

NEWSLETTER ISSUE No. 10-2018

In this issue

NEW LEGAL DOCUMENTS

Update new legal document issued in October 2018

1. Decree No. 143/2018/ND-CP dated October 15, 2018 of the Government detailing the Law on Social Insurance and the Law on Occupational Safety and Health in respect of compulsory social insurance for Foreigners working in Vietnam..... 2
2. Decree No. 140/2018/ND-CP dated October 8, 2018 of the Government amending and supplementing the decrees related to business investment conditions and administrative procedures under the State management of the Ministry of Labor, War Invalids and Social Affairs 2
3. Circular No. 87/2018/TT-BTC dated September 27, 2018 of the Ministry of Finance amending and supplementing a number of articles of Circular No. 215/2013/TT-BTC dated December 31, 2013 of the Ministry of Finance guiding the enforcement of tax administrative decision..... 3
4. Circular No. 17/2018/TT-BLDTBXH dated October 17, 2018 of the Ministry of Labor, War Invalids and Social Affairs providing for self-inspection of the implementation of labor law of enterprises . 3
5. Decree No. 146/2018/ND-CP dated October 17, 2018 of the Government, detailing and guiding the implementation of a number of articles of the Law on Health Insurance..... 4

TAXATION GUIDELINES OFFICIAL LETTERS

Update new guidelines on taxation and customs

1. Official Letter No. 3842/TCT-KK dated October 9, 2018 of the General Department of Taxation on the VAT refund 5
2. Official Letter No. 3744/TCT-TNCN dated 3 October 2018 of GDT on the declaration of PIT 5
3. Official Letter No. 5826/TCHQ-TXNK dated 5 October 2018 of the General Department of Customs on the tax treatment of on-spot export goods..... 5
4. Official Letter No. 3428 / TCT-CS dated 7 September 2018 of the GDT on declaration of foreign contractor withholding tax for payment intermediary services to foreign parties 5

NEW LEGAL DOCUMENTS

New legal documents in this issue

1. *Decree No. 143/2018 / ND-CP dated October 15, 2018 of the Government*
2. *Decree No. 140/2018/ND-CP dated October 8, 2018 of the Government*
3. *Circular No. 87/2018/TT-BTC dated September 27, 2018 of the Ministry of Finance*
4. *Circular No. 17/2018/TT-BLDTBXH dated October 17, 2018 of the Ministry of Labor, War Invalids and Social Affairs*
5. *Decree No. 146/2018/ND-CP dated October 17, 2018 of the Government*

1. Decree No. 143/2018/ND-CP dated October 15, 2018 of the Government detailing the Law on Social Insurance and the Law on Occupational Safety and Health in respect of compulsory social insurance ("SI") for Foreigners working in Vietnam

Under Clause 1, Article 2 of this Decree, foreigners must only pay social insurance in Vietnam when have labor contracts with the term of 1 year or more and have work-permits, practice licenses or practice certificates granted by Vietnam. This means that foreigners have labor contracts with less than 1 year term shall be exempted from paying social insurance.

In addition, under Clause 2, Article 2, foreigners are exempted from paying social insurance in Vietnam when they are under the case "movement inside the enterprises" under point 1, Article 3 of Decree No. 11/2016/ND-CP or are in "retirement age".

The level of contribution and entitlement of SI for foreigners is basically the same as domestic workers. However, from 01 December 2018 to 31 December 2021, the enterprises only have to pay 3% for sickness and maternity fund and 0.5% for unemployment insurance fund ("UI"), Occupational diseases ("OD") fund.

22% for pension and death funds (of which 14% are paid by the enterprises and 8% by foreigners) are only required to be paid from January 1, 2022 (Article 13).

In cases where foreigners sign a number of labor contracts, only the first contract shall be paid SI, except for the UI, OD which must be paid for each contract (Clause 4 of Article 13).

Until 2022 new foreigners are required to pay for pension fund, so the pension benefits

will only be offered from 2022. Conditions and levels of pension are almost similar to domestic workers. Only one-off SI benefit entitlement shall be paid right after the termination of the labor contract and do not need to for a one year period after termination (Article 9).

The Decree takes effect on December 1, 2018. The regimes provided for in Article 9 (pension), Article 10 (Death) of this Decree takes effect on January 1, 2022.

2. Decree No. 140/2018/ND-CP dated October 8, 2018 of the Government amending and supplementing the decrees related to business investment conditions and administrative procedures under the State management of the Ministry of Labor, War Invalids and Social Affairs

Accordingly, the Decree amends many regulations related to the conditions and procedures for granting licenses for foreigners working in Vietnam. One of the amendments is the exemption of work permits for the person responsible for establishing a commercial presence in Vietnam.

In addition, the following cases shall be exempted from registration of foreign labor demand: Heads of representative offices and projects of international organizations and non-governmental organizations in Vietnam; Relatives of foreign representatives in Vietnam are exempted from applying for a work permit under the Law of International Treaties.

The duration of the work permit grant is shortened from 7 days to 5 working days.

With regard to the authority to approve the demand for foreign workers is transferred from the Chairman of the provincial People's

NEW LEGAL DOCUMENTS

New legal documents in this issue

1. *Decree No. 143/2018 / ND-CP dated October 15, 2018 of the Government*

2. *Decree No. 140/2018/ND-CP dated October 8, 2015 of the Government*

3. *Circular No. 87/2018/TT-BTC dated September 27, 2018 of the Ministry of Finance*

4. *Circular No. 17/2018/TT-BLDTBXH dated October 17, 2018 of the Ministry of Labor, War Invalids and Social Affairs*

5. *Decree No. 146/2018/ND-CP dated October 17, 2008 of the Government*

Committee to the provincial People's Committee.

The Decree takes effect from the date of signing.

3. Circular No. 87/2018/TT-BTC dated September 27, 2018 of the Ministry of Finance amending and supplementing a number of articles of Circular No. 215/2013/TT-BTC dated December 31, 2013 of the Ministry of Finance guiding the enforcement of tax administrative decision

As supplemented at Clause 1, Article 1 of this Circular, in cases where taxpayers have "extended tax payment time limits" or "notices for late payment exemption" shall also be suspended or have not been subject to coercive measures.

However, the case of "late payment of fines" will also be subject to coercive measures such as failing to pay tax, late payment of tax (Clause 2 of Article 2).

Regarding procedures, if an enterprise has an electronic tax transaction account, the Decision on coercive measures will be sent online via the network (Clause 2, Article 1).

With respect to the invoices subject to coercive measures, right in the termination of coercive measures, the tax office will announce the invoice for continued usage and post it publicly on the website of the General Department of Taxation at www.gdt.gov.vn (Clause 7 of Article 1).

In addition, the Circular also replaces and supplements some forms of tax coercive measures. For details please see attached Appendix 01 and Appendix 02.

The Circular takes effect since November 15, 2018.

4. Circular No. 17/2018/TT-BLDTBXH dated October 17, 2018 of the Ministry of Labor, War Invalids and Social Affairs providing for self-inspection of the implementation of labor law of enterprises

Accordingly, enterprises must organize their own self-inspection teams at least once a year in order to assess compliance with labor legislation and propose improvement measures (Clause 1 of Article 4).

The self-inspection period begins on the first day of the calendar year of the previous calendar year to the time of inspection. The time for self-inspection is determined by the enterprise (Clauses 2 and 3, Article 4).

The content of self-inspection includes from the recruitment, labor training; signing labor contracts; signing collective labor agreements; working hours; payment; OSH; set up regulations; payment of social insurance ... to the disciplines, settlement of disputes, complaints of labor (Article 5).

The content of self-inspection will be designed by the Ministry for each field of production and business and posted on the website at <http://tukiemtraphapluatlaodong.gov.vn> for the selection of enterprises.

Self-inspection dossiers include self-inspection check, self-inspection conclusions, establishment of self-inspection teams and relevant documents and dossiers must be stored in the enterprise for monitoring and analyzing and proposing advance compliance enhance policies.

Enterprises must cooperate with local trade unions to make online reports on self-inspection (through the website mentioned above) at the request of the State Inspectorate (Article 7).

NEW LEGAL DOCUMENTS

New legal documents in this issue

1. *Decree No. 143/2018 / ND-CP dated October 15, 2018 of the Government*
2. *Decree No. 140/2018/ND-CP dated October 8, 2015 of the Government*
3. *Circular No. 87/2018/TT-BTC dated September 27, 2018 of the Ministry of Finance*
4. *Circular No. 17/2018/TT-BLDTBXH dated October 17, 2018 of the Ministry of Labor, War Invalids and Social Affairs*
5. *Decree No. 146/2018/ND-CP dated October 17, 2008 of the Government*

With any agencies, organizations, enterprises and individuals that fail to comply with the self-inspection and reporting work under the provisions of this Circular, the State Labor Inspection Agency will conduct extraordinary inspections or list them in the inspection plan of the next years, in the meantime, it is also an aggravating factor to determine the level of sanction for administrative violations and, if causing serious consequences, be examined for penal liability and other forms according to provisions of law.

The Circular takes effect on January 1, 2019 and replaces the Decision No. 02/2006/QD-BLDTBXH dated February 16, 2006.

5. Decree No. 146/2018/ND-CP dated October 17, 2018 of the Government, detailing and guiding the implementation of a number of articles of the Law on Health Insurance

Similar to the previous regulations, the enterprises still have to pay compulsory health insurance premiums for all laborers with labor contracts for full 3 months or more and paid management (Article 1).

However, Clause 5, Article 2 of this Decree clearly stipulates that the period when the laborers take maternity leave or child adoption will be exempted from payment of the health insurance and it will be paid by the social insurance authorities.

On health insurance premiums, the current rate is 4.5% of the monthly salary. In addition, the Decree clearly states that for people signing many labor contracts, they must pay health insurance premiums according to the labor contract with the highest wage (Clause 3 of Article 7).

Regarding the health insurance payment regime, under Clause 3, Article 14 of the Decree, in case the employees go to the wrong route (inappropriate route) and then transferred to another hospital, they will still be entitled to health insurance. Benefit levels are as prescribed in Clause 3, Article 22 of the Law on Health Insurance, except for the following cases: Emergency; Inpatient treatment detected with other diseases beyond the professional scope of the medical examination and treatment establishment; The disease situation goes beyond the professional capacity of the medical examination and treatment establishment.

The Decree takes effect on December 1st, 2018.



Official letters in this issue

1. *Official Letter No. 3842/TCT-KK dated October 9, 2018 of the General Department of Taxation on the VAT refund*
2. *Official Letter No. 3744/TCT-TNCN dated 3 October 2018 of GDT on the declaration of PIT*
3. *Official Letter No. 5826/TCHQ-TXNK dated 5 October 2018 of the General Department of Customs on the tax treatment of on-spot export goods*
4. *Official Letter No. 3428 / TCT-CS dated 7 September 2018 of the GDT on declaration of foreign contractor withholding tax for payment intermediary services to foreign parties*

1. Official Letter No. 3842/TCT-KK dated October 9, 2018 of the General Department of Taxation (“GDT”) on the VAT refund

Under the provisions of Point f, Clause 1, Article 2 of Circular No. 26/2015/TT-BTC, for VAT paid in provinces, enterprises declare to offset to the VAT payable VAT at head-office.

In cases where an enterprise sells both domestic and export goods, the VAT payable VAT of the domestically sold goods shall be offset against the input VAT of the exported goods.

The input VAT of the exported goods shall be refunded only if the remaining amount after offset is VND 300 million or more, the tax refund limit is 10% of export turnover (Article 1 of Circular 130/2016/TT- BTC).

It is noticed that un-deducted VAT from domestically sold goods and the current tax paid will not be added to input VAT of exported goods for refund request.

2. Official Letter No. 3744/TCT-TNCN dated 3 October 2018 of GDT on the declaration of PIT

As stipulated at Clause 3, Article 21 of Circular 92/2015/TT-BTC, only employees with single income at a place are authorized to make tax finalization

Accordingly, for resident tax payer in Vietnam but earning additional overseas incomes shall not be permitted to authorize and must directly make tax finalization (Form No. 02 / QTT -TNCN).

In cases where the incomes from overseas were withhold tax, the withhold tax amount shall be deducted to the tax payable in Vietnam according to Clause 2, Article 26 of Circular No. 111/2013/TT-BTC. On the tax finalization declaration, the "tax amount already paid oversea" is stated in the index No. 39.

3. Official Letter No. 5826/TCHQ-TXNK dated 5 October 2018 of the General Department of Customs on the tax treatment of on-spot export goods

Do the export goods which are exempted or refunded the import duty of raw materials according to Decree 134/2016/ND-CP include on-spot exports?

According to this Official Letter, the case of on-spot export is the product produced by domestic enterprises and then exported to the EPE (not in EPZ but in accordance with Clause 1, Article 4 of the Law on Import-Export Tax) still enjoy the exemption or refund of import duty on raw materials. However, for on-spot goods being goods produced by Vietnamese enterprises for foreign traders but assigned to deliver products in Vietnam, they shall not be entitled to exemption or refund.

In case of exemption from import tax on raw materials for production, but then on-spot export products according to the foreign trader's designation, tax, late payment and administrative penalty shall be imposed.

4. Official Letter No. 3428 / TCT-CS dated 7 September 2018 of the GDT on declaration of foreign contractor withholding tax (“FCWT”) for payment intermediary services to foreign parties

According to this Official Letter, in cases where foreign organizations act as intermediaries for payment between Vietnamese enterprises, the fee is subject to FCWT. The seller is responsible for deducting and paying contractor tax before paying the service fee. However, in cases where foreign organizations act as intermediaries for payment between foreign sellers and Vietnam purchasers, the services fee paid by oversea sellers is not subject to FCWT.

Contact us

The information and identification in this newsletter are provided by IAC Hanoi based on information source that IAC Hanoi considers as reliably, available and legally and does not constitute professional advice. If you would like to make decision based on this newsletter, please contact us to be consulted more detail.



Nguyen Ba Chinh – CPA, CTA

Managing Director
+84 0904 917 259
chinh.nb@iachanoi.com



Park Sung Wan – FM

Consulting Director
+84 0987 252 990
swpark@astc.vn



Ha Thi Thu Trang – CPA, CTA

Audit Director
+84 0977 438 698
trang.htt@iachanoi.com



Bui Minh Cuong – CPA, CTA

Audit Director
+84 0987 200 809
cuong.bm@iachanoi.com



<http://astc.vn>
<http://iachanoi.com>



[facebook.com/KeToanIACHaNoi](https://www.facebook.com/KeToanIACHaNoi)



info@astc.vn
infor@iachanoi.com

About us

ASTC is a high growth trusted professional service provider in Viet Nam. We provide our Clients with a wide range of value added tax, auditing, consulting, and accounting services. ASTC is being managed by the founders who have experiences in tax, auditing, consulting, and accounting services to meet Accurate, Standardized, Timely, Confidential requirements to our clients. We delivers what we promise to our clients. "We do not compromise on our service quality" – one of our key values that our staff are living with. We are providing our services to clients by a group of Company including:

- Administration Solutions and Tax Consultancy LLC (ASTC).
- Independent Auditing Consulting Co., Ltd (IAC).

We are a full member of RT ASEAN Network, a network of firms under the RT brand is headquartered in Singapore and has presence in over 14 countries and 25 cities across ASEAN, Asia and Australia and beyond. We are proud to provide our services with international professional standards.