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S&S’s Newsletter – May and June 2018

Dear our Readers,

Below are S&S’s Tax and Legal update Newsletter for **May and June 2018**.

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. OFFICIAL LETTER 2688/TXNK-CST DATED 28 MAY 2018 REGARDING OF IMPORT DUTY REFUND

According to Clause 1 Article 36 of Decree No. 134/2016/ND-CP, import duty refund is only given to goods which are imported for manufacture or business operation and eventually used for manufacture of goods for export and the products have been exported abroad or exported to non-tariff zones.

Accordingly, with regard to goods which are imported for business operation but eventually used for manufacture of goods for export and the products are **exported on the spot**, import duty shall not be refunded.

2. OFFICIAL LETTER 1827/TCT-TNCN DATED 17 MAY 2018 REGARDING TO PERSONAL INCOME TAX

According to Clause 1 Article 14 of Circular No. 92/2015/TT-BTC, in case a resident individual in Vietnam receives tax – exclusive incomes (net incomes) from both Representative Office in Vietnam and another Company outside Vietnam of the same Corporation, incomes to be grossed up are the actually – received incomes plus other benefits paid by the employers on behalf of the employee (if any) minus deductions.

The actually - received incomes are tax - exclusive salary, wage the employee receives every month, excluding tax - exempt incomes.

Similar to the above – mentioned case, if the Company of the same Corporation is located in a country which signed an Agreement on double taxation avoidance with Vietnam, the amount of tax already paid outside Vietnam shall be deducted from the tax amount payable in Vietnam. The deductible tax amount must not exceed the amount payable according to Vietnam's tax table calculated proportionally upon the incomes generated at the Company outside Vietnam (Clause 2 Article 26 of Circular No. 111/2013/TT-BTC).

3. OFFICIAL LETTER 1841/TCT-TNCN DATED 18 MAY 2018 REGARDING TO PIT

If the employee shaving income from **winning lucky draw** organized by the company, the tax department shall base on the company's financial policy and substance of the event to determine whether this is income from winning prize or income from wage and salary to calculate PIT.



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4. OFFICIAL LETTER 1801/TCT-TNCN DATED 16 MAY 2018 REGARDING TO PIT

According to point dd.7 Clause 2 Article 2 of Circular No. 111/2013/TT-BTC, payments for foreign workers such as payments for tax counseling service, charges for making temporary residence cards, visas are all subject to PIT.

Particularly, the tuition fees (from preschool to high school) for children of foreign workers in Vietnam to study in Vietnam shall be exempt from PIT according to point g.7 Clause 2 Article 2 of Circular No. 111/2013/TT-BTC.

For benefits paid to workers (both Vietnamese and foreign workers), currently, these amounts are exempt from PIT: The payments for refresher courses for workers (point dd. 6 Clause 2 Article 2); supports provided for medical examination and treatment of fatal diseases suffered by workers and their families (point g.1 Clause 2 Article 2).

For workers who face with difficulties caused by natural disasters, fires, accidents or severe diseases, they may be considered for PIT reduction corresponding to the extent of damage they suffer from but not exceeding payable tax amount (Article 5 of Decree No. 65/2013/ND-CP).

Regarding airfares, charges for accommodation, travelling expenses incurred by foreign contractors, enterprises shall carry out according to Official Letter No. 594/TCT-TNCN dated February 12th, 2015 and Official letter No. 4345/TCT-TNCN dated September 20th, 2016.

5. OFFICIAL LETTER 37304/CT-TTHT DATED 4 JUNE 2018 REGARDING TAX OBLIGATIONS RELATING TO PAYMENTS AND COMPENSATION FOR FOREIGN CONTRACTOR

According to Official letter, in case an enterprise in Vietnam signs a contract (e.g. contract on sale of shares) with a foreign party, then, because of some reasons, the contract cannot be performed and the Vietnamese party has to refund the amount of money already received, this amount is not considered income and therefore, it shall not be subject to withholding tax.

However, if there arises compensation upon the cancellation of the contract, the compensation shall be subject to withholding tax (refer to Official letter No. 11503/CT-TTHT dated March 26th, 2018). At the same time, because this amount of compensation is not corresponding to revenue for calculation of enterprise income tax (it does not create any revenue), it shall **not be accounted into reasonable expenses** as regulated at Article 4 of Circular No. 96/2015/TT-BTC.



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6. OFFICIAL LETTER 1980/TCT-KK DATED 23 MAY 2018 REGARDING SUBMISSION OF FINANCIAL STATEMENTS OF SMALL AND MEDIUM ENTERPRISE (SME) UNDER CIRCULAR 133/2016/TT-BTC

According to Article 80 of Circular No. 133/2016/TT-BTC, SMEs, including extra-small enterprises, have to prepare and send financial statements to managing authorities, including **tax authorities, business registration authorities and statistics authorities.**

Regarding financial statement form, to comply with the new form issued together with Circular No. 133/2016/TT-BTC from the fiscal year beginning on or after January 1st, 2017.

If enterprises have submitted financial statements according to the old form issued together with Decision No. 48/2006/QĐ-BTC, they have to re-send financial statements made according to the new form as mentioned above.

7. DECREE 76/2018/ND-CP DATED 15 MAY 2018 GUIDANCE SOME ARTICLES OF LAW ON TECHNOLOGY TRANSFER

The Decree replaces new list of technologies encouraged for transfer, restricted or banned from transfer and the procedure for registration and support.

Compared with previous guidance, the Decree adds in a lot of new technologies encourages for transfer, such as: priority for high tech investment; technology for manufacturing optoelectronics infrared equipment; technologies to recognize voice; technologies to manufacture LED screen; technologies to manufacture electronic car, using clean energy, recycle energy, etc.

However, Decree also adds in some technologies restricted from transfer into Vietnam, such as: digital ground television technology, DVB satellite television; manufacture, design information system – signal by ro-le; manufacture construction materials using white amiang, etc. Beside that, list of technologies banned from transfer into Vietnam also added in: technology to manufacture phone using PHS; manufacture similar modem and dial-up, ADSL; technology to manufacture television, computer by electronic spark to create picture by analog; manufacture engine 2 for mechanical truck, technology for manufacturing automobiles not up to Euro 2 exhaust standard.

This decree takes into effect from 1 July 2018



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8. DECREE 82/2018/ND-CP DATED 22 MAY 2018 GUIDANCE ON MANAGEMENT OF INDUSTRIAL PARKS AND ECONOMIC ZONES

This Decree prescribes planning, establishment and operation of, policies on, and state management of, industrial parks and economic zones.

One of the new points of this Decree is the supplement of regulations on incentive policies for development of auxiliary industrial parks and eco-industrial parks.

Accordingly, auxiliary industrial area means an industrial park specializing in manufacturing auxiliary industrial products and rendering services satisfying the needs of manufacture of these products.

Eco-industrial Park means an industrial park in which enterprises get involved in cleaner production, make effective use of natural resources and enter into manufacturing cooperation and affiliation in order to tighten industrial symbiosis to promote economic, environmental and social efficiency in these enterprises.

For investment projects on development of infrastructure of auxiliary industrial parks, they shall be granted land rent exemption or reduction in accordance with legislation on land; permission for leasing of land within the maximum period of 70 years. In addition, such projects are also given priority to have access to on-lent ODA funds and the Government's guarantees for mobilization of foreign capital.

With regard to investment projects on manufacturing of products in auxiliary industrial parks, they shall be entitled to tax incentives with respect to corporate income tax, export and import duty, and other support, as prescribed in laws on taxes, development of auxiliary industries.

With regard to enterprises operating within eco-industrial parks that participate in cleaner production activities, efficient use of resources and industrial symbioses shall be certified as eco-enterprises operating within industrial parks by the Management Board of industrial parks and economic zones.

In addition, this Decree also supplements regulations on establishment of industrial – urban – service zones and incentives for investment in industrial – urban – service zones. The details are provided in Section 3 Chapter IV of this Decree.

This Decree takes effect **from 10 July 2018**.



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9. CIRCULAR 02/2018/TT-BKHCN DATED 15 MAY 2018 ISSUED BY MINISTRY OF SCIENCE AND TECHNOLOGY ON REPORTING REGIME OF TECHNOLOGY TRANSFER CONTRACT

In accordance with Article 2 of this Circular, on yearly basic, transferee and transferer (in case of transfer from Vietnam to oversea) must submit the reporting regime under list of restricted technologies transfer to the Ministry of Science and Technology.

Form of reporting follows Form 05 attached with this Circular. Deadline for sending report must before 31 Dec of reporting year. Figure using for reporting from 15 Dec of previous year to 14 Dec of reporting year.

Method of reporting must be in hard copy including hard copy and electronic report, submission directly or via post office for hard copy version and email to: vudtg@most.gov.vn) apply for electronic report.

This Circular takes effectively from 1 July 2018.

10. NOTICE 1228/TB-BHXH DATED 18 JUNE 2018 REGARDING ADJUSTMENT BASIC WAGE LEVEL

From 1 July 2018, the basic wage level shall be increased from VND 1,300,000 per month to **VND 1,390,000 per month** (Decree No. 72/2018/ND-CP). As the result, insurance premiums which are based on the basic wage level shall be also increased:

- ✓ Social insurance (SI), health insurance (HI) and occupational accident and disease insurance premiums of cadres, public officials, public employees and employees whose salary scale, payroll are decided by the state.
- ✓ HI premiums which are paid by the State budget.
- ✓ HI premiums of the entities whose part of HI premiums is paid by the State budget (students, near-poor households).
- ✓ Household HI premiums.

The maximum pay rate (20 times higher than the basic wage level) on which social insurance premium is based shall be also increased from VND 26 million to **VND 27.8 million**



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11. DECISION 1158/QĐ-NHNN DATED 29 MAY 2018 ON RESERVE REQUIREMENT RATIOS APPLICABLE TO CREDIT INSTITUTIONS AND FOREIGN BANKS' BRANCHES

Under this Decision, the reserve requirement ratios applicable to commercial banks and foreign banks' branches are still basically similar to the old ratios, in particular:

- 3% for demand deposits and term deposits of less than 12 months in VND.
- 1% for term deposits of at least 12 month in VND.
- 8% for demand deposits and term deposits of less than 12 months in foreign currencies.
- 6% for term deposits of at least 12 months in foreign currencies.
- 1% for all deposits of foreign CIs in foreign currencies

For People's credit funds and micro-finance institutions, the reserve requirement ratio applicable to all deposits in VND and foreign currency is reduced to 0%.

This Decision takes effect from the required reserve maintenance period of June 2018.

To replace Decision No. 379/QĐ-NHNN dated February 24th, 2009, Decision No. 1925/QĐ-NHNN dated August 26th, 2011, and Decision No. 1972/QĐ-NHNN dated August 31st, 2011.

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