



# LEGAL NEWSLETTER

## OCTOBER 2023

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## Highlights of Decree 91/2022/ND-CP: Amendments and Supplements to Decree on Guiding the Law on Tax Administration

On October 30, 2022, the Government issued Decree No. 91/2022/ND-CP amendments and supplements to some articles of the Government's Decree No. 126/2020/ND-CP dated October 19, 2020 detailing some articles of the Law on Tax Administration ("**Decree 91**"). The Decree contains specific additional provisions as follows:

### 1. Supplementing regulations on the filing of tax return deadline and tax payment deadline

Decree 91 added Article 6a to the Government's Decree No. 126/2020/ND-CP dated October 19, 2020 detailing some articles of the Law on Tax Administration ("**Decree 126**") on time limits of tax payment as follows:

The time limits for submission of tax declaration dossiers, time limits for payment of tax, time limits for tax authorities to process applications, effective periods of decisions on enforcing the implementation of tax decisions shall comply with regulations of the Law on Tax Administration and Decree 126.

In case the last day of the time limits for submission of tax declaration dossiers, time limits for payment of tax, time limits for tax authorities to process applications, and the effective period of the enforcement decision coincides with a prescribed holiday, the last day the end of the time limits is calculated as the working day immediately following that holiday.

### 2. Supplementing the case that tax declaration dossiers are not required to be filed

Decree 91 supplemented the case of not having to file tax declaration dossiers for personal income tax declarers who are organizations or individuals paying income in the case of monthly or quarterly personal income tax declaration, but in the month, that quarter does not deduct personal income tax deductions for the income recipient. Supplementing this case will save time and reduce unnecessary administrative procedures.

### 3. Changes in time limit and temporary tax payment amount

Decree 91 amended the provisions on temporary payment of corporate income tax in Article 8 of Decree 126 in two aspects:

First, increase the number of quarters of provisional tax payment from 03 quarters to 04 quarters;

Second, increase the minimum amount of total corporate income tax temporarily paid from 75% to 80% of the corporate income tax payable according to the annual balance.



## Highlights of Decree 91/2022/ND-CP: Amendments and Supplements to Decree on Guiding the Law on Tax Administration

According to Decree 126, the total amount of corporate income tax temporarily paid in the first 03 quarters of the tax year must not be lower than 75% of the amount of corporate income tax payable according to the annual balance.

### 4. Obligation to provide taxpayer information of e-commerce platforms

Decree 91 added Clause 8, Article 27 of Decree 126 on the obligation to provide information on e-commerce platforms to tax authorities. Accordingly, organizations established and operating under Vietnamese law that are owners of e-commerce platforms are responsible for providing fully, accurately and on time to tax authorities the information of merchants, organizations and individuals that conduct part or the whole process of the sale of goods, services on the e-commerce platform include:

- Name of seller;

- Tax code or personal identification number or identification card or citizen identification card or passport, address, contact phone number;

- Sales revenue through the platform's online ordering function.

Information shall be provided electronically every quarter by the last day of the first month of the following quarter, by electronic method, via the web portal of the General Department of Taxation in the format announced by the General Department of Taxation.

This regulation aims to assist tax authorities in gathering information of individuals and organizations conducting business activities on e-commerce platforms, thereby ensuring the compliance with personal income tax and value-added tax of organizations and individuals engaged in online transaction activities.

### 5. Handling cases of receiving bonuses and dividends in the form of securities

Decree 91 also stipulates that individuals who receive dividends in the form of securities, individuals who are existing shareholders receiving bonuses in the form of securities that are recorded in securities accounts of investors up until December 31, 2022 and have not had their tax declared and paid on their behalf by the securities companies or commercial banks where their depository accounts are opened, fund management companies where their investment portfolios are managed, or securities-issuing organizations shall declare and pay personal income tax themselves under personal income tax laws, be exempted from incur administrative penalties for late submission of tax declaration dossiers and imposition of late payment interest (if any).

Decree 91 brings important changes to improve transparency and enhance tax compliance. However, its success also depends on promoting tax understanding and compliance in the community.

## New points on Industrial Property Rights in Decree 65/2023/ND-CP

On August 23rd, 2023, the Government issued Decree No. 65/2023/ND-CP detailing some articles and implementation measures of the Intellectual Property Law on industrial property rights, protection of industrial property rights, rights to plant varieties, and state management of intellectual property ("**Decree 65**"). Decree 65 has come into effect with provisions that amend and supplement the intellectual property law system, especially new points on industrial property rights. Specifically, they are as follows:

### 1. Change in forms and application

The forms of application for establishing, protection of industrial property rights, such as application for trademark registration, patent, industrial design and layout design have been changed according to the new templates prescribed in the Appendix of Decree 65.

In addition, for the first time, the "Form of requesting for confirmation of the first-time delayed registration procedure for pharmaceutical circulation" and "Declaration of requesting compensation for delayed issuance of the first-time circulation for pharmaceuticals produced under exclusive patent" have been issued for patent owner to request competent state agencies to consider compensation for delays in granting pharmaceutical circulation issuance as stipulated in Article 131a of the Law on Intellectual Property in 2005, amend and supplement in 2022.

### 2. Procedure and scope of security control for patent

The procedure and scope of security control for patents are stipulated in Article 14 and Appendix VII of Decree 65. These procedures establish a strict process to identify and control patents that may affect national defense and security. The participation of the Ministry of National Defense and the Ministry of Public Security ensures a comprehensive evaluation process for patents, protecting national security interests and preventing harmful technologies. The responsibility of the applicant to comply with the legislation on the protection of state secrets emphasizes the need to carry out appropriate statutory procedures in accordance with the interests of national security. In addition, the regulations also protect the right of applicants to apply for a patent abroad if the applicant can prove that the patent registration is not a state secret.



## New points on Industrial Property Rights in Decree 65/2023/ND-CP

### 3. Procedure for amending and supplementing applications for establishing industrial property rights

Clause 1 Article 16 of Decree 65 stipulates that the applicant has the right to request the amendment of certain information in the application, such as the name, address, country code of the applicant, address of the patent author, layout design,...

However, according to Article 16 of Decree 65, it should be noted that:

The applicant can exercise the right to request amendment in writing without submitting an Amendment Declaration, only when the request is made before the application is validly accepted or rejected, or the application is amended or supplemented based on the notice of the Intellectual Property Office.

In case of changing the name, address, country code of the applicant, name and nationality of the author, the applicant must submit confirming document (original or certified copy) or a legal document (certified copy) proving the change (decision to change the name, address; business registration certificate recording the name change, address change,...). In case of changing the representative, the applicant must submit a declaration of change of representative.

The requester for amendment or supplementation of the application must submit: (i) a Fee for examination of the amendment request; and (ii) a Fee for publication of the amendment, and supplement information, as prescribed for each case.

### 4. Dividing the application, withdrawing the application for industrial property right establishment

According to Article 17 of Decree 65, the applicant has the right to request to divide the application for industrial property rights before the state management agency for industrial property rights decides to refuse the acceptance of the application, accept or refuse the granting of the protection certificate. Dividing the application has the following considerations:

Dividing the application into one or more new applications is only accepted in the following cases: Divide one or some technical solutions in the patent application; Divide one or some industrial designs in the industrial design application; Divide a part of the list of goods, service in the trademark application.

The divided application will be granted a new application number and is obtained from the filing date of the original application or the priority date(s) of the original

For each divided application, the applicant must pay the application fee and all fees for procedures performed independently with the original application (except for procedures already performed in the original application that do not need to be repeated in the divided application), but not pay the fee for examination of the priority right request (except for the case of splitting an industrial design application due to lack of unity).

The divided application is assessed in form and continues to be processed according to the procedures that have not been completed for the original application. The divided application must be published as prescribed;

## New points on Industrial Property Rights in Decree 65/2023/ND-CP

Point b2 Clause 2 Article 17 of Decree 65 supplemented provisions about the industrial property right authority issues a notice intending to refuse the withdrawal in case the withdrawal application does not comply with Point a Clause 2 Article 17 of Decree 65.

### 5. Regulation on the form of the protection certificate

Clause 1 Article 29 of Decree 65 stipulates that the protection certificate will be issued in electronic and paper form, however, the paper form of the protection certificate will only be issued when and only the applicant requests the issuance in the paper form.

This regulation shows a notable change toward granting electronic protection certificates as the default method for protection certificates. The shift to electronic formats is in line with the trend of digital transformation in Vietnam. The regulation still allows applicants to choose paper protection certificates to meet the needs of organizations and individuals who require physical documents that are suitable for their purpose.

### 6. Procedures related to classified inventions

Decree 65 has five articles from Article 48 to Article 52, which provide detailed regulations on secret invention as follows:

Application for secret invention must be submitted in paper form, not electronic form;

The required documents, application processing procedure, and the deadline for assessing the content of the secret invention application shall not exceed 18 months;

Mechanism for coordinating with the Ministry of Public Security in determining the conformity of information disclosure with the law on protection of state secrets;

Regulation on the non-application of complaint procedure for decision.

Notification of applications for secret inventions and applications related to secret inventions.

Regulation on the non-disclosure of applications for secret inventions and protection certificates for secret inventions.

Regulations on the declassification of secret inventions when submitting the application and being granted a protection certificate.

Regulation on the registration of secret inventions abroad and the management of the use of secret inventions.

The regulations in Decree 65 regarding secret inventions are crucial to ensuring national security, protecting intellectual property rights with secret inventions, ensuring transparency, and making a balance between innovation and security. These regulations provide clear and transparent legal frameworks for effectively managing sensitive information and technology while promoting innovation within certain appropriate boundaries in line with national security interests.

The issuance of Decree 65 marks an important step in enhancing intellectual property protection in Vietnam. These regulations have been established in detail, providing clear guidance to relevant subjects, ensuring consistency in application, facilitating effective enforcement, and promoting social innovation.

## Analysis of Case No. 69/2023/AL regarding the authority of Commercial Arbitrators in Resolving Disputes in Non-Disclosure Agreements and Non-Compete Agreements

*Non-Disclosure Agreements (NDA) and Non-Compete Agreements (NCA) are one of the common types of agreements appearing in labor relations today. The issue of jurisdiction in resolving disputes related to these agreements has been addressed in Case No. 69/2023/AL regarding the jurisdiction of commercial arbitrators in resolving disputes in non-disclosure agreements and non-competes agreements ("Case No. 69").*

### 1. Overview of the Case

(i) On October 10, 2015, Company R Ltd ("**Company R**") and Ms. Đỗ Thị Mai T ("**Ms. T**") signed an employment contract with a period of twelve (12) months (from October 10, 2015, to October 31, 2016). Ms. T worked at Company R as the Head of the Recruitment Department.

(ii) On October 21, 2015, Company R and Ms. T signed a Non-Disclosure Agreement and Non-Compete Agreement ("**NDA**"), wherein Article 3 of the NDA stated: *"During the period of employment and for twelve (12) months after termination of employment or work with Company R, regardless of the reason for such termination, the individual agrees not to, directly or indirectly, and within the entire territorial scope, engage in work similar to the work or substantially similar in nature to the work into any competing business with L.vn (...), currently or in the future competing with the business of L.vn, Company R, and/or affiliated entities and partners of Company R."* The parties also agreed that in case of a dispute, it would be resolved through arbitration.

(iii) On November 1, 2016, Company R and Ms. T entered into another employment contract with a duration of twelve months (from November 1, 2016, to October 31, 2017), with the same position as the Head of the Recruitment Department.

(iv) On November 18, 2016, Ms. T terminated the 2016 employment contract with Company R. On October 2, 2017, Company R filed a claim with evidence at the Vietnam International Arbitration Center (VIAC), requesting Ms. T to compensate Company R in the amount of 205,197,300 Vietnamese Dong, equivalent to three times the monthly salary preceding Ms. T's unilateral termination of the 2016 employment contract, claiming that Ms. T had violated Article 3 of the NDA.

(v) On February 19, 2018, an Arbitral Tribunal belonging to VIAC in Ho Chi Minh City issued Arbitration Award No. 75/17 HCM. The Arbitral Tribunal accepted all the claims made by Company R.

(vi) Disagreeing with the Arbitral Tribunal's award, on March 22, 2018, Ms. T filed a lawsuit at the People's Court of Ho Chi Minh City, requesting the annulment of the entire content of Arbitration Award No. 75/17 HCM dated February 19, 2018, issued by VIAC, on two grounds: **The arbitration agreement is void due to a violation of legal prohibitions, and the arbitration award is contrary to the fundamental principles of Vietnamese law; the dispute does not fall within the jurisdiction of the Arbitral Tribunal.**



## Analysis of Case No. 69/2023/AL regarding the authority of Commercial Arbitrators in Resolving Disputes in Non-Disclosure Agreements and Non-Compete Agreements

### 2. Court's Conclusion

The People's Court of Ho Chi Minh City reached the following conclusions:

Ms. T argued that *"the dispute does not fall within the jurisdiction of the Arbitral Tribunal"* because she reasoned that "disputes related to the NDA should be resolved by the Court." Referring to Article 2 of the Commercial Arbitration Law, states: "Arbitration's authority to resolve disputes: Disputes arising between parties, of which at least one party is engaged in commercial activities." Company R is a merchant, registered for business, and engaged in commercial activities under the Commercial Arbitration Law of 2005. Therefore, the arbitration agreement falls under the jurisdiction of VIAC and the Arbitral Tribunal as provided in Article 2 of the Commercial Arbitration Law. This conclusion was reached by the Arbitral Tribunal at its meeting on January 19, 2018.

Article 35, Section 4 of the Commercial Arbitration Law stipulates: "In cases where the plaintiff claims that the dispute does not fall within the jurisdiction of the Arbitral Tribunal, there is no arbitration agreement, the arbitration agreement is void, or the arbitration agreement cannot be enforced, this must be clearly stated in the self-defense statement." However, in the self-defense statement and throughout the arbitration proceedings, Ms. T did not raise any objections to the jurisdiction of the Arbitral Tribunal and continued to participate in the arbitration proceedings and attend dispute resolution meetings. Therefore, Ms. T lost her right to object to the jurisdiction of the Arbitral Tribunal as provided in Article 13 of the Commercial Arbitration Law and the guidance in Resolution 01/2014/NQ-HĐTP.

Furthermore, Ms. T argued that the dispute between the parties is a labor dispute falling under the jurisdiction of the Court because the NDA is an integral part of the employment contracts between her and Company R. In paragraph 11 of the Legal Counsel's Statement dated January 18, 2018, defending Ms. T's legal rights and interests at VIAC and in the final hearing, Ms. T's legal counsel reiterated the view that the NDA is entirely separate from the employment contracts between Company R and Ms. T.



## Analysis of Case No. 69/2023/AL regarding the authority of Commercial Arbitrators in Resolving Disputes in Non-Disclosure Agreements and Non-Compete Agreements

Therefore, the application review council concluded that the NDA is an independent agreement, and in the event of a dispute, it falls within the jurisdiction of the Arbitral Tribunal as the parties' choice from the time of signing.

The application review council rejected Ms. T's request to annul Arbitration Award No. 75/17 HCM issued by the Arbitral Tribunal at the Vietnam International Arbitration Center (VIAC) on February 19, 2018, in Ho Chi Minh City.

### 3. Some Issues Derived from the Case Content

In the above-mentioned case, two key issues have been addressed:

**Regarding the Jurisdiction of the Arbitral Tribunal:** Based on the specific legal provisions in Article 2 of the Commercial Arbitration Law concerning the jurisdiction to resolve disputes, the Arbitral Tribunal has jurisdiction when a dispute arises between parties, with at least one party engaged in commercial activities. Since Company R is a business entity engaged in commercial activities and Ms. T did not raise any objections to the jurisdiction of the Arbitral Tribunal but continued to participate in the arbitration process, Ms. T waived her right to object to the jurisdiction of the Arbitral Tribunal. The Court's conclusion on the jurisdiction issue is reasonable and consistent with the legal provisions on commercial arbitration.

**Regarding the NDA Agreement:** The Court noted that, in paragraph 11 of the Legal Counsel's Statement dated January 18, 2018, defending Ms. T's legal rights and interests at VIAC and in the final hearing, Ms. T's legal counsel reiterated that the NDA is entirely separate from the employment contracts between Company R and Ms. T. Therefore, the Arbitral Tribunal concluded that the NDA is an independent agreement, and in the event of a dispute, it falls under the jurisdiction of the Arbitral Tribunal as the parties' choice from the time of signing. The Court's conclusion aligns with the principle of recognizing the will and agreement of the parties.

From the content of this case, some noteworthy points can be concluded:

Based on the Court's determination, Case No. 69 has provided a legal conclusion in determining the jurisdiction of commercial arbitrators in independent agreements arising outside of employment contracts. It allows for the choice of commercial arbitration to resolve disputes between businesses and employees arising from independent civil agreements outside of employment contracts.

If an NDA is separately signed from the employment contract, it will be considered an independent civil agreement separate from the employment contract. However, if the NDA is signed together with the employment contract, it becomes a part of that employment contract. Therefore, businesses need to be aware of this when signing employment contracts, as it can be related to the jurisdiction of dispute resolution between employers and employees in case of disputes.

If one believes that the Arbitral Tribunal does not have the authority to resolve a dispute, it is necessary to object to the jurisdiction of the Arbitral Tribunal in the self-defense statement during the arbitration proceedings. In such cases, the Arbitral Tribunal will review the issue of its jurisdiction. When the application review council receives an application for the annulment of an arbitral award because the dispute does not fall under the jurisdiction of the Arbitral Tribunal, it will not consider one party to have lost the right to object as per Resolution 01/2014/NQ-HDTP.

## Resolving disputes in the field of business and commerce: Choosing Arbitration or Court?

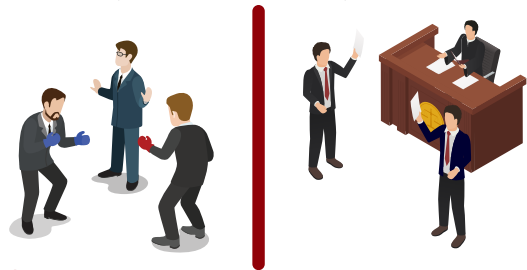
*In recent years, disputes in the line of business and commerce have been increasing. To minimize damage, the parties shall choose a dispute resolution suitable to their business and production situation. Accordingly, when a dispute occurs, the parties can choose the following resolution methods: Negotiation, conciliation, arbitration, or court. In case negotiation or conciliation is unsuccessful, the parties will have to consider resolving the dispute at an arbitration agency such as Arbitration or Court. In this article, TNTP will present some characteristics of these two methods so that the parties have more basis to choose the appropriate dispute resolution.*

### 1. Dispute resolution in Court

**Firstly**, in nature, resolving disputes by the Court is through the operation of the judicial apparatus and on behalf of state power to issue judgments or decisions that force the parties to carry out their obligations, even by physical force. When a dispute occurs, one of the parties can sue in court to protect their legitimate rights and interests. However, before submitting a lawsuit in Court, the plaintiff needs to determine whether the Court has jurisdiction and whether the parties have an arbitration agreement or not. In case the parties have an arbitration agreement but still sue a lawsuit in Court, the Court will refuse to accept the case, unless the arbitration agreement is invalid or the arbitration agreement cannot be performed.

**Secondly**, dispute resolution by the Court shall follow the two-level adjudication regime (first instance, appeal,...). Accordingly, in case of disagreement with the judgment or decision of the first instance, each party has the right to appeal within the prescribed time limit

**Thirdly**, dispute resolution in Court must be carried out according to the principle of public trial. In special cases where it is necessary to keep State secrets, preserve the nation's fine customs and practices, protect minors, or keep professional secrets, business secrets, and personal secrets of the involved parties at their legitimate claims, the Courts may conduct the trials behind closed doors (Article 15 of the Civil Procedure Code 2015).



## Resolving disputes in the field of business and commerce: Choosing Arbitration or Court?

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### 2. Dispute resolution at Arbitration

*Firstly*, the Arbitration method allows parties to resolve disputes quickly, simply, conveniently, and in accordance with the psychology of businesses. However, Arbitration fees are often higher than court fees. In the case of reimbursement of arbitration fees, depending on the regulations of each Arbitration Center, the reimbursement fee may not be equal to the Court's refund fee.

*Secondly*, the disputing parties have the right to choose an arbitration body. If initiating a lawsuit in Court, the plaintiff must submit a lawsuit at a Court with jurisdiction according to the provisions of the Civil Procedure Code 2015. For cases resolved in Arbitration, the parties can agree to any arbitration centre or arbitrator to resolve the dispute. For instance: The disputing parties all have their business headquarters in Hanoi city, so to facilitate dispute resolution, the parties agreed to choose an arbitration centre in Hanoi city to resolve the dispute.

*Thirdly*, regarding information confidentiality: Dispute resolution by Arbitration is carried out on the principle of non-publicity unless the parties agree otherwise. Therefore, a closed trial at Arbitration can minimize negative effects on the reputation and business activities of the disputing parties.

*Fourthly*, the trial at Commercial Arbitration only takes place at one level of trial, the arbitration award is final and binding on the parties. Thus, resolving disputes by Arbitration will save time and money for the parties as they do not have to continue resolving the dispute at the appellate level like in Court. However, the arbitration award can be annulled according to cassation procedures.

With the contents analyzed above, depending on the production and business situation, the parties should choose the method of dispute resolution by Court or Arbitration when there is a dispute in the field of business and commerce. However, the parties need to pay special attention and remember that the prerequisite for resolving disputes by commercial arbitration is that the parties must have an arbitration agreement, and must ensure that this agreement is legally valid and can be done.

Above is the content of the article ***"Resolving disputes in the field of business and commerce: Choosing Arbitration or Court?"***. Hope the above article is useful for those interested in this issue.

*Best regards,*

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## OCTOBER 2023

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