

# LEGAL UPDATES

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## 1. Decree No. 31/2022/ND-CP on interest rate incentive from the State budget for loans of enterprises, cooperatives and household businesses, takes effect as of May 20<sup>th</sup>, 2022

On May 20<sup>th</sup>, 2022, the Government issued a Decree No. 31/2022/ND-CP on interest rate incentive from the State budget for loans of enterprises, cooperatives and household businesses ("**Decree 31/2022/ND-CP**"). This decree takes effect as of May 20<sup>th</sup>, 2022.

### *Subjects of interest rate incentive*

Decree 31/2022/ND-CP clearly states that subjects of interest rate incentive are enterprises, cooperatives and household businesses (hereinafter referred to as customers) falling into one of the following cases:

- (i) the use purpose of the loan is to do their registered business classified as one of the sectors/areas provided for in Decision No.27/2018/QD-TTg on the identification of Vietnam's Economic Sectors System, namely: aviation and logistics (H), tourism (N79), lodging and food services (I), education and training (P), agriculture, forestry and fisheries (A), manufacturing and processing industry (C), software publishing (J582), computer programming and related activities (J-62), information service activities (J-63). This also includes construction activities in direct service to the above-mentioned economic sectors, but excluding construction activities for the property trading purposes classified as (L) code in the list of economic sectors in Decision No.27/2018/QD-TTg; or
- (ii) the use purpose of the loan is to implement a social housing project, or for the construction of workers' housing, or for the rehabilitation of an old apartment building included in the List of projects made and publicized by the Ministry of Construction.

### *Conditions for interest rate incentive*

According to Decree 31/2022/ND-CP, the customers shall be supported the rate interest if they meet the following conditions:

- (i) they have requested interest rate incentive, meet loan conditions in accordance with current laws on lending activities of credit institutions, foreign bank branches to customers; and
- (ii) the loan with interest rate incentive is a loan in Vietnam dong, was signed a loan agreement and disbursed from January 01<sup>st</sup>, 2022 to December 31<sup>st</sup>, 2023, was used for the right purpose according to clause 2 Article 2 of Decree 31/2022/ND-CP and have not yet received interest rate incentive from the State budget according to other policies.

### *Unsupported interest rate cases*

The loans are not being supported the rate interest, including:

- (i) loans with overdue principal balance and/or late payment interest balance (these loans are not supported on interest rate in the interest payment term and the time of repayment is within the balance period whose overdue principal and/or overdue interest balance). The loans can only continue to receive interest rate incentive for the next interest payment terms after the customer has fully paid the overdue principal balance and/or the late payment interest balance; and
- (ii) debt extension loans (these loans are not supported with interest for the debt extension period).

### *Term and interest rate incentive*

According to Decree 31/2022/ND-CP, the interest rate incentive period is from the loan disbursement date to the date when the customers fully pay off the loan principal and/or interest under agreements between them and the commercial bank, accordance with the funding source for announced interest rate incentive, but not exceeding December 31<sup>st</sup>, 2023.

The support interest rate for customers is 2%/year, calculated on the loan balance and the actual interest rate support loan term within the period specified above.

### *Method of interest rate incentive*

Decree 31/2022/ND-CP states that at the time of repayment in each payment term, the commercial banks shall reduce the loan interest as equal as incentive loan interest in payment term according to the guidance of the State Bank of Vietnam.

Specifically, the commercial banks can choose one of the following methods to support the interest rate:

- (i) by directly reducing the loan interest as equal as supported loan interest; or
- (ii) by fully collecting the loan interest in payment term and refunding the supported loan interest in the same day.

## **2. Resolution No. 01/2022/NQ-HDTP amending and supplementing a number of articles of the Resolution No. 02/2018/NQ-HDTP guiding the application of Articles 65 of the Criminal Code on suspended sentence, takes effect as of May 10<sup>th</sup>, 2022**

On March 23<sup>rd</sup>, 2022, The Judicial Council of the Supreme People's Court approved Resolution No. 01/2022/NQ-HDTP ("**Resolution 01/2022/NQ-HDTP**") amending and supplementing a number of articles of the Resolution No. 02/2018/NQ-HDTP ("**Resolution 02/2018/NQ-HDTP**") guiding the application of Articles 65 of the Criminal Code on suspended sentence. Resolution 01/2022/NQ-HDTP takes effect as of May 10<sup>th</sup>, 2022.

### *Supplementing the condition for suspended sentence*

Previously, according to Resolution 02/2018/NQ-HDTP, conditions for suspended sentence for persons sentenced to prison are as follows:

- (i) be sentenced to prison no more than 03 years;
- (ii) having the good personal records: Person are considered that they have good personal records if in addition to this crime, they abide by the policies and laws and fully fulfills the citizen obligations in residence or workplace. For a person who has been convicted but is considered to have no criminal record, who has been sentenced but whose criminal record has been expunged, who has been administratively sanctioned or disciplined but the time of administrative non-sanction or non-discipline has expired more than 6 months by the time he/she commits a new crime, if it is considered that the



nature and seriousness of the newly committed crime falls under the following circumstances: less serious or the offender is an accomplice who plays an insignificant role in the case and meets other conditions, a suspended sentence may also be served;

- (iii) having two or more extenuating circumstances of criminal ability, in which:
  - having at least 01 extenuating circumstances of criminal ability specified Clause 1 Article 51 of Criminal Code; and having no aggravating circumstance of criminal ability specified in Clause 1 Article 52 of Criminal Code.
  - if having an aggravating circumstance of criminal ability, the number of extenuating circumstances shall be more than 02 ones compared with the number of aggravating circumstances, and there is at least 01 aggravating circumstance of criminal ability specified Clause 1 Article 51 of Criminal Code.
- (iv) having clear place of residence or stable workplace so that the competent authorities can supervise, educate. Accordingly, a clear place of residence may be a temporary or permanent residence place with a specific address according to the Residence Law. That is where person regularly reside and live after serving the suspended sentence. A stable workplace is where the offenders work from 01 year under the labor contracts or under the decisions of the competent authorities, organizations; and
- (v) if the offenders are able to re-educate and serving suspended sentence is not hazardous for social, does not affect the social security, order and safety.

However, currently, in addition to the above conditions, Resolution 01/2022/NQ-HDTP also amend and supplement some conditions. Specifically:

- (i) for the condition of good personal records: Decree 01/2022/NQ-HDTP stipulates that a person who has been convicted but is considered to have no



criminal record, who has been sentenced but whose criminal record has been expunged, who has been administratively sanctioned or disciplined but up to the date of committing new crime, but the time of administrative non-sanction or non-discipline has expired pursuant to the law (previously, the regulation was 06 months), if it is considered that the nature and seriousness of the newly committed crime falls under the following circumstances: less serious or the offender is an accomplice who plays an insignificant role in the case and meets other conditions, a suspended sentence may also be served. For an offender when determining crimes, have used the circumstances of "having been disciplined" or "have been administratively sanctioned" or "have been convicted" and fully satisfies other conditions, the court may also entitle him/her to suspended sentence. For an offender when a case is separated in different stages (into some cases) and meets the other conditions, he court may also entitle him/her to suspended sentence; and

- (ii) court must consider carefully the suspended sentence conditions to ensure to comply with the law when deciding the suspended sentence, especially for cases in Clause 2, Clause 4 and Clause 5 Article 3 of this Resolution.

In short, from May 10<sup>th</sup>, 2022, when considering and deciding the suspended sentence, the competent authorities must base on 06 conditions specified in Resolution 01/2022/NQ-HDTP.

### *Cases in which a suspended sentence is not allowed*

Previously, according to Resolution 02/2018/NQ-HDTP, a suspended sentence is not allowed in one of the following cases:

- (i) the offender is the mastermind, leader, commander, stubbornly opposer, thug, uses cunning tricks, has a professional nature, abuse of position and power to gain personal gain, intentionally causes harm particularly serious consequences;
- (ii) the offender escapes and was wanted by the proceeding agencies;





- (iii) person serving suspended sentence but committing new crime in the probation; person serving suspended sentence but being judged on other crime before serving suspended sentence;
- (iv) the offender is judged for multiple crime, except for person under 18 years old;
- (v) the offender commits crime many times, except for person under 18 years old; and
- (vi) the offender repeats or dangerously repeats the crime.

Currently, according to Resolution 01/2022/NQ-HDTP, from May 10<sup>th</sup>, 2022, there are also 06 cases in which the suspended sentence is not allowed but some of them are amended and supplemented. Under this Resolution, a suspended sentence is not allowed in one of the following cases:

- (i) the offender is the mastermind, leader, commander, stubbornly opposer, thug, uses cunning tricks, has a professional nature, abuse of position and power to gain personal gain, intentionally causes harm particularly serious consequences;
- (ii) the offender escapes and was wanted or requested to want by the proceeding agencies; except for the cases when the offender gives himself/herself up to the police before having the decision to bring to trial;
- (iii) person serving suspended sentence but committing new crime in the probation; person serving suspended sentence but being judged on other crime before serving suspended sentence;
- (iv) the offender is judged for multiple crime in one time, except for the following cases when:
  - the offender is under 18 years old;
  - the offender is judged and convicted of 02 less serious crimes or the offender is a helper in complicity case with insignificant role.
- (v) the offender commits crime twice or more, except for the following cases:



- the offender is under 18 years old;
  - the offender commits a less serious crime in each time;
  - the offender is a helper in complicity case with insignificant role in every time; or
  - the offender confesses when committing a crime.
- (vi) the offender repeats or dangerously repeats the crime.

*Determining the imprisonment period for convicted persons who is detained or given into custody but served the suspended sentence*

Previously, Resolution 02/2018/NQ-HDTP only stipulates on how to determine the challenge probation (the time for offender served suspended sentence). Now, Resolution 01/2022/NQ-HDTP adds new regulation on conversion of temporary detention, custody periods during the offender's suspended sentence.

Accordingly, the temporary detention, custody periods of convicted persons who are served suspended sentence shall not be deducted in the imprisonment term (this term is used to indicate the challenge probation). If the offender commits a new crime or violates the obligations to serve the prison sentence of the serving suspended sentence judgement, the temporary detention, custody periods shall be deducted in imprisonment term of the serving suspended sentence judgement or new judgement.

*Beginning of the probationary period in the case of retrial of the first instance but still serving a suspended sentence*

This is a new content of Resolution 01/2022/NQ-HDTP. Accordingly, if the first-instance court grants a suspended sentence but the appellate court revokes the first-instance judgement for investigating or judging again and after the first-instance retrial, the first-instance court still grants a suspended sentence, the challenge probation is calculated from the date of the next first-instance judgement.

Finally, according to Resolution 01/2022/NQ-HDTP, for criminal acts occurred before the effective date of this Resolution and the cases are being judged in first instance, appellate, cassation or reopening trial, this Resolution will be applied to solve. If the offender was judged before the effective date of this Resolution under previous guiding documents or legal effective judgements, this Resolution will not be based on to appeal according to cassation or reopening trial procedure.

**3. Decree No. 22/2022/ND-CP amending, supplementing a number of articles of**





## **Decree No. 32/2012/ND-CP on management of export, import of cultural products for non-commercial purposes, takes effect as of May 10<sup>th</sup>, 2022**

On March 25<sup>th</sup>, 2022, the Government issued the Decree No.22/2022/ND-CP ("Decree 22/2022/ND-CO") amending, supplementing a number of articles of Decree No.32/2012/ND-CP on management of export, import of cultural products for non-commercial purposes ("Decree 32/2012/ND-CP"). Decree 22/2022/ND-CP takes effect as of May 10<sup>th</sup>, 2022.

### *Definition of cultural products*

Previously, Decree 32/2012/ND-CP gave the definition of cultural products. Accordingly, cultural products include:

- (i) audio or video records; films, magnetic tapes, floppy disks, hard disks and optical disks already recorded; other audio-visual technology products already recorded with information in form of scripts, sound or images;
- (ii) works of graphic depict, applied art, painting and photography; and
- (iii) tangible cultural heritages and products relating to intangible cultural heritages.

Now, Decree 22/2022/ND-CP also amends and supplements the definition of cultural products. Accordingly, the cultural products include:

- (i) audio or video records; films; other audio-visual technology products recorded on digital materials or media in the form of words, sounds or images (excluding audio and video recordings containing alternative content or illustrations for books and electronic publications specified in the Law on Publishing);
- (ii) works of graphic depict, applied art, painting and photography; and
- (iii) tangible cultural heritages and products relating to intangible cultural heritages.

### *Authority to grant import of cultural products license*

Previously, according to Decree 32/2012/ND-CP, the Ministry of Culture, Sports and



Tourism has the right to grant the import of cultural products license in the following cases:

- (i) cultural products used for exchange, cooperation, assistance; participation in exhibitions, contests or festivals at national level;
- (ii) motion pictures, television films used for dissemination or distribution nationwide or in two or more localities as prescribed by law;
- (iii) relics, antiques used for exhibitions or display in museums;
- (iv) cultural products specified in Clause 1, Article 6 of this Decree used for professional work or research of ministries or central branches, after obtaining written opinions of relevant ministries or branches; and
- (v) cultural products used for other purposes nationwide or in many localities.

The Department of Culture, Sports and Tourism has the right to grant the import of cultural products license for individuals, organizations in their localities in the following cases:

- (i) cultural products used for works of individuals, organizations in their localities;
- (ii) cultural products being gifts or donations with values exceeding the duty-free quota as prescribed by law;
- (iii) cultural products for participation in exhibitions, contests or festivals; for circulation or dissemination in their localities;
- (iv) relics, antiques of individuals, organizations in their localities; and
- (v) cultural products of which they are authorized for license by the Ministry of Culture, Sports and Tourism.

Currently, Decree 22/2022/ND-CP also amends, supplements the authority to grant the import of cultural products license of the Ministry of Culture, Sports and Tourism (point (ii) was amended). Accordingly, from May 10<sup>th</sup>, 2022, in addition to the above point (i), (iii), (iv) and (v), the Ministry of Culture, Sports and Tourism also has the right to grant the import license for films used for dissemination or distribution nationwide.



Besides, Decree 22/2022/ND-CP also adds a new case in which the Department of Culture, Sports and Tourism has the right to grant the import license. Specifically, in addition to the above 05 cases, the Department of Culture, Sports and Tourism could grant the import license for films used for dissemination or distribution imported by the local Television and Radio Company according to the law.

### *Supplementing the regulation on recalling the import of cultural products license*

The regulation on the authority of recalling the import of cultural products license is a new content in Decree 22/2022/ND-CP. Specifically, the competent agencies could recall the import license if they find that the film content violates the prohibition regulations of Law on Cinema.

### *Procedure of granting the import of cultural products license*

The individuals, organizations importing the cultural products in cases specified in Article 8 Decree 32/2012/ND-CP shall submit dossiers of application for license directly or by post to state management agencies of culture, sports and tourism.

A dossier of application for license includes:

- (i) an application for license of individual or organization, clearly stating the kind, content, quantity, origin, use purpose and use scope of cultural products (Application form is promulgated in uniform in whole nation by the Ministry of Culture, Sports and Tourism);
- (ii) copyright certificate; contract; translation of the film's content summary in Vietnamese; and a written commitment to be responsible for the content of imported movies that do not violate the provisions of law; written authorization; certificate or commitment regarding to lawful ownership with respect to relics, antiques; and
- (iii) copy of bill of lading or notice of goods delivery (if any).

Moreover, according to Decree 22/2022/ND-CP, the individuals, organizations shall be responsible for providing the cultural products and custom declaration (the copy does not need to be certified). For the cultural products that are films: the organizations are responsible for providing the imported films and custom declarations (the copy needs to be certified or not and provide the original copy for checking if the dossier is directly



applied, or provide the certified copy if the dossier is applied by post) within 30 days from the date of have import license. Individuals commit that they only use the imported films for personal purposes and these purposes do not violates the Law on Cinema and use films accordance with the law.



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**DOCUMENTS ISSUED IN MAY 2022**

DATE OF ISSUANCE	NO.	TYPE OF DOCUMENT	ISSUED BY	MAIN ISSUE
May 4 <sup>th</sup> , 2022	1399/L□TBXH-VL	Official dispatch	The Ministry of Labor, War invalids and Social Affairs	Receiving and processing unemployment benefits on the National Public Service Portal
May 10 <sup>th</sup> , 2022	06/2022/TT-BKH□T	Circular	The Ministry of Planning and Investment	Guidelines for Decree No.80/2021/ND-CP guiding the Law on Supporting Small and Medium Enterprises (SMEs)
May 11 <sup>th</sup> , 2022	27/2022/TT-BTC	Circular	Ministry of Finance	Abolishing the Decision No. 59/2007/QD-BTC approving the organization and operation charter of the Cooperative Development Support Fund
May 16 <sup>th</sup> , 2022	1604/TCT-KK	Official dispatch	Ministry of Finance General Department of Taxation	Receiving and processing tax registration documents for the first time, changing tax registration information of non-business individuals through the National Public Service Portal connected to the



				National Database on Population
May 16 <sup>th</sup> , 2022	14/VBHN-BTNMT	Decree	Ministry of Natural Resources and Environment	Sanctions for administrative violations in the field of land
May 20 <sup>th</sup> , 2022	03/2022/TT-NHNN	Circular	State Bank	Guiding commercial banks to implement interest rate support according to Decree No.31/2022/ND-CP on interest rate support from the State bank for loans of enterprises, cooperatives and business households
May 20 <sup>th</sup> , 2022	31/2022/NĐ-CP	Decree	Government	Interest rate support from the State budget for loans of enterprises, cooperatives, and business households

