



LEGAL, LABOR AND TAX UPDATES

November 2019

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A. NEW LEGAL INSTRUMENT

❖ GOVERNMENT

14 November 2019 | Decree No. 86/2019/NĐ-BTC Regulating the legal capital levels applicable to credit institutions and branches of foreign bank

Scope of regulation and applicable entities

1. This Decree regulates the legal capital levels applicable to credit institutions and branches of foreign bank established and operating in Vietnam.

2. This Decree is applicable to:

a) Credit institutions;

b) Branches of foreign bank;

c) Organizations and individuals involved in the establishment, organization, operation of credit institutions and branches of foreign bank.

Accordingly, the legal capital levels applicable to the People's Credit Fund are regulated as follows:

- VND 0,5 billion for the People's Credit Fund operating in a commune or a town;
- VND 01 billion for the People's Credit Fund operating in a ward; the People's Credit Fund operating in inter-commune and inter-ward areas.

(Currently, Decree No. 10/2011/NĐ-CP stipulates that the People's Credit Fund is divided into two levels, including central and grassroots levels with the legal capital as to 2011 of VND 3,000 billion and VND 0.1 billion respectively).

The legal capital level applicable to other types remains the same, namely:

- Branch of foreign bank: USD 15 million.
- Financial company: VND 500 billion.
- Financial leasing company: VND 150 billion.

(This Decree shall take effect from 15 January 2020)

15 November 2019| Decree No. 90/2019/NĐ-CP Stipulating region-based minimum wages applied to employees working under labor contracts

Scope of regulation

This Decree stipulates the region-based minimum wages applied to employees who work under labor contracts in accordance with the Labor Code.

Regulated entities

1. Employees who work under terms and provisions of labor contracts as prescribed in the Labor Code.
2. Enterprises established, organized and operating under the Law on enterprises.
3. Cooperatives, cooperative unions, artels, farms, households, other organizations and individuals in Vietnam that hire employees on the basis of labor contracts.
4. Foreign authorities, foreign organizations, international organizations and foreigners that live/operate in the territory of Vietnam and hire employees under labor contracts (unless otherwise stipulated in international agreements to which the Socialist Republic of Vietnam is signatory).

The entities mentioned in Clauses 2, 3 and 4 of this Article are hereinafter referred to as “enterprises”.

Accordingly, the region-based minimum wages applicable from 01 January 2020 shall increase from VND 150,000 to VND 240,000/month, depending on different regions. Details are as follows:

- For employees working in enterprises located in region I: VND 4,420,000 /month (increase of VND 240,000 compared to current regulations at Decree No. 157);
- For employees working in enterprises located in region II: VND 3,920,000 /month (increase of VND 210,000/month);
- For employees working in enterprises located in region III: VND 3,430,000 /month (increase of VND 180,000 /month);
- For employees working in enterprises located in region IV: VND 3,070,000 /month (increase of VND 150,000 /month).

The regions referred to in this document are district-level administrative divisions;

The list of region I, region II, region III and region IV is provided in the Appendix enclosed herewith.

(This Decree shall take effect from 01 January 2020)

❖ **MINISTRY OF INDUSTRY AND TRADE**

14 November 2019 | Circular No. 25/2019/TT-BCT Amending and supplementing several articles of Circular No. 22/2016/TT-BCT dated 03 October 2016 of Minister of Industry and Trade on implementation of rules of origins in the ASEAN Trade in Goods Agreement

Procedures for issuance and verification of Certificates of Origin are specified in Decree No. 31/2018/NĐ-CP detailing the Law on foreign trade management in terms of origin of goods and Appendix VII issued together with Circular No. 22/2016.

Currently, procedures for issuance and verification of Certificates of Origin are specified in Circulars No. 06/2011/TT-BCT and No. 01/2013/TT-BCT amending and supplementing Circular No. 06 and Appendix VII issued together with Circular No. 22/2016.

In addition, Appendix IV - List of information technology products (ITA) issued together with Circular No. 22/2016 is replaced by the Appendix attached to Circular 25.

(This Circular shall come into effect from 01 January 2020)

B. OFFICIAL INSTRUCTIONS

✚ GENERAL DEPARTMENT OF TAXATION

12 November 2019 | Official Letter No. 4641 / TCT-DNNCN on PIT for overtime pay

According to the opinion of the Ministry of Labor, War Invalids and Social Affairs in Official Letter No. 4038 / LDTBXH-PC dated September 16, 2019 that: *When calculating overtime pay, the number of overtime hours allowed to be calculated according to the labor law: Maximum of 200 hours per year; in special cases, it does not exceed 300 hours per year as prescribed in Article 106 of the 2012 Labor Code. In case of overtime work exceeding the above permitted level supposed to be a violation of law.*

Pursuant to the current regulations and the above opinions of the Ministry of Labor, War Invalids and Social Affairs, the General Department of Taxation **only accepts the higher part of the salary from salaries and wages paid for**

night work and overtime. The normal rate for overtime does not exceed the level specified in Article 106 of the Labor Code is exempt from PIT.

Thus, according to this instruction, salaries and wages for night work and overtime are paid higher than normal rate **for overtime working hours in excess of the provisions of the Labor Code has the tax risk of non-exemption from PIT.**

12 November 2019 | Official Letter No. 4660 / TCT-DNNCN on answering the recommendations of Minh Dang Quang Limited Law Company

Pursuant to the provisions of Point 2.8, Appendix 4 of Circular No. 39/2014 / TT-BTC, the General Department of Taxation provides specific guidance for cases where the purchaser of goods of an organization is **an individual business household that returns goods handled similarly to the case where the buyer has no invoice.** Specifically, the buyer and the seller shall make a record which specify types of goods, quantity, and VAT-exclusive price or VAT amount according to the sales invoice (number and date) of the returned goods and reasons for return, and the seller shall revoke the issued invoice.; the buyer is not required to issue the return invoice.

13 November 2019 | Official Letter No. 4670 / TCT-KK on the declaration of value-added tax (VAT) at the branch

In this Official Letter, the General Department of Taxation confirms the branches in another province than the taxpayer's headquarter which directly sells goods and generates revenue, should issue invoice and declare VAT to the supervisory tax authority managing branch.

The Company declares and pays VAT for sales and service provision of the Branch at the head office as well as the decision of the Tax Administration managing the Branch require the Branch to pay 2% provisional on the turnover subject to 10% VAT arising in the locality is not in accordance with the regulations.

For tax amounts that the Branch has not declared in accordance with the law, the General Department of Taxation instructs the Tax Department in managing the company's headquarter to redefine and confirm tax obligations of the Branch with the Company and the Tax Department managing the Branch. Based on the above these tax obligations, the branch shall pay taxes in accordance with regulations.

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