

03  
2020



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# LEGAL NEWSLETTER

Issue No. 3 | March 2020





## MAIN CONTENT

REMARKABLE REGULATIONS

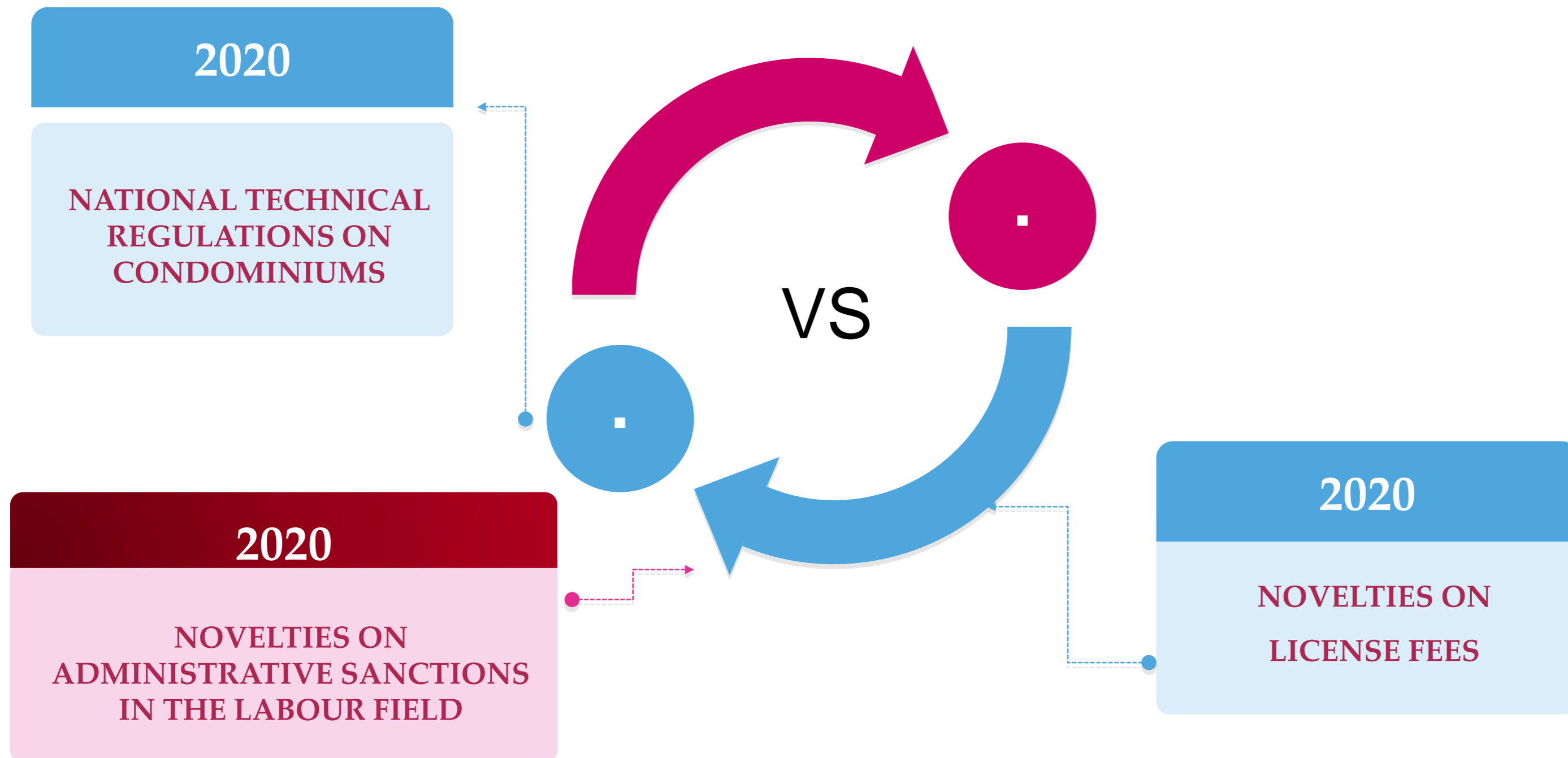
READING FOR YOU

ANSWERS TO QUERIES

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## REMARKABLE REGULATIONS



# NATIONAL TECHNICAL REGULATIONS ON CONDOMINIUMS



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[Legal Newsletter]

On 31 December 2019, the Ministry of Construction issued QCVN 04: 2019/BXD in attachment to Circular 21/2019/TT-BXD on the National Technical Regulations on condominiums (“QCVN 04:2019/BXD”). Accordingly, QCVN 04: 2019/BXD will take effect on 31 December 2019 and feature some remarkable contents as follows:

## 1. Governing scope and subjects of application

- QCVN 04:2019/BXD prescribes the applicable technical requirements when building or rebuilding condominiums up to 150m in height or having up to 3 basements, including condominiums for residential and mixed-use purposes.
- For buildings over 150m high or with 4 basements or more, in addition to complying with QCVN 04:2019/BXD, technical requirements and organizational and public engineering solutions must be added. The project must conform to the fire prevention and fighting characteristics of the condominium on the basis of standard documents permitted by law. These requirements and solutions are subject to approval by the competent professional authority.
- QCVN 04:2019/BXD applies to organizations and individuals involved in construction investment, management and use of condominiums.

## 2. Area of a condominium apartment

### ▪ Apartment

- There must be at least one living room and one toilet area. The minimum usable area of an apartment is not less than 25 m<sup>2</sup>.
- For commercial housing projects, the percentage of apartments with an area of less than 45 m<sup>2</sup> must not exceed 25% of the total number of apartments of the project.
- Apartments must be under natural sunbeam. The apartment must have two or more rooms, allowing one residential room without natural sunbeam.
- Bedrooms must be well ventilated, under natural sunbeam. The usable area of a bedroom in an apartment must not be less than 9 m<sup>2</sup>.

### ▪ Residence apartment (Condotel)

- Using area of a Condotel is not less than 25 m<sup>2</sup>.
- Other requirements are set according to the selected standard for a Condotel.

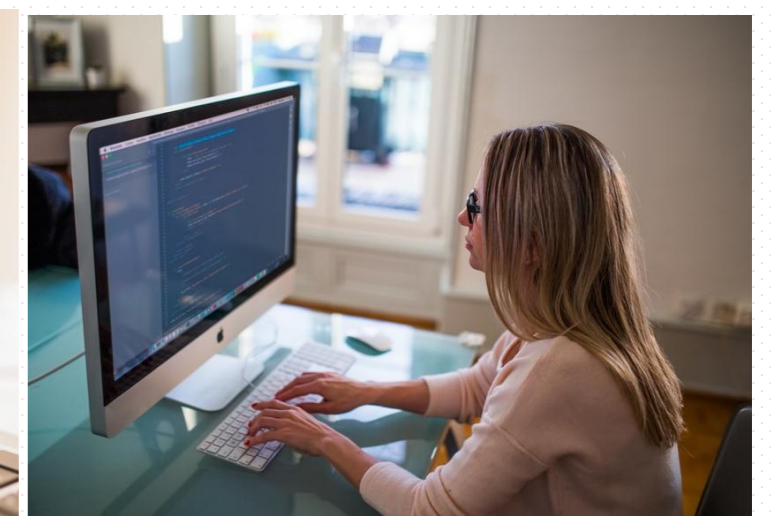
### ▪ Officetel

- The usable area of an Officetel must not be less than 25 m<sup>2</sup>, of which the minimum working area is 9 m<sup>2</sup>. No kitchen layout in an Officetel.
- Other requirements are set according to the selected standards applicable to the design of an Officetel.

## 3. Technical regulations and standards on condominium apartments

- For residential rooms, the clearance height must not be less than 2.6m.
- For kitchens and toilets, the clearance height must not be less than 2.3m.
- For basements, semi-basements, technical floors, the clearance height must not be less than 2.0m.
- For evacuation shelters, the clearance height must not be less than 2.6m.
- For the interior space under a sloping roof used as a bedroom or a living room, the clearance height of half of the room area must not be less than 2.1 m.
- For rooms and other functional areas (other than for residential purposes), the clearance height must not be less than 2.6m.

In addition to the said requirements, condominium apartments must also meet other design requirements, such as ensuring a minimum design life of 50 years; the house structure ensuring long-term durability corresponding to the design life; specifying the use life of the condominium in design dossiers and other documents; the investor must conduct inspection and evaluation of work quality and apply interventions to extend the use duration or take other measures in accordance with law.



# NOVELTIES ON ADMINISTRATIVE SANCTIONS IN THE LABOUR FIELD



As of 01 March, 2020, the Government issued Decree 28/2020/ND-CP stipulating administrative sanctions in the field of labour, social insurance and sending Vietnamese employees abroad to work under contracts ("Decree 28/2020").

Although at the present time, the Labour Code 2019 has not been officially applied, many points of Decree 28/2020 are studied, updated and modified to suit the current socio-economic situation, which is a necessary preparation for employers and employees to understand and comply with the Labour Code 2019 which officially takes effect from 01 January, 2021.

Decree 28/2020 consists of 6 chapters and 58 articles providing for violations, sanctioning forms and levels, remedial measures, competence to sanction, make minutes of, conduct procedures for sanctioning in the field of labour, social insurance, sending Vietnamese employees abroad to work under contracts. Accordingly, a number of provisions of this Decree have raised the level of administrative sanctions for labour-related violations in order to ensure deterrence, prevent violations and contribute to the development of a fair and civilized working environment and safeguard the legitimate rights and interests of employees adequately.

**Some notable contents for enterprises and employers are specified as follows:**

## 1. The objects of application regulated by Decree 28/2020

- Employers, employees and other individuals and organizations committing administrative violations in the field of labour, social insurance, and sending Vietnamese employees abroad to work under contracts;
- Persons with sanctioning competence and competence to make minutes of administrative violation;
- Other agencies, organizations and individuals involved in the administrative sanctions;

## 2. Violating regulations on labour contract execution

- **A fine of VND 2 - 25 million for employers committing one of the following acts:**
  - Failure to enter into a labour contract in writing for the jobs with a full term of 3 months or more;
  - Failure to enter into the right type of labour contract with employees; sign labour contracts with a lack of major contents that are required to be included in labour contracts;
  - Signing labour contracts in case of hiring employees to be directors of state-owned enterprises in noncompliance with the law.
- **A fine of VND 20-25 million for employers committing any of the following acts:**
  - Keeping originals of identification papers, diplomas and certificates of employees when signing or implementing labour contracts;
  - Forcing employees to use money or other assets as security measures for the performance of labour contracts;
  - Signing labour contracts with employees from full 15 years old to under 18 years old without the written consent of the legal representative of the employees.



# NOVELTIES ON ADMINISTRATIVE SANCTIONS IN THE LABOUR FIELD



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## 3. Violating regulations on salary payment

According to this Decree, if the employer is an organization, it will suffer a double penalty that may amount up to VND 100 million for the act of not paying salary in time. The fine depends on the number of affected employees. Namely:

REF. NO	NUMBER OF AFFECTED EMPLOYEES	FINE LEVEL
1	01- 10 employees	VND 5,000,000 – VND 10,000,000
2	11 - 50 employees	VND 10,000,000 – VND 20,000,000
3	51 - 100 employees	VND 20,000,000– VND 30,000,000
4	101 - 300 employees	VND 30,000,000 – VND 40,000,000
5	310 employees or more	VND 40,000,000 – VND 50,000,000

The said fines also apply to the following violations:

- Failure to pay or insufficiently pay salaries to employees as agreed in labour contracts;
- Failure to pay or insufficiently pay salaries to employees performing heavy, hazardous or dangerous jobs, extremely heavy, hazardous or dangerous jobs or jobs requiring vocational training;
- Failure to pay or underpay overtime salaries, night shift salaries, or job suspension salaries;
- Unlawful deduction of employees' salaries;
- Paying salaries in noncompliance with the law when temporarily transferring employees to do other jobs compared to labour contracts, during job suspension, strikes or untaken annual leave days.

## 4. Adding some violations with the following fine levels:

- A fine of VND 10,000,000 to VND 15,000,000 will be imposed on an employer who applies various forms of labour discipline for the same labour violation;
- A fine of VND 10,000,000 to VND 15,000,000 will be imposed on an employer who fails to pay domestic workers amounts of social insurance and health insurance as prescribed by law so that they can handle the insurance by themselves;
- A fine of VND 50,000,000 to VND 75,000,000 will be imposed upon any employer that uses forced labour without enough gravity to be *examined* for penal *liability*.

## 5. Removing the regulation on penalizing companies for their failure to notify the expiry date of labour contracts

Decree 95/2013/ND-CP remains effective until 14 April, 2020, providing a warning or a fine of VND 500,000 to VND 1,000,000 for employers who do not notify employees in writing at least 15 days before expiry of the definite-term labor contract.

Decree 28 has removed the regulation on penalizing companies for their failure to notify the expiration date of labor contracts, and understandably, the employer is no longer bound to notify the employee of the expiration date. Therefore, the parties involved in the labor contract in this case must pay attention and proactively plan to negotiate with the company to extend the contract or continue to enter into a new contract in accordance with the laws, employers and employees need to properly exercise their rights and obligations in case of the labor contract expiry.

The said penalties applied to employers who are individuals. For employers as organizations, the penalty level is doubled. Therefore, employers need to pay attention to comply with the law in the process of signing labour contracts, employing laborers etc. ... to limit the risks and liabilities that may affect business activities.

The Decree takes effect from April 15, 2020 and will replace Decree No. 95/2013 / ND-CP of August 22, 2013 and Decree No. 88/2015/ND-CP of October 7, 2015.

# NOVELTIES ON LICENSE FEES



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[Legal Newsletter]

On 24 February, 2020, the Government issued Decree 22/2020/ND-CP ("Decree 22/2020") amending and supplementing Decree 139/2016 regulating license fees. Accordingly, Decree 22/2020 presents many new key points directly related to the payment of license fees applicable to entities regulated by Decree 139/2016 as follows:

## 1. Adding 3 cases entitled to license fee exemption

Providing license fee exemption in the first year of establishment, production or business activities (from January 1 to December 31) for:

- Newly established organizations (granted new tax codes, new enterprise identification numbers);
- Households, individuals and groups of individuals that first engage in production and business activities;
- Small and medium-sized enterprises converted from household businesses (defined in the Law on Support for Small and Medium-sized Enterprises) are exempted from license fee for 03 years from the date of being granted the first business registration certificate;
- Public high school and public preschool.

The exemption of license fee reduces costs and help enterprises save time carrying out procedures. Accordingly, during the exemption of license fee, if the aforesaid organizations, households, individuals, groups of individuals, small and medium-sized enterprises establish branches, representative offices and business locations, these will also be exempted from license fees.



## 2. Supplementing the provision on the time-limit for paying license fees

According to the new Decree, the time-limit for paying license fees will stay the same (no later than January 30). However, due to the addition of subjects eligible for fee exemption, the time-limit for fee payment with respect to these subjects is also re-prescribed. Namely:

- For small and medium-sized enterprises converted from household businesses (including branches, representative offices, business locations), they will pay license fees after the period of exemption (the fourth year from establishment) as follows:
  - If the license fee exemption period expires within the first 6 months of the year, the deadline for paying license fees is July 30 of the expiry year;
  - If the license fee exemption period ends within the last 6 months of the year, the deadline for paying license fees is 30 January of the year immediately following the expiry year.
- For household businesses, individuals or groups of production and business individuals that have been dissolved, and return to production and business activities, paying license fees is as follows:
  - In case of commencing operations in the first 6 months of the year, the deadline for paying license fees is 30 July of the year of operation.
  - In case of commencing operations within the last 6 months of the year, the deadline for paying license fees is 30 January of the year immediately following the year of operation.

# NOVELTIES ON LICENSE FEES



### 3. Adjustment of license fee rates for small and medium-sized enterprises

Because small and medium-sized enterprises converted from household businesses are exempted from license fees for a period of 03 years, license fees may only be paid by  $\frac{1}{2}$  (half) of the prescribed level, specifically for small and medium-sized enterprises converted from household businesses (including branches, representative offices, business locations) when the fee exemption period is expired if:

- Being expired within the first 6 months of the year to pay license fees for the whole year
- Being expired within the last 6 months of the year to pay 50% of the license fee for the whole year

### 4. There is no fee payment in case of production and business suspension

In case an operating fee payer notifies in writing the immediate tax management authority of its suspension of production and business in the calendar year, the license fees for the year of suspension are not required if the following 2 conditions are satisfied:

- Sending the tax authority a written request for temporary cessation of production and business activities before January 30.
- Not paying license fees of the year of suspending production and business activities.

### 5. Cases for non-declaration of license fees

Decree 22/2020 stipulates that household businesses, individuals and groups of individuals paying taxes by the presumption method do not have to declare license fee.

Accordingly, the tax authorities will rely on tax returns, tax database to determine business revenue as a basis for calculating payable license fees. This is one of the remarkable provisions of Decree 22/2020, which enables household businesses, individuals and groups of business individuals paying taxes by the presumption method to avoid some procedures and save time.

**Note: For the remaining organizations and individuals engaged in production and business activities, business license fee must be declared according to regulations.**

Although the effective Decree 22/2020 may affect the state budget revenue from the exemption of license fee, in another aspect, it provides positive support for businesses and people in reducing input costs; ensuring the rationality, feasibility, and facilitating practical implementation and application. In addition, it also helps to improve the ranking of business start-up index; enhance positions in the international rankings on business environment, competitiveness and contribute to the rapid increase in the number of newly established enterprises.

**Decree 22/2020/ND-CP takes effect from 25 February, 2020.**





# READING FOR YOU



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## READING FOR YOU

EXPECTED INCREASE IN FAMILY  
CIRCUMSTANCE DEDUCTIONS UP TO  
VND 11 MILLION/MONTHGLOBAL VIETNAM  
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[Legal Newsletter]

**From 2020, the deduction level for taxpayers who gain income from wages and salaries is expected to increase up to VND 11 million/month, for dependents 4.4 VND million/month instead of VND 9 million and VND 3.6 million respectively for the time being.**

Recently, the Ministry of Finance has said that it sent a dispatch to consult with ministries, branches, localities and organizations and individuals about the draft resolution of the National Assembly Standing Committee on adjusting the family circumstance deductions of personal income tax.

Accordingly, pursuant to Article 1.4 of Law No. 26/2012/QH13 stipulating that *“In case the consumer price index (CPI) fluctuates by more than 20% compared to the time when the law takes effect or the time of adjusting the latest family circumstance deduction level, the Government will submit the National Assembly Standing Committee for adjustment of the family circumstance deduction levels prescribed in this Article in alignment with price fluctuation to apply to the next taxation period”*.

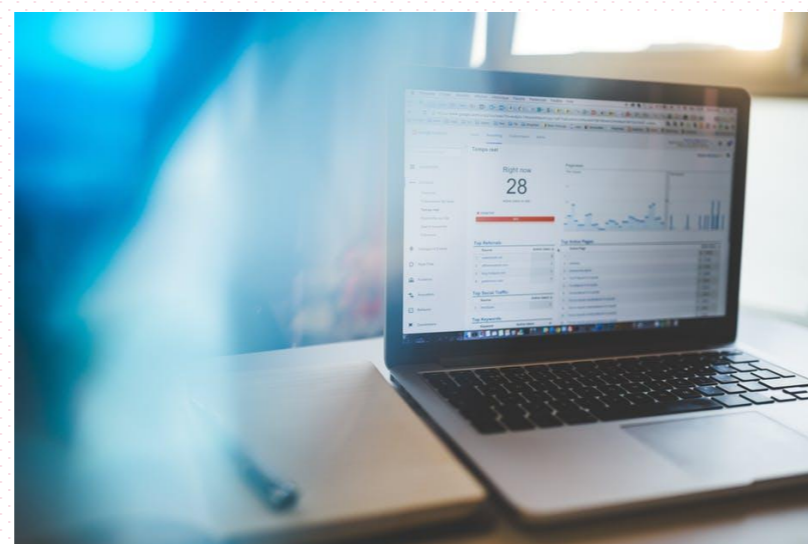
According to the Ministry of Finance, the figures provided by the General Statistics Office, the CPI at the end of December 2019 compared to 01 July, 2013 increased by 23.2%.

Pursuant to the said provisions, the Ministry of Finance deems it necessary to consider adjustment of the family circumstance deduction levels of personal income tax. Therefore, the Ministry of Finance has consulted extensively with the ministries and branches to submit the Government a draft resolution on adjusting the family circumstance deduction levels of personal income tax.

For the taxation period 2020, the expected deduction level for taxpayers themselves increases from VND 9 million/ month to VND 11 million/month. And the deduction for each dependent from VND 3.6 million/month to VND 4.4 million/month. With the adjustment of the family circumstance deduction levels as aforesaid, if applied, this will contribute to relieving taxpayers of difficulties amid price and inflation increase compared to 2013. Tax payables will be reduced for all taxpayers.

Source: [L.Thanh\\_tuoitre.vn](http://L.Thanh_tuoitre.vn)

Hopefully, the above content is useful for your reference, if you still have questions or need other legal assistance, please contact our lawyers via email: [info@gvlawyers.com.vn](mailto:info@gvlawyers.com.vn) or telephone: 028 3622 3555 for specific answers and timely support.



## READING FOR YOU

FROM 2021, SOME JOBS WILL REQUIRE  
A PROBATION OF UP TO 6 MONTHSGLOBAL VIETNAM  
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[Legal Newsletter]

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With this provision, it can be seen that the Labour Code 2019, which came into effect on 01 January, 2021, supplemented the probationary period for employees holding managerial positions (Labour Code 2012 does not address this issue).

It is worth mentioning that the probationary period of this job reaches up to 06 months, much longer than other jobs. Therefore, enterprises as well as employees should pay attention when the official Code is applied.

#### **Enterprises must notify the probationary results**

To ensure the objectivity, fairness as well as protect the rights of employees, Article 27 of the new Labour Code has clearly specified the responsibilities of enterprises when the probationary period is over. At the end of the probationary period, the employer must notify the employee of the probation result.

If the probationary job meets the requirements, the employer will continue to perform the assigned labour contract if there is an probationary agreement therein or a labour contract must be entered into if a probationary contract is previously entered into.

If the probationary test is unsatisfactory, the employment contract or the probationary contract will be terminated.

Regarding the right to cancel the probationary agreement, at present, the Labour Code 2019 allows both employees and employers to cancel the signed probationary contract or labour contract without notice and without any compensation.

*Source: Author Thuy Linh\_luatvietnam.vn*



# ANSWERS TO QUERIES



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## ANSWERS TO QUERIES

2020



### 1. Royalties under a trademark use contract

- In case the Company pays a foreign enterprise to use a trademark in Vietnam (registered with the National Office of Intellectual Property), the obligation on withholding tax will be implemented in accordance with the instructions in Official Letter No. 15888/BTC-CST dated 7 November 2016 of the Ministry of Finance guiding the withholding tax policy for trademark licensing.
- In case the Company has declared and deducted the withholding tax as prescribed:
  - For trademark usage amounts: The company is allowed to make their accounting into the deductible expenses if they meet the conditions specified in Article 4 of Circular 96/2015/TT-BTC.
  - For CIT amounts paid on behalf of foreign contractors: The Company will implement according to Article 4.2.37 of Circular 96/2015 /TT-BTC.
  - For VAT amounts paid on behalf of foreign contractors: Companies will proceed in accordance with Articles 14 and 15 of Circular 219/2013 / TT-BTC

*Guidelines are provided in Official Letter No. 7634/CT-TTHT dated 24 February 2020 of the Ha Noi City Tax Department.*



### 2. Minutes of invoice retrieval

- In case of any error of an e-invoice that has been prepared and issued to the buyer, such e-invoice will be handled in accordance with Article 9 of Circular No. 32/2011/TT-BTC.
- In case the buyer does not have an electronic signature, the seller and the buyer will make a written agreement clearly stating the errors and signed by the seller and the buyer.

*Guidelines are provided in Official Letter No. 7639/CT-TTHT dated 24 February 2020 of the Ha Noi City Tax Department.*



# ANSWERS TO QUERIES



## 3. Associated transactions

- In case the Company borrows money from individuals who are members of the Members' Council involved in operating the Company (including cases which do not bear interests), the Company has made associated transactions under Article 4 of Decree 20/2017/ND-CP. Therefore, the Company determines the deductible interest expenses when calculating taxable income in accordance with Article 8.3 of Decree 20/2017/ND-CP dated 24 February 2017 of the Government.
- Currently, the Ministry of Finance and the General Department of Taxation are in the process of receiving, summarizing arising problems and proposals in the implementation of Decree No. 20/2017/ND-CP in general and Article 8.3 of Decree. No. 20/2017/ND-CP in particular to report to the Government for promulgation of a Decree amending and supplementing Decree No. 20/2017/ND-CP. In case there are instructions different from the said guidelines, the Ha Noi City Tax Department will guide the Company for implementation.

*Guidelines are provided in Official Letter No. 6684/CT-TTHT dated 20 February 2020 of the Ha Noi City Tax Department.*

2020



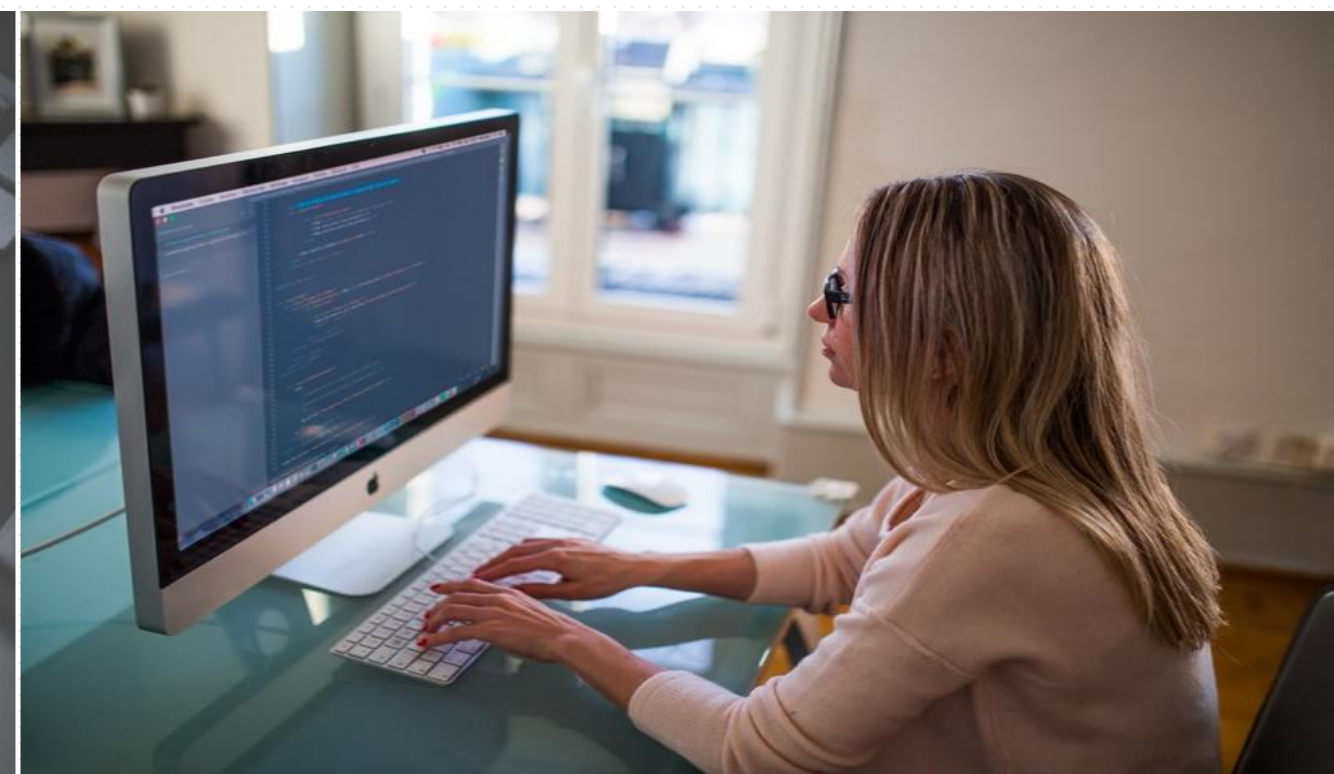
## 4. Paying health insurance premiums for foreign workers

- Foreign employees working in Vietnam in the form of intra-corporate transfer as prescribed in Article 3.1 of Decree No. 11/2016/ND-CP dated 3 February 2016 of the Government including managers, executives, experts and technical workers of a foreign enterprise that has established a commercial presence on the territory of Vietnam, temporarily moving within the enterprise to a commercial presence on the territory of Vietnam and previously recruited by foreign enterprises at least 12 months before are not subject to health insurance.
- The time for reducing the process of participation in health insurance is from 01 February 2020 onwards. In case, in February 2020, the participants have used the health insurance card and incurred medical examination and treatment costs, the health insurance process will be reduced from 01 March 2020.
- It is recommended that units urgently review and prepare dossiers to adjust the process of participation in health insurance for foreign workers pursuant to the said regulations and send it to the social insurance agency before 31 March 2020.

*Guidelines are provided in Official Letter No. 288/BHXH-QLT dated 18 February 2020 of the Ho Chi Minh City Social Insurance.*



## LIST OF LEGAL DOCUMENTS ISSUED IN THE MONTH



# LIST OF LEGAL DOCUMENTS ISSUED IN THE MONTH



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[Legal Newsletter]

NO.	DOCUMENT TITLE	ISSUANCE DATE	EFFECTIVE DATE
<b>GOVERNMENT</b>			
1	Decree 26/2020/ND-CP detailing a number of articles of the Law on Protection of State Secrets	28/02/2020	01/07/2020
2	Decree 25/2020/ND-CP detailing a number of articles of the Bidding Law on Investor Selection	28/02/2020	20/04/2020
3	Decree 24/2020/ND-CP detailing a number of articles of the Law on Prevention and Control of the Harms of Liquor and Beer Abuse	24/02/2020	24/02/2020
4	Decree 23/2020/ND-CP regulating the management of river-bed sand and gravel and protection of the river beds and banks	24/02/2020	10/04/2020
5	Decree 22/2020/ND-CP amending and supplementing a number of articles of the Decree 139/2016/ND-CP dated 04 October 2016 of the Government on business license fee	24/02/2020	25/02/2020
6	Decree 21/2020/ND-CP amending and supplementing a number of articles of the Governmental Decree 139/2017/ND-CP dated November 27, 2017 on penalties for administrative violations against regulations on investment and construction; extraction, processing and trading of minerals in form of building materials; management of infrastructural constructions; real estate business, housing development, management of the use of houses and public offices	17/02/2020	01/04/2020
7	Decree 20/2020/ND-CP on the pilot implementation of the management of labour, salaries and bonuses for a number of state-owned economic groups and corporations	17/02/2020	01/04/2020
8	Decree 19/2020/ND-CP on the inspection and handling of disciplines in the implementation of the law on handling administrative violations	12/02/2020	31/03/2020
9	Decree 18/2020/ND-CP sanctioning administrative violations in the field of geodesics and mapping	11/02/2020	01/04/2020
10	Decree 17/2020/ND-CP amending and supplementing a number of articles of Decrees concerning business investment conditions under the state management of the Ministry of Industry and Trade	05/02/2020	22/03/2020
11	Decree 16/2020/ND-CP detailing a number of articles of and measures to enforce the Law on Vietnamese Nationality	03/02/2020	20/03/2020
12	Decree 15/2020/ND-CP stipulating the sanctions against administrative violations in the fields of post, telecommunications, radio frequency, information technology and electronic transactions	03/02/2020	15/04/2020

NO.	DOCUMENT TITLE	ISSUANCE DATE	EFFECTIVE DATE
<b>MINISTRY OF FINANCE</b>			
1	Circular No. 11/2020/TT-BTC amending and supplementing a number of articles of Circular No. 278/2016/TT-BTC dated 14 November 2016 of the Minister of Finance providing for the rate and regime of collection, remittance, management and use of fees in healthcare sector	20/02/2020	06/04/2020
<b>MINISTRY OF FOREIGN AFFAIRS</b>			
1	Circular 02/2020/TT-BNG on the organization for settlement of consular work	14/02/2020	01/04/2020
2	Circular 01/2020/TT-BNG on Honorary Consulate of the Socialist Republic of Vietnam	06/02/2020	23/03/2020
<b>MINISTRY OF PLANNING AND INVESTMENT</b>			
1	Circular 01/2020/TT-BKHDT guiding the classification and evaluation of cooperatives	19/02/2020	01/04/2020
<b>MINISTRY OF INFORMATION AND COMMUNICATION</b>			
1	Circular 01/2020/TT-BTTTT on detailing and guiding the implementation of a number of articles of the Law Publication and Decree 195/2013/ND-CP dated 21 November 2013 of the Government detailing a number of articles and measures to enforce the Publication Law	07/02/2020	01/04/2020
<b>MINISTRY OF TRANSPORT</b>			
1	Circular No. 05/2020/TT-BGTVT amending and supplementing a number of articles of Circular No. 03/2018/TT-BGTVT dated 10 January 2018 prescribing the inspection for technical safety quality and environmental protection with respect to imported automobiles regulated by Decree No. 116/2017/ND-CP	26/02/2020	15/04/2020
<b>VIETNAM GENERAL CONFEDERATION OF LABOUR</b>			
1	Decision 333/QĐ-TLĐ on the Regulation on the Trade Union settling and participating in the settlement of complaints and accusations	28/02/2020	28/02/2020
2	Decision 174/QĐ-TLĐ issuing the Charter on the Vietnamese Trade Union (Term XII)	03/02/2020	03/02/2020
<b>MINISTRY OF LABOUR, WAR INVALIDS AND SOCIAL AFFAIRS</b>			
1	Circular 01/2020/TT-BLDTBXH guiding the implementation of a number of articles of the Governmental Decree 61/2015/ND-CP of 9 July 2015 providing for employment support policies and the National Fund on employment and Decree 74/2019/ND-CP dated 23 September 2019 of the Government amending and supplementing a number of articles of Decree 61/2015/ND-CP	10/02/2020	26/03/2020





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