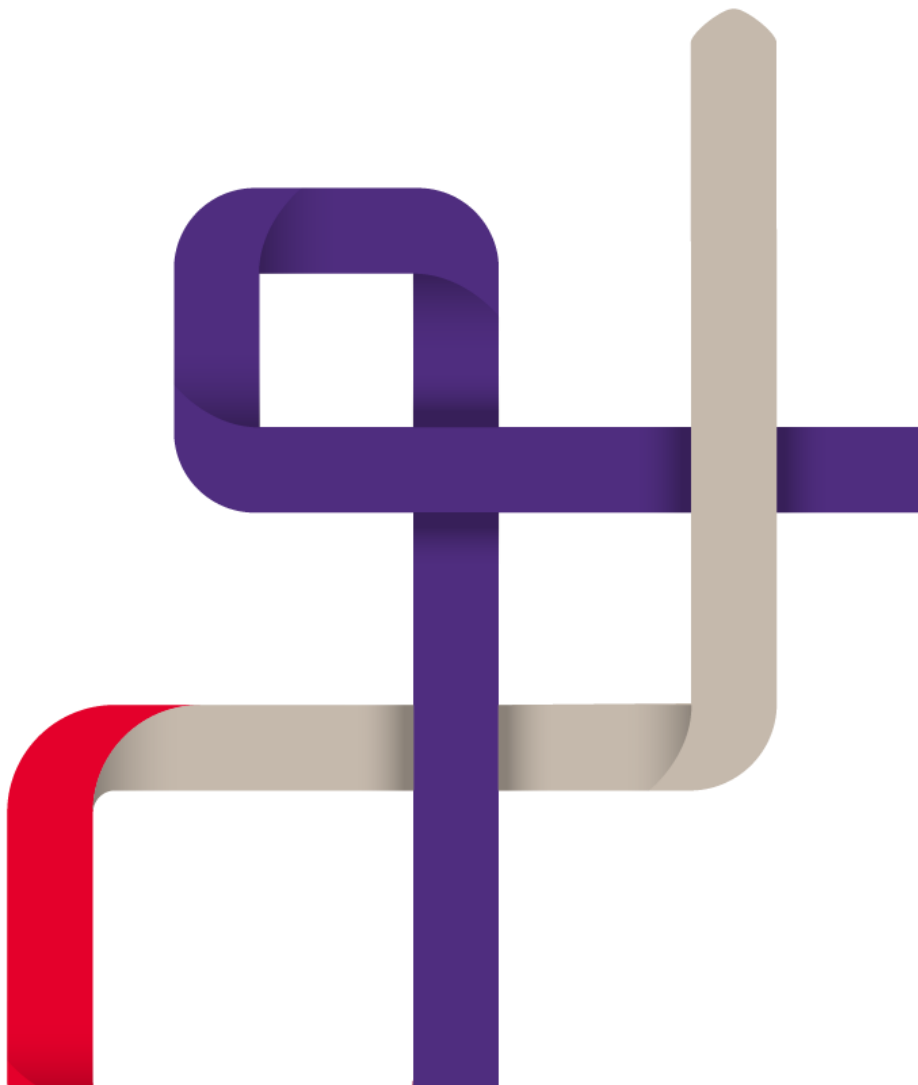


Update on the latest regulations and important tax policies

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Content

In this newsletter, Grant Thornton Vietnam would like to update the latest regulations and notable policies on taxation as follows:

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1. Decree 146/2018/ND-CP providing guidelines on Health Insurance (“HI”) effective from 01 December 2018

On 17 October 2018, the Government issued Decree No. 146/2018/ND-CP (“Decree 146”) providing detailed guidelines on implementation of Health Insurance Law. This Decree is effective from 01 December 2018. This Decree will replace Decree No. 105/2014/ND-CP dated 15 November 2014, and abolish Circular No. 41/2014/TTLT-BYT-BTC dated 24 November 2014, Circular No. 16/2015/TTLT-BYT-BTC dated 02 July 2015 and other articles in other legal documents. Some remarkable points in Decree 146 are as follows:

➤ HI card expires when patient is currently under inpatient treatment

In case HI card expires when the HI card holder is currently under inpatient treatment, their medical costs may be covered under the scope of coverage and coverage rates of HI card during the treatment period, but this period cannot exceed 15 days since expiry date of HI card. Social Insurance authorities have responsibility for issuing or extending HI card for the patient who is currently under treatment at the healthcare establishment.



➤ HI coverage payment in case of changing healthcare establishment

Another notable point in Decree 146 is the HI coverage rate. Accordingly, in case where a HI card holder visits an inappropriate-level healthcare establishment at his/her discretion, and thereafter is transferred to another healthcare establishment by the such former healthcare establishment, he/she will be entitled to HI coverage with the rates applied to the cases of transferal to different-level hospitals specified in clause 3, article 22 in Law on Health Insurance.

2. Decree No. 148/2018/ND-CP amending certain guidelines on implementing Labour Code

The Government issued Decree No. 148/2018/ND-CP (“Decree 148”) dated 24 October 2018 amending, supplementing certain guidelines of Decree No. 05/2015/ND-CP detailing the implementation of Labor Code. Decree 148 is effective from 15 December 2018. Some significant points in Decree 148 are as follows:

➤ Working duration as the basis for calculating severance allowance and redundancy pay

According to the current regulation, the working duration that is previously used by the employer as the basis to pay severance allowance (if any) to employee, is incorporated into the working duration for the purpose of calculating future severance allowance and redundancy pay. However, Decree 148 has amended this regulation.

Accordingly, working duration that was already used as the basis to compute redundancy pay previously, will not be used to compute redundancy pay thereafter.

Additionally, probationary period is not included in actual working period as basis to calculate severance allowance and redundancy pay since Decree 148 comes into effect.

However, there are periods of time that will be included in the duration as basis for calculating severance allowance according to this Decree, for instance, leave for medical treatment, recovery after occupational accident, occupational disease, paid leave for fulfilment of citizen’s duties, etc.

➤ Time limit for settlement of payments after employment contract termination

Decree 148 also supplements guidelines about time limit for settlement of payments relating to benefits of employer and employee upon termination of labour contract. Accordingly, during 7 working days, from the termination of labour contract, both the employer and employee have responsibility for fulfilling the payments related to the benefit of each party. Previously, this clause only mentioned the time limit for the employer. In specific circumstances, the time limit can be extended but cannot exceed 30 days, from the termination date of labour contract.

➤ Authorised person to sign employment contract

Decree 148 mentioned 5 (five) types of subjects from employer's side who can act as the authorised person to conclude labour contracts instead of 4 (four) subjects as previously.

Accordingly, the person who is legally authorised by members of household business, or by legal representative based on charter of the company, cooperatives, or by head of legal entities in accordance with the regulations to conclude employment agreement can sign labour contract.

➤ The basis to calculate salary for annual leave, holiday and paid leave

According to the previous regulation, the basis for calculation of salary for annual leave, extra annual leave by seniority, public holiday, Tet holiday, paid leave is the salary indicated in labour contract of the preceding month. However, according to Decree 148, the basis for calculation has been changed to salary stated in labour contract.

➤ Salary used as the basis for compensation in case of illegal and unilateral termination of employment contract

Decree 148 also supplements the regulation on salary used as the basis for compensation in case of illegal unilateral termination of employment agreement. Accordingly, it is the salary in labour contract at the point of time the employer or the employee illegally and unilaterally terminates the employment contract.



3. Paper invoice is no longer required to prove the origin of goods when using electronic invoice ("e-invoice")

On 18 October 2018, the General Department of Taxation ("GDT") issued Official Letter No. 4049/TCT-CS providing guidelines on e-invoice.

According to this Official Letter, the seller has the right to convert e-invoice to paper invoice to prove the origin of tangible goods in transit in accordance with article 12, Circular No. 32/2011/TT-BTC. However, conversion can be performed only once and the converted paper invoice must have signature of legal representative and seal of the seller.

From 01 November 2018, in accordance with article 29, Decree 119/2018/ND-CP, conversion from e-invoice into paper invoice to prove the origin of goods has been abolished. Accordingly, when checking goods in transit, for the case of using e-invoice, the inspectors will obtain information on e-invoices via National Information Portal of the GDT, the request for paper invoice is no longer applicable. In case unexpected events, incidents or natural disasters cause impacts on access to the internet, the shipper of goods should have paper invoices transformed from e-invoices (could be paper copies without signature and seal of the seller) to show to the inspectors for the purpose of checking goods.

4. Domestic enterprises can rent office in export processing zone

On 19 October 2018, the General Department of Customs issued the Official Letter No. 6134/TCHQ-GSQL providing guidelines on renting space for offices in export processing zone. According to the official letter, domestic enterprises can rent office in export processing zone as headquarter of the enterprise or its branch. However, the enterprise must comply with the regulations stipulated in Law on investment, Decree No. 118/2015/ND-CP and other legal documents.

Before bringing equipment, machinery into the rented office, the domestic enterprise has to follow the requirements as below:

- Coordinating with customs sub-department managing export processing enterprises to inspect the rented space to ensure separation with office block of export processing enterprises; having control systems to manage employees come in and out of rented space; having surveillance camera monitoring entrance and exit gate (being able to archive, extract data upon request) connected to system of customs sub-department managing export processing enterprises.



- Creating list of goods brought to the branch inside export processing enterprise (this list needs confirmation letter of domestic enterprise, export processing enterprise leasing out the space and sub-department of customs) to serve the purpose of installing IT system of the enterprise, e.g. the server systems, office computers, etc. During the operation, any cases of bringing the equipment in and out for replacement need to be reported to customs sub-department managing the export processing enterprises.
- In case of asset transfer between the enterprises, customs declaration is required in order to comply with the regulations.

5. The cost of gifts given to employees is deductible provided that it does not exceed the average one month salary

The General Department of Taxation issued Official Letter No. 4003/TCT-CS dated 17 October 2018 on tax treatment of purchasing expenses of goods as gifts to employees that does not come from welfare fund. According to this Official Letter, in case the enterprise incurs any purchasing expenses as mid-autumn gifts, Tet gifts to its employees but does not use welfare fund, such expense is regarded as deductible expense for Corporate Income Tax ("CIT") purpose if it does not exceed the average one month actual salary in the relevant tax year.

In the meantime, input VAT is also creditable corresponding to the deductible expenses. When giving away the gifts to employees, the enterprise has to issue invoices in accordance with the regulations.

6. Tax treatment on payment of gifts in form of vacation trips to customers

On 12 June 2018, Ho Chi Minh Tax Department issued Official Letter No. 5509/CT-TTHT providing guidelines on payment of income to business individuals.

Under this Official Letter, in case the enterprise organises a promotion program registered with Department of Trade and Industry in form of free travel vouchers (e.g. free vacation trips) given to customers who meet sales target, the corresponding expenses of those travel vouchers are regarded as being related to the enterprise's business activities. Accordingly, such expenses are deductible for CIT purpose provided that invoices and supporting documents are in place (evidences of non-cash payment are required for the invoices with value of VND20 million or above).

However, in case the customers are business individuals, not attending the vacation trips organised by the enterprise but the enterprise pays cash to the customers with the amount equivalent to the cost of the trip, such cash amount is subject to Personal Income Tax (“PIT”). The enterprise will withhold and pay PIT of 1% on such supporting payment in cash made to the customers on behalf of those customers.

7. VAT and CIT treatment in case of deemed increase in tax liabilities of imported goods

On 02 August 2018, Hanoi Tax Department issued Official Letter No. 54152/CT-TTHT on the deemed increase in tax liabilities of imported goods.

According to this Official Letter, in case the company violates the regulations on tax declaration and as a result incurs additional import duty and input VAT of imported goods based on Decision on deemed tax issued by the customs authority (this violation is not one of the cases of tax invasion in accordance with the regulations), the tax treatment will be as follows:

- For VAT: the input VAT of imported goods paid based on Decision on deemed tax issued by the customs authority is creditable provided that the conditions for input VAT to be creditable are satisfied in accordance with the regulations.

- For import duty: the import duty paid based on Decision on deemed tax issued by the customs authority is deductible for CIT purpose provided that the requirements for expenses to be deductible are met under CIT regulations. However, the administrative penalties (due to under-declaration, incorrect declaration of product code, incorrect tax rates of imported products that lead to less tax payable) and interests due to late tax payment are not deductible for CIT purpose.



8. Contribution for natural disaster prevention fund is required to be made only once per annum

Bac Ninh Tax Department issued Official Letter No. 1762/CT-TTHT dated 10 July 2018 detailing the collection of natural disaster prevention fund. According to the guidance in this Official Letter, the employees who are subject to making contribution for natural disaster prevention fund are only required to make such contribution once per annum, and such contribution is only applied to the employees under labour contract with the company. In case during the year the employee has obtained the confirmation on contribution at the residential places or at other companies, those employees are not required to make contribution at the company.



9. Tax deduction of loan interest expenses of enterprises having related party transactions

On 28 August 2018, Binh Duong Tax Department issued Official Letter No. 14605/CT-TT&HT detailing the application of Decree No. 20/2017/ND-CP regarding loan interest expenses.

In particular, according to this guidance of Binh Duong Tax Department, in case the enterprise has annual fiscal year starting from 01 January 2017 and ending on 31 December 2017 and incurs related party transactions under the scope of regulations in Decree No. 207/2017/ND-CP, the enterprise has responsibility for declaring the related party relationships and related party transactions in accordance with Form 01 in the Appendix attached with Decree No. 20/2017/ND-CP and submits this Form 01 together with 2017 CIT Finalisation return. In relation to determination of deductible interest expenses incurred during the period for CIT purpose, it is regulated that if the enterprise's EBITDA is negative (less than zero), the total interest expenses during the tax period is not deductible for CIT purpose.

Contact

Please contact professional advisors at Grant Thornton Vietnam for assistance with taxation, work permits for expatriate and legal issues you may have during the course of your business.

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