the term of labour contract. Instruction No. 398/HD-TLD dated March 28, 2012 of the Vietnam General Confederation of Labour eliminated this inappropriateness by stipulating that re-elected employees must be of working time left at least $\frac{1}{2}$ tenure, specifically the remain term of labour contract must be 6 months or more to be eligible for re-election.



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LEGAL DOCUMENT IN 08/2023

NO.	EFFECTIVE DATE	NAME
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TRANSPORTATION

1.	02/8/2023	Consolidation document 44/VBHN-BGTVT in 2023 consolidating the Circular on compensation for non-refundable advance in air passenger transport issued by the Minister of Transport
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GOVERNMENT

1.	28/07/2023	Resolution 114/NQ-CP of the Government meeting in July 2023 on the draft Law on Social Insurance (amended)
2.	15/08/2023	Decree 57/2023/ND-CP amending Decree 49/2019/ND-CP guiding the Law on People's Public Security
3.	15/08/2023	Resolution No. 127/NQ-CP dated August 14, 2023 on application of granting electronic visas to citizens of countries and territories; International checkpoints allowing foreigners to enter and exit by electronic visas issued by Government
4.	12/08/2023	Decree 58/2023/ND-CP amending Decree 37/2019/ND-CP guiding the Law on Planning
5.	15/08/2023	Decree 59/2023/ND-CP guiding the Law on Implementation of Grassroots-level Democracy
6.	15/08/2023	Decision No. 128/NQ-CP dated August 14, 2023 on amendments to the Government's Resolution No. 32/NQ-CP on visa waiver for nationals of the Federal Republic of Germany, The French Republic, Italian Republic, Kingdom of Spain, The United Kingdom of Great Britain and Northern Ireland, Russian Federation, Japan, Republic of Korea, Kingdom of Denmark, Kingdom of Sweden, Kingdom of Norway, Republic of Finland, and the Republic of Belarus
7.	16/08/2023	Decree 61/2023/ND-CP on formulating and implementing village conventions and conventions of residential communities



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| 8. | 10/10/2023 | Decision 22/2023/QD-TTg on credit for those who have completed prison sentences issued by the Prime Minister |
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JUSTICE

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| 1. | 02/08/2023 | Circular 03/2023/TT-BTP amending Circular 01/2022/TT-BTP guiding Decree 87/2020/ND-CP stipulating the electronic civil status database, online civil status registration Issued by the Minister of Justice |
| 2. | 01/10/2023 | Circular 04/2023/TT-BTP guiding the implementation of administrative procedures and professional forms in civil judgment enforcement issued by the Minister of Justice |

CURRENCY - BANK

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| 1. | 28/07/2023 | Circular 09/2023/TT-NHNN guiding the implementation of the Law on Anti-money laundering issued by the Governor of the State Bank of Vietnam |
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INDUSTRY AND TRADE

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| 1. | 08/08/2023 | Consolidation document 20/VBHN-BCT in 2023 consolidating Circular stipulating the import of passenger cars with under 16 seats, new (unused) issued by the Ministry of Industry and Trade |
| 2. | 08/08/2023 | Consolidation document 21/VBHN-BCT in 2023 consolidating the Circular guiding the import of used passenger cars under 16 seats according to Decree 12/2006/ND-CP issued by the Ministry of Industry and Trade |

CONSTRUCTION

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| 1. | 14/08/2023 | Consolidation document 06/VBHN-BXD in 2023 consolidating the Decree on construction investment cost management issued by the Ministry of Construction |
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