



# LEGAL UPDATES

## JANUARY 2018

### MAIN POINTS

### New regulations on the conditions for import-export business and distribution of FDI enterprises since 2018

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**Decree No. 09/2018/ND-CP** dated January 15, 2018 of the Government provided detailed regulations on Commerce Law and Law on the management of foreign trade for the activities of purchasing and selling goods and activities directly related to the purchase and sale of goods of the foreign investors, economic organizations having foreign investment capital in Vietnam.

The Decree stipulates the detailed conditions allowing FDI enterprises to implement the right to export, right to import, right to distribute goods and services directly related to the purchase and sale of goods.

One of the new regulations which should be paid attention to in this Decree is to the removal of the requirement to apply for a license for the right to import and export for FDI enterprises.

FDI enterprises only have to apply for a license for those activities stipulated in Article 5 of this Decree, including: right of retail distribution, right of wholesale distribution, logistics services, trade promotion, intermediary trade, e-commerce and so on.

In addition, the scope of the implementation of the right to export of FDI enterprises is also expanded by allowing to export goods from the processing orders in Vietnam (Article 7).

Furthermore, the new Decree stipulates a number of conditions to allow FDI enterprises to trade commodities not yet committed in WTO such as oil, grease, rice, sugar, books, newspapers and so on.

Regarding to the licensing procedure, if previously authorized to issue the license is the provincial People's Committee, now move on to The Department of Industry and Trade.

The Decree takes effect from January 15, 2018 and replaces Decree No. 23/2007/ND-CP dated February 12, 2007.

## Delayed adjustment of expansion investment license will be fined 20-30 million dongs

**Official Letter No. 83647/CT-TTHT** dated December 29, 2017 of the Tax Department of Hanoi City responded about the expansion investment project of Enplas Vietnam Co., Ltd which does not carry out procedures to adjust its investment license.

According to this Official letter, in cases where enterprises actually carried out investment activities to expand the production scale (such as renovating workshops, expanding production lines, purchasing additional fixed assets), but have not adjusted the investment certificate, such enterprise can still apply for adjustment.



However, when they are granted the amended investment certificates, they will be sanctioned for administration violation according to Clause 4, Article 13 of **Decree No. 50/2016/ND-CP**, with a fine of from 20 to 30 million dongs.

## Advertising on shall be subject to foreign contractor tax (FCT)

**Official letter No. 9806/CT-TTHT** dated October 9, 2017 of the Tax Department of Ho Chi Minh City responded about the tax policy.

According to the guidance in **Official letter No. 5465/TCT-KK** dated November 25, 2016, in case the Company incurred advertising expenses on the Google/Facebook network, the Company is allowed to pay in advance by the credit card of the Company's employee and repay via bank account later on condition that such form of payment has been stipulated in the financial regulations or under decision of payment authorization.

However, before paying the advertising costs to foreign organizations (Google/Facebook), **the Company must withhold to pay the FCT on behalf of such organizations, including 5% VAT and 5% of corporate income tax.** The deadline for declaration of the FCT is 10 days from the date of payment at the latest.



## Exported goods derived from import are entitled to value added tax (VAT) refund since February 01, 2018



**Official letter No. 5344/TXNK-CST** dated December 22, 2017 of the General Department of Customs responded

about the VAT on exported goods.

As provided in Clause 3 Article 1 of **Circular 130/2016/TT-BTC**, from July 01, 2016, the exported goods with importing origin shall not be entitled to VAT refund, but only entitled to deduction until over.

However, on February 01, 2018, the VAT refund policy for exported goods derived from import will be reinstated in accordance with Decree 146/2017/ND-CP dated December 15, 2017.



The Company can base on the following documents and vouchers to record and withhold the tax on expenses of internet advertising:

- Invoices issued by Google/Facebook to the Company;
- Dossiers of declaration and payment of the foreign contractor tax;
- Document showing the authorization for the employee to make the payment;
- Document of payment from the employee's account to Google/Facebook;
- Document of payment from the Company's account to the employee.



## Some of regulations take effect since 2018

### Social insurance - foreign employees are compulsory to pay the social insurance

Foreigners who enter Vietnam to work under a work permit or a practicing certificate or license will be required to participate in compulsory social insurance in Vietnam from 2018.

The current social insurance payment rate are 17% and 8% (refer to the table below, as provided in Section 3 of **Official Letter No. 1734/ BHHX-QLT** by Ho Chi Minh City Social Insurane on August 16, 2017):

Participants	Social insurance	Occupational accident and disease insurance	Health insurance	Unemployment insurance	Total
Employer	17%	0.5%	3%	1%	21.5%
Employee	8%		1.5%	1%	10.5%

In addition, foreign employees who have a labor contract are still subject to the occupational accident and disease insurance like the Vietnamese employees. Also from 2018, with labor contracts for a period of less than 3 months, the employer must also pay (formerly, the employer just only needs to pay for those labor contracts having the term at least 3 months). The current applicable rate is 0.5% and is only payable by the enterprises (**Decree No. 44/2017/ND-CP** dated April 14, 2017).

### Tax refund - only online applications are acceptable

**Official letter No. 3474/TCT-KK** dated August 04, 2017 of the

General Department of Taxation: Accordingly, up to December 31, 2017, 100% of enterprises who are entitled to VAT refund for exported goods and investment projects must register to use the electronic tax refund service.

With the repeal of the aforesaid Circular, the foreign contractors will no longer have to register the lists of materials, machinery and equipment imported or temporarily imported for re-export for constructions in Vietnam.

### Import-export

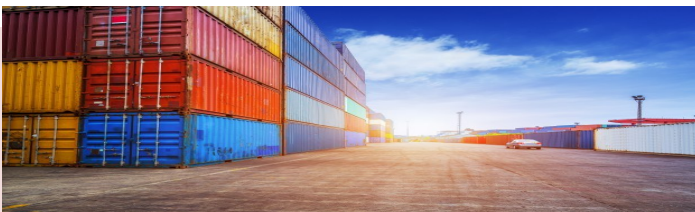
#### The list of import-export goods is replaced

The List of Vietnam's import-export goods provided in Circular No. 103/2015/TT-BTC (taking effect from 2015) expires from January 01, 2018 while the new List promulgated in Circular No. 65/2017/TT-BTC is applied instead.

In principle, the new list of import-export goods also includes 02 appendices:

Appendix I - List of import and export goods in Vietnam.

Appendix II - Six (6) general rules explaining the classification of goods under the List of import-export goods in Vietnam based on the Harmonized Commodity Description and Coding System of the World Customs Organization.



### Foreign construction contractors are not subject to registration of the list of imported machinery

According to the guidelines provided in Circular No. 35/2017/TT-BCT dated December 29, 2017, from February 12, 2018 onwards, the Circular No. 53/2015/TT-BCT stipulating the procedures for registration of lists of materials, machinery and equipment imported or temporarily imported for re-export for constructions in Vietnam of the foreign contractors will be repealed.



#### 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".