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# NEW LEGAL LETTERS AUGUST 2018

# TOP HEADLINES



DONG DU  
INTERNATIONAL  
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## **HOT NEWS IN AUGUST 2018**

- **Decree 86/2018 / ND-CP regulates foreign cooperation and investment in education, effective from 1 August.**
- **Circular No. 15/2018 / TT-NHNN amending Circular 22/2016 / TT-NHNN regulates the purchase of corporate bonds by the credit institution (CI) and the branch of the foreign bank.**
- **Circular No. 09/2018 / TT-BTP defining the criterion for the legal aid case.**
- **Official Letter No. 3040 / TCT-HTQT dated 8/8/2018 on determination of permanent establishment.**
- **Official Letter No. 3065 / TCT-KK dated 9/8/2018 on granting MST to declare and pay contractor tax according to the mixed method.**
- **Official Letter No. 3100 / TCT-CS dated 10/8/2018 on collection of land rent.**
- **Official Letter 3104 / TCT-CS dated 10/08/2018 on royalties.**

## **NEW LEGAL DETAILS**

- **TAXE FIELD**
- **Official Letter No. 3040 / TCT-HTQT dated 8/8/2018 on determination of permanent establishment.**

Signs identifying the establishment of a permanent establishment in Vietnam of a foreign unit include:

- ✓ Vietnamese company on behalf of foreign companies collects service charges from customers of foreign company and transfer these fees to foreign company. In other

words, the Vietnamese company has formed a partnership that is a representative of a foreign company that performs part of the business of a foreign company in Vietnam (collection of service charges).

- ✓ Foreign company: (i) reserves the right to dispose of sales staff, management or accountants at the office of the Vietnamese company, (ii) (iii) moves or inspects any item / item that the Vietnamese company stores and / or carries; (iv) directs or designates a third party to inspect books, records and accounts at the office of a Vietnamese company that has caused the Vietnamese company to comply with foreign company's detailed instructions and under certain control of foreign companies, thus losing independence within the scope of implementation of agreements with foreign companies.

In this case, the foreign company is determined to have a permanent establishment in Vietnam through a Vietnamese company even though there is only one service agreement signed between the foreign company and the Vietnamese company.

- **Official Letter No. 3065 / TCT-KK dated 9/8/2018 on granting MST to declare and pay contractor tax according to the mixed method.**

In cases where foreign traders without presence in Vietnam wish to participate in business activities in the form of foreign contractors which have not established legal persons in Vietnam and sign commercial contracts with Vietnamese customers, Foreign traders must be granted certificates of registration of the import right and export right according to the provisions of the Government's Decree No. 90/2007 / ND-CP of May 31, 2007 [Import rights of foreign traders without presence in Vietnam]

After the foreign trader is granted a certificate of registration of the right to export or import right granted by the competent authority, Local Tax office will guide foreign traders to make tax registration according to Clause 3, Article 7 of Circular No. 95/2016 / TT-BTC.

- **Official Letter No. 3100 / TCT-CS dated 10/8/2018 on collection of land rent.**

For cases where the land is leased by the State with land rents collected for the whole lease term as prescribed in Decree No. 46/2014 / ND-CP but not on the list of geographical areas and areas eligible for investment incentives under Decree No. 108/2006 / ND-CP, which has been determined and announced by the competent State body and notified of the payable land rent in accordance with the provisions of the law, investment incentives under Decree 118/2015 / ND-CP shall not be considered for exemption or reduction of land rent.

- **Official Letter 3104 / TCT-CS dated 10/08/2018 on royalties.**

The exemption of natural resource tax shall be carried out by the tax office directly managing the place of exploitation. If the cases eligible for exemption from natural resource tax for exploited land under the provisions of Clause 6, Article 9 of the Law on Royalties, the declaration of natural resources tax shall be made as follows.

Monthly basing itself on relevant documents on royalty exemption and reduction, taxpayers shall make natural resource tax declarations for land exploited and used on the spot on the assigned or leased land areas according to the set form 01 / TAIN issued together with Circular No. 156/2013 / TT-BTC. Determining the natural resource tax amount arising in the month, the temporarily paid natural resource tax amount of the month and the royalty amount to be paid in the month.

- **ENTERPRISES**

- **Decree 86/2018 / ND-CP regulates foreign cooperation and investment in education, effective from 1 August.**

The educational program of a foreign country to be integrated must be a program which has been accredited for the quality of education in the host country or recognized by the competent educational agency in the host country for the quality of education. Integrated education programs must meet the objectives of Vietnam's education program and meet the requirements of the foreign educational program. It is not compulsory for learners to study the same content again and ensuring the stability of all levels of education and communication between the classes for the benefit of students, ensuring voluntariness and not overloading. for students...

Abolish the regulation that students under 5 years of age can not study foreign training

programs. Instead of this condition, the number of students enrolled in a foreign education program must be less than 50% of the total number of students.

- **Circular No 15/2018 / TT-NHNN amending Circular 22/2016 / TT-NHNN regulates the purchase of corporate bonds by the credit institution (CI) and the branch of the foreign bank.**

Accordingly, regulations on credit institutions and branches of foreign bank are not allowed to buy corporate bonds issued for the purpose of restructuring the debts of enterprises. In addition, the circular also added a number of principles when CIs, branches of foreign bank buy corporate bonds as follows.

- ✓ Issuance of internal control on the purchase of corporate bonds, especially bonds issued to implement projects in potentially risky areas.
- ✓ Specifying the potential areas of risk and credit policy, invest in these areas.

Circular 15/2018 / TT-NHNN is effective from 02/8/2018.

- **LAW PROCEDURES**
- **Circular No. 09/2018 / TT-BTP defining the criterion for the legal aid case.**

Accordingly, the case of legal aid in the civil procedure, except civil cases, the case is settled under the shortened procedure, is defined as complex legal cases, typical when meeting one of the criteria after:

- ✓ Meeting one of the general criteria for the participation in the proceedings;
- ✓ Legal aid in cases where the provisions of law on matters to be resolved in the case are unclear and have not been guided in uniform application; There are no direct legal documents;
- ✓ Legal aid falls under the jurisdiction of the lower-level people's court, but is taken up by the People's Courts of higher level;
- ✓ Legal proceedings must extend the time limit for preparation for hearing.

Circular 09/2018 / TT-BTP took effect on 21/8/2018.

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*If the readers have any questions or requests, please contact with us via*

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