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1. DECREE NO. 143/2018/ND-CP REGARDING COMPULSORY SOCIAL INSURANCE FOR EMPLOYEES WHO ARE FOREIGN NATIONALS WORKING IN VIETNAM

On 15 October 2018, the government has officially issued a Decree No. 143/2018/ND-CP on the Law on Social Insurance regarding compulsory Social Insurance (SI) for foreign employees in Vietnam, which will come into effect on 1 December 2018. As there have been differences regarding the specific subject of application/scope, this is to be specified and implemented through the current new Decree.

- **Subject to be registered / paid for compulsory social insurance**

According to Clause 1, Article 2 of this Decree, foreign workers shall be required to participate in the compulsory Social Insurance in Vietnam when they sign employment contracts valid for at least one year and obtain work permits, practicing certificates, practicing licenses issued in Vietnam. This regulation means that any foreign worker that signs an employment contract for less than 1 year shall be exempt from participation in compulsory SI.

In addition, according to Clause 2 Article 2 of this Decree, foreign workers shall be also exempt from participation in compulsory SI in Vietnam when they are **"intra-company transferees"** (from HQ) or they **"reach retirement age"** (Man 60s / Women 55s) as stipulated in Clause 1 Article 3 of Decree No. 11/2016/ND-CP.

- **Social insurance subscription form (separate the time of register)**

The compulsory social insurance package covers (1) sickness and maternity (3% for the company), (2) workplace accidents and occupational diseases (0.5% for the company), (3) retirement and a death fund (14% for the company, 8% for the workers).

Of these, from December 2018, the following are indispensable for foreigners: **(1) sickness and maternity benefits, (2) industrial accident and occupational disease benefits insurance** which are basically similar to those applied to Vietnamese workers. In the case of such a subscription, the rights for foreigners and the social insurance contribution level are essentially the same as for Vietnamese citizens. **There is no payment for the employee, and the company must bear 3% of the maternity and sickness funds and 0.5% of the industrial accident fund each month.**



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Separately, (3) 22% of the contributions to the pension and death funds (14% for the company / 8% for the workers) are effective from January 1, 2022.

If an employee has an employment contract with several employees and is part of the mandatory social insurance scheme, the employee and the employer only pay social insurance contributions for the first labor contract. However, if the employee wishes to join the Industrial Accident and Occupational Health Insurance Fund, the employee may request the company to pay insurance liability for each labor contract. (Article 13 Clause 4)

- **Social insurance – retirement benefit receipt**

Because foreign workers shall pay to retirement fund by 2022, thereby the retirement benefit shall be only calculated from 2022. Entitlement conditions and rates are similar to those given to Vietnamese workers.

In addition, a foreign employee whose contract has expired and not been renewed or who is eligible for pensions or monthly allowances but no longer resides in Vietnam can still receive a one-off payment from the social insurance fund if requested.

Under Article 60 of the Social Insurance Act, the level of lump sum benefits is equivalent to **two months of [A wage based on insurance subscription] for one year**. However, the actual payment examples and methods are expected to be specific after 2022.

- **Practical issues relating to insurance reporting / payment**

Current foreigners must have medical insurance as a mandatory insurance (3% for company / 1.5% for workers) and social insurance (3.5% for company) will be added separately from December 1, 2018. The calculation limit is 20 times the minimum civil servant salary, which is 27,800,000 VND as of October 2018.

- **The social insurance calculation limit calculated based on the limit is [social insurance = 973,000 VND, whole company], [health insurance = 1,251,000 VND (834,000 VND for the company / 417,000 VND for the workers)].**

In addition, the Vietnamese Labor Union Committee has expressed its official opinion that from December 1, 2018, it will be applied for both foreigner and Vietnamese too to register **the [union expense - Social insurance standard salary 2% company burden]** currently applied only to Vietnamese people. In this case, the calculated amount for the current ceiling is **556,000 VND** (for the company portion).



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In case of the foreigners, they usually get a net income rather than a Gross Income. So, you can think that **the company's burden is added 2,780,000 VND, excluding net income and PIT per foreign worker.**

In addition, there is a lot of inquiries about [**the head office worker – internal transferee**] who are exempted from joining social insurance, but there is no concrete way to prove this in detail. This discussion is occurred from the issue of 'avoiding the disadvantage of double signup in case of joining mandatory insurance in home country'. Therefore, it is highly likely that the company will request a certificate of social insurance and a certificate of the Grade A earned income tax from the head office in the future.

In case of the residents of Vietnam, the Vietnamese taxation authority is in the process of establishing and firmly enforcing the declaration of all Global Income to Vietnam. (Especially in case of representative office) It is considered that each company should take this into consideration comprehensively.

- **General provisions relating to insurance claims**

In cases where employees do not work or earn a salary for 14 days a month, they do not have to pay the social insurance for that month. (Decrease reporting)

Under Vietnamese law, employees are allowed to manage their social insurance book during the period paying social insurance premiums, to monitor payments and enjoyment social insurance. They are to also be provided with information from their employer on the annual payment of social insurance premiums once every six months, and have their annual social insurance premium payment certified by the social insurance agency annually. This provides important grounds for employees to compare and supervise the responsibility of their employers in paying social insurance premiums.

- **Effective date**

This Decree takes effect from 1 December 2018.

The regulations provided in Article 9 (retirement benefit) and Article 10 (death benefit) of this Decree shall enter into force from 1 January 2022.



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2. DECREE NO. 146/2018/ND-CP GUIDANCE ON SOME ARTICLES OF LAW ON HEALTH INSURANCE

On 17 October 2018, the Government issued Decree No 146/2018/ND-CP guidance on some Articles of Law on Health Insurance. Same with old regulations, the Enterprise has contributed compulsory Health Insurance for employees who has Labor Contract from 3 months above and the owner of the company who receive the salary.

However, at item 5 of Article 2 of this Decree, during the period employees on leave for maternity or getting adopted child, Social Insurance Dept shall contribute Health Insurance on behalf, the Enterprise don't need to contribute.

In terms of level of Health Insurance contribution, it is still as existing of 4,5% monthly salary. Besides that, Decree also mentions for those employees signed many Labour Contract, there is a need to contribute Health Insurance in accordance with Labour Contract with highest salary.

Regarding to Health Insurance settlement regimes, at item 3 of Article 14, for those cases checking health do not in line with Health Insurance system, after that transfer to other hospital still subject to enjoy Health Insurance.

This Decree takes into effectively from 1 Dec 2018.



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3. DECREE NO 148/2018/ND-CP GUIDANCE ON SEVERANCE PAY, REDUNDANCY PAY UNDER LABOR CODE

On 24 October 2018, the Government issued Decree No. 148/2018/ND-CP on amending, supplementing to a number of Articles of the Government's Decree No. 05/2015/ND-CP.

Regarding time limit for settlement of benefits of employer and employee upon termination of the labor contract, Clause 8 Article 1 of this Decree allowed enterprises to extend the time limit for payment to 30 days in some special cases such as: merger, consolidation, division, separation of enterprise, cooperative, ownership transfer or property use right transfer as prescribed in Article 45 of the Labor Code."

In addition, salary which is used as the basis for compensation upon illegal unilateral termination of the labor contract is specified that it is the salary under the labor contract at the time when the employer or the employee illegally unilaterally terminates the labor contract (Clause 10 Article 1).

This Decree takes effect from 15 December 2018.



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4. OFFICIAL LETTER NO. 5826/TCHQ-TXNK REGARDING IMPORT DUTY ON RAW MATERIALS USED FOR MANUFACTURE OF GOODS FOR EXPORT ON THE SPOT

On 5 October 2018, the General Department of Vietnam Customs issued Official Letter No. 5826/TCHQ-TXNK regarding settlement of duties on goods imported/exported on the spot.

According to the regulation of Decree No. 134/2016/ND-CP, goods manufactured for export shall be exempted from/refunded import duty on raw materials. Whether this regulation is also applied to the case of export on the spot or not?

According to this Official Letter, if goods exported on the spot are the goods manufactured by a domestic enterprise then they are sold to an export processing enterprise (EPE) (the EPE is not located in an export processing zone but it meets the regulations provided for non-tariff zones according to Clause 1 Article 4 of the Law on import and export duties), such goods shall be still entitled to apply the policies on exemption or refund of import duty on raw materials.

However, with regard to goods exported on the spot which are goods manufactured by a Vietnamese enterprise for a foreign trader but they are designated to be delivered in Vietnam, import duty on raw materials shall not be exempted or refunded. Cases in which import duty on raw materials used for export production has been exempted but then the products are exported in the form of export on the spot under designation of foreign trader shall be imposed duty, subject to late payment interest and handling of administrative violations.



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5. OFFICIAL LETTER NO. 11889/BTC-CST ON VAT TARIFF APPLICABLE TO IMPORTS IS NO LONGER APPLIED

On 1 October 2018, the Ministry of Finance issued Official letter No. 11889/BTC-CST regarding value added tax (VAT) policies applicable to imports.

According to the Ministry of Finance's opinions, HS codes at the VAT tariff promulgated at Circular No. 83/2014/TT-BTC were formed based on the List of imports and exports promulgated together with Circular No. 156/2011/TT-BTC.

However, such List of imports and exports has been changed by the new one promulgated together with Circular No. 65/2017/TT-BTC and therefore the determination of VAT on imports is no longer carried out according to the VAT tariff promulgated at Circular No. 83/2014/TT-BTC but it shall be carried out based on these currently – applied documents:

- ✓ Circular No. 219/2013/TT-BTC dated December 31st, 2013
- ✓ Circular No. 26/2015/TT-BTC dated February 27th, 2015
- ✓ Circular No. 130/2016/TT-BTC dated August 12th, 2016
- ✓ Circular No. 25/2018/TT-BTC dated March 16th, 2018.

6. OFFICIAL LETTER NO. 3185/GSQL-GQ4 REGARDING ADDITIONAL SUBMISSION OF C/O

On 10 October 2018, the General Department of Vietnam Customs issued Official Letter No. 3185/GSQL-GQ4 regarding additional submission of C/O. C/O shall be rejected if it lacks the line “where RVC is applied”.

According to the form of C/O form D issued together with Annex VIII A of Circular No. 22/2016/TT-BCT, at box No. 9 of the C/O must have the line “where RVC is applied”.

Accordingly, if at box No. 9 of a C/O form D already issued lacks the line “where RVC is applied”, the C/O is considered to be issued in contravention of the prescribed form and customs authority shall not accept such C/O.

The declaration and time for submission of C/O are regulated in Article 5, Article 7 of Circular No. 38/2018/TT-BTC.