

Update on the latest regulations and important tax policies

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In this newsletter, Grant Thornton Vietnam would like to update the important regulations and tax policies as follows:

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1. Decree No. 157/2018/ND-CP on new regional minimum wages

The Government issued Decree No. 157/2018/ND-CP (“Decree 157”) on 16 November 2018 providing guidelines on regional minimum wages applied to employees working under labour contracts. This Decree is effective from 01 January 2019. Accordingly, the Decree No. 141/2017/ND-CP dated 7 December 2017 on regional minimum wages applied to employee working under labour contract will expire when Decree 157 comes into effect.

To be specific, from 1 January 2019, regional minimum wages officially applied to employees working under labour contracts will be as follow:

- For enterprises located in region 1: VND4,180,000/month.
- For enterprises located in region 2: VND3,710,000/month.
- For enterprises located in region 3: VND3,250,000/month.
- For enterprises located in region 4: VND2,920,000/month.

Therefore, compared with the current regional minimum wages, the new regional minimum wages are higher, roughly from VND160,000 to VND200,000 per month.

The sub-regions mentioned in this Decree are district-level administrative divisions promulgated in the Appendix of the Decree.

Decree 157 clarifies that the enterprises apply the regional minimum wages applied to the location where the enterprises operates. In case, branches of the enterprises locate in different regions with different regional minimum wages, the respective minimum wages of the regions where the branches are located should be applied. The highest regional minimum wages will be applied to the enterprises operating in industrial parks, export processing zones that have different regional minimum salary.

2. Circular No. 17/2018/TT-BLDTBXH stipulating the enterprises' self-inspection of its compliance with the labor regulations

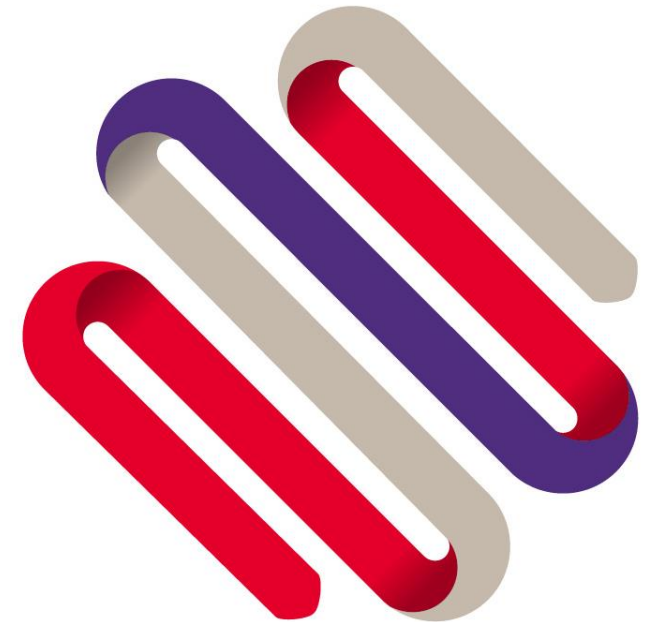
On 17 October 2018, the Ministry of Labor - War Invalids and Social Affairs issued Circular No. 17/2018/TT-BLDDTBXH ("Circular 17") providing guidelines on the enterprises' self-inspection of compliance with the labor regulations. This Circular will take effect from 1 January 2019. Decision No. 02/2006/QD-BLDTBXH dated 16 February 2006 will expire when Circular 17 takes effect.

Circular 17 provides guidelines on the enterprises' self-collection, analysis and evaluation of compliance with provisions of the labor regulations in their businesses.

In particular, the enterprises are required to perform self-inspection at least once per annum to evaluate their compliance and have solutions for improvement if necessary.

The self-inspection period starts from the first date of January in the previous year to the inspection date. However, the specific time for inspection shall be the enterprise's decision.

The self-inspection activities include the periodical labour reports, recruitment and training, conclusion and implementation of employment agreement, provisions of working hour and leaves, salary payment to employees, building and registration of labor disciplines, compensation for material liability, monthly contribution for compulsory social, health and unemployment insurances, and resolution of labor-related disputes and complaints.



2. Circular No. 17/2018/TT-BLDTBXH stipulating the enterprises' self-inspection of its compliance with the labor regulations (cont.)

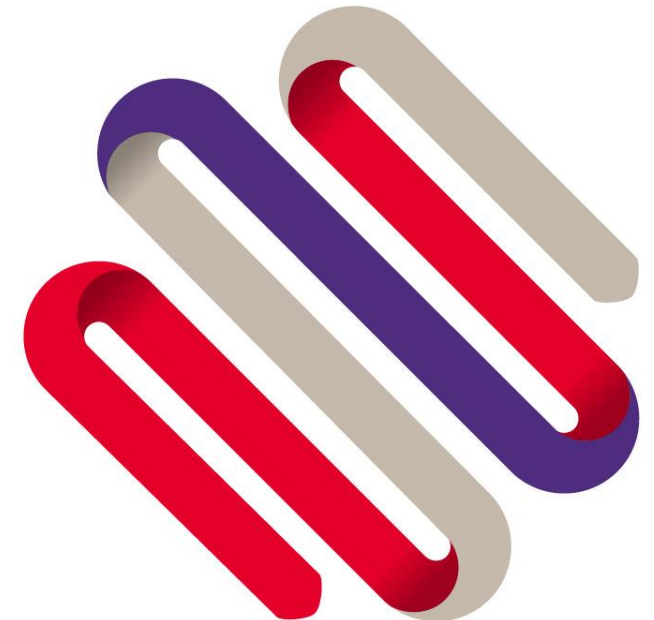
According to self-inspection schedule set by the enterprises, the enterprises will set up a self-inspection team and register an account on the website <http://tukiemtraphapluatlaodong.gov.vn> to obtain a self-inspection guidance note for its self-inspection purpose.

Self-inspection dossier includes the self-inspection note, self-inspection conclusion, document on establishment of the self-inspection team, and other relevant documents made during self-inspection process must be stored in the enterprise management dossier as a basis for monitoring, analyzing, and developing policies and methods for the purpose of improving labor law compliance at the enterprise.

The enterprise has the responsibility to collaborate with labor union in preparing online report of self-inspection outcomes as per written request by the the state inspectorate.

The enterprise, including its branches and offices located in local areas, construction entities are obliged to send an online report on the self-inspection result to relevant supervisory authority and local Inspectorate of Department of Labor, War Invalids and Social Affairs in locations where the enterprise's branches and offices or the construction entities operate.

According to this Circular, the enterprise should prepare report and self-inspection dossier in accordance with regulations to avoid the risk of being fined in the future by the authority.



3. From 01 December 2018, compulsory Social Insurance (“SI”) applies to foreigners

Ho Chi Minh City Social Insurance issued Official Letter No. 2446/BHXX-QLT dated 29 November 2018 providing temporary guidance on compulsory social insurance for foreign employees according to Decree No. 143/2018/ND-CP.

In general, the official letter provides basic guidelines on the subject of application, contribution rates, and monthly salary base for social insurance contribution, social insurance benefits, and procedures to participate in compulsory social insurance of foreigners in accordance with Decree No. 143/2018/ND-CP.

In particular, the effective date of social insurance contribution is 01 December 2018. However, at this point of time, From 1 December 2018, the Employers will make the contribution of 3% into the sickness, maternity and paternity Insurance Fund and 0.5% into the occupational accident – occupational disease Insurance Fund. From 01 January 2022, the Employers will make a contribution of 14% and the expatriates will make a contribution of 8% of their monthly salary into the retirement and death benefit fund.

Therefore, from 01 December 2018 to 31 December 2021,

foreign employees are only entitled to schemes for illness and maternity, occupational accident and occupational disease Insurance. The retirement, one-time social insurance and death cover insurance are only applicable from 01 January 2022.

According to this guideline of Ho Chi Minh City Social Insurance, regarding procedures and dossiers for compulsory SI contribution for foreign employees from 01 December 2018, Social Insurance department will transfer codes of all foreigners who have previously participated in HI with code BW into the new code IC for SI and HI contribution purpose. In case where the foreigners are exempt from SI contribution (inter-firm assignment or near retirement period), the employer shall make an electronic dossier No. 600 to make decrement adjustment to code IC and simultaneously make dossier No. 603 to make increment adjustment to code BW.

When preparing payment order, the employer must complete all 3 items: employer’s name, entity code, and payment details. If the employer makes one document for multiple codes (such as: YN, IC, BW), it must specify the specific amounts of each payment equivalent to each code in the payment details.

Other local social insurance departments are also expected to have guidelines on compulsory social insurance for foreigners.

4. Phone number registration is required for online information verification of the social insurance contribution process

Ho Chi Minh City Social Insurance Department issued official letter No. 2273/BHXXH-QLT dated 13 November 2018 providing guidelines on amending information of Social Insurance participants.

According to this official letter, the online verification of contribution process for SI, HI and UI at the Vietnam Social Insurance Portal (<https://baohiemxahoi.gov.vn/Pages/default.aspx> online section) must be made via the mobile phone number of the individual participant.

Therefore, when there are new employees, the enterprises need to guide participants to prepare Form TK1-TS with full information including mobile phone number of individual participants. The enterprises simultaneously prepare an electronic dossier No. 600 to record the labor increase.

For those who have been participated in SI and HI, the enterprises need to collect and supplement missing information and telephone numbers of individual participants, and at the same time preparing Form TK1-TS to submit the electronic dossier No. 608 for adjustment purpose when necessary.

For employees who have left their job, they are obliged to declare Form TK1-TS and submit directly to the relevant Social Insurance Department where they reside at or submit via postal service to adjust the registered personal telephone number.



5. Is it mandatory for new business established after 01 November 2018 to use electronic invoices?

On 29 November 2018, the General Department of Taxation (“GDT”) issued Official Letter No. 4763/TCT-CS to provincial tax departments to provided guidelines on electronic invoices.

Accordingly, the new businesses established in the period from 01 November 2018 to 31 October 2020 that have not received announcement on using electronic invoices from Tax Department may choose to register for pre-printed invoices, self-printed invoices, electronic invoices or order invoices issued by the tax authority (in case they purchase invoices) to use and implement administrative invoicing procedures in accordance with the current regulations.

In circumstance where the tax authority has issued announcement on obligatory use of electronic invoices, however, the new businesses are not able to meet requirements of information technology infrastructure, they can opt for registration of pre-printed or self-printed invoices. It is worth noting that the new businesses have responsibility for declaring the invoices data by Form 03 in the Appendix attached with Decree No. 119/2018/ND-CP and submitting VAT returns.



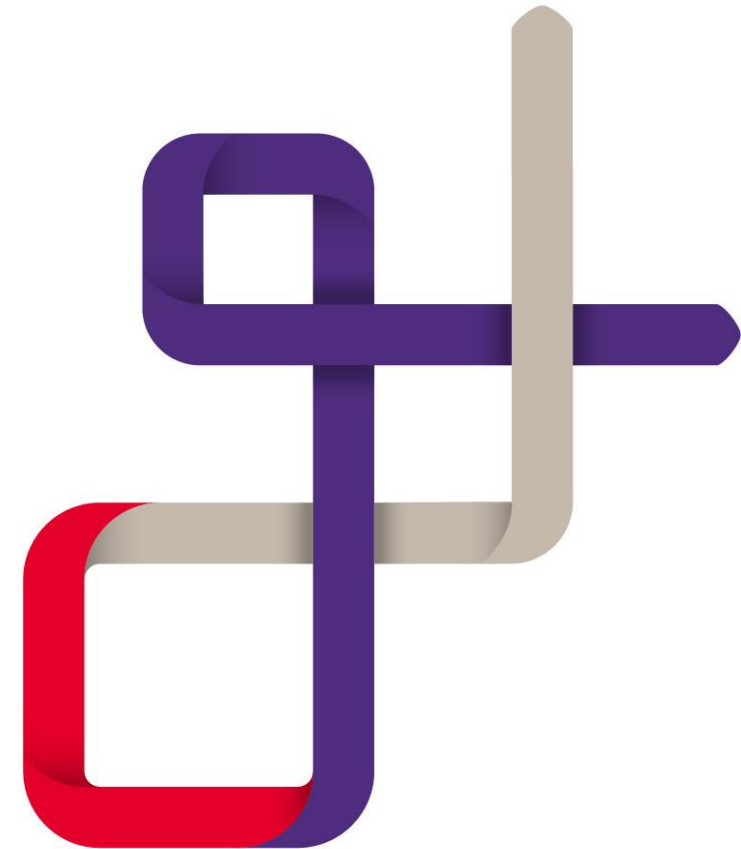
6. VAT refund following the operation of the investment project

The GDT issued Official Letter No. 4624/TCT-CS on 22 November 2018 to respond to Hanoi Tax Department on refund VAT of investment project.

In particular, according to the current regulations, during the investment stage, the investment project that meets the VAT refund conditions will be entitled to VAT refund. However, in recent tax audits, the tax authorities had an opinion of not allowing tax refunds for investment projects in the event the projects go into production stage at the time of submitting tax refund application.

According to Official Letter No. 4624, the State Auditors are proposing additional tax treatment on input VAT of investment projects incurred after operation date. Therefore, the GDT is reporting to the competent authorities regarding the aforesaid issue and will issue a guiding Official Letter after comments of competent authorities are obtained.

We will update the outcome of this issue as soon as possible when there is more detailed guidance available.



7. Decrement adjustment to VAT payable will not be entitled to re-calculation of late payment interest

On 7 November 2018, The GDT issued Official letter No. 4352/TCT-KK on adjustment of late payment interest.

Accordingly, in case the enterprise submits the revised VAT return for the earlier tax period and therefore reduces the VAT payable amount, the interest of late tax payment computed previously (from the deadline of tax payment of the earlier tax declaration to the submission date of the revised tax return) will not be re-calculated.

8. Amended Investment Registration Certificate must be obtained to be qualified for tax exemption applied to investment expansion

On 7 November 2018, the General Department of Customs issued Official Letter No. 6528/TCHQ-TXNK on tax treatment of import duty.

Under this Official Letter, in case the enterprise has the project entitled to import duty exemption applied to machinery, equipment and specialized means of transport used to form fixed assets of the project, the content should be clearly mentioned in the Investment Registration Certificate of the enterprise in accordance with export and import duty regulations.

The list of goods exempt from import duty and the monitoring sheet will be made only once for the entire project or for each stage of the project implementation, each construction category, or be made for each of combined system of machinery, equipments if the goods are combined system of machinery, equipment. In addition, registration for the List of goods must be done before executing the import procedure.

However, in case the enterprise builds more items, works for the project entitled to tax incentives but does not amend its Investment Registration Certificate and not register its business expansion project, these new items cannot be considered business expansion project by the competent authority. Accordingly, these new items do not meet the requirements on announcement on duty exemption list and not meet conditions for import duty exemption applied to machinery, equipment and specialized vehicle for the intention of forming fixed assets.



9. Income received as a result of agreement signed with Google, Facebook is subject to Foreign Contractor Tax (“FCT”)

Hanoi Tax Department issued Official Letter No. 61336/CT-TTHT dated 4 September 2018 providing guidance on declaration and payment of FCT.

According to this Official Letter, in case the Foreign Contractors (“FC”) earning income sourced from Vietnam based on the agreement between the FC (Google, Facebook) with Vietnamese enterprises, their income is subject to FCT (including CIT and VAT) in Vietnam. Accordingly, the enterprise is responsible for declaring, withholding and paying taxes on behalf of foreign contractors in accordance with the regulations.

Given that the expense paid to the FC (Google, Facebook) is related to the business activities of the enterprise, properly supported by legitimate invoices, documents indicating name, address, tax code of the enterprise (in case the seller cannot provide invoices, FCT return and FCT payment voucher must be obtained) and non-cash payment vouchers for each payment over VND20 million, it is regarded as deductible expense for CIT purpose.



10. Capitalization of loan interest expenses when purchasing machinery and equipment

On 21 November 2018, the Ministry of Finance (“MOF”) issued Official Letter No. 14494/BTC-QLKT guiding capitalization of interest expenses when purchasing machinery and equipment.

According to this Official Letter, the enterprise is not allowed to capitalize the interest expenses of the loans given for the purpose of purchasing machinery, equipment and immediately putting them into operation. The MOF’s guideline is in line with Sections 07 and 08 of Vietnamese Accounting Standards No. 16 - Borrowing Costs (VAS 16) and Circular 200/2014/TT- BTC dated 22 December 2014, article 35, clause 1, point d1.

The MOF once again emphasized in this Official Letter that Circular 200/2014/TT-BTC dated 22 December 2014 providing guideline on accounting entries, making and presenting financial statements is not applied to determining the tax obligations of the enterprise for State Budget.

However, it is noted that Official Letter 14494 issued by the MOF does not mention the guidelines for determining the historical cost of fixed assets in clause 1a, article 4 of Circular 45/2013/TT-BTC guiding the management, using and depreciation of fixed assets. In this regard, the enterprise should consider the treatment in each specific circumstance to minimize the risk for future tax audit/inspection.



Contact

Please contact professional advisors at Grant Thornton Vietnam for assistance with taxation, accounting, transfer pricing, labour regulation, investment and Customs as well as legal issues you may have during the course of your business. Visit our [Tax Hub](#) to access tax newsletters, tax updates on new policies.

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