



## **LEGAL NEWS**

### **Enterprise**

#### **Priority rights in the mark registration: How to get it right?**

##### **What are the priority rights in the mark registration?**

The definition of priority right is not prescribed in the Law on Intellectual property. However, in accordance with Articles 90, and 91, Law on Intellectual property, the priority right is the application for mark registration and applicable to the principles of priority



right in accordance with the Law on Intellectual property to receive the protection titles.

The principles of priority rights include:

##### **(1) - The first-to-file principle**

In accordance with Article 90, Law on Intellectual property 2005, amended and supplemented in 2009, the first-to-file principles are prescribed as follows:

- Cases of applications:

- Many applications are filed for registration of the same invention or similar inventions, or for registration of industrial designs identical with or insignificantly different from one another.
- In case there are many applications filed by different persons for registration of identical or confusingly similar marks for identical or similar products or services, or in case there are many applications filed by the same person for registration of identical marks for identical products or services.



The protection title may only be granted for the mark in the valid application with the earliest priority or filing date among applications satisfying all the conditions for the grant of a protection title.

**Note:**

An industrial property registration application enjoying priority right shall bear the priority date being the filing date of the first application (Clause 3, Article 91, Law on Intellectual property 2005).

- In case there are many registration applications and satisfying all the conditions for the grant of a protection title and having the same earliest priority or filing date. The protection title may only be granted for the object of a single application out of these applications under an agreement of all applicants. Without such agreement, all relevant objects of these applications will be refused for the grant of a protection title. (Clause 3, Article 90, Law on Intellectual property).

**(2) - Principle of priority**

An applicant for registration of an invention, an industrial design, or a mark from a contracting party under the international treaties on intellectual property.

In Vietnam, the principle of priority is applicable to the Paris Convention for the Protection of Industrial Property and some other international treaties.

**What are the benefits of enjoying priority rights?**

Priority rights take important roles in the issuance procedure of protection title and protect economic values for marks. Some benefits for the owners when applying the principles of priority are as follows:

- The highest base for the issuance of trademarks is when others have duplicated marks which can cause mistakes for duplicated products and services.
- Create favorable conditions for protected goods and services to be protected in many other countries, and the owners of marks can open their business markets.
- The principle of priority is the base for handling the relevant disputes and violations to trademark registration and protection.

Therefore, the priority rights in mark registration are for all the trademarks in the registration of protection. It is necessary for trademark users which are not famous to submit the application for priority rights. [More](#)



## Land - Housing

### The income-based method for land pricing

Pursuant to Article 5, Circular No. 36/2014/TT-BTNMT, the process and content of determining land prices using the income-based method are prescribed as follows:

#### *Step 1: Explore, and collect information on the land parcel*



- For non-agricultural land: The average annual income is the average amount earned from manufacturing, business, or lease over 05 consecutive years up to the pricing term.

- For agricultural land: The average annual income is determined as follows:

- Annual crops, aquaculture, or salt production: is the average amount earned from such activities over 03 consecutive years up to the pricing term;
- Perennial plants or production forests: is based on annual revenue, periodic revenue, or lump sum revenue.

- If the income from the target land parcel cannot be determined, information for the average income of at least 03 similar parcels of land in terms of purposes, locations, profitability, technical and social infrastructure, areas, dimensions, shapes, and legitimacy of rights to use land shall be collected, or information collected from the market shall be used.

#### *Step 2: Explore, and collect information about the operating cost of the target land parcel*

- The average annual cost is based on the taxes related to land, cost of land recovery; cost of maintenance of constructions on land, and production cost.

- The above costs are based on the limits and unit prices imposed by competent authorities.

If no limits or unit prices imposed by competent authorities are available, information about the average income of at least 03 similar parcels of land in terms of purposes, locations, profitability, technical and social infrastructure, areas, dimensions, shapes, and legitimacy of rights to use land shall be collected, or information collected from the market shall be used.

#### *Step 3: Define the annual average net income*



The annual average net income shall be calculated as follows:

$$\text{Annual average net income} = \text{Annual average income} - \text{Annual average cost}$$

**Step 4: Pricing determination of land parcel**

- Value of the target land parcel is determined as follows:

$$\text{Value of land parcel} = \frac{\text{Annual average net income}}{\text{Annual average saving deposit interest rate}}$$

The annual average saving deposit interest rate(r) in 03 consecutive years up to the pricing date is the highest 12-month interest rate on a VND deposits defined by a state-owned commercial bank in the provincial regions(at the pricing term).

- For non-agricultural land with limited land use terms, the interest rate of the annual average saving deposit is as follows:

$$\text{Term-adjusted interest rate} = \frac{r \times (1 + r)^n}{(1 + r)^n - 1}$$

Within that, n is the remaining land use term of the target land parcel (by years).

If the land parcel has been invested, and constructed with the asset to bring into use and business, the current value shall be deducted after determining the value of the land parcel and property thereon in order to determine the price of the target land parcel.

The determination of current asset value of the land shall be determined in accordance with Step 2.

**Step 5: Price determination of land parcel**

The land price of the target parcel is determined using the formula below:

$$\text{Price of target land parcel} = \frac{\text{Value of land parcel}}{\text{Area of target land parcel}}$$

[More.](#)





## Land - Housing

### Excise tax 2022: Who will pay? What is the payable excise tax amount?

#### Excise tax rate

No.	Taxable goods and services	Tax rate (%)
1	Cigarettes, cigars and other tobacco preparations	75
2	Alcohol of 20o proof or higher	65
3	Alcohol of under 20o proof	35
4	Beer	65
5	Gasoline	10
6	Gasoline typed E5	8
7	Gasoline typed E10	7
8	Dance halls;	40
9	Massage parlors and karaoke bars	30
10	Casinos and prize-winning electronic games	35

#### Decrease tax on battery-powered electric cars from March 01, 2022

In accordance with the Law on Amending and Supplementing a Number of Articles of the Law on Public Investment, Law on Investment in the Form of Public-Private Partnership, Law on Investment, Housing Law, Bidding Law, Electricity Law, Law on Enterprises, Law on Excise Tax, and Law on Enforcement of Civil Judgments, the National Assembly decides to decrease the tax to increase the usage of using battery-powered electric cars.

Type of car	From March 01, 2022, to February 28, 2027	From March 01, 2027
- Battery-powered electric passenger cars of 9 seats or fewer	The tax rate (%) is decreased from 25% to 3%	The tax rate is 15%





- Battery-powered electric passenger cars of 10 seats or fewer	The tax rate (%) is decreased from 15% to 2%	The tax rate is 10%
Battery-powered electric passenger cars of between 16 seats and under 24 seats	The tax rate (%) is decreased from 10% to 1%	The tax rate is 5%

### Excise tax calculation

Pursuant to Article 5, Law on Excise tax 2008, excise tax bases include the taxed price of taxable goods or service and the tax rate. The payable excise tax amount is the excise taxed price multiplied by the excise tax rate.

The payable excise tax amount (payable excise tax level) is calculated as follows:

$$\text{Payable excise tax amount} = \text{Excise taxed price} \times \text{Excise tax rate}$$

Therefore, in order to get the payable excise tax amount (payable excise tax level) must define (1) Excise taxed price and (2) Excise tax rate

#### *(1) Excise taxed price*

Pursuant to Clauses 2, 3, 6, 7, 8, 9, Article 4, Decree No. 108/2015/ND-CP and Clauses 1, 2, Decree No. 100/0016/ND-CP, the excise taxed price is defined for goods and services as follows:

\* For domestically produced goods or imported goods

The excise taxed price is the selling price of the producer or importer.

In case the selling price of the producer or importer does not match the ordinary market price, the tax agency shall assess tax in accordance with the Tax Administration Law.

The excise tax calculation price shall be determined as follows:

$$\text{Excise taxed price} = \frac{\text{Selling price exclusive of value-added tax} - \text{Environmental protection tax (if any)}}{1 + \text{Excise tax rate}}$$

Within that, the selling price exclusive of value-added tax shall be determined in accordance with the law on value-added tax. [More](#).





## LEGAL UPDATES

### Enterprise

#### **Hanoi supports 90,000 SMEs for digital transformation**

On September 23, 2022, the People's Committee of Hanoi issues the Decision No. 3457/QĐ-UBND on approving the Plan on “Supporting the digital transformation for small- and medium-sized enterprises in the 2021 - 2025 period”.

90,000 small- and medium-sized enterprises which have been established are supported with guidelines documents, self-assessment, knowledge on digital transformation in the enterprise, support in leasing charges, and buying solutions of digital transformation.

The plan proposes 06 tasks and solutions for performance, including:

- Set up tools, documents, software, and databases for digital transformation;
- Have communication to improve the awareness of digital transformation in enterprises;
- Develop human resources for digital transformation;
- Support the digital transformation of small- and medium-sized enterprises at all levels;
- Connect and set up the network of consultants for digital transformation;
- Motivate the ecosystem of digital transformation.

The city also supports the packages of digital transformation apart from training costs, and human resource development for enterprises as follows:

- For the package “Beginning digital transformation”:

Support at the maximum of 50% consulting contract, but not exceed VND 50 million/contract/year for small-sized enterprises, not exceed VND 100 million/contract/year for medium-sized enterprises;

Support at the maximum of 50% charges of hiring, buying solutions of digital transformation but not exceed VND 20 million/year for micro-enterprises, but not exceed VND 50 million/year for small-sized enterprises, but not exceed VND 100 million/year for medium-sized enterprises.

- For the package “Acceleration of digital transformation”: Enterprises are supported on database safety, system management of customers and sale channels, reports, and smart business analysis...
- For the package “Digital transformation towards the global market”: Support enterprises in promoting exports and developing brands in the international market.



## Tax – Fee – Charge

### **8 charge and fee rates are reduced from October 01, 2022**

On September 29, 2022, the Minister of Finance issues the Circular No. 59/2022/TT-BTC providing a number of charge and fee rates to support and remove difficulties for transport business.

In particular, from October 01, 2022, to December 31, 2022, the Ministry of Transport reduces the number of charges and fee rates as follows:

- Reduce the rate of 20% of tonnage dues applicable to domestic maritime activities specified in Clause 1 Article 12 Chapter III of the Tariff for maritime dues and fees applicable to domestic maritime activities, promulgated together with the Minister of Finance’s Circular No. 261/2016/TT-BTC.
- Reduce the rate of 20% of Maritime safety assurance dues applicable to domestic maritime activities specified in Clause 1 Article 13 Chapter III of the Tariff for maritime dues and fees applicable to domestic maritime activities, promulgated together with the Minister of Finance’s Circular No. 261/2016/TT-BTC.
- Reduce the rate of 20% of port dues applicable to domestic maritime activities specified in Article 16 Chapter III of the Tariff for maritime dues and fees applicable to domestic maritime activities, promulgated together with Circular No. 261/2016/TT-BTC.
- Reduce the rate of 20% of appraisal charge rates for grant of certificates and licenses in civil aviation operations; grant of licenses for entry into and exit from restricted areas in airports and airfields specified in Section VI Part A of the Aviation Charge and Fee Tariff attached to Circular No. 193/2016/TT- BTC.
- Reduce the rate of 20% of charge rates for registration of secured transactions for aircraft specified in Section VIII, Part A of the Tariff for maritime dues and fees applicable to domestic maritime activities, promulgated together with Circular No. 193/2016/TT-BTC.
- Reduce the rate of 50% of railway infrastructure charges together with Article 3 together with Circular No. 295/2016/TT-BTC.
- Reduce the rate of 50% of inland waterway ports and wharves specified at Point 2 Clause 1 Article 4 of Circular No. 248/2016/TT-BTC.
- Reduce the rate of 50% of the charge rates specified at Point 3 Clause 1 Article 4 of Circular No. 248/2016/TT-BTC.

From January 01, 2023, onwards, the charge and fee rates specified in the above-mentioned Tariff shall comply with the previous regulations before October 01, 2022.

Circular 59 takes effect on October 01, 2022, to December 31, 2022.



## LIST OF UPDATED LEGAL NORMATIVE DOCUMENTS

<b>Culture – Sports - Tourism</b>		
1	Official Dispatch No. <a href="#">3432/BVHTTDL-VHCS</a> dated September 09, 2022 of the Ministry of Culture, Sports and Tourism on strengthening the state management of karaoke and discotheque service provision	Issuing date: 09/09/2022 Effective date: 09/09/2022 Effect status: In force
<b>Land - Housing</b>		
2	Resolution No. <a href="#">125/NQ-CP</a> dated September 22, 2022 of the Government on reducing land and water surface rentals for 2022 for subjects affected by the Covid-19 pandemic	Issuing date: 22/09/2022 Effective date: 22/09/2022 Effect status: In force
<b>Tax – Fee – Charge</b>		
3	Circular No. <a href="#">59/2022/TT-BTC</a> dated September 29, 2022 of the Ministry of Finance providing a number of charge and fee rates to support and remove difficulties for transport business	Issuing date: 29/09/2022 Effective date: 01/10/2022 Effect status: In force
4	Decision No. <a href="#">273/QD-TANDTC</a> dated September 15, 2022 of the Supreme People's Court on pilot implementation of the online public justice service of collection and remittance of legal costs and court fees on the National Public Service Portal	Issuing date: 15/09/2022 Effective date: 15/09/2022 Effect status: In force
<b>Organizational structure</b>		
5	Decree No. <a href="#">66/2022/ND-CP</a> dated September 20, 2022 of the Government defining the functions, tasks, powers and organizational structure of the Committee for Ethnic Minority Affairs	Issuing date: 20/09/2022 Effective date: 11/05/2022 Effect status: In force
<b>Transport</b>		
6	Decree No. <a href="#">69/2022/ND-CP</a> dated September 23, 2022 of the Government amending and supplementing a number of articles of the Decrees regulating business activities in maritime	Issuing date: 23/09/2022 Effective date: 30/10/2022 Effect status: Not yet applied



*Thank you for your reading!*

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