

LEGAL UPDATES

February 2018

(DRAFT) LEVEL OF SOCIAL INSURANCE CONTRIBUTION AND ENJOYMENT FOR FOREIGNERS

The Government is drafting a Decree detailing and guiding the implementation of the Law on Social Insurance for compulsory social insurance for foreign employees working in Vietnam.

This Decree will provide guidance on the subject, the level of contribution and the level of benefit of compulsory social insurance for employees who are foreigners.

Accordingly, foreigners working in Vietnam must pay compulsory social insurance if they sign a labor contract for at least one month and have one of the following papers: work permit, practice license or certificate (Clause 1 of Article 2).

The level of contribution is similar to that of Vietnamese employees, which equates to 8% of the monthly wage (including: salary, allowances and other offers). However, foreigners do not have to pay unemployment insurance.

Local (Vietnam) enterprises also have to pay 17% of social insurance for foreigners, including 3% of sickness and maternity fund, and 14% of pension fund. In the case of occupational accidents – diseases fund, the maximum contribution is 1% (0.5% higher than the contribution of Vietnamese employees).

In terms of conditions, the level of enjoyment of social insurance for foreigners is basically the same as Vietnamese employees, which will be entitled to all five regimes, including sickness, maternity, occupational accidents and diseases, retirement and death.

In case of one-time social insurance, there is a small difference. Specifically, when the labor contract or the work permit expires, if they are not renewed or extended, the foreign employees can immediately claim social insurance once as a lump sum.

The draft decree takes effect since January 01, 2018.

PROJECTS WHICH HAVE BEEN PUT INTO OPERATION ARE NOT



ENTITLED TO VALUE ADDED TAX REFUND

Official letter No. 496/TCT-KK dated February 06, 2018 was released by the General Department of Taxation about the refund of value added tax (VAT).

According to Clause 3, Article 1 of Circular 130/2016/TT-BTC, the investment projects which are considered for VAT refund are only applicable to projects still in the investment stage, not those which are completed and put into operation.

Accordingly, from the time the project is completed, put into operation and generates revenue, it is not allowed to continue applying for VAT refund under the category of "investment projects".

BAN ON DISBURSEMENT IN CASH FOR BORROWERS WHO ARE LEGAL ENTITIES

The State Bank promulgated the Circular No. 21/2017/TT-NHNN on December 29, 2017, stipulating the disbursement of loan capital by credit institutions and foreign bank branches to customers.

One of the new points of this Circular is the ban on disbursement in cash for borrowers who are legal entities, even including the loans under 100 million dong.

Cash disbursement is only acceptable to borrowers who are individuals. However, it is only accepted for loans not exceeding 100 million dong or for cases where the borrowers have no bank account.

In addition, the Circular also added provisions on disbursement procedures for a number of specific cases, such as syndicated loans, loans to buy foreign currencies, etc.

The Circular takes effect since April 02, 2018 and replaces the Circular No. 09/2012/TT-NHNN dated April 10, 2012.

PAYING COMMISSIONS FOR OVERSEAS GOODS SALE BROKERAGE IS FREE FROM WITHHOLDING OF THE PERSONAL INCOME TAX

This is the content as guided in Official letter No. 46/TCT-TNCN dated January 04, 2018 of the General Department of Taxation.

Under the guidance of Official Letter No. 4036/TCT-TNCN dated September 30, 2015, foreigners who are non-resident individuals are exempted from personal income tax when providing overseas goods sale brokerage for Vietnamese enterprises.



Accordingly, in cases where the Company hires foreigners who are non-resident individuals to act as brokers to sell goods abroad, the Company will not have to withhold the personal income tax from the commission paid.

PAPERS REQUIRED FOR ENTITLEMENT TO DEDUCTION OF THE PERSONAL INCOME TAX (PIT) ALREADY PAID OVERSEAS

Official letter No. 6005/TCT-TNCN was released by the General Department of Taxation on December 29, 2017 responding about the documents proving the PIT paid overseas.

According to Point b.2.1, Clause 3, Article 21 of Circular No. 92/2015/TT-BTC, the foreign employees who wish to have the PIT amount they already paid in their native land deducted against the tax amount which must be payable in Vietnam must have the following papers:

- *Copy of report of PIT declared overseas;*
- *Copy of document of tax withheld overseas;*
- *Income confirmation letter from the Company confirming that the PIT has already withheld overseas.*

Foreigners must commit to be responsible for the accuracy of the information on the copies and the information provided in the file must be sufficient, clear and connected to each other, ensuring the possibility to prove that the deductible amount is the tax amount already paid overseas.



AUDIT

NOTICE:

“The purpose of this news is to provide the clients with further information. Although we have focused much on the ensure of accuracy, the information that is given on this news is not absolutely thorough and the clients would better consult professional opinions before application”.