

NEWSLETTER ISSUE No. 11-2018

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3. *Circular No. 95/2018/TT-BTC of the Ministry of Finance dated October 17th, 2018 on abolishing some circulars of the Minister of Finance pertaining to import and export duties*

1. The Decree No. 148/2018/ND-CP of the Government dated October 24th, 2018 amending and supplementing to a number of articles of the Decree No. 05/2015/ND-CP dated January 12th, 2015 detailing and guiding the implementation of a number of contents of the Labor code

Some highlights of Decree No. 148/2018/ND-CP:

i. Amending the person who concludes labor contract

Instead of “family householder” (Point c, Clause 1, Article 3, Decree 05), Point c, Clause 1, Article 1, Decree 148 is amended to “Person who is authorized to be the representative at law by members of other household, cooperative group, organization that does not have legal person status”. Therefore, the person who concludes labor contract is expanded.

In addition, Point e, Clause 1, Article 1, Decree 148 stipulates that the person that is only authorized in writing to conclude labor contract by the Representative at laws as prescribed in regulations enterprise, cooperative (Point a) and Head of agency, unit or organization that has the legal person status under provision of law (Point b).

ii. Amending the regulation of the labor contract with elder employees

According to the Clause 3, Article 1 of this Decree stipulates that when the employee has no demand or the elder employee’s health is not good, the two parties shall “make agreement” instead of “make an implementation” for termination the labor contract as at Clause 2, Article 6, Decree 05.

iii. Amending the working time serving as the basis for calculating severance allowance

According to Clause 5, Article 1, Decree No.148, the working time serving as basis for calculating severance allowance does not include times of probation, internship and apprenticeship, time of detained or jailed away from work (after which the conclusion that they are not guilty).

iv. Supplementing the regulation of deadline for payment severance allowance

According to Clause 8, Article 1, Decree No. 148, due to merger, consolidation, division, separation of enterprise, cooperative, ownership transfer or property use right transfer, the enterprise can pay the severance allowance to employees within 30 days.

v. Salary for public holiday is not based on the preceding monthly’s salary

According to Clause 9, Article 1, Decree No. 148, salary which is used as the basis for payment for the employee’s annual leave, holiday, Tet leave or leave for personal reason is the salary stated in labor contract instead of the preceding monthly’s salary in old regulation.

6. Make more clearly about the salary which is used as the basis for compensation upon illegal unilateral termination of the labor contract

Clause 10, article 1, Decree No. 148 supplementing the salary which is used as the basis for compensation upon illegal unilateral termination of the labor contract is the salary under labor contract at the time when the employer or employee illegally unilateral terminates the labor contract.

In addition, procedures for labor discipline is stipulated at Clause 12, Article 1, Decree No.148.

Decree No.148/ND-CP takes effect from December 15th, 2018.

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2. The Decree No. 151/2018/ND-CP dated November 07th, 2018 amending, supplementing a number of decrees providing the investment and business conditions under the State management of the Ministry of Finance

The Decree amends, supplements 14 Decrees in the field of finance, it reduce and simplifies 117 business conditions of 13 professions as: accounting, auditing, lottery, casino, betting, electrics game for foreigners, credit rating services, voluntary retirement fund management services, insurance business, reinsurance, insurance brokerage, valuation, securities as detailing:

Accounting and Auditing

- Revision of the Decree No. 84/2016/ND-CP on eligibility requirements for practicing auditors and auditing firms accredited to provide audit services for public interest entities: The operating duration of the audit firm in Vietnam has decreased down to 24 months from 36 months as before. In addition, the conditions on the implementation of professional liability insurance or establishment of provision for professional risk reserve funds have been abolished.
- Abolition of some articles of Decree No. 17/2012/ND-CP on detailing and guiding the implementation of a number of articles of the law on independent audit: to annul the article which regulate that the member being an organization shall appoint one representative person in the Members' Council; and such representative must be an auditor and register for auditing practice in the audit firm to which the organization contributes its capital.

- In addition, some conditions on the provision of cross-border accounting and auditing services such as: confirmation on non-violation of regulations on independent auditing and accounting services; purchase of professional liability insurance practicing for auditors, accountants have also been abolished.

Securities Trading

To amend some articles of Decree No. 58/2012/ND-CP stipulating in detail and guiding the implementation of some articles of the securities law, specifically as follows:

The provisions of Clause 1, Article 13 of Decree No. 151/2018/ND-CP have reduced the legal capital for securities dealing activities from VND 100 billion to VND 50 billion. In addition, the conditions on business operation results of organizations contributing capital to set up securities business organizations must be profitable in the last two years and no accumulated losses have been abolished.

The provisions of Clause 1, Article 14 of this Decree No. 151/2018/ND-CP have amended the conditions on the liquidity ratio of at least 220% in the 06 consecutive months before registration of provision of the margin trading service (which was 12 months in previous regulations). At the same time, the decree has erased the condition of no accumulated losses in the audited annual financial statements and the latest reviewed semi-annual financial statements (if any) of the capital-contributing organizations to such securities companies.

Decree No. 151 also eliminates 02 conditions for securities companies conducting margin trading: (i) No accumulated loss equal to or more than 50% of charter capital as calculated according to the most recent audited financial statements or reviewed semi-annual financial

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statements; (ii) The ratio of total debt to equity does not exceed three times, the owner's equity is not lower than the legal capital, the full provision is made.

Besides, the Decree also abolished the conditions on foreign indirect investment of securities trading organizations.

Insurance

To amend and annul some articles of the Decree No. 73/2016/NĐ-CP detailing the implementation of the Law on Insurance Business as follows:

Clause 1, Article 11 of Decree 151 stipulating the conditions on business operation results of organizations contributing capital to insurance companies to only need to make profit in the preceding three years is abolished. Furthermore, a foreign capital contributor is only required to have experience for 7 years in the insurance sector instead of the 10-year rule as before. For capital-contributing members being organizations in Vietnam, the Decree has abolished the condition that such organizations are enterprises operating in the fields of finance, banking and insurance; hence, it will create favorable conditions for businesses in other fields to contribute capital to establish insurance companies.

The decree has also abolished some of the initial requirements that foreign non-life insurance companies setting up branches in Vietnam must meet (such as the state agency managing foreign insurance where such foreign non-life insurance companies' head offices located permits the establishment of branches in Vietnam for operation); abolished certain conditions for sale agents trading joint-stock insurance, pension insurance and aquatic insurance.

The decree has eliminated and simplified many conditions in the sectors as lottery,

electronic games with prizes for foreigners, rating services, casino, bets, voluntary pension fund management services.

3. Circular No. 95/2018/TT-BTC of the Ministry of Finance dated October 17th, 2018 on abolishing some circulars of the Minister of Finance pertaining to import and export duties

The Circular has abolished all the following legal documents:

1. Circular No. 35/2010/TT-BTC dated March 12nd, 2010 guiding the export duty on wood and coke commodities produced from imported materials;
2. Circular No. 118/2011/TT-BTC dated August 16th, 2011 guiding import duty and value-added tax on imports of power projects;
3. Circular No. 10/2015/TT-BTC dated January 29th, 2015 detailing the implementation of Decision No. 54/2014/QĐ-TTg dated September 19th, 2014 on the import duty exemption for accessories imported to produce, assemble medical equipment prioritized to research and manufacture.

The Circular takes effect on December 01st, 2018.



Official letters in this issue

1. **Official letter No. 4261/TCT-CS dated November 1st, 2018 of the General Department of Taxation guiding the declaration and refund of Value-Added Tax (VAT)**

1. Official letter No. 4261/TCT-CS dated November 1st, 2018 of the General Department of Taxation guiding the declaration and refund of Value-Added Tax (VAT)

As guided, in cases the investment project is not divided into several phases or items of investment and has generated revenue, the input VAT amount arising after the project has generated revenue is not declared on Form 02/GTGT for tax refund, but on Form 01/GTGT.

Similarly, in cases where the project is divided into several phases, investment items; if any investment items have generated revenue, such items shall not be refunded with the input VAT amount arising after they have generated revenue. For the remaining items being invested, it shall be able to continue to declare for deduction and refund as prescribed in Clause 3, Article 1 of Circular No. 130/2016 /TT-BTC.

Moreover, after the establishment of a branch to manage an investment project, the Company must hand over the whole amount of input VAT which is not yet refunded, and the output VAT amount of that project to the Branch for declaration and deduction.

2. Official letter No. 76607/CT-TTHT dated November 19th, 2018 of Hanoi Department of Taxation guiding depreciation of intangible fixed assets in case of land use right

In cases where the company receives capital contribution in land use right but has not carried out procedures for ownership registration, the amortization expenses shall not be eligible as reasonable expenses (Point b, Clause 2.2, Article 4 of Circular No. 96/2015 / TT-BTC).

In addition, if the land use right received as capital contribution falls into cases stipulated in Point (đ), Clause 2, Article 4 of Circular 45/2013/TT-BTC (for instance, the land is

handed by the State without payment; land rental is paid annually...) shall not be recognized as an asset for being depreciated.

3. Official letter No. 13666/BTC-TCND dated November 7th, 2018 of Ministry of Finance on payment methods when purchasing shares

According to Article 6 of Decree No. 222/2013/ND-CP, enterprises are not allowed to conduct payments in cash when purchasing, selling or transferring their contributed capital. The Ministry of Finance considers that this regulation applies to shares transactions in joint-stock companies. Accordingly, when the Company acquires shares, it is not allowed to pay in cash, including the purchase of shares from individual shareholders.

4. Official letter No. 3433/BHXH-BT dated September 6th, 2018 of Social Insurance of Vietnam on strengthening debt relief measures

The Officer letter requests the Department of Exploitation and Collection of Social Insurance Debts to review companies with 6-month overdue payables to report the Director of Social Insurance for conducting unexpected inspection.

There must be decisions on handling violations according to regulations in such unexpected inspections; concurrently, the decisions shall be sent to the local authorities such as the People's Committees, the People's Courts, the People's Procuracy, the Police, the Labor Department... for later serving as grounds for criminal handling.

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Nguyen Ba Chinh – CPA, CTA

Managing Director
+84 904 917 259
chinh.nb@iachanoi.com



Park Sung Wan – FM

Consulting Director
+84 987 252 990
swpark@astc.vn



Ha Thi Thu Trang – CPA, CTA

Audit Director
+84 977 438 698
trang.htt@iachanoi.com



Bui Minh Cuong – CPA, CTA

Audit Director
+84 987 200 809
cuong.bm@iachanoi.com



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



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



info@astc.vn
infor@iachanoi.com

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- Independent Auditing Consulting Co., Ltd (IAC).

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