**LEGAL UPDATES VOL.11**

**AUGUST, 2021**

**Dear Valued Clients and Partners,**

ADK Lawyers Law Firm would like to introduce to you the Legal Updates, Vol. 11 of August 2021, with notable contents as follows:

1. **Clarifying regulations on childbirth allowances for male employees and supplementing incomes for which compulsory social insurance contributions and contributions are excluded.**

On July 7, 2021, Ministry of Labor, War Invalids and Social Affairs (MOLISA) issued Circular 06/2021/TT-BLDTBXH amending and supplementing Circular 59/2015/TT-BLDTBXH, effective from September 01, 2021. Of which,

1. Article 1.5 Circular 06/2021/TT-BLDTBXH, supplementing Article 9.2 (c) Circular 59/2015/TT-BLDTBXH providing for the case of childbirth allowance for male employees, specifically, In case the mother participates in social insurance but is not eligible for maternity benefits upon giving birth, and the father meets the conditions specified in Article 9.2 (a) Circular 59/2015/TT-BLDTBXH, the father is entitled to Childbirth allowance according to Article 38 of the Law on Social Insurance (LSI). The addition of this provision is intended to clarify the provisions on the childbirth allowance in Article 38 of LSI.

Thus, in case both husband and wife participate in social insurance and the wife is not eligible for maternity benefits, the husband who has paid social insurance contributions for full 06 months in the 12 months before giving birth will be entitled to a childbirth allowance will be entitled to a birth allowance equal to 2 months' basic salary in the month of childbirth for each child.

In addition, the determination of 12 months before childbirth for male employees and the husband of the mother who asks for surrogacy benefits when the wife gives birth shall comply with the provisions of 9 Circular 59/2015/TT-TTg. BLDTBXH.

1. The incomes for calculating and excluded from the SI contribution
2. The incomes for calculating the SI contribution:

From January 1, 2021 onward, the monthly salary on which social insurance premiums are based is the salary, salary allowance and other additional amounts specified at Point a, Item b1 Point b and Item c1 Article 3.5 (c) of Circular 10/2020/TT-BLDTBXH. Specifically,

* Salary for job or job title;
* Salary allowance under bilateral agreement: The salary allowances for compensation of working conditions, work complexity, living conditions, and level of labor attraction that the agreed salary in the labor contract has not been accounted or incompletely accounted;
* Other additional amounts under the bilateral agreement: The additional amounts are defined with a specific money amount along with the agreed salary in the labor contract and regularly paid in each payment period.
1. The incomes excluded from the SI contribution:
* Bonus under regulation of Article 104 Labor Code;
* Initiative Bonus;
* Mid-shift meal;
* Support such as: petrol, phone, travel expenses, housing, babysitting or child care;
* Support when the employee: Having relative dying, relative getting married, birthday;
* Allowance for the employees have been struggling when having occupational accidents or occupational diseases;
* Other supports or allowances noted in a specific sector in the labor contract under regulation of item Article 3.5 (c2) of Circular 10/2020/TT-BLDTBXH.
1. **Registration of land use rights and ownership of land-attached assets for organizations and individuals purchasing debt in the case of land use rights and land-attached assets derived from bad debts of credit institutions.**

Circular 09/2021/TT-BTNMT of Ministry of Natural Resources and Environment dated June 30, 2021 amending and supplementing some articles of Circulars guiding implementation of Land Law 2013, effective from September 01, 2021.

In which, stipulating the registration of land use rights and ownership of land-attached assets for organizations and individuals buying and selling debts where the land use rights and land-attached assets are derived from bad debts of credit institutions, foreign bank branches according to Article 9 of Resolution No. 42/2017/QH14 dated June 21, 2017 with the conditions of performance in the case of mortgage transactions of land use rights and assets attached to land that have been performed in accordance with the provisions of the law on land and other relevant laws; the purchase and sale of debt means the right to use land and assets attached to land as security in accordance with the law on debt trading.

A dossier of carrying out procedures for registration of land use rights and ownership of land-attached assets includes:

1. An application for registration of changes in land and assets attached to land, made according to Form No. 09/DK;
2. The issued original certificate of land use right, ownership of property on land (LURC);
3. A written agreement or mortgage contract with the content of an agreement on handling of the mortgaged property is the mortgagee, and the guarantee-receiving party is entitled to receive the security property itself;
4. A document on debt purchase in accordance with the law on debt purchase and sale containing an agreement that the debt purchaser may inherit the rights and obligations of the mortgagee or the guarantee recipient in mortgage contracts, guarantee contracts;
5. A document on the handover of assets for sale and purchase of debt or a written settlement of a competent authority in accordance with law in case it is not possible to agree on the handover of assets for sale and purchase of debt or record of property seizure according to the provisions of Clause 5, Article 7 of Resolution No. 42/2017/QH14 dated June 21, 2017 of the National Assembly on piloting bad debt settlement.

In addition, the Circular also adds cases of change of land use purpose without obtaining permission but having to register a change in land, which is amended and supplemented as follows:

1. Converting annual crops into other agricultural land, including: land used to build greenhouses and other kinds of house for cultivation purposes; land for construction of barns for raising cattle, poultry and other animals permitted by law; aquaculture for the purpose of study, research and experiment;
2. *Converting land for planting other annual crops or aquaculture land into planting perennial crops;*
3. *Converting land for growing perennial crops into land for aquaculture or annual crops;*
4. Converting residential land into non-agricultural land which is not residential land;
5. *Converting commercial and service land into other kinds of land belonging to non-agricultural production and business land which is not the land of non-agricultural production establishments (amended content); converting non-agricultural production and business land that is not commercial or service land or non-agricultural production establishment land into land for construction of non-business works.*

We hope you found this brief legal update informative.

Best Regards.

|  |
| --- |
| This document has been only prepared for general information purposes and makes no representations or warranties, express or implied, as to the accuracy, timeliness, or completeness of such information. This legal update is not intended to be relied upon as accounting, tax, legal or other professional advice. If you have or suspect that you may have a particular problem, you should contact us or your lawyer for specific advice on the matter.  **ADK VIETNAM LAWYERS**Address: G-01 Fl. HBT Tower, 456-458 Hai Ba Trung Str., Tan Dinh Ward, District 1, HCMC, VN. Hotline: (+84) 28 66 79 79 66 |