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S&S's Newsletter – November 2019

Dear our Readers,

Below are S&S's Tax and Legal update Newsletter for **November 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. 4641/TCT-DNNCN REGARDING TO PIT OF OVERTIME SALARY

On 12 November 2019, General Tax Department issued Official Letter No. 4641/TCT- DNNCN regarding to PIT of overtime salary. Followings that:

- Upon calculation overtime salary, there is a need to define number of hours overtime allow in accordance with guidance of Labour Law: maximum not over 200 hours per year; in special case maximum not over 300 hours per year guidance at Article 106 of Labour Law Year 2012. In case of overtime exceed standard as mentioned above is considered as violation regulations and number of hours of overtime exceed the standard shall not exempt PIT.
- Income from salary, income from nightshift, overtime which higher than normal salary for normal working hours shall subject to exempt PIT if number of hours of overtime comply with guidance at Article 106 of Labour Law.

1.2 OFFICIAL LETTER NO. 79762/CT-THT REGARDING TO FCT DECLARATION FOR FOREIGN INDIVIDUALS

On 22 October 2019, Hai Duong Department of Taxation issued this official letter to guide FCT declaration for foreign individuals who signed contracts to transfer the manufacturing technology of the new product to the company, with the following contents:

In case of individual foreigners signed contracts to transfer the manufacturing technology of the new product to the company:

- + In case the individual is a businessperson, the income from the abovementioned contract is subject to FCT for income from business. The company has responsibility to declare VAT and PIT, then pay tax on behalf of the individual using the Form 01/CNKD in Circular No. 92/2015/TT-BTC dated 15 June 2015 issued by the Ministry of Finance.
- + In case the individual is not a businessperson, the income from the contract shall be treated as income from salary or wages. In this case, the company must withhold PIT with tax rate of 10% in case the individual is resident in Vietnam and 20% in case he/she is non-resident. Otherwise, the company shall apply the progressive tariff for PIT in case the individual is a resident and the abovementioned contract meets the requirement of a labor contract.

Individual who is a businessperson must have business certificate or equivalent documents according to the law of the foreign country. Documents in foreign languages used in Vietnam should have consular legalization, according to regulations of Circular No. 01/2012/TT-NG dated 20 March 2012 of the Ministry of Foreign Affairs guiding the consular legalization certificate.



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1.3 OFFICIAL LETTER NO. 4490/TCT-KK REGARDING TO VAT REFUND

On 4 November 2019, the General Department of Taxation issued Official Letter 4490/TCT-KK guiding the VAT refund for exported goods and services. Accordingly, in cases where the VAT amount requested by the company is smaller than the refundable tax amount of the previous declaration period, it shall be added up with the VAT refund amount not yet requested to be refunded to the arising VAT amount of the refund request period. next. If the VAT amount not yet requested to be refunded in the previous period, transferred to this period, has been allocated according to the proportion of export turnover as prescribed in the previous period, it is not required to reallocate it in this period.

1.4 OFFICIAL LETTER NO. 22111/CT-TTHT REGARDING TAX POLICY

On 4 November 2019, Binh Duong Department of Taxation issued Official Letter No. 22111/CT-TTHT on tax policies on capital contribution. Followings that:

- A member must contribute capital to the company in full and in the right type of assets as committed when registering an enterprise within 90 days from the date of issuance of the business registration certificate. Members of the company may only contribute capital to the company with assets other than the type of assets committed if approved by the majority of the remaining members. Documents of capital contribution comply with Article 13 of Circular No. 09/2015/TT-BTC dated 29 January 2015.
- However, in case the transfer of advance payment to pay the land rent into the contributed capital, in addition to the bank transfer voucher, the minutes of meeting of the members' council on capital contribution, the dossier must include a copy of debt projection with the land lessor and confirmation of the account service bank on the Company's foreign (advance) loan prescribed in Article 9 and Clause 8 Article 14 of Circular No. 09/2015/TT -BTC of the Ministry of Finance.

1.5 OFFICIAL LETTER NO. 4731/TCT-TVQT DATED 19/11/2019 REGARDING TO NOTICE OF INVOICE ISSUANCE

On 19 November 2019, the General Department of Taxation issued Official Letter No. 4731 / TCT-TVQT on publicizing the notice of invoice issuance of taxpayers on the tax website.

In order to avoid affecting the production and business activities of the enterprise, the General Department of Taxation requests the provincial Tax Departments to post the invoice issuance notice of the enterprise on the tax branch's website within 2 working days from reception day.

The enterprise should note that the notice of invoice issuance with the sample invoice must be sent to the tax authority **at least 2 days** before the date of using the invoice. Notice of invoice issuance must ensure full contents as prescribed in Circular 39/2019/TT-BTC and amended in Circular 37/2017/TT-BTC.



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2.1 OFFICIAL LETTER NO. 8604/NHNN-QLNH DATED 4/11/2019 REGARDING ACCOUNT RECEIVING PAYMENT OF FOREIGN CONTRACTOR

- According to the Ordinance on Foreign exchange control 2005 (which has been amended, supplemented in 2013), a foreign contractor's executive office in Vietnam is a resident. The use of foreign currency account of a resident that is an organization is specified in Circular No. 16/2014/TT-NHNN dated August 1st, 2014 guiding the use of foreign currency and Vietnamese dong accounts for residents and non-residents at authorized banks.
- Point a Clause 7 Article 4 of Circular No. 32/2013/TT-NHNN dated December 26th, 2013 (Circular No. 32/2013/TT-NHNN) guiding the implementation of regulations on restricting the use of foreign exchange in the territory of Vietnam regulates: *"Residents being domestic and foreign contractors shall comply with the following provisions: For costs outside Vietnam involving in the implementation of a bidding package through international bid as prescribed in the Law on bidding, the contractors are allowed to bid in a foreign currency and receive payments in foreign currency by transfer from investor or principal contractor for payment and offshore remittance"*.

Based on the aforesaid regulations, a foreign contractor operating in Vietnam shall open an account at an authorized bank according to regulation of applicable laws. The payment in a foreign currency the contractor receives from the investor according to Point a Clause 7 Article 4 of Circular No. 32/2013/TT-NHNN are transferred to the contractor's account opened at a Vietnamese bank in order for the contractor to make payment abroad for overseas costs or make payment to sub-contractors.

2.2 OFFICIAL LETTER NO. 8291/BKHĐT-PC DATED 6/11/2019 REGARDING IMPLEMENTATION OF INVESTMENT PROCEDURES

According to point d Clause 1 Article 33 of the Law on Investment No. 67/2014/QH13, a project dossier must comprise documents proving financial capacity, including copies of these documents: financial statements of the last two years of the investor; commitment of the parent company to provide financial support; commitment of a financial institutions to provide financial support; guarantee for the investor's financial capacity; description of the investor's financial capacity.

With regard to papers, documents granted by foreign agencies, whether they are obligated to or exempt from consular certification and legalization shall be based on Clause 2 Article 4 and Article 9 of Decree No. 111/2011/ND-CP.

In case an investor signs a contract before establishment of enterprise, the conclusion contract, rights and obligations arisen from the signed contract before the establishment of enterprise shall be carried out according Article 19 of the Law on enterprises No. 68/2014/QH13.



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3.1 DECREE NO. 90/2019/ND-CP DATED 15/11/2019 GUIDANCE ON REGIONAL MINIMUM SALARIES

On 15 November 2019, the Government issued Decree No. 90/2019-ND-CP guidance on regional minimum salaries, following that, there are some main points need to pay attention as below:

Regional Minimum salaries

From 1 January 2020, regional minimum salaries will be applied at enterprise as follows:

- Region I: VND 4,420,000 (increase of 5.7% equivalent to VND 240,000 from VND 4,180,000)
- Region II: VND 3,920,000 (increase of 5.7% equivalent to VND 210,000 from VND 3,710,000)
- Region III: VND 3,430,000 (increase of 5.5% equivalent to VND 180,000 from VND 3,250,000)
- Region IV: VND 3,070,000 (increase of 5.1% equivalent to VND 150,000 from VND 2,920,000)

Classification of region

There are some upgrades made to the regional classifications from region II to II and region IV to III, detailed as follows:

- Upgrades from Region III to Region II: Dong Phu district of BinhPhuoc province and Chau Thanh district of Ben Tre province.
- Upgrades to Region III: Cua Lo town, Nghi Loc and Hung Nguyen districts of Nghe An province; Dong Son and Quang Xuong districts of ThanhHoa province; Ba Tri, Binh Dai and Mo Cay Nam districts of Ben Tre province.

Ruling to apply regional minimum salaries

It should note that the above - mentioned region - based minimum wage levels are applied to those who work the simplest jobs. For laborers who have undergone vocational learning, vocational training, such the region - based minimum wage levels must be at **least 7% higher**.

Areas to which the 2020 region – based minimum wage levels shall be applied are specified in the Appendix enclosed with this Decree.

This Decree takes effect from 1 January 2020 and replaces Decree No. 157/2018/ND-CP dated 16 November 2018.

3.2 LAW NO.45/2019/QH14 DATED 20/11/2019 ON LABOUR CODE

On 20 November 2019, Vietnam’s National Assembly issued new Labour Code, following that there are some new changes compared with existing Labour Code No. 10/2012/QH13. Detailed as follows:



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- Increase in retirement age for employees:

From Year 2021, retirement age will official rise incrementally to 60 years old and three months for men; 55 years old and four months for women.

After that each year will rise incrementally three months for men and four months for women to an eventual 62 years of age for males (effective from 2028) and 60 years of age for females (effective from 2035).

- Additonal day off on National Day 2 September

From National Day on 2 September 2021, the employees will be taken public holiday 02 days, instead of 01 day as existing. Additional day might be on 1 September or 3 September.

- The employees can unilaterally terminate labour contract without reason

New Labour Code 2019 allows for employees to unilaterally terminate their labor contracts without given reason but subject only to observing the advance notice requirements (45 days in the case of an indefinite term contract, 30 days in the case of a definite term contract.

- Seasonal Labour Contract has no longer apply

New Labour Code 2019 only guidance two types of labor contracts: indefinite term contracts and definite term contracts. Seasonal or short-term employment under 12 months have no more apply, and it has combined together with definite term contracts, etc.

- Recruitment cost is prohibited

New Labour Code 2019 strictly prohibits Enterprises, Companies to collect recruitment cost from employees.

- Form of Labour Contract

Beside the name “Labour Contract”, the Company and employees can negotiate to sign contract with other name but required the contents of contract mention necessary contents related to job with salary, supervisor, manage of each party.

In related to the Form of Contract, Contract can be signed in paper or electronic form. With the Contract via verbally discussion, New Labour Law only allows to apply for duration under 1 month, previously under 3 months.

- Probation period

Regarding to probation period, New Labour Law allows to increase probation period up to maximum 180 days (previously 60 days) apply for management positions.

New Labour Code takes into effectively from 1 Jan 2021 and replaces Labour Code No. 10/2012/QH13 dated 18 June 2012.



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3.3 OFFICIAL LETTER NO 2618/BHXH-QLT DATED 13/11/2019 REGARDING TO HEALTH INSURANCE CARD

This Official Letter reminds all companies located in Ho Chi Minh City should speed up process of payment Social Insurance, Health Insurance for Year 2019 before 31 Dec 2019 in order to extend the period for Health Insurance from 1 Jan 2020.

In case of delay in payment Social Insurance, Health Insurance for Year 2019 leading not enough time for extend Health Insurance from 1 Jan 2020 for employees, Company will take responsibility to pay medical fee for Health Insurance.

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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