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S&S's Newsletter – AUGUST 2019

Dear our Readers,

Below are S&S's Tax and Legal update Newsletter for [August 2019](#).

We trust that you will enjoy this edition and welcome any feedback or queries that may arise to our email address: samuel230@hanmail.net

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Enjoy your reading! And we would be happy to meet up with you to discuss how best we can assist your company in this regard.





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1.1 OFFICIAL LETTER NO. 59212/CT-TTHT DATED 29 JULY 2019 REGARDING CIT INCENTIVES

In accordance with Clause 17 Article 1 of the Government's Decree No. 12/2015/ND-CP dated February 12th, 2015 detailing the implementation of the Law on amending, supplementing to a number or articles of Laws on tax and amending, supplementing to a number or articles of Decrees on tax (takes effect from January 1st, 2015) regulates:

"17. To add point dd to Clause 2 Article 19 of Decree No. 218/2013/ND-CP as follows:

dd) Incomes of enterprises from projects of investment in the field of goods sale, service provision arisen outside economic zones, hi-tech zones, industrial zones and geographical areas that are entitled to tax incentives shall not be applied EIT incentives as prescribed in Clause 1, Clause 4 of Article 4 and Article 15, Article 16 of this Decree."

Following above guidance, an enterprise's incomes from an investment project in the field of goods sale, service provision arisen outside economic zones, industrial zones shall not be entitled to incentives.

Accordingly, in case a company implements an investment project in an industrial zone entitled to incentives, if having trading activities without attaching to the investment project, incomes from trading activities shall not be entitled to tax incentives

1.2 OFFICIAL LETTER NO. 3042/TCT-CS DATED 2 AUG 2019 REGARDING CIT

According to Clause 2 Article 10 of Circular No. 96/2015/TT-BTC, with regard to a project that is eligible for incentives under geographical conditions, the income eligible for incentives is the whole income generated from business and production activities in the incentive area (excepting income from transfer of project, transfer of real estate, mineral exploitation, goods and services liable to excise tax).

In case an enterprise that is enjoying tax incentives supplements trading business line without increase of capital, without additional investment in assets, incomes from such trading activity shall not be entitled to tax incentives.

1.3 OFFICIAL LETTER NO. 5755/CT-TTHT DATED 10 JUNE 2019 REGARDING PIT APPLY FOR FOREIGNERS

According to Clause 1 Article 1 of Circular No. 111/2013/TT-BTC, in principle foreigners have to determine their residence status year by year in order to calculate personal income tax (PIT).

Accordingly, in the last working year in Vietnam, foreigners have to re-determine whether they are residents or non-residents, based on the number of days they stay in Vietnam counted to the date of exit, which is at least 183 days or under 183 days.

If in the last year foreigners stay in Vietnam under 183 days, they shall be determined non-residents, thereby they have to pay 20% PIT. However, they shall be exempt from making PIT accounting before leaving Vietnam.



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1.4 OFFICIAL LETTER NO.2245/CT-TTHT DATED 15 MAR 2019 REGARDING SHARE TRANSFER

According to this Official letter, when shareholders in a joint stock company transfer shares, if the shareholders are enterprises, it is required to declare and pay corporate income tax (CIT) under regulations on capital transfer. In particular, the incomes from sale of shares shall be accounted into other incomes and subject to 20% tax.

In case the shareholders are individuals, upon the transfer, they shall declare and pay PIT on incomes from securities transfer (PIT on incomes from securities transfer equals (=) securities transfer price multiplied (x) by 0.1% tax rate). The individuals transferring shares shall declare and pay PIT on incomes from securities transfer according to Article 16, Clause 6 Article 21 of the aforesaid Circular No. 92/2015/TT-BTC.

In addition, there is another different point, shareholders that are enterprises shall temporarily pay tax on incomes from capital transfer every quarter and make tax accounting at the end of each year. With regard to shareholders that are individuals, they shall not have to make tax finalization.

1.5 OFFICIAL LETTER NO.12973/CT-TTHT DATED 25 JULY 2019 REGARDING THE STORAGE OF E-INVOICE

In accordance with guidance by Binh Duong Tax Dept, the selling enterprises must store e-invoices for a period of 10 years and in both the file extensions of PDF and XML. In particular, the XML format contains the entire data of the invoice and is legally valid if not modified after being issued. The PDF format is only a demonstration of the XML version, with no legal validity.

2.1 OFFICIAL LETTER NO. 5859/BKHĐT-ĐTNN DATED 21 AUG 2019 REGARDING PROCEDURE AFTER EXPIRY OF PROJECT

Period of operation of project is guidance at Article 43 of Law on Investment. Depending on decision of investors on continue or stop the project after expiry of project operation period, the procedure will be implemented differently.

Following that, if the investors want to extend the project, there is a need to follow the amendment investment certificate in accordance with Article 40 of Law on Investment and Article 34 of Decree No 118/2015/ND-CP.

In case of the investors want to stop the project, there is a need to apply procedure for closing the project and withdraw the Investment Project's Certificate guidance at Article 41 of Decree 118/2015/ND-CP.

Upon closing the project, the investors shall proceed to liquidate assets according to regulations on liquidation assets.

In case of the investors receiving land, renting land from Government or permit to convert purpose of land, there is a need to follow the Law on Land for settlement the land use right and assets together with land.



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2.2 OFFICIAL LETTER NO. 5587/BKHDT-ĐTNĐ DATED 9 AUG 2019 REGARDING RE-RECORDING OF CAPITAL CONTRIBUTION, CHARTER CAPITAL ACCORDING TO ACTUAL EXCHANGE RATE

According to the regulations at Annexes I.1, I.3 and I.7 issued together with Circular No. 16/2015/TT-BKHDT, when declaring the “Capital contribution” item in the application form for registration of investment project, the investor has to present in VND and the equivalent value according to a foreign currency (if any).

Upon granting the investment registration Certificate, at the “Capital contribution” item, the investment office shall also present in VND and the equivalent value according to a foreign currency (if any) (Annexes II.1, II.2, II.3 and II.4 of Circular No. 16/2015/TT-BKHDT).

As the result, with regard to any investment project, it is required to determine capital contribution in VND and the equivalent value according to a foreign currency (if any), the investor has to contribute adequate capital as registered per Investment Certificate.

2.3 OFFICIAL LETTER NO. 5582/BKHDT-ĐTNĐ DATED 9 AUG 2019 REGARDING REGISTRATION OF PROJECT IMPLEMENTATION SCHEDULE

According to Article 44 of Decree No. 118/2015/ND-CP, a foreign investor that wishes to establish an enterprise in Vietnam shall follow procedures for issuance of an Investment Registration Certificate according to the regulations at Articles 29, 30 and 31 of this Decree, then the investor shall carry out procedures for establishment of an enterprise in order to deploy investment project and business activities.

From the day on which the Certificate of Enterprise Registration is issued, the newly-established enterprise shall be considered to be the investor of such the project and the project implementation schedule shall be counted after the issuance of the Certificate of Enterprise Registration (Clause 1 Article 45 of Decree No. 118/2015/ND-CP).

3.1 OFFICIAL LETTER NO. 646/CVL-QLLĐ DATED 16 JULY 2019 REGARDING CONDITIONS FOR ISSUING THE WORK PERMIT FOR FOREIGN EMPLOYEE

According to point a Clause 8 Article 10 of Decree No. 11/2016/ND-CP, if a foreigner moves to work for another company even at the same job position, he/she shall still have to apply for the work permit. This means each work permit shall be valid for use within the scope of the enterprise that has applied for the work permit.

The application for the work permit in this case comprises the documents regulated in Clauses 1, 5, 6 and 7 Article 10 of Decree No. 11/2016/ND-CP and the work permit or certified copy of the issued work permit.

Regarding forms, to refer at Circular No. 40/2016/TT-BLDTBXH.

Regarding administrative procedures, to refer Decision No. 602/QĐ-LĐTBXH dated April 26th, 2017



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3.2 OFFICIAL LETTER NO. 1938/BHXH-CD DATED 27 AUG 2019 REGARDING ELECTRONIC TRANSACTION ON SETTLEMENT SICKNESS ALLOWANCE, MATERNITY, CONVALESCENCE BENEFITS

The Notice informs that from 1 Sep 2019, the enterprise located in HCM City already conducted electronic transactions with Social Insurance Dept, there is a need to submit the list of recipients receiving sickness allowance, maternity (Form 01B-HSB) via software of Social Insurance (address <https://gddt.baohiemxahoi.gov.vn>) or via software of IVAN.

In which, there is a need to pay attention below things:

- List of recipients entitle for sickness allowance, maternity must sign by Token.
- List of documents need to supplement by hard copy, the date of receiving is counting from the date Social Insurance Dept receives in full all necessary hard copy documents.
- The results of solving will be sent by electronic version follow Form C70a-HD (and Form 1C-HSB, if any).

4.1 CIRCULAR NO. 48/2019/TT-BTC DATED 8 AUG 2019 REGARDING PROVISION

One of notable attention at this Circular is not allow to make provision for loss on investment in overseas.

For the balance of provision for loss on investment in overseas which the Company already provided (if any), it must be reverted and recorded to reduce the expenses at the time of preparing Financial Statement for Year 2019.

However, the provision for inventory, the Company are allowed to provide provision for decline in inventory for all goods located outside the store, such as: goods in transit, goods in bonded warehouse.

Beside that, the level of making provision for shares and delin in financial investment have change in formular for calculation which is difference with previously.

Timing for making provision and revert the provision is the time of preparing Yearly Financial Statement (point 2 of Article 3), previously timing is the end of yearly financial period or the last day of fiscal year (Article 3 of Circular 228/2009/TT-BTC).

This Circular takes into effectively from 10 Oct 2019 and apply for fiscal year 2019. Replaced for Circular 228/2009/TT-BTC dated 7 Dec 2009, Circular 34/2011/TT-BTC dated 14 Mar 2011, Circular 89/2013/TT-BTC dated 28 June 2013 and other guidance on making provision which opposite with this Circular.



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4.2 OFFICIAL LETTER NO. 2395/BKHCHN-ĐTG DATED 8 AUG 2019 REGARDING IMPORT ON THE SPOT OF USED MACHINERY, EQUIPMENT, TECHNOLOGICAL LINES

From 15 June 2019, the import of used machinery, equipment and technological lines shall comply with the regulations at Decision No. 18/2019/QĐ-TTg.

However, according to the Ministry of Science and Technology's opinions, the aforesaid Decision No. 18/2019/QĐ-TTg only applies to used machinery, equipment and technological lines from abroad imported into Vietnam for the first time rather than applies to used machinery, equipment and technological lines transferred in Vietnam between Vietnamese enterprises, including between EPEs and domestic enterprises.

Accordingly, when an EPE purchases used machinery, equipment of domestic enterprises (it means import on the spot), it shall not comply with the regulations on quality inspection as prescribed in Decision No. 18/2019/QĐ-TTg.

Should you have any query, please do not hesitate to contact with our company – S&S Auditing and Consulting Co., Ltd

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