

LEGAL UPDATES



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I. Recognition of welfare expenses in respect of all kinds of enterprises

On June 29, 2015, the Ministry of Finance issued the Official letter No. 8738/BTC-TCT guiding the corporate income tax (CIT) in respect of the expenses of welfare allowances directly paid to the employees. This Letter confirms that:

Enterprises in all economic sectors are allowed to recognize the welfare expense since 2014 under the new regulations at Clause 4 Article 1 Decree No. 91/2014/ND-CP and Article 1 Circular No. 151/2014/TT-BTC, with no exceptions:

Article 1 Circular No. 151/2014/TT-BTC dated October 10, 2014 of the Ministry of Finance providing guidance on the implementation of Decree No. 91/2014/ND-CP as: the deductible expenses upon determining the taxable income:

“Expenses of welfare nature paid directly to laborers such as expenses for weddings and funerals of laborers and their families; expenses for summer leaves and medical treatment support; expenses to support complementary training and learning at training institutions; expenses to support families of laborers affected by natural disasters, enemy sabotage, accidents and ailments; expenses for rewards for laborers’ children with good learning achievements; expenses to support travel expenses during festive and new-year holidays of laborers and other expenses of welfare nature. The total of the above-mentioned expenses must not exceed the average implemented monthly wage in the tax year of enterprises...”

Accordingly:

The expenses that meet the conditions of having invoices, vouchers and not exceeding the salary of one month/year will be deducted upon determining the corporate income tax, regardless of economic sectors.

II. New process of tax inspection

On July 28, 2015, the General Department of Taxation issued Decision No. 1404/QD-TCT on the process of tax inspection.

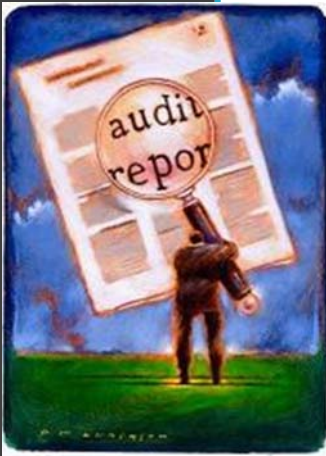
Under the new regulation at Point 5 Section I Part II of this Decision, should the conclusion of tax inspection be in the following cases, the enterprises will be re-inspected:

- There are serious violations of the order, procedures upon conducting the tax inspection.
- There are mistakes in the application of the law upon concluding the tax inspection.
- The content of tax inspection conclusion is inconsistent with the evidences gathered in the inspection process.
- The issuer, leader, inspector, civil servant of tax inspection assigned to do the specific inspection deliberately falsifies the records or intentionally provide illegal conclusion.
- There are signs of serious law violation of taxpayers not yet fully discovered through tax inspection.

The period of re-inspection is 1 year from the date of signing the inspection conclusion.

Regarding to the provision of documents for inspection, this Decision has the additional regulation that the inspection agency is not allowed to require the enterprises to provide the records, documents submitted to the tax authority as prescribed, for instance, the documents of tax registration, tax declaration, tax submit, invoice reports, etc. the inspection agency will self-search and self-exploit at the tax authority.

The Decision takes into effect from the date of signing and replaces the Decision No. 74/QD-TCT dated January 27, 2014, Decision No. 1116/QD-TCT dated July 24, 2014 and Decision No. 1895/QD-TCT dated October 21, 2014.



III. Additional guidance on the investment registration procedures under the new Law

Official letter No. 5122/BKHDT-PC dated July 24, 2015 of the Ministry of Planning and Investment on the implementation of the Law of Investment No. 67/2014/QH13.

Following the Official letter No. 4326/BKHDT-DTNN and Official letter No. 4366/BKHDT-PC dated June 30, 2015, this Official letter provides guidelines on implementing some of investment registration procedures since July 01, 2015 under the Law on Investment of 2015, specifically including:

1. Issuing the Certificate of investment registration for those documents of projects received before the Investment Law of 2015 takes effective
2. Issuing the Certificate of investment registration for the projects that are not subject to the approval of the investment policy
3. The procedures of adjusting, changing the investment licenses, investment certificates (also, business registration certificates)
4. The procedures of setting up the branches, representative offices (RO) of the Foreign Direct Investment (FDI) enterprise
5. Supplementing the business activities of the FDI Enterprises.
6. Other issues such as: the valuation of capital contributed assets, responsibilities of the agencies of investment registration, business registration.

Accordingly, since July 01, 2015, the FDI enterprises have the right to register for setting up the branches, RO apart from the head office at the agency of business registration. The documents, orders of the registration procedures only need to be implemented under the Law on enterprise, it is not necessary to comply with the Investment law.

Besides, the FDI enterprises can also register for the operation of branches, or additional business activities at the agency of business registration, and are not required to have the accompanied investment projects.

In addition, the content of business registration and the content of investment project issued on the investment license, old investment certificates will be separated and issued with divided content on the certificate of enterprise registration and the certificate of investment registration when the enterprises require adjusting, amending or re-changing the license.



IV. Summary of new points of Circular No. 96/2015/TT-BTC (Circular 96) on corporate income tax

As mentioned in the legal update of June, 2015, on June 22, 2015, the Ministry of Finance issued Circular No. 96/2015/TT-BTC guiding the corporate income tax (CIT) in Decree No 12/2015/ND-CP. This Circular took into effect since August 06, 2015 and will be applied for the period of CIT calculation from 2015 onwards.

As there are some important amendments, supplements compared with Circular No. 78/2014/TT-BTC (guiding the implementation of Decree No. 218/2013/ND-CP providing guidance on the Law of CIT), we would like to continue summarizing the important changes that you may need to pay attention to:

1. Determining the assessable income

(Clause 2 Article 4 of Circular No. 78/2014/TT-BTC is amended)

Circular No. 96 provides more detailed guideline on losses carried forward to the next years among the incomes, as detailed: In a tax period, if an enterprise makes the assignments of real estate, investment project, or right to participate in an investment project (except for mineral exploration and extraction projects) and suffers from a loss, such loss shall be offset against the profit from the business operation (including other incomes prescribed in Article 7 of Circular No. 78/2014/TT-BTC). The loss that remains after offsetting shall be carried forward to the next years within the entitlement limit.

2. Time for determining income subject to CIT

(Clause 2 Article 5 of Circular No. 78/2014/TT-BTC is amended and supplemented)

Circular No. 96 amended the regulations of the time for determining revenue for calculating taxable income for the activities of **providing services**, as details:

The time for determining revenue for calculating taxable income for the activities of service provision is **the time when service provision is completed or part of service provision is completed** except for the case stated in Clause 3 Article 5 Circular No. 78/2014/TT-BTC (revenue for taxable income calculation in some specific cases), Clause 1 Article 6 Circular No. 119/2014/TT-BTC (revenue for calculating taxable income of goods, services used for exchange).

Previously: (As mentioned in the legal update of July, 2015)

In case the enterprises receive the payment in advance or during the time of providing services, **the invoices shall be prepared at the time of receiving payment, not to wait until finishing the services. Hence:**



The value added tax and corporate income tax have to be determined and declared for submission at the same time of invoice preparation.

Note: this change will affect to the declaration of VAT in the tax period of August 2015 to the enterprises providing the services on the spot (since the effective date of Circular 96 – August 06, 2015).

3. Deductible and non-deductible expenses when calculating taxable income

(Article 6 of Circular No. 78/2014/TT-BTC is amended and supplemented)

3.1. Expenses related to damage caused by natural disasters, epidemics, fires, and other force majeure events without compensation

Documents for determining the value damaged by natural disasters, epidemics, fires, and other force majeure events are as follows:

- a) Documents about assets, goods damaged by calamities that are included in deductible expenses as follows:
 - A statement of value of damaged assets, goods made by the enterprise. A statement of value of damaged assets, goods must specify the value of damaged assets/goods, causes, responsibilities for such damage, categories, quantity, value of recoverable assets/goods (if any); statement of damaged goods certified by legal representative of the enterprise.
 - A compensation claim upheld by the insurer (if any).
 - Documents about responsibility for provision of compensation (if any).
- b) Expired goods and goods damaged because of natural deterioration that are not compensated will be deductible expenses when calculating taxable income.

Documents of expired goods and goods damaged because of natural deterioration and that are included in deductible expenses include:

- Statement of damaged goods made by the enterprise. A statement of value of damaged goods must specify the value of damaged goods, causes; categories, quantity, and values of recoverable goods (if any) enclosed with a statement of inventory of damaged goods certified by the legal representative of the company.
 - A compensation claim upheld by the insurer (if any).
 - Documents about responsibility for provision of compensation (if any).
- Documents of determining the damaged value shall be recorded at the enterprise and presented to the tax authority when they require.



3.2. Depreciation expense of fixed assets

Supplementing the fixed assets of enterprises serving employees and creating occupational training activities which are accounted deductible expenses when calculating the taxable income including: library, kindergarten, sports facilities, furniture, and equipment are qualified as fixed assets installed in the construction serving the employees at the enterprise; facilities, machinery, equipment are the fixed assets used for creating occupational training activities.

3.3. Expenditure on consumption of raw materials, fuel, energy, and goods beyond the norm limits

Removing the regulation that the enterprise self builds and manage consumption norms of raw materials, materials, fuels, energy, goods used in production, business as the basis for determining raw materials, materials, fuel, energy, goods in excess of reasonable consumption are not allowed to account in the deductible expenses.

Expenditure on consumption of raw materials, fuel, energy, and goods beyond limits on reasonable expenses imposed by the State will not be allowed to account into the deductible expenses when calculating the taxable income.

3.4. Expenditures on salaries, wages and bonus for employees amended some of the following contents:

Supplementing the regulation of not to be accounted into deductible expenses towards expenses of purchasing life insurance for employees without detailing the specific conditions and the level enjoyed as terms of one of the following documents: labor contracts; collective labor agreements; financial regulations of the Company, Corporation, Group; Bonus regulations by the Chairman of Board of director, General Director, Director stipulated under the financial regulations of Company, Corporation.

3.5. Expenses on employees' clothing amended as follows:

Removing the limit rate for the case that the enterprises have in-kind expenses on employees' clothing, the enterprises can account into the deductible expenses if having the invoices, vouchers in accordance with the regulation.

Monetary expenses on employees' clothing that exceed VND 05 million/person/year are not allowed to account into the deductible expenses.

In case the enterprise has both monetary and in-kind expenditures on employees' clothing, the monetary expenditure must not exceed VND 05 (million/person/year and the in-kind expenditure must have invoices in order to be deductible.

3.6. Allowance for employees on business trips

Removing the limit rate for the allowance for employees on business trips, the enterprise can account into the deductible expenses if having the invoices, vouchers in accordance with the regulation. In case the enterprise has the allowance for the employees on business trips and performs in compliance with the financial regulation or the internal regulation of the enterprise, it will be accounted into the deductible expenses.

3.7. Payments for electricity and water supply

Removing the regulation that the enterprise has to prepare the payment lists of electricity and water expenses with the form No. 02/TNDN accompanying with No. 78/2014/TT-BTC.

3.8. Payment for interest on capital invested into other enterprises

In case the enterprise has contributed sufficiently the charter capital and, during its business operation, paid interest expenses taken to make investment in another enterprise, such payment will be deductible when calculating taxable income.

3.9. Some of expenses not corresponding with the assessable income are now deductible expenses

- Expenses for occupational training activities for employees include:
 - + Expenses paid to the teacher, learning materials, equipment used to operate the occupational education activities, practice materials, other expenses of support for learners
 - + Expense of occupational training for workers employed to work for the enterprise
- Expenses of welfare nature spent directly for workers such as: the genus accident insurance, health insurance, voluntary insurance for employees (except expenses of buying life insurance for workers, voluntary pension insurance for employees)

At the same time, additional instructions: in case the operation time of the enterprise is under 12 months, the actual average salary in one month of the tax year is determined by the method of which the realized salary fund in the year divides (:) the number of actual operation months in the year.



4. Losses carried forward when splitting the enterprise

(Clause 3 Article 9 of Circular No. 78/2014/TT-BTC is amended and supplemented)

Supplementing the guidance: if the losses of the enterprise incurred before splitting into the consequent enterprises and are still carried forward under the regulations, they will be allocated to the consequent enterprises by the capital rate of the shareholders in the split enterprise.

5. Determining the buying price of transferred capital

(Second dash of Point a Clause 2 Article 14 of Circular No. 78/2014/TT-BTC is amended and supplemented)

- In case the assignment of contributed capital for enterprise establishment is the contributed capital accumulated up to the date of capital assignment basing on accounting books, invoices, and other documents and is certified by investors or participants in the business cooperation contract or basing on audit results provided by an independent audit company if the enterprise is a wholly foreign-owned enterprise.
- In case the enterprise accounting in Vietnamese Dong has transferred its capital in foreign currency, the transfer price must be clarified in Vietnamese Dong as the buying rate announced by the commercial bank which the enterprise's account is opened at the time of assignment.

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