

LEGAL UPDATES

MAY, 2013



I - Provision of overtime hours for employees



- The Government has just promulgated the Decree No. 45/2013/ND-CP elaborating a number of articles of the Labor Code on hours of work, hours of rest and occupational safety and occupational hygiene, in which provision of overtime for employees has been elaborated.

Accordingly, overtime hours in a day shall not exceed 50% of the normal working hours in 01 day; the total normal working hours and overtime hours shall not exceed 12 hours in a day when applying weekly working hours.

Overtime hours shall not exceed 12 hours in a day on public holidays and weekends.

The Decree also prescribed 03 cases to be allowed to organize overtime hours from 200-300 overtime hours in a year including:

- 1- Production and export processing of textiles, garments, leather, shoes, agricultural, silvicultural, and aquaculture products;
- 2- Production and supply of electricity, telecommunication services, oil refinery; water supply and drainage;
- 3- Other urgent cases in which works must not be postponed.

After each overtime hours up to 07 consecutive days in a month, the employer shall provide their employees with compensatory rest periods.

When compensatory rest periods are not available, overtime pay shall be given as prescribed in Article 97 of the Labor Code.

The Decree prescribed specifically, periods considered working hours of employees to calculate annual leaves includes: The apprenticeship specified in the apprentice contract; The probation period in the labor contract; Unpaid leaves agreed by the employee, but the total length must not exceed 01 month; Rest periods due to sickness, but the total length must not exceed 02 months...

I - Provision of overtime hours for employees (continued)

Regarding Lunar New Year Holiday, the Decree has prescribed: The period of Lunar New Year Holiday is selected by the employer, either 01 last day and 04 first days of the lunar year, or 02 last days and 03 first days of the Lunar year.

Employers take responsibilities for notifying employees of the Lunar New Year Holiday plan at least 30 days before the holiday.

The provisions on hours of work and hours of rest in the Decree No. 45/2013/ND-CP are applicable to:

1. Vietnamese employees, apprentices and other employees prescribed in the Labor Code.
2. Employers.
3. Foreign employees working in Vietnam.
4. Other agencies, organizations, and individuals directly related to employment relationship .

II - Value added tax (VAT) exemption for some services

On May 17, 2013, the Ministry of Finance promulgated the Circular No. 65/2013/TT-BTC amending and supplementing the Decree No. 06/2012/TT-BTC dated January 11, 2012 of the Ministry of Finance giving guidelines on implementing a number of articles of Law on Value added tax, giving guidelines on implementing the Decree No. 123/2008/ND-CP dated December 08, 2008 and the Decree No. 121/2011/ND-CP dated December 27, 2011 of the Government.



Accordingly, from July 01, 2013, as prescribed in the Circular No. 65/2013/TT-BTC, the following kinds of services will not subject to VAT or be applied 0% tax rate:

- Credit provision activities of all organizations (only credit granting activities of credit institutions not subject to VAT in the past).
- Digital services.
- Factory leasing service in non-tariff zones.

In particular, this change will be applicable for all service activities arisen from March 01, 2012.

II- Value added tax (VAT) exemption for some services (continued)

Handling VAT amount of services above arisen from March 01, 2012 has been guided specifically in Article 2 of the Circular No. 65/2013/TT-BTC.

This Circular takes into effect from July 01, 2013 and has been guided and applied for specific cases:

- From March 01, 2012, if the party leasing workshop has issued invoice and calculated VAT when let other enterprise hiring workshop, parties shall make VAT invoice to correct the issued invoice at the VAT rate of 0%.
- From March 01, 2012, if business establishments other than credit institutions has issued invoices and calculated VAT on interest of providing loans to other organizations, individuals, parties shall make invoice to correct the interest amount of loans to become service not subject to VAT. In case when parties fail to correct the issued invoices, if organizations borrowing and using fund in serve for business activities subject to VAT, they are entitled to deduct the input VAT as prescribed on the base of VAT invoice of the loaning party.
- In case of contract supplying the digital services to foreign parties signed before this Circular comes into effect, VAT shall be continued to comply with guidelines at the respective legal documents at time of signing contract. In case of contract supplying the digital services to foreign parties signed from March 01, 2012 subject to VAT and become subject applying tax rate of 0% as prescribed in this Circular, this Circular shall be applied from March 01, 2012.

There is other content relatively important in the Circular i.e. handling method of input invoices which have been rejected by tax authority due to without receipts of payment through banks, accordingly:



- For VAT invoices that have been adjusted for reduction by enterprises being examined: Enterprises are entitled to declare for supplementation when having payment voucher via bank.
- For VAT invoices that have been detected by tax authority and requested for decreasing adjustment: only being entitled to declare for supplementation of VAT within 06 months from the month of having decisions on handling.

Contents that are not guided in this Circular and contents that are not contrary to contents guided in this Circular shall be complied with provisions in the Circular No. 06/2012/TT-BTC dated January 11, 2012 of the Ministry of Finance, guiding on Value added tax.

III- Amending Article 170 in Enterprise Law 2005 to remove difficulties for Foreign investment enterprises (FDI)

At the 5th session of the National Assembly XIII, amendments of Clause 2, Article 170 of draft bill which was submitted to the National Assembly by the Government has received the consent of a majority of the National Assembly Members. According to proposal, the amendment of Article 170 of Law on Enterprises is to remove difficulties, and create conditions for foreign investment enterprises, especially for enterprises which have engaged in production and business stably, had long-term employees keep on contribution into society and the State budget, and at the same time which creates a legal framework to encourage foreign investment enterprises which have not re-registered to perform new investment projects and expand investment in Vietnam.

Applicable objects of this amended Law are foreign investment enterprises whose license investment has been granted before July 01, 2006 and they have not performed registration procedure to operate under provisions of Law on Enterprises 2005.

Also according to the proposal, the Government proposed to amend Paragraph 2, Article 170 of Law on Enterprises towards abolition of time limit for re-registration of foreign investment enterprises to allow them to choose not to register or re-register at the appropriate time. Content of this amendment is to ensure the autonomy of enterprises in determining methods of management organization and business operations.

IV- Amending submission deadline of report on use performance of invoices

Submission deadline of quarterly report on use performance of invoices of individuals, organizations is the thirtieth date of the first month of the following quarter (April 30, July 30, October 30, January 30).

The former submission deadline is the twentieth date of the first month of the following quarter.

Some kinds of invoices such as invoices of telecommunication service fees, electricity and water charges and bank charges... of which each number will not be reported but of which total number has been reported.

However, business establishments must be responsible for declaring and provide specifically figures as required by tax authority.

These are some new points prescribed in the Circular No. 64/2013/TT-BTC guiding the Decree No. 51/2010/NĐ-CP regarding invoices.

The Circular takes into effect from July 01, 2013, replacing the Circular No. 153/2010/TT-BTC and the Circular No. 13/2011/TT-BTC.





The Ministry of Finance has received inflection of Provincial - level tax departments surrounding tax refund in the case of using VAT invoice for goods, service exported abroad. To handle this issue consistently at tax office and enterprises, the Ministry of Finance has issued the document No. 6421/BTC-TCT giving guidelines on implementing.

Accordingly, in case the enterprises exported goods, services but not timely catch changes in the Circular No. 153/2010/TT- BTC giving guidelines on implementing the Government's Decree No. 51/2010/ND-CP dated May 14, 2010 regarding invoice of goods sale, provision of services and issued VAT invoice instead of export invoice, this issue will be handled by two ways:

- In case tax authorities have not announced decision on tax inspection and examination at enterprises, the enterprises will cancel VAT invoice issued, simultaneously prepare export invoice and conduct supplementary declaration as prescribed.
- In case tax authorities have announced decision on tax inspection and examination at enterprises, the enterprises will suggest tax authorities examine specifically, if their goods and services have been exported in practice and their dossiers meet sufficiently the refundable conditions and input tax refund for exported goods as prescribed; although their VAT invoices have been issued instead of export invoices and those are kept in their book. Simultaneously, at the period of tax refund, the enterprises have recorded sales and expenses of exported goods, and there is a presence of sale invoices of exported goods, customs declarations, invoice, payment vouchers via bank as prescribed, enterprises' input VAT will be considered to be declared, deducted and refunded corresponding to exported goods lot.

Notes

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