



# S&S AUDITING AND CONSULTING COMPANY

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

## S&S's Newsletter – SEP & OCT 2019

Dear our Readers,

Below are S&S's Tax and Legal update Newsletter for [Sep & Oct 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](mailto:samuel230@hanmail.net)

### S&S Auditing and Consulting Co., Ltd

**Head office:**

8th Floor, Yoco Building  
41 Nguyen Thi Minh Khai St, Ben Nghe Ward,  
District 1, TP. HCM, Viet Nam

Tel: 84 (28) 39 104 996

Fax: 84 (28) 39 104 998

Web: <http://www.ssaudit.com>

**Hanoi office:**

7th Floor, Vinaconex 9 Building,  
Pham Hung St., Me Tri Ward, Tu Liem Dist,  
Hanoi, Viet Nam

Tel: 84 (24) 62 512 199

Fax: 84 (24) 62 512 201

*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.*





# **S&S AUDITING AND CONSULTING COMPANY**

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

## **CONTENTS ●●●●●**

### **1. TAX AND TAX ADMINISTRATION**

**1.1 CIRCULAR NO.68/2019/TT-BTC DATED 30/09/2019 GUIDANCE ON ELECTRONIC INVOICE (“E-INVOICE”)**

*- Page 4-5*

**1.2 OFFICIAL LETTER NO. 69382/CT-TTHT DATED 4/9/2019 REGARDING TO TAX ON CAPITAL TRANSFER**

*- Page 5*

**1.3 OFFICIAL LETTER NO. 71443/CT-TTHT DATED 11/9/2019 ISSUED BY HA NOI TAX DEPT REGARDING TO INTEREST EXPENSE**

*- Page 6*

**1.4 OFFICIAL LETTER NO. 78407/CT-TTHT DATED 15/10/2019 REGARDING TO PIT ON TUITION FEES FOR FOREIGN WORKERS' CHILDREN**

*- Page 6*

**1.5 OFFICIAL LETTER NO. 4201/TCT-KK DATED 16/10/2019 REGARDING DECLARATION OF TAX WITH REGARD TO EXTRA-PROVINCIAL**

*- Page 6*

**1.6 OFFICIAL LETTER NO. 80200/CT-TTHT DATED 23/10/2019 REGARDING REMUNERATION PAID TO BOARD OF MANAGEMENT**

*- Page 6-7*

**1.7 OFFICIAL LETTER NO. 4409/TCT-KK DATED 30/10/2019 ON ELECTRONIC TAX TRANSACTIONS**

*- Page 7-8*

### **2. CUSTOM**

**2.1 OFFICIAL LETTER NO. 6218/TCHQ-TXNK DATED 30/9/2019 REGARDING DUTY RATES APPLICABLE TO GOODS IMPORTED ON SPOT**

*- Page 8*

**2.2 CIRCULAR NO. 62/2019/TT-BTC DATED 5/9/2019 DETERMINING ORIGIN OF IMPORTED AND EXPORTED GOODS**

*- Page 8-9*

**2.3 OFFICIAL LETTER NO. 6423/TCHQ-TXNK DATED 9/10/2019 REGARDING SETTLEMENT OF VAT ON IMPORTED GOODS THEN RE-EXPORTED TO A THIRD PARTY**

*- Page 9*



# **S&S AUDITING AND CONSULTING COMPANY**

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

## **3. INVESTMENT**

**3.1 OFFICIAL LETTER NO. 6524/BKHĐT-QLKKT DATED 10/9/2019 ON DEFINING INVESTMENT CAPITAL AND MOBILIZED CAPITAL**

*- Page 9*

**3.2 OFFICIAL LETTER NO. 7850/BKHĐT-ĐTNN DATED 24/10/2019 REGARDING CHANGE OF NATIONALITY OF A FOREIGN INVESTOR**

*- Page 10*

**3.3 OFFICIAL LETTER NO. 7768/BKHĐT-ĐKKD DATED 22/10/2019 REGARDING BUSINESS REGISTRATION**

*- Page 10*

**3.4 OFFICIAL LETTER NO. 7944/BKHĐT-QLĐT DATED 28/10/2019 REGARDING POWER OF ATTORNEY OF A REPRESENTATIVE OFFICE'S HEAD TO SIGN A CONTRACT FOR BIDDING**

*- Page 11*

**3.5 OFFICIAL LETTER NO. 7492/BKHĐT-ĐKKD DATED 14/10/2019 REGARDING CHANGE OF LEGAL REPRESENTATIVE OF THE COMPANY**

*- Page 11*

## **4. LABOUR**

**4.1 OFFICIAL LETTER NO. 3650/BHXH-BT DATED 30/9/2019 ON PAYMENT OF HEALTH INSURANCE PREMIUMS FOR FOREIGN WORKERS**

*- Page 11*

**4.2 OFFICIAL LETTER NO. 4554/LĐTBXH-PC DATED 25/10/2019 REGARDING LABOUR CONTRACT AND ANNUAL LEAVE**

*- Page 12*

**4.3 DISPATCH NO.4544/TB-LĐTBXH DATED 25/10/2019 ON DAYS OFF DURING TET HOLIDAY IN 2020**

*- Page 12*





# S&S AUDITING AND CONSULTING COMPANY

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

## 1.1 CIRCULAR NO.68/2019/TT-BTC DATED 30/09/2019 GUIDANCE ON ELECTRONIC INVOICE (“E-INVOICE”)

On 30 September 2019, the Ministry of Finance issued Circular 68/2019/TT-BTC guiding the implementation of Decree No. 119/2018 / ND-CP (Decree 119 ") on electronic invoice (e-invoice) when selling goods and providing services. Below are some notable points for your attention:

### 1. Contents of E-invoices have been changed compared to existing as follows:

- The principle to create e-invoice's Form, Serial number shall be more simple and easier to distinguish among the types of e-invoices;
- The issuance date of an e-invoice shall be the date on which the digital or electronic signature is added and presented on the invoice;
- the buyer's digital signature is not compulsory and will depend on the technical conditions and the agreement between the seller and the buyer;
- Accordingly, regarding names of goods, services on electronic invoices, they must be presented in Vietnamese. If the goods fall into different categories, their names shall contain the categories e.g. Samsung phone, Nokia phone, etc.;
- In addition, in case the right to use or ownership of the goods has to be registered, the invoice shall bear the number or symbol of the goods that is needed for registration e.g. chassis number, engine number of a vehicle; address, level, dimensions and number of stories of a house, etc;
- Regarding a buyer's address, in case of sale of goods/services to a foreigner in Vietnam, his/her information and address may be replaced with information in his/her passport or travel document and his/her nationality.

### 2. E-invoice applies for export of goods and services

**Instead of using Commercial invoices**, enterprises must issue e-invoice (i.e. VAT invoice or sales invoices) for export of goods and services under the guidance of Circular 68. Regarding the exporting of goods, the e-invoice shall be issued after the completion of customs procedure (*point 5c, Article 6*).

### 3. Sellers of goods and services who are classified as having high tax risks

Circular 68 guidance that such Sellers must implement authenticated e-invoices, regardless of the transaction value. The Circular also sets out the criteria to identify enterprises with high tax risks;

### 4. Issuing separate invoice

Supplement cases where the tax authority shall issue separate invoices for enterprises, business organizations, business households or business individuals applying VAT direct method as below:

- The tax payer undergoing tax code closure procedures, however, need to issue invoice for assets liquidation;



# S&S AUDITING AND CONSULTING COMPANY

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

- The tax payer under dormant period, however, need to issue invoice for the contract signed before dormancy;
- The tax payer banned from using electronic invoices by the tax authority as an enforcement method.

## 5. In case E-invoices contain errors, the correction process shall be as follows:

- If the buyer's name or address is not correct, however the tax code and other information is correct, the seller shall inform the buyer of the errors and send a notice to the tax authority in the template of Form No. 04 in Decree No. 119/2018/ND-CP ("Form 04"). In this case, re-issuance of invoice is not required;
- If the tax code, invoice amount, tax rate, tax amount or description of goods/services on the invoice is not correct, the seller and the buyer shall prepare a minutes specifying the errors; the seller shall send a notice to the tax authority, i.e. Form No. 04, and issue a new e-invoice in replacement of the incorrect one;
- In case the tax authority discovers that an e-invoice contains error, a notice shall be sent to the seller (Form No. 05 in the Appendix to Decree No. 119/2018/ND-CP) and the seller will carry out the above-mentioned correction process within an allowable timeframe;

## 6. Transmission of electronic invoice data to tax authorities will be conducted as follows:

- o Tax payers shall transmit data of the issued e-invoices to tax authorities directly (if technical conditions are met) or via a qualified service provider;
- o In case the enterprises issue a large number of invoice, such as enterprises operating in the industries of postal and telecommunications, insurance, finance and banking, air transport, sale of petro to individuals, the data transmission will be carry out together with the submission of VAT declaration, using a summary list of sold good/services. In other cases, the e-invoices shall be sent to both the buyer and tax authority upon issuance.

The Circular takes into effectively from 14 Nov 2019.

## 1.2 OFFICIAL LETTER NO. 69382/CT-TTHT DATED 4/9/2019 REGARDING TO TAX ON CAPITAL TRANSFER

In accordance with guidance at Article 14, Circular 78/2014/TT-BTC, in case of foreign company transfers its whole capital invested in Company in Vietnam to individual, this is the income from capital transfer must pay tax regardless the transferer is resident or non-resident in Vietnam.

If the buyer is the individual in Vietnam, the buyer shall take responsibility for determining, declaring, withholding and paying payable EIT on behalf of the foreign organization according to point 2, Article 14 of Circular No. 78/2014/TT-BTC.

If the transfer contract does not specify the payment price, or tax authority have grounds to conclude that the payment price is not conformable with the market price, the tax authority may inspect and fix the transfer price.



# **S&S AUDITING AND CONSULTING COMPANY**

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

## **1.3 OFFICIAL LETTER NO. 71443/CT-TTHT DATED 11/9/2019 ISSUED BY HA NOI TAX DEPT REGARDING TO INTEREST EXPENSE**

In accordance with item 3, Article 8 of Decree No. 20/2017/NĐ-CP, in case of the Company incurs related parties transaction, interest cost shall not exceed 20% of total net profit generated from business activities plus loan interest costs and depreciated costs arising within that period.

According to Ha Noi Tax Department, based on the aforesaid regulations of loan interest costs incurred **from 1 May 2017** (from the date of effectivity of Decree 20/2017/ND-CP), regardless of loan contract signed before or after May 1st, 2017.

In terms of the criteria for calculation of "total net profit within the period", if the taxpayer makes separate cost accounting of business results from May 1st, 2017 to the end of the fiscal year. If the taxpayer cannot make separate cost accounting of business results from May 1st, 2017 to the end of the fiscal year, the criteria for calculation of "total net profit generated from business activities plus loan interest costs and depreciated costs arising within that period" shall be allocated in proportion to the remaining months of the fiscal year from May 1st, 2017.

## **1.4 OFFICIAL LETTER NO. 78407/CT-TTHT DATED 15/10/2019 REGARDING TO PIT ON TUITION FEES FOR FOREIGN WORKERS' CHILDREN**

In case the Company signs a labor contract with a foreigner working in Vietnam in which indicating the expenditures on tuition fees for children of the foreigner to study in Vietnam from preschool to high school, which are paid by the Company as salaries, wages and have adequate invoices, receipts bearing name, address and tax identification number of the Company, such expenditures shall not be included in incomes liable to PIT of the laborer upon calculation of PIT according to Clause 2 Article 2 of Circular No. 111/2013/TT-BTC.

## **1.5 OFFICIAL LETTER NO. 4201/TCT-KK DATED 16/10/2019 REGARDING DECLARATION OF TAX WITH REGARD TO EXTRA-PROVINCIAL**

According to the General Department of Taxation's opinions, in case a main contractor assigns part of his work to a sub-contractor but the whole value of the works is paid by the investor via the main contractor, the main contractor has to declare and pay extra-provincial tax on the whole value of the works.

Particularly, the sub-contractor shall only declare and pay VAT on the VAT – exclusive value of the assigned work signed with the main contractor.

## **1.6 OFFICIAL LETTER NO. 80200/CT-TTHT DATED 23/10/2019 REGARDING REMUNERATION PAID TO BOARD OF MANAGEMENT**

Based on Article 4 of Circular No. 96/2015/TT-BTC dated June 22nd, 2015 of the Ministry of Finance amending, supplementing to Article 6 of Circular No. 78/2014/TT-BTC regulates deductible and non-deductible expenditures upon determination of taxable incomes: ".....d) *Salaries and wages of owners of private enterprises, one member limited liability companies (employed by an individual); remuneration paid to the founding members, members of the Board of members, Board of Directors who are not directly involved in directing the production and business*".



# S&S AUDITING AND CONSULTING COMPANY

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

Following that, remuneration paid to the founding members, members of the Board of Management who are not directly involved in directing the production and business will be taken out of deductible expenses.

In other contrast, if founding members, members of the Board of Management who are directly involved in directing the production and business, such remuneration meets the conditions regulated at Article 4 of Circular No. 96/2015/TT-BTC dated June 22nd, 2015 of the Ministry of Finance, they shall be included in deductible expenses upon determination of CIT - liable incomes.

## 1.7 OFFICIAL LETTER NO. 4409/TCT-KK DATED 30/10/2019 ON ELECTRONIC TAX TRANSACTIONS

On 30 October 2019, the General Department of Taxation issued Office Letter No. 4409/TCT-KK that introduced new contents of Circular No. 66/2019/TT-BTC that amended for Circular No. 110/2015/TT-BTC about on electronic tax transactions, **comes into force from 05 November 2019**. Main points listed as below:

### 1. Time for submitting electronic documents and paying tax electronically:

- The guidance for penalties for late submission or failure to submit tax documents at the Clause 4, Article 8 of Circular No. 110/2015 are repealed.

### 2. Dealing with errors during electronic tax transactions:

- Administrative penalties for late submission of electronic tax documents and exempting from pay late payment interest are repealed.
- The taxpayer should submit electronic tax documents on the next day when the website of the General Department of Taxation if function again and the electric documents submitted within this day is on time.
- The taxpayer can submit paper documents to Tax Authority directly, pay tax directly at the State Treasury or commercial banks for the period during which the web portal of General Department of Taxation is suspended.

### 3. Registration of electronic tax transactions:

- The Taxpayer will be provided a main account to perform fully functions of electronic tax transactions with Tax Authority; the Taxpayer can use this main account to register one or more sub- accounts through the function on the web portal of General Department of Taxation to perform each electronic transaction with the Tax Authority.

### 4. Tax registration:

- The web portal of General Department of Taxation shall send form 01-1/TB-TĐT to the Taxpayer within 15 minutes after receiving the taxpayer's application.
- Within 02 working days, Tax Authority shall check the application and send a notification of not accepting the application to the taxpayer in case the application contains errors for the taxpayer to submit the other application. The rejection notification has been replaced into form 01-2/TB-TĐT.
- Tax Authority only notifies to the Taxpayer when the application contains errors after checking the tax application.
- In case the paper application for tax registration does not match the electronic application and if the information on the paper application is complete and accurate, Tax Authority shall process on the paper form. The Taxpayer is not required to submit the electronic application again.

### 5. Change of responsibility to declare tax:

- The regulation of notice on tax accounting method in responsibility to declare of the Taxpayer is repealed.



# S&S AUDITING AND CONSULTING COMPANY

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

If the taxpayer's responsibility to declare tax is changed, Tax Authority must send a notification of whether the change is accepted or not within 02 working days from the receipt of information about the change via the web portal of General Department of Taxation or the provider of T-VAN services.

## 6. Electronic tax declaration:

- After the deadline of tax declaration in accordance with the Law on Tax administration and its instructional documents, the Taxpayer has not submitted again the tax declaration or the re-submission has not been accepted by Tax Authority, the taxpayer shall be determined to not completed the submission of tax declaration dossiers.

## 7. Making and sending electronic claim for Tax refund:

- The deadline for process of claim for tax refund in accordance with the regulation will be calculated from the date on the receipt electronic tax claim notification (form 01-2/TB-TĐT).

## 8. Taxpayer's access to information:

- The Taxpayer may use electronic tax transaction accounts to send confirmation of tax amount paid to The State Treasurer; the receipt request from the Taxpayer and send the notification from Tax Authority to the Taxpayer will be performed via electronic web portal of General Department of Taxation.

## 2.1 OFFICIAL LETTER NO. 6218/TCHQ-TXNK DATED 30/9/2019 REGARDING DUTY RATES APPLICABLE TO GOODS IMPORTED ON SPOT

Reference to guidance at Official Letter. 1909/TCHQ-TXNK dated April 3rd, 2019, the application of preferential duty rates to goods imported on the spot shall be carried out as follows:

- *If goods are imported on the spot from non-tariff zones into the domestic market, meet all the requirements for being entitled to apply special preferential import duty rates under regulations, the special preferential import duty rates shall be applied to such goods.*
- *If goods are imported on the spot under designation of the foreign party, meet the requirements of origin in Vietnam or in any country or group of countries that accord Vietnam most-favored nation treatment, preferential import duty rates shall be applied*

## 2.2 CIRCULAR NO. 62/2019/TT-BTC DATED 5/9/2019 DETERMINING ORIGIN OF IMPORTED AND EXPORTED GOODS

Some of notable contents of Circular as below:

- Detailed guidelines for implementation of goods' origin under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP") Including declaration and submission timeline for the certificate of origin as well as inspection, verification and rejection procedures conducted by customs authorities on the certificate of origin.
- Guidance on the handling process from customs authority in case of inconsistencies in the customs tariff codes between certificate of origin and import customs declarations. Based on their checking of the declared information and the physical imported goods, customs will accept, reject or perform verification of the origin with the overseas-issuing authorities/organisations.





# **S&S AUDITING AND CONSULTING COMPANY**

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

Accordingly, in order to be eligible to apply CPTPP tariff, each enterprise may either submit the proof of origin issued by the exporter or producer (self-certification of origin) or submit the C/O issued by any member country of the CPTPP.

C/O under the framework of CPTPP shall be also accepted in case the commercial invoice is issued by a third party (a non-member country).

This Circular takes into effect from 21 Oct 2019.

## **2.3 OFFICIAL LETTER NO. 6423/TCHQ-TXNK DATED 9/10/2019 REGARDING SETTLEMENT OF VALUE ADDED TAX ON IMPORTED GOODS THEN RE-EXPORTED TO A THIRD PARTY**

In accordance with guidance, depending on time when the declaration form of re-export is registered, the VAT already paid at the time of importation of goods shall be settled according to different guidelines:

- If the declaration form of re-export had been registered before July 1st, 2016, the VAT already at the time of importation shall be settled similar to overpaid tax according to Clause 1 Article 29 of Decree No. 83/2013/ND-CP and Clauses 1, 3 Article 49 of Circular No. 38/2015/TT-BTC.
- If the declaration form of re-export had been registered from July 1st, 2016 to before February 1st, 2018, the already paid VAT on re-exported goods shall not be refunded but it shall be declared for deduction according to Clause 3 Article 1 of Circular No. 130/2016/TT-BTC.
- If the declaration form of re-export is registered from February 1st, 2018, the already –paid VAT may be refunded if the conditions at Article 2 of Circular No. 25/2018/TT-BTC are met..

## **3.1 OFFICIAL LETTER NO. 6524/BKHDT-QLKKT DATED 10/9/2019 ON DEFINING INVESTMENT CAPITAL AND MOBILIZED CAPITAL**

Relating to the determination of “investment capital” and “mobilized capital” of a project, the Ministry of Planning and Investment requests to carry out, based on Clause 18 Article 3 of the Law on Investment, Clause 15 Article 2 of Decree No. 118/2015/ND-CP, Circular No. 16/2015/TT-BKHDT and Circular No. 09/2016/TT-BKHDT.

Following that:

- “Investment capital” of a project means the capital contributed by an investor and capital raised by the investor to execute the investment project written on the decision on investment guidelines, the investment registration certificate (Clause 15 Article 2 of Decree No. 118/2015/ND-CP).
- “Mobilized Capital” includes: borrowings (from abroad, from parent company, from credit institutions in Vietnam) and other finances mobilized (offering of stocks or bonds, from customers, etc.) (Point 2.2 Section 2 Part II form No. 2 of the Annex issued together with Circular No. 09/2016/TT-BKHDT).
- “Total investment” includes fixed capital (costs of land compensation and relocation; land /water surface lease; construction cost; costs of equipment, machinery, technology and brands; cost of fixed assets; contingency) and working capital (Section 5. 1 form I.2 promulgated together with Circular No. 16/2015/TT-BKHDDT).



## S&S AUDITING AND CONSULTING COMPANY

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

### 3.2 OFFICIAL LETTER NO. 7850/BKHĐT-ĐTNN DATED 24/10/2019 REGARDING CHANGE OF NATIONALITY OF A FOREIGN INVESTOR

Relating to the change of nationality of a foreign investor who is a member of a limited liability company, the Ministry of Planning and Investment mentions some notes below:

- The change of nationality of a foreign individual investor shall comply with laws of involved countries.
- If a limit liability company has a capital contribution member being a foreign individual who changes his/her nationality, it must ensure investment conditions provided for foreign investors according to regulations of laws on investment.
- In case projects of a limit liability company are not subject decision on investment policies, the update of nationality of an individual foreign investor shall be carried similarly to procedures for adjustment to the certificate of investment registration as regulated at Clause 1 Article 33 of Decree No. 118/2015/ND-CP.
- If a limit liability company has a capital contribution member being a foreign individual who changes his/her nationality, the company has to send the notice using the form regulated at Annex II - 5 issued together with Circular No. 20/2015/TT-BKHDT daed December 1st, 2015 (which has been amended, supplemented by Circular No. 02/2019/TT-BKHDT) and documents proving the change of nationality to the registration office where the enterprise's head office is located.

### 3.3 OFFICIAL LETTER NO. 7768/BKHĐT-ĐKKD DATED 22/10/2019 REGARDING BUSINESS REGISTRATION

The OL guidance some procedures related to business registration:

- **Acquisition:** Relating dossier, order of and procedures for acquisition, the Ministry of Planning and Investment assumes that they have been specified in Article 195 of the Law on Enterprises No. 68/2014/QH13

According to Clause 1, Clause 3 Article 61 of Decree No. 78/2015/NĐ-CP, within 03 working days from the day on which acquirer company is granted the certificate of enterprise registration, Business Registration Office shall remove the acquired company from the Enterprise Registration Database.

In addition, all branches, representative offices, and business locations of the acquired company shall be also shut down prior to the expungement of the parent company (Clause 3 Article 7 of Circular No. 20/2015/TT-BKHDT).

Members, the owners, or shareholders of each of relevant companies shall ratify the acquisition contract, charter of the acquirer, and apply for registration of the acquirer as prescribed by this Law. The acquisition contract shall be sent to all creditors and notified to all employees within 15 days from the ratification date.

- **Capital contribution or purchase of shares/stakes:** Regarding dossier, order of and procedures for capital contribution or purchase of shares/stakes of a foreign investor, they are regulated at Clause 2 Article 26 of the Law on Investment and Clause 3 Article 46 of Decree No. 118/2015/ND-CP.



# **S&S AUDITING AND CONSULTING COMPANY**

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

## **3.4 OFFICIAL LETTER NO. 7944/BKHDT-QLĐT DATED 28/10/2019 REGARDING POWER OF ATTORNEY OF A REPRESENTATIVE OFFICE'S HEAD TO SIGN A CONTRACT FOR BIDDING**

Relating to the signing and sealing in a contract, at Circular No. 01/2015/TT-BKHDT, Circular No. 03/2015/TT-BKHDT and Circular No. 11/2016/TT-BKHDT all regulate that the bidder may authorize (grant his/her power of attorney to) director of a branch, Head of a representative office to sign the contract on behalf of the bidder and use the seal of the bidder or of the branch/representative office.

Accordingly, in case a company authorizes its representative office's Head to sign and seal in documents in the course of bidding, including the contract, the Head of the representative office may directly sign and seal the contract by using the representative office's seal.

However, even the contract is signed and sealed by the representative office with its own seal, the contract's main entity is still the company and the company still takes responsibility before the investor to the entire performance of the contract.

## **3.5 OFFICIAL LETTER NO. 7492/BKHDT-DKGD DATED 14/10/2019 REGARDING CHANGE OF LEGAL REPRESENTATIVE OF THE COMPANY**

According to point i Clause 2 Article 149 of the Law on enterprises No. 68/2014/QH13, the Board of Management ("BOM") has the right to elect, dismiss, discharge from duty the Chairperson of BOM; designate, dismiss, sign contracts, terminate contracts with the Director and other key managers prescribed by the company's charter (if any).

Accordingly, upon election or dismissal, BOM shall hold a meeting and make record of the meeting.

The Chairperson of the BOM shall be in charge of the meeting. If the Chairperson is absent or is not able to fulfill his/her duties, the Chairperson shall authorize another member in writing to perform rights and obligations of the Chairperson in accordance with the company's charter. In case no one is authorized, other members shall elect one of them as a temporary Chairperson under the majority rule.

## **4.1 OFFICIAL LETTER NO. 3650/BHXH-BT DATED 30/9/2019 ON PAYMENT OF HEALTH INSURANCE PREMIUMS FOR FOREIGN WORKERS**

Relating to the exemption from payment of health insurance premiums for foreigners that are internally transferred to Vietnam to act as managers, administrators, Vietnam Social Security says that it is waiting for opinions of the Ministry of Health and will provide guidelines later.

According to current regulations at Clause 1 Article 12 of the Law on health insurance 2008 (which has been amended, supplemented at Clause 6 Article 1 of the Law on health insurance No. 46/2014/QH13), if a foreigner is an enterprise's manager and is paid salary in Vietnam, he/she has to pay health insurance premiums.

However, according to point a Clause 2 Article 2 of Decree No. 143/2018/ND-CP (which takes effect from 1 December 2018), foreigners that are intra-company transferee shall be excluded from participation in the compulsory social insurance, including intra-company transferees that are managers, administrators in enterprises in Vietnam. This regulation results in the case in which may enterprises assume that foreigners who are internally transferred to Vietnam to act as managers shall be also exempt from payment of health insurance premiums.



# S&S AUDITING AND CONSULTING COMPANY

8<sup>th</sup> Floor, 41 Nguyen Thi Minh Khai Street, District 1, Ho Chi Minh City

Tel: 028-3910.4996 – 3910.4997

Email: [SAMUEL230@HANMAIL.NET](mailto:SAMUEL230@HANMAIL.NET)

Fax: 028-3910.4998

[SAMUEL230@SSAUDIT.COM](mailto:SAMUEL230@SSAUDIT.COM)

## 4.2 OFFICIAL LETTER NO. 4554/LĐTBXH-PC DATED 25/10/2019 REGARDING LABOUR CONTRACT AND ANNUAL LEAVE

According to Clause 2 Article 22 of the Labor Code No. 10/2012/QH13, an employer shall be allowable to sign the definite labor contract twice. Then, if the labor contract is signed again, it shall become an indefinite-term labor contract.

However, if an employee signed the definite labor contract twice and stops working, for the period of time later such employee is employed again by the former employer, the employer may either sign an indefinite-term labor contract or a definite-term labor contract similar to the case of signing contract with a new employee.

Relating to annual days-off to be increased based on working seniority of an employee whose working length is more than 5 years, the Ministry of Labor - Invalids and Social Affairs assumes that the regulations at Article 112 of the Labor Code No. 10/2012/QH13 does not mention that 5 years' working must be consecutive. As the result, the "5-year" number to be used as the basis for addition of one annual day-off shall be calculated based on the length of working for the same employer. This means that those who have interrupted period of working for an employer are still entitled to the regime of addition of annual day-off if their total length of working reaches at least 5 years.

## 4.3 DISPATCH NO.4544/TB-LĐTBXH DATED 25/10/2019 ON DAYS OFF DURING TET HOLIDAY IN 2020

Tet holiday 2020, officials and public employees and employees of administrative and non-business agencies, political organizations shall take 7 consecutive days off from 23 – 29 Jan 2020, in which 4<sup>th</sup> and 5<sup>th</sup> (in Lunar Calendar) are 2 days off compensate for Saturday and Sunday.

Accordingly, enterprises shall apply in accordance with point b, item 1, article 115 of Labour Law with **5 consecutive days**. In which, enterprise may either select one of two method: (i) take 01 day off at the end of the lunar year and 04 days off at the begging of the lunar New Year or (ii) take 02 days off at the end of the lunar year and 03 days off at the begging of the lunar New Year.

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

## S&S Auditing and Consulting Co., Ltd

### Ho Chi Minh Head Office:

8th Floor, Yoco Building  
41 Nguyen Thi Minh Khai St,  
District 1, HCMC, Vietnam  
Tel: 84 (28) 39 104 996  
Fax: 84 (28) 39 104 998

### Hanoi Office:

Room 702, 7th floor, Vinaconex 9 building  
Pham Hung Street, Me Tri Ward,  
Nam Tu Liem District, Hanoi, Vietnam  
Tel: 84 (24) 62 512 199  
Fax: 84 (24) 62 512 201

====000====