

LEGAL UPDATES

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Loan limit for borrowing foreign currencies to implement investment projects



Official letter No. 3404/NHNN-QLNH dated May 10, 2019 of the State Bank refers to the investment capital of the project and the loan limit.

As stipulated at Clause 1, Article 5 of Circular No. 12/2014/TT-NHNN, enterprises are allowed to use foreign loans to implement their investment projects.

However, the limit applied for foreign loans used to implement the investment projects must comply with the provisions at Item (i), Point B, Clause 2, Article 11 of **Circular No. 12/2014/TT-NHNN**.

Accordingly, the maximum balance of medium-term and long-term loans (including domestic loan balance) serving the project of the enterprise must **NOT** exceed the difference between the total investment capital and the contributed capital of the enterprise as registered in the investment certificate.

For example, total investment capital of the project is 5 million USD, in which the enterprise already contributed 2 million USD, then the maximum foreign loan limit for implementing that project is 3 million USD (= 5 million USD - 2 million USD).

In addition, when carrying out foreign borrowing activities, enterprises are responsible for complying with the current regulations on borrowing and repayment of foreign loans for enterprises which are not guaranteed by the Government and other related regulations.

Establishment of foreign direct investment (FDI) enterprises to manufacture medical equipment is allowable



Official letter No. 2933/BKHDT-DTNN dated May 07, 2019 of the Ministry of Planning and Investment refers to conditions for establishment of a company to manufacture medical equipment.

According to the Ministry of Planning and Investment, the Schedule of Specific Commitments in Services of Vietnam in the World Trade Organization (WTO) only applies to services rather than regulates with regard to production.

The "**production of medical equipment**" business line does **NOT** belong to scope of adjustment of the **Schedule of Specific Commitments in Services** of Vietnam in the WTO. Concurrently, Vietnam laws have no regulation on banning, restricting foreign investors from making investment in the production sector (Article 6 of the **Law on Investment 2014**).

However, this is the business line subject to the specialized management, according to which it is required to discuss with the Ministry of Health for having guidelines.

Procedures for establishment of economic organizations by foreign investors are regulated at Article 22 of 2014 Investment Law and Article 44 of **Decree No. 118/2015/ND-CP**.



What kind of accounting materials are not subject to translation into Vietnamese?

Official letter No. 4942/BTC-QLKT dated April 26, 2019 of the Ministry of Finance provides the regulations on accounting vouchers and invoices.

As stipulated at Clause 3, Article 3 of the **Law on Accounting No. 88/2015/QH13**, “**ACCOUNTING VOUCHERS**” mean papers and information-carrying articles reflecting economic and financial operations that have arisen and completed, serving as a basis for making entries in accounting books.

“**INVOICES**” are accounting vouchers made by goods sellers and service providers to record information about the goods sale or service provision as prescribed by law (Clause 1, Article 20 of the **Law on Accounting**).

Primary contents of accounting records in foreign languages used for recording accounting books and preparing financial statements in Vietnam must be translated into Vietnamese language in accordance with Clause 1, Article 16 of the Law on Accounting. The Vietnamese translations of accounting records must be attached to the original versions.

Vietnamese translations of documents in foreign languages attached to accounting records such as contracts, documents accompanied with payment dossiers, project dossiers, statements, etc. are not mandatory unless required by a competent authority (Clause 5, Article 5 of **Decree No. 174/2016/ND-CP**).



Stop tax grace for the projects of importing machinery over VND 100 billion from May 20, 2019

Official letter No. 5167/BTC-CST dated May 06, 2019 of the Ministry of Finance refers to the extension of the time limit for payment of value added tax (VAT) for importation.

According to the Ministry of Finance, at the regular meeting on November 2018, the Government agreed to stop implementing measures for extending the time limit for VAT payment and refund under the **Resolution No. 63/NQ-CP** dated August 25, 2014 (applying for projects having the value of imported machinery **FROM VND 100 BILLION OR MORE**) and asked this Ministry to issue the guidance documents.

Accordingly, the Ministry of Finance has issued **Circular No. 18/2019/TT-BTC** to repeal Circular No. 134/2014/TT-BTC in order to stop the VAT grace and refund policies for investment projects having the value of imported machinery and equipment from VND 100 billion or more from May 20, 2019 onwards.

Tax grace applications submitted to the Customs authority before May 20, 2019 are still entitled for consideration for extension of the time limit for tax payment under the **Circular No. 134/2014/TT-BTC**.





Refunded VAT amount must be returned when an on-going investment project is terminated



Official letter No. 1386/TCT-DNL dated April 16, 2019 of the General Department of Taxation refers to the refund of VAT for projects.

As stipulated at Point 5, Clause 3, Article 1 of **Circular No. 130/2016/TT-BTC**, for the case that the enterprise terminates the project under the investment stage, not yet in the operation, not incurring output taxes, then the refunded input VAT must be re-remitted.

However, if assets liable to VAT of the project are sold, the enterprise is not required to return the VAT already refunded corresponding to the assets sold.

For the VAT which has not been refunded up to the time of project termination, the enterprise is not allowed to apply for the tax refund and deduction.

Requirement for application of VAT refund for projects with progress adjustment



IN PROGRESS

Official letter No. 1739/TCT-CS dated May 03, 2019 of the General Department of Taxation refers to VAT refund for investment projects.

According to this Official letter, for investment projects of which the progress of implementation needs to be adjusted, if the enterprise has carried out the procedures of such adjustment in compliance with the investment law and already been approved in writing by a competent authority of the State, concurrently not subject to the circumstance of project termination, it is then considered for VAT refund .

NOTE:

"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".