

# LEGAL UPDATES

## House, factory are allowed depreciation deduction before issuance of the works completion certificate.

Accordingly, if the Company has house and factory built on land owned by the Company, the structures have been completed and put into operation for business activities but still awaited for issuance of the works completion certificate from the authorities, the depreciation deduction will be conducted as long as they meet the above conditions. It's not necessary to wait until issuance of the works completion certificate.

*Official Letter No. 3665/CT-TTHT dated April 22, 2016 of General Department of Taxation*

## From July 01, 2016, the enterprise shall pay the insurance premium of occupational accidents for each employee.

The premium level of occupational accidents and occupational diseases is 1% of the salary fund paid to social insurance and it is paid by the enterprise on the monthly basis, while the employee does not have to pay this kind of insurance.

*Decree No. 37/2016/ND-CP dated May 15, 2016 of the Government*

## Foreign Contractor Tax (FCT) on loan guarantee fee attached to the foreign loans

In case the guarantee fee is prescribed in the loan agreement, it shall be included in loan interest, be the income subject to the Corporation Income Tax and free from the value added tax when determining the FCT.

In case the guarantee fee is regulated in a separated guarantee agreement, that whether or not this fee shall be subject to the VAT when determining the FCT, it shall be based on the determination of the guarantor (located in Vietnam) as credit institution or enterprise.

In case the foreign loan guarantee fee is not stated in the loan agreement and not guaranteed by the bank, it shall be subject to 10% of VAT when calculating the FCT.

*OL No. 2510/TCT-CS dated June 07, 2016 of General Department of Taxation*

## Authorization for accounting finalization and offsetting Personal Income Tax (PIT)

PIT incurred excessively after finalization only shall be entitled to offsetting within the on-behalf finalizing enterprise having the tax code unchanged.

When offsetting the overpaid tax amount against the outstanding tax payable of the tax payer making the authorization, the enterprise is only allowed to offset to the tax obligations incurred within the income-paying organization having the same tax code, but not allowed to offset to those incurred within the income-paying organization having any other tax code.

*OL No. 2569/TCT-TNCN dated June 10, 2016 of General Department of Taxation*

## The basic wage level officially increased since May 01, 2016 by VND 1,210,000.

Although this level of salary is used as a base to calculate the salary level as in the payroll, the allowance level, etc. for only those who are civil servants, public employees of the State, etc., many allowances under the Law on Social insurance, the Law on Employment are still based on this basic wage level, which causes many impacts to the enterprises.

In particular, the maximum wage level by which to pay the social insurance and the accident insurance (20-month basic wage) will be increased from 23 million VND to 24.2 million VND. Maternity allowance (2-month basic wage) will also be increased from 2.3 million VND to 2.42 million VND.

*Decree No. 47/2016/ND-CP dated May 26, 2016 of the Government*

## New regulations on the cases of not returning the health insurance card (HIC) when leaving

The enterprise does not have to bother with the case when the labors leave without returning the HIC.

When raising the cases causing the decrease in the number of labors attending the health insurance (quit job), the enterprise could prepare the dossiers sending to the social insurance agency. If such labors wish not to return their HIC which are unexpired, the enterprise could fill with the content "not return the HIC to the Company" on the note column of the List of labors attending the social insurance (Form D02-TS).

Upon receiving the dossiers from the enterprise, the social insurance agency will summarize and transfer the List of labors not returning the HIC to the hospitals for withdrawal of such cards when those labors come for medical treatment.

*OL No. 1814/BHXH-ST dated May 24, 2016 of Vietnamese Social Insurance*

## Private enterprise is not allowed to hire other person named as legal representative

The Law on Enterprise currently did not stipulate any prohibition for this case. This means the person who is considered the legal representative of a branch of a certain private enterprise is entitled to register his name to establish his own private enterprise.

Although Clause 2, Article 185 of the Law on Enterprise No. 68/2014/QH13 allows the private enterprise to hire other person for management and operation of the business (as director), the private enterprise's owner should be still the legal representative of that private enterprise and its branches and shall take all responsibilities relating to the business activities of the PE and its affiliated branches (Clause 4, Article 185 of the Law No. 68/2014/QH13). Accordingly, in case the private enterprise's owner registers the name of another person, including the director's name as legal representative for the branch of the private enterprise, this act is considered not complied with the law.

*OL No. 2344/TCT-KK dated May 30, 2016 of General Department of Taxation*

## Payment by credit card under the Director's name

When the company registers to use bank credit card, this card is secured over the Company's saving book, the payments are made by using the credit card recorded as Debit on the bank statement which the Bank is authorized by the Company for automatically withholding from its bank payment account, the name printed on the card is the name of the director of the company under card issuance agreement or as prescribed by the Bank, then such payments via credit card are also considered to meet the conditions of non-cash payment evidence for tax



deductible and recognition of expenses.

In addition, charges related to the credit card mentioned above including card issuance fee, card maintenance fee, late payment interest rate of the card are still counted into the deductible expenses when calculating the corporate income tax (if satisfying the conditions as prescribed).

*OL No. 2543/TCT-KK dated June 08, 2016 of General Department of Taxation*

## Loosing the penalties for violations against invoicing

There are many important changes in the field of sanction on invoicing which is more favorable to the enterprises.

For example, reducing the penalty level for the act of ordering the invoice printing without signing a written printing contract from 2 - 4 million VND down to 500,000 VND - 1.5 million VND (Clause 1 Article 3).

Or reducing the penalty level for the act of losing, burning, damaging the invoice that has been made (the copy to be handed to the customer) before delivery to the customers from 10 - 12 million VND down to 4 - 8 million VND (Clause 4 Article 3).

Specially, Clause 4 Article 3 of this Decree also supplements the regulation on **FREE FROM PECUNIARY PENALTIES** for many cases, including:

**I**nvoice that has been made (the copy to be handed to the customer) is lost, burnt, or damaged because of other unexpected circumstances, force majeure events (previously only applied for natural disasters, conflagration).

**T**he buyer and the seller have already made a record on the event of losing the invoice that has been made (the copy to be handed to the customer); the seller has declared, paid tax and has the contract, documents proving the goods sale and purchase and there are 2 extenuating circumstances (a warning shall be imposed).

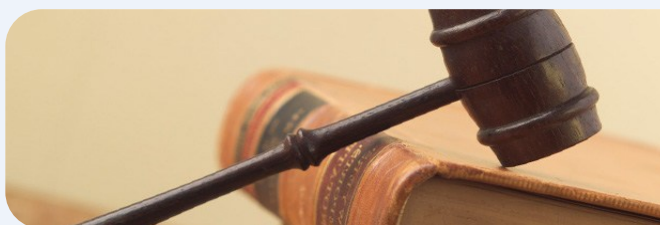
**T**he organizations, individuals themselves detect errors and make another notification or report as prescribed in order to send to the tax agencies before the tax agencies or competent authorities issue the decision on tax investigation, tax inspection at the taxpayers' premise (Clause 7 Article 3).

*Decree No. 49/2016/ND-CP dated May 27, 2016 of the Government, taking effect since August 01, 2016*

## Since July 01, 2016, the legal entity may reserve criminal responsibilities.

The highlight as stipulated in the Penal Code 2015, which takes effect from July 01, 2016, is the regulation on criminal responsibilities of commercial entity when that entity commit offences in the areas of economic management and environment.

The commercial legal entity shall reserve criminal responsibilities for the offences such as tax evasion, evasion on payment for kinds of compulsory insurances to employees, etc.



Punishment on such offences includes pecuniary penalties; suspending operation for a definite time; suspending operation permanently. Additional punishment includes prohibition on business activities in a certain number of fields; prohibition on capital mobilization; pecuniary penalties when it is not applied as major punishment.

For each violation, the commercial legal entity committing offences is only forced to one major punishment and one or more additional punishment.

*Penal Code 2015*

## Accounting documentations are allowed to be destroyed after 10 years.

The enterprises themselves shall directly destroy their accounting documentations by the way freely selected by the enterprises. For the confidential documentations, those can be destroyed by burning, cutting, shredded by machines or manually so as to ensure that the information and figures recorded on them are unable to be re-used.

Procedures of destruction: The legal representative of the enterprise shall make a Decision on establishment of a Destruction Council including the enterprise's leaders, the chief accountant and the representative of the storing division.

This destruction council shall conduct the manual count, verification, classification by each type of accounting documentations, and then set the list of destroyed documentations. When the destruction is completed, the enterprise shall prepare a Minutes on the destruction of the out-of-date accounting documentations, in which it should be stated clearly with the form of destroyed accounting documentations, the storing time of each kind of documentations, the form of destruction, the conclusion and signatures of the council's members.

*OL No. 3668/CT-TTHT dated April 22, 2016 of Tax Department of Ho Chi Minh city*

## Payment by check is considered as payment via bank

As stipulated at Clause 10 Article 1 of Circular No. 26/2015/TT-BTC, "document of via-bank payment" is understood as having documents proving the payment transfer from the buyer's account to the seller's account opened at the organization providing the payment service in accordance with the current legal regulations such as: checks, payment credentials or payment orders, receipt credentials, receipt orders, bank cards, credit cards, cell phone SIM (electronic wallet) and other payment forms as prescribed.

Therefore, payment for goods purchased by checks is also considered the payment via bank.

*OL No. 3039/CT-TTHT dated April 07, 2016 of Tax Department of Ho Chi Minh city*

### Notice

*"The purpose of this news is to provide the clients with further information. Although we have focused much on the ensure of accuracy, the information that is given on this news is not absolutely thorough and the clients would better consult professional opinions before application".*