

Update new legal documents and some important tax policies

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Content

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

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1. Ho Chi Minh City Social Insurance Department requested Enterprises to adjust the salary base for Social Insurance contribution according to the new minimum regional salary before 28 February 2019



On 20 December 2018, Ho Chi Minh City Social Insurance Department (“SID”) has issued Official Letter No. 2717/BHXH-QLT guiding the contribution of Social Insurance, Health Insurance, Unemployment Insurance (“SI, HI and UI”) and work accident and occupational disease Insurance for employees from 01 January 2019.



To be specific, from 01 January 2019, the employers must review the minimum salary in the salary scale and payroll that was sent to the labor authorities in order to make adjustment (if necessary) and ensure the principle that the minimum salary cannot be lower than the new minimum regional salary under Decree No. 157/2018/ND-CP. Correspondingly, Ho Chi Minh City SID requests enterprises to adjust the salary and remuneration package stated in labor contracts as the base for SI, HI, UI and work accident and occupational disease Insurance contribution for each employee to be in line with the built salary scale and payroll.



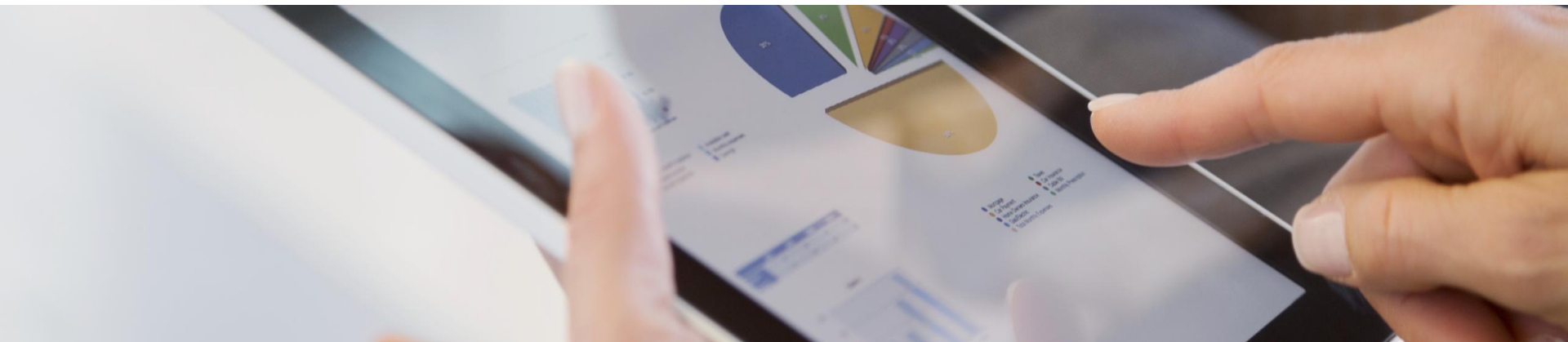
The enterprises have to apply the salary no lower than the minimum regional salary to the employees doing simple jobs when entering into a labor contract and pay SI, HI, UI and work accident and occupational disease Insurance accordingly. For workers who have passed professional training and vocational training, the salary must be at least 7% higher than the minimum regional salary.



According to Ho Chi Minh City SID, by 28 February 2019 at the latest, the employers have to submit the documents to adjust the salary base for SI, HI, UI and work accident and occupational disease Insurance for the employees according to the new minimum regional salary.



If the enterprises fail to make the said adjustment by the deadline, SID will temporarily adjust the salary base for SI, HI, UI and work accident and occupational disease Insurance to be equal to the new minimum regional salary for the employees doing simple jobs and increase salaries of the employees completing professional training by 7% until the enterprises submit the required adjustment dossier according to the regulations. The SID only confirms the period of insurance participation and resolves the regimes after the enterprises submit the said adjustment dossier (to be in line with new minimum regional salary) as prescribed




2. The business expansion projects adding scopes of business but not increasing operation scale and capital are not entitled to CIT incentives

On 17 December 2018, Hanoi Tax Department issued Official Letter No. 82371/CT-TTHT providing guidance on CIT incentives in the case of additional licensed scopes of business per the investment certificates.

According to this official letter, in case the company amends Investment Registration Certificate (“IRC”) to add more scopes of business, but such amendment is not associated with the increase in operation scale and capital of the current investment project, this is not considered as the business expansion project. Therefore, it is not entitled to CIT incentives applied to business expansion.

For the current operating project, the company will continue to enjoy the incentives for the remaining period if the conditions for tax incentives are satisfied.





3. Notable tax points for Export Processing Enterprises (“EPEs”) providing repairing services for domestic enterprises

On 13 December 2018, Hanoi Tax Department issued Official Letter No. 81739/CT-TTHT on tax policy for Export Processing Enterprises (“EPEs”) providing services for domestic enterprises.

According to Hanoi Tax Department, in case the company is an EPE signing a contract to provide mold repairing and maintenance services for domestic enterprises, such activity must be licensed.

Simultaneously, as this activity is subject to Value Added Tax (“VAT”), the company must separately record and register tax with the tax authority to declare and pay VAT separately for this activity. The method of calculating VAT for mold repairing and maintenance services provided for domestic enterprises will be determined according to VAT return under the regulations.

The EPE issues VAT invoices or sales invoices depending on its method of VAT declaration, which is either credit method or direct method.

For Corporate Income Tax (“CIT”), if such activity of mold repairing and maintenance service provision is not within the initial registered scope of business of initial investment project, when adding scope of business, in case the company does not have a new investment project or investment expansion project and not increase investment capital, the company will not be entitled to CIT incentives for incomes earned from providing such mold repairing and maintenance services.

4. Goods borrowed from foreign partners for production activities and then re-exported are not exempt from import duty



The General Department of Customs issued Official Letter No. 7447/TCHQ-TXNK dated 18 December 2018 on treatment on tax refund of goods borrowed from foreign partners for production and then re-exported.



According to Law on import and export duty, machinery and equipment temporarily imported and then re-exported for the purpose of testing, researching and developing products are exempt from duty. However, according to this Official Letter, goods imported under a contract to serve production activities and then re-exported to foreign partners are not considered to serve the activities of testing, researching and developing products according to the above regulations, therefore, not exempt from import duty.



In addition, goods imported under the said contract to serve production and then re-exported to foreign partners are not qualified for depreciation in accordance with Circular 45/2013/TT-BTC, article 9. Accordingly, the goods do not meet conditions for import duty refund (the refundable amount of import duty is determined based on the remaining use value of the goods upon re-export in correspondence with the time of use and retention in Vietnam; in case the goods are no longer usable, refund of paid import duty is not applicable).

5. Conditions for salaries paid to the expatriates working under assignment letter are deductible for Corporate Income Tax purpose

Ho Chi Minh City Tax Department issued Official Letter No.13276/CT-TTHT on 14 December 2018 to provide guidance on Corporate Income Tax (“CIT”) deduction.

According to this Official Letter, in case the expatriates are assigned by the parent company in Japan to work in Vietnam and involve in production and business activities of the company in Vietnam under the assignment letter, provided that (i) the assignment letter fully presents the content of a labor contract as an agreement between the employee and the employer in terms of the paid employment, working conditions, rights and obligations of each party in employment relations, etc., and (ii) the expatriates are defined as legal workers in accordance with Labor Code, granted Work Permits and (iii) the expatriates’ remuneration package are indicated in the assignment letter, the salaries paid to the expatriates will be deductible for CIT purpose.



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