


# LEGAL UPDATES

**11/2018**

- 01 Foreigners who have been granted work permits are considered being granted temporary resident cards
- 02 Foreigners who have been granted work permits must pay compulsory social insurance premiums from December 2018
- 03 Paper invoices issued before November 01, 2018 are allowed for circulation until October 31, 2020
- 04 Value added tax incurred after the project generates revenue is not entitled for refund
- 05 Goods produced for on-the-spot export is not exempted from the import duty on materials
- 06 Already - used machinery with unknown manufacturing year are banned from import





## Foreigners who have been granted work permits are considered being granted temporary resident cards

Official letter No. 2764/BCA-V03 dated November 01, 2018 of the Ministry of Public Security provided guidelines on conversion of visa type for foreign employees.

According to the Ministry of Public Security, a foreigner that is guaranteed by an enterprise to be granted business visa (DN category) in order to work for the enterprise and now he/she has been granted the work permit, such foreigner shall be considered being granted suitable visa, temporary resident card.

Visa procedures (conversion) can be carried out at the Bureau of Immigration Management - Ministry of Public Security or the Office of Immigration Management - Provincial Public Security.

## Foreigners who have been granted work permits must pay compulsory social insurance premiums from December 2018

According to Decree No. 143/2018/ND-CP dated October 15, 2018, for those foreign employees, the participation in compulsory social insurance is based on the work permit, not based on the labor contract term as Citizens of Vietnam (Clause 2, Article 2 of the Law on Social Insurance No. 58/2014/QH13). Accordingly:

Employees who are foreign citizens working in Vietnam are subject to participation in the compulsory social insurance when:

Having work permits or practice certificates or practice licences granted by Vietnam and having labor contracts with indefinite-term, definite-term with the employers in Vietnam.

Payment levels are specifically as follows:

- For employees: monthly pay 8% of their monthly salary to the retirement and survivorship allowance fund (from January 01, 2022);
- For employers:
  - \* From December 01, 2018, make monthly payments calculated based on the salary funds on which social insurance premiums are based for employee as follows: 3% to the sickness and maternity fund; 0.5% to the labor accident and occupational disease fund.
  - \* From January 01, 2022, additionally pay 14% to the retirement and survivorship allowance fund.

***In conclusion, the employers must pay the monthly social insurance premium with 3.5% for the foreign employees from December 01, 2018; while the foreign employees themselves only have to pay 8% to the retirement and survivorship allowance fund from January 01, 2022.***

The above regulations take effect from January 01, 2018. However, the time for paying compulsory social insurance premiums starts from December 01, 2018 when the Decree No. 143/2018/NĐ-CP takes effect.



**Value added tax (VAT) incurred after the project generates revenue is not entitled for refund**

However, from November 01, 2020 onwards, the enterprises is forced to stop using paper invoices and switch to use electronic invoices.

Official letter No. 4261/TCT-CS dated November 01, 2018 of the General Department of Taxation provided guidelines on declaration and refund of VAT of the project.

According to this Official letter, in cases where an investment project is not divided into several phases or items of investment and generated revenue, the input VAT amount arising after the time the revenue generates is not allowed to be declared by Form 02/GTGT to apply for the tax refund, but must be switched to declare for tax deduction by Form 01/GTGT.

Similarly, in cases where the project is divided into several phases and items of investment, and if any of such investment items has finished and generated revenue, the relevant input VAT arising after the time such items generates revenue is not refunded. The VAT of the remaining project items which are still being invested are continuously declared for tax deduction and refund as prescribed in Clause 3, Article 1 of Circular No. 130/2016/TT-BTC.

**Goods produced for on-the-spot export is not exempted from the import duty on materials**

Official letter No. 5826/TCHQ-TXNK dated October 05, 2018 of General Department of Customs provided guidelines on settlement of duties on goods imported/exported on the spot. Accordingly, goods produced for on-the-spot export is not exempted from the import duty on materials when it is sold to enterprises that are not export processing enterprises (EPE) or not in the Non-tariff zone.

According to this Official letter, in cases where goods exported on the spot are those produced by an inland enterprise, then sold to the EPE, they shall still enjoy the exemption or refund of import tax on materials.

However, in cases where goods exported on the spot are those produced by Vietnamese enterprises for foreign traders, but assigned to deliver in Vietnam, then those goods are not entitled to exemption from or refund of the import duty on materials.

If the enterprise has been exempted from import duty on materials, supplies which has been imported in the form of export production but then the products are exported in the form of export on the spot as assigned by foreign traders, customs authority shall impose duty, calculate late payment interests and sanction administrative violation as prescribed.



## Already - used machinery with unknown manufacturing year are banned from import

Official letter No. 3353/GSQL-GQ1 dated October 22, 2018 of the General Department of Customs provided guidelines on issues relating to assessment results of used machinery and facilities.

As stipulated in Article 10 of Circular No. 23/2015/TT-BKHCHN, used machinery and facilities are only allowed to be imported upon having the assessment certificate stating clearly manufacturing year and name, brand, etc. and the conformity of standards.

Accordingly, in cases where the assessment certificate concludes that it is not clear on the manufacturing year as well as the conformity of standards of used machinery and facilities, then they fail to meet the conditions for being imported.

According to Clause 1, Article 10 of Circular No. 23/2015/TT-BKHCHN, apart from the basic information of a certificate, the conclusion of the assessment certificate for already - used machinery, equipment must present the following contents:

- a) Manufacturing year and name, brand, serial number, manufacturer's name of already used equipment;
- b) Conclusion of the conformity of manufacturing standards on used equipment with the provisions on the National Technical Regulations or the National Standards of Vietnam or conformity with the G7 nation's standards on safety, energy-saving and environment protection.

### 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."*

