

LEGAL UPDATES

AUGUST 2019

New points on appropriation

Circular No. 48/2019/TT-BTC dated August 08, 2019 of the Ministry of Finance provides guideline on making and settling provisions for decline in inventory, loss of investments, doubtful debts and warranty of products, merchandises, construction works of the enterprises.

One of notable points mentioned in this Circular is that the enterprises are no longer allowed to provide against loss of abroad investments (Clause 2 of Article 2, Clause 4 of Article 3).

Balance of provision for loss of abroad investments provided by the enterprises (if any) must be reimbursed, recorded to decrease the expenses at the time of preparation of 2019's financial statements (Clause 5 of Article 8).

However, regarding to the provision for the decline of inventories, the enterprises are allowed to provide against impairment of goods which are even outside the warehouses such as goods in transit, goods on consignment, goods in tax-suspension warehouses (Clause 1 of Article 4).

In addition, the level of provision for impairment of investment and provision for loss of financial investments has changed in comparison with the previous formula.

The time for provision and reimbursement would be the time for preparation of the annual financial statements (Clause 2 of Article 3), rather than the time ending the annual accounting period or the last day of the financial year according to the former regulations (Clause 2, Article 3 of Circular No. 228/2009/TT-BTC).

The Circular takes effect from October 10, 2019 and shall be applicable from the financial year of 2019.

Circular No. 228/2009/TT-BTC dated December 07, 2009, Circular No. 34/2011/TT-BTC dated March 14, 2011, Circular No. 89/2013/TT-BTC dated June 28, 2013 and other written documents containing regulations on appropriation and use of provisions which are contrary to the regulations of this Circular are repealed.

Documents needed for application for getting confirmation on work permit exemption for foreigners

Official letter No. 755/CVL-QLLD dated August 01, 2019 of the Ministry of Labor, Invalids and Social Affairs refers to the confirmation of not being subject to application for work permit.

According to Clause 3, Article 8 of Decree No. 11/2016/ND-CP (as amended by Decree No. 140/2018/ND-CP), applications for requesting confirmation that a foreigner is exempted from getting the work permit include the following documents:

- (i) Written documents requesting for the confirmation;
- (ii) Documents to prove that such foreigner is exempt from getting work permit;
- (iii) For dossier to prove the exemption from getting work permit of the foreigner, its copy must be submitted together with its originals for comparison or must be certified, at the same time foreign languages must be translated into Vietnamese.

Before October 08, 2018 - the date when the Decree No. 140/2018/ND-CP takes effect - applications for requesting confirmation that a foreigner is exempted from getting the work permit must also include the brief of the foreigner's full name, age, gender, nationality, passport number, etc. However, these requirements have been removed.

According to Article 172 of the Labor Code and Article 7 of Decree No. 11/2016/ND-CP, **the following cases are exempted from the work permit:**

1. As a capital contributed member or an owner of the limited liability company;
2. As the Board of Management's member of the Joint Stock Company;
3. As a Chief Representative of a foreign company in Vietnam;
4. Entering Vietnam with the term under 03 months to perform the service offered or to troubleshoot technical cases;
5. A foreign lawyer granted the practice license by Vietnam;
6. According to the regulations of the international treaties to which Vietnam participates in;
7. Interns;
8. Internal travel;
9. Implementation of ODA projects;
10. Performing press activities;
11. Teaching and researching at the international schools in Vietnam;
12. International volunteers;
13. As a technical experts or chief executive officers working less than 30 days.

Regulations on sanction related to social insurance

Some of the following acts related to social insurance are considered to be prohibited from performing or required by enterprises to avoid being sanctioned:

Slow payment of the labor accident allowance

Upon receiving the labor accident allowance transferred by the social insurance authority, the enterprise must quickly hand over to employees having the accident within 10 days.

Exceeding this term, the penalty will be 03 million VND for each case of violation.

(Clause 2, Article 1 and Clause 6, Article 2 of Decree No. 88/2015/ND-CP)

Slow payment of social insurance

As prescribed at Clause 1 Article 7 Decision No. 595/QĐ-BHXH dated April 14, 2017, the enterprise must pay social insurance monthly, as the latest time is the last day of the month.

If paying social insurance later than the term mentioned above, the enterprise will be fined from 24% to 30% of the total payment of social insurance, the maximum fine is VND 150 million.

In addition, the enterprise must additionally pay the interest on the late payment at the rate of the investment operation from the social insurance fund during the year.

(Clause 2, Clause 4, Article 26 of Decree No. 95/2013/ND-CP dated August 22, 2013)

Slow preparation of dossiers for participating social insurance

If the new agreed labor contract subject to pay social insurance, the enterprise must prepare the participation dossier of social insurance within 30 days from the date of contract.

The slow preparation of the social insurance participation dossier will be fined from VND 4,000,000 to VND 6,000,000 for each labor contract.

(Clause 3, Article 28 of Decree No. 95/2013/ND-CP dated August 22, 2013)

Making forged dossiers for enjoying social insurance

Employees who commit acts of false declaration, making forged dossiers for enjoying the social insurance (sickness, maternity, retirement and so on) will be fined from VND 500,000 to VND 1,000,000.

Enterprises who commit acts of making forged dossiers for enjoying the social insurance for the purpose of taking advantage will be fined about VND 15,000,000 per dossier.

(Clause 1, Clause 4, Article 27 of Decree No. 95/2013/ND-CP dated August 22, 2013)

Missing declaration of labor contracts subject to social insurance payment

From 2018, labor contracts with a term of 1 month to 3 months shall be subject to compulsory social insurance (Law on Social Insurance No. 58/2014/QH13).

Therefore, every month, the enterprise will have to pay social insurance for all labor contracts with a term of 1 month or more.

If the enterprise misses the labor contract compulsory for paying social insurance, the enterprise will be fined from 24% to 30% of the total payable amount whether unintentionally.

For the case of not paying social insurance for all employees, the penalty rate will be from 36% to 40% of the total payable amount.

The maximum fine for the acts of omission or not paying social insurance for all employees is VND 150,000,000.

(Article 26 of Decree No. 95/2013/ND-CP dated August 22, 2013)

Agreement on not paying social insurance

According to Article 5 of Decision No. 595/QĐ-BHXH dated April 14, 2017, the payment rate of compulsory social insurance of the enterprise is 17% (enterprise) and 8% (employee), the total rate is 25% (the monthly salary).

The enterprise and the employee are required to follow this rate to pay social insurance, they are not allowed to have the agreement on not paying or paying with lower amount.

The employee who having the agreement with the enterprise on not paying social insurance or paying with lower rate shall be fined from VND 500,000 to VND 1,000,000. For the enterprise, it will be fined from 24% to 30% of the total amount of the social insurance payment, the maximum fine is VND 150,000,000.

(Clause 1, Clause 2, Article 26 of Decree No. 95/2013/ND-CP dated August 22, 2013)

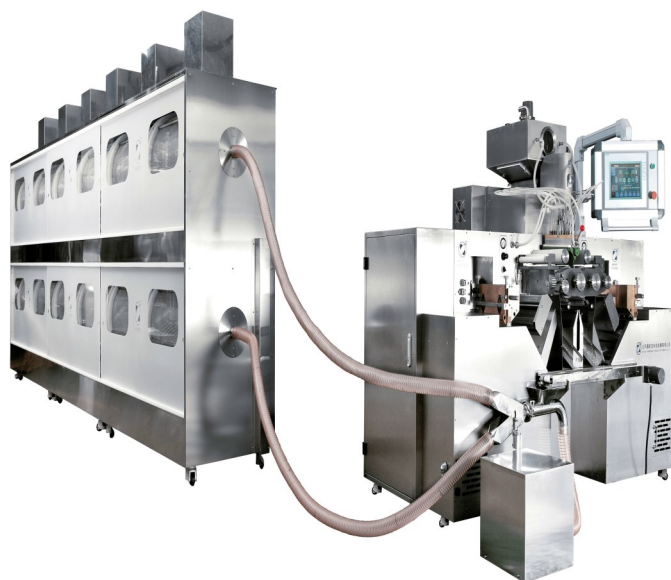
On-spot import of used machinery is exempt from quality assessment

Official letter No. 2395/BKHCN-DTG dated August 08, 2019 of the Ministry of Science and Technology refers to the issue that the enterprise purchases (on-spot import) used machinery, equipment, technological lines of local enterprises.

Accordingly, from June 15, 2019, the import of used machinery and equipment shall comply with the provisions of Decision No. 18/2019/QD-TTg.

However, according to the Ministry of Science and Technology, Decision No. 18/2019/QD-TTg mentioned above only applies to used machinery and equipment upon first imported from abroad into Vietnam, not adjusted for machinery and equipment to be transferred in Vietnam between Vietnamese enterprises, including export processing enterprise with local enterprises.

Accordingly, when the export processing enterprise purchases used machinery and equipment from local enterprises (on-spot import), then it does not need to comply with provisions on quality inspection at Decision No. 18/2019/QD-TTg.



From when the implementation progress of a project is considered as being started

Official letter No. 5582/BKHDT-DTNN dated August 09, 2019 of the Ministry of Planning and Investment refers to the registration of the project implementation schedule.



As prescribed at Article 44 of Decree No. 118/2015/ND-CP, foreign investors if want to establish the enterprise in Vietnam, they must perform procedures of issuing the investment registration certificate under Article 29, 30, 31 of this Decree, they also need to perform procedures of establishing enterprises to carry out the investment project and business activities.

From the issuance date of the enterprise registration certificate, the new established enterprise shall be considered as the investor of that project and the project implementation progress is started from the issuance date of the enterprise registration certificate (Clause 1, Article 45 of Decree No. 118/2015/ND-CP).

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."