

# LEGAL UPDATES

## SEPTEMBER, 2013



**I - Some noteworthy amended contents in terms of personal income tax which have been guided in the Circular No. 111/2013/TT-BTC (the Circular 111) promulgated on August 15, 2013 taking into effect as from October 01, 2013**

### 1. Converting into earnings before tax (Gross up) of some benefit amounts paid on behalf of employees by employers

Before, according to guidelines in the Official Letter No. 3565/TCT-TNCN dated September 14, 2010 of the General Department of Taxation, benefits paid on behalf of employees by employers (such as house rental, electricity and water cost, club membership fees, etc.) shall be considered as earnings before tax, now according to guidelines of the Circular 111, the benefits paid on behalf **are considered as earnings after tax** and have to be added to other earnings after tax **before being converted into earnings before tax (Gross up)**.



The amendment above shall lead to remarkable increase of personal income tax expenses compared with before for enterprises in which policy of paying salary after tax for employees has been applied (**especially the employees are foreigner in FDI enterprises**) in which there are much amounts paid on behalf of employees.

### 2. Registration of declaration of dependant

In case a taxpayer has not calculated family circumstance deductions for dependant in the taxable year, he/she is entitled to calculate deductions for dependant **as from the month in which nourishing obligation has been arisen** when he/she conducts tax finalization **and registers family circumstance deductions for dependant**.

Particularly for other dependants in accordance with guidelines of the Circular 111 (such as sibling, grandfather/grandmother, grandchild, other persons are directly brought up under the provisions of law) registration deadline of family circumstance deductions **no later than 31 December of the taxable year**, over above time limit, family circumstance deductions have not been calculated in the taxable year.

In case a taxpayer changes working place, business place, he/she will register and submit documents proving dependant **as the case of registration of dependant at the first time**. This is noteworthy point for laborers and enterprises.

Regarding dossiers proving dependant in accordance with the Circular 111, apart from proving documents as prior provisions, taxpayer needs to submit **copy of identity card** of dependant (for dependant whose identity card have been issued).

## **II - New provisions of the issuance of work permits (WP) to foreign workers who work in Vietnam**

On September 05, 2013, the Government has promulgated the Decree No. 102/2013/ND-CP ("the Decree 102"), giving guidelines on the Labor code on foreign workers in Vietnam. Some main amended contents in the Decree as follows:

## II - New provisions of the issuance of work permits (WP) to foreign workers who work in Vietnam (continued)



The enterprise would like to use foreign labor, which has to be approved in written by the Chairman of provincial-level People's Committee. Issuance of the approval letter will be implemented according to annual explanation statement of units of use demand of foreign labors.

- Procedure of application for WP in accordance with the Decree 102 has been implemented through 02 steps:
  - ♦ Step 1: To Apply for approval permit of use of foreign labors of provincial-level People's Committee.
  - ♦ Step 2: To Apply for WP at local Labor Department.
- Note that the enterprise has to implement procedure of application for WP before the date laborer starts his/her job at least 15 working days (before that was 20 days).
- Extension of WP has to be implemented before the date WP is due at least 5 days but no more than 15 days (before deadline was before 10 days and no more than 30 days).
- Documents related to foreigners (Appointment Decision, Experience certificate) are exempt from consular legalization.
- On the other hand, for laborers not subject to apply for WP, they also have to implement procedure to be issued confirmation letter not subject to WP.
- Annually, the enterprise has to make a report, explaining the demand for foreign workers sent to the provincial-level People's Committee, it is the basis for permission to use foreign labor. For a case of tendering, dossiers of tendering invitation and requirement have to specify the use demand of foreign labor.

The Government's Decree No. 34/2008/ND-CP dated March 25, 2008 on recruitment and management of foreign workers in Vietnam; the Government's Decree No. 46/2011/ND-CP dated June 17, 2011 amending and supplementing a number of articles of the Government's Decree No. 34/2008/ND-CP dated March 25, 2008 on recruitment and management of foreign workers in Vietnam are expired from the effective date of this Decree.

The Decree 102 takes into effect as from November 01, 2013.

The work permits that are still unexpired up to the effective date of this Decree might not be renewed.

## III - The invoices prepared in compliance with provisions have been rejected upon tax declaration when the blank has not been crossed out

On August 23, 2013, Provincial – level tax department of Ho Chi Minh City has promulgated the Official Letter No. 5871/CT-TTHT giving guidelines on invoices, documents. Accordingly, the Official Letter highlighted and based on Clause 1b of Article 14 of the Circular 64/2013/TT-BTC dated May 15, 2013 of the Ministry of Finance giving guidelines on invoice of sale of goods, provision of services:



“Contents in the invoice have to reflect contents of economic transactions arisen correctly; not be erased or repaired; on which there is the same color ink with indelible ink, red ink has not been used; on which figures and letters are continuous, uninterrupted, available printed letters have not been written or overwritten and the rest blank has been crossed out (if any). In case of self-printed invoices or invoices in printing order which have been prepared by computer, **if there is a blank in the invoice, the blank has to be crossed out by ink pen**, with indelible ink, red ink has not been used.”

Thus, in case enterprise prepares invoices, there is a blank not crossed out in the middle of column of name of goods and services and there are some information supplemented at the end, the invoices have not been prepared in accordance with provisions, and have been rejected upon tax declaration. The invoices which have not been prepared correctly need to be returned to prepare the new invoices to replace in accordance with provisions.

This is an extremely basic error, but it is very common and tax losses are considerable. The Department in charge of billing of enterprises should pay attention to avoid the error.

#### IV - Provisions of sanction of administrative violation in the field of accounting and independent auditing



On September 16, 2013, the Government has just promulgated the Decree No. 105/2013/ND-CP providing sanction of administrative violation in the field of independent accounting and auditing. This Decree prescribes detailed provisions of behaviors of administrative violation, sanction limitation, sanctioning form, level of sanction, and remedial measures, and competence of making minutes and competence of sanction of administrative violation in the field of accounting and independent auditing.

Accordingly, some noteworthy main contents as follows:

Sanction limitation of administrative violation in the accounting field is 02 years; in the field of independent auditing is 01 year.

In accordance with the Decree, level of penalty money has been increased much compared with current provisions. Specifically:

The maximum of penalty money in the accounting field for an individual is 30,000,000 dongs, for an organization is 60,000,000 dongs; whilst the maximum of 50,000,000 dongs has been applied for individual and the maximum of 100,000,000 dongs has been applied for organization in the auditing field.

For some behaviors of violations in the accounting field, this Decree prescribes an increase of minimum level of penalty for accounting documents.

Specifically, for behaviors of forgery, false declaration or agreement, coercion against others to carry out forgery, false declaration in terms of accounting documents will be fined from 20,000,000 dongs to 30,000,000 dongs, penalties for this behavior from 10,000,000 dongs to 30,000,000 dongs before.



**Accounting**

Additional penalties for this behavior are accounting documents have been confiscated, the right to use accounting practice certificate has been deprived, and business of accounting services has been suspended from 01 to 03 months.

Besides that, behaviors of signing accounting documents when there are no enough document contents, there is no competence to sign or not to be authorized to sign will be fined from 5,000,000 dongs to 10,000,000 dongs, 2,000,000 dongs to 10,000,000 dongs before.

In the auditing field, behaviors of buying off, bribing, or colluding with audit organization to falsify auditing result will be fined from 20,000,000 dongs to 30,000,000 dongs.

This level of penalty also applies to any threat, revenge against auditors or obstruction, restriction against audit work.



Particularly for behavior of refusing or providing necessary documents incompletely, exactly as required by auditors or audit organization shall be punished at the level of warning.

Besides that, the Decree also prescribes sanction of violated behaviors of signing the auditing contract for financial statements of the year. Specifically:

- Warning for businesses and organizations subject to annually audited financial statement sign auditing contract not fully in accordance with contents as prescribed.
- Pay a fine from 10,000,000 dongs to 20,000,000 dongs for enterprises, organizations which implement one of violated behaviors as follows:
  - ♦ Enterprises and organizations are subjects required to annually audited financial statement have signed auditing contract late compared with deadline prescribed;
  - ♦ Enterprises and organizations do not sign auditing contract prior to the audit work has been implemented.
- Pay a fine from 20,000,000 dongs to 30,000,000 dongs for enterprises and organizations are subjects required to annually audited financial statement do not sign auditing contract as prescribed.

The Decree 105 takes into effect as from December 01, 2013, replaces Decrees No. 185/2004/ND-CP and the Decree No. 39/2011/ND-CP.

## V - New provisions in terms of export and import procedures



The Ministry of Finance has just promulgated the Circular No. 128/2013/TT-BTC dated September 10, 2013, ("the Circular 128") regarding customs procedures; customs inspection and supervision for exported and imported goods.

According to the new provisions, customs declaration forms for imported goods will be implemented more strictly than before:

- In which, in the Circular 128 there is a change of registration place of declaration form of import serving for business and production compared with prior provisions should be paid attention to (enterprises are entitled to choose to carry out customs procedure at a district-level customs department where the enterprises feel the most convenient). According to new provisions, the enterprises register to carry out customs procedure of import of materials, supplies in accordance with list registered at a district-level customs department belonging to Provincial-level customs department of province, city where the enterprises have production establishment;
- Registering customs declaration form has to be implemented right after the declarant declares and submit dossiers of customs sufficiently.

Implementing provisions of the Circular 128 will start from November 11, 2013, replacing provisions of the Circular No. 194/2010/TT-BTC.

Besides that, the Circular 128 also have provisions specifying cases considered as payment via bank to be applied tax payment deadline of 275 days with imported materials for production of exported goods.

## VI - Pay a fine up to 20 million dong if invoices have been lost

As from November 09, 2013, if invoices which have been issued have been lost, burnt, damaged but enterprises have not prepared invoices or already prepared (copies delivered to customers) but not delivered those to customers will be fined up to 20,000,000 dong.



Moreover, if the stored copies have been lost, damaged, the enterprises will be fined in accordance with accounting law.

Pay a fine up to 8,000,000 dong if the invoices have not been prepared on time; in order; not delivered to the buyer, with false kind of invoice, on which the date before the purchase date of invoices, etc.

For behaviors of not cancelling or cancelling the invoices in compliance with provisions will be fines at the maximum of 4,000,000 dong, decreasing 2.5 times compared with level of 10,000,000 dong before.

This is one of contents in Decree No. 109/2013/ND-CP regarding sanction of administrative violation in the fields of management of prices, fees, charges and invoices.

This Decree takes into effect as from November 09, 2013 and replaces Chapter V the Government's Decree No. 51/2010/ND-CP providing invoices of selling goods and supplying services.

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