

MONTHLY LEGAL UPDATES

OCTOBER, 2012



I - Tax Law

The extension of value added tax payment



- On October 22, 2012 The Ministry of Finance promulgated Circular No. 175/2012/TT-BTC, guiding the extension of value added tax payment under the Government's Resolution No. 67/NQ-CP dated October 05, 2012. Accordingly:

+ The number of value added tax of June, 2012 which have been extended up to January 2013 under Resolution No. 13/NQ-CP dated May 13, 2012 and Circular No. 83/2012/TT-BTC dated May 23, 2012 will continue to defer the deadline for tax payment up to April 2013 (***the latest date shall be on April 20, 2013***).

+ Enterprises which are paying value added tax by deductible method shall be entitled to defer value added tax payment including: Small and medium-sized enterprises, including cooperation (hereinafter collectively referred to as to small and medium-sized enterprises) excluding those conducting business in the lotteries, securities, finance, banking or insurance sectors; producing goods and supplying services subject to special sales tax; enterprises classified as grade I or special grade belonging to economic Groups and Corporations; Enterprises in the sectors of producing and processing agricultural, forestry and aquatic products, textiles, leather footwear, electronic components, and construction of socio-economic infrastructure (hereinafter collectively referred to as to labor intensive enterprises).

+ The Criterion to determine enterprises which are subjects to be entitled to defer value added tax payment in June 2012 and the method to determine the amount of value added tax which is entitled to extension payment follow guidelines in *item 2, item 3, and item 4 of Article 1 of Circular No. 83/2012/TT-BTC* dated May 25, 2012 of Ministry of Finance.

Law on environmental protection tax



- On September 28, 2012 the Ministry of Finance promulgated Circular No. 159/2012/TT-BTC, amending and supplementing Circular No. 152/2011/TT-BTC dated November 11, 2011 guiding the implementation of Decree No. 67/ 2011/ ND-CP dated August 08, 2011 of the Government detailing and guiding the implementation of a number of articles of the Law on environmental protection tax. A number of noteworthy points :

+ To Amend and supplement item 4 of Article 1: Detailing for Prepackages of goods item:

“....

a) *Prepackages of goods including:*

a1) *Prepackages of imported goods.*

a2) *Packages **self-produced** or imported by organizations, households, individuals to pack the products which these organizations, households, individuals produce, process, or purchase products to pack, or provide packaging services.*

a3) *Packages purchased directly by organizations, households, individuals from the producers or importers to pack the products which these organizations, households, individuals produce, process, or purchase products to pack, or provide packaging services.*

a4) *Prepackages of goods prescribed in section a2 and a3 of this point **is exclusive of bag of goods when selling.***”

And the required documents to prove that the prepackages of goods prescribed in section a2 and a3, point a of this Clause is: The original written commitment signed and stamped by the legal representative of the package producer (if the package producer is a legal personality) on self-producing packages to pack the products and send those to the directly administrative tax office when producing those; A copy of Contract for sale and purchase of goods (in case of purchasing goods for packing) or a copy of contract for packaging of goods (in case of packaging services); Invoice list on selling packages under form No. 03/TBVMT... depending on each specific case. Please make reference to the attached Circular.

+ To amend and supplement point 2.4 item 2 of Article 2: “2.4. Goods which are exported overseas (including exported goods which are processed from imported raw materials and materials) produced by business establishments (including processing) directly exported or entrusted to export by business establishments used for exporting, the customs authorities shall not collect the environmental protection tax to which exported goods, materials and raw materials imported for processing and then exported overseas when importing.

In case goods are taxable environmental protection subject purchased by organizations, households and individuals for exporting, the goods production establishments must declare and pay the environmental tax when selling goods.”

Law on environmental protection tax (continued)

+ To add point 1.4 into item 1 of Article 5 as follows: “1.4. To multi-layer bags which are produced or processed from the low density polyethylene resin HDPE, LDPE, LLDPE and other polyethylene resin (PP,PA,...) or other substance such as aluminum, paper... the Law on environmental protection tax **shall be determined by the percentage the weight** of low density polyethylene HDPE, LDPE, LLDPE in multilayer- plastics bags. Basing on the quantity norm of low density polyethylene resin HDPE, LDPE, LLDPE used for producing or processing multilayer- plastics bags, producer or importer multilayer - plastics bags shall self-declare and have responsibility for their declarations.”

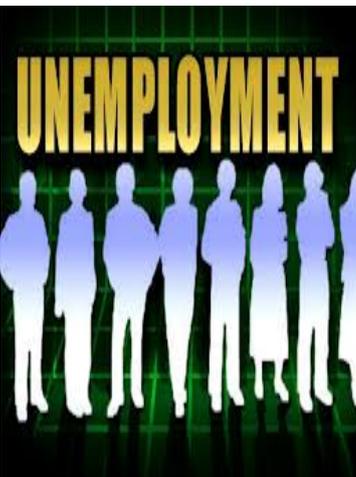
+ To add point 2.4 in item 2 of Article 7 as follows: “2.4. Goods are environmental protection subject produced in the country or non-tariff areas and sold between the country and non-tariff areas, in non-tariff areas, among the non-tariff areas and spot export - import (in Viet Nam territory) (excepts for packages produced for packaging in accordance with regulations in item a2 and a3, point a in Article 1 of this Circular), **the goods production establishments must declare and pay environmental protection tax.**

Calculating environmental protection tax for exported and imported goods is determined when the goods are exported or imported via the Vietnam territory.”

Business registration tax

- On October 17, 2012 the General Department of Taxation promulgated the Official Letter No. 3639/TCT-KK guiding the registration tax payment to foreign contractors. Accordingly, *foreign organizations and individuals doing business and having arising income in Vietnam but they do not present in Vietnam* **are not the registration tax payment subject**; And on the basis for determining foreign contractors which do not present in Vietnam is: **there is no direct investment** in Vietnam accordingly to the forms prescribed in Investment Law, Commercial Law; there is no any representative office, branch in Vietnam under Commercial Law.

Unemployment allowance for employees



- On October 24, 2012 the Ministry of Finance promulgated the Circular No. 180/2012/TT-BTC, guiding financial settlement of unemployment allowance for enterprises' employees. Under the Circular:

+ Basis for determining the enterprises' unemployment allowances accounted in expenses is:

* Unemployment allowance to employees in case enterprises change the structure or technology prescribed in item 1, Article 17 of Labor Code 1994, Article 11 of Decree No. 39/2003/ND-CP dated April 08, 2003 of the Government detailing and guiding the implementation of a number articles of Labor Code on employment.

I - Tax law (continued)

Unemployment allowance for employees (continued)

* Unemployment allowance shall be counted by the time employees work in enterprises from December 31, 2008 onwards determined under Circular No. 39/2009/TT-BLDTBXH dated November 18, 2009 of the Ministry of Labor, War Invalids and Social Affairs, guiding the implementation of Article 12 of Decree No. 39/2003/ND-CP dated April 18, 2003 of the Government, detailing and guiding a number of articles of the Labor Code on employment.

+ The financial settlement of unemployment allowance and the balance of the provision fund of unemployment allowance: When the expense of unemployment allowance arises, the enterprise may include the unemployment allowance given to employees as prescribed in this Circular to general and administrative expenses, and may deduct it when calculating the income subject to enterprise income tax. In particular in 2012, the enterprise may use the balance of the provision fund for unemployment allowance appropriated as prescribed in the Circular No. 82/2003/TT-BTC dated August 14, 2003 of the Ministry of Finance until December 31, 2011 (if any) to give unemployment allowance to employees. If the balance of provision fund of unemployment allowance is not sufficient or not available to give employees, the missing amount may be included to the general and administrative expenses as of the date of preparation of the annual financial statements, and may be deducted when calculating the income subject to enterprise income tax as prescribed. If the provision fund of unemployment allowance is still positive (after giving the unemployment allowance in 2012) the enterprise must record it as other incomes in 2012, and **must not transfer it to the succeeding year**. When an enterprise changes its structure or technology and makes a massive redundancy, if the enterprise suffers a loss after including the unemployment allowance to the expense, then it may *allocate the amount used for giving unemployment allowance to employees to the general and administrative expenses in the succeeding years. The allocation period must not exceed 3 years.*

II - Labor - Social insurance



- On October 18, 2012, the Ministry of Labor - Invalids and Social Affairs issued Circular No. 23/2012/TT-BLDTBXH amending and supplementing a number of regulations of Circular No. 19/2008/TT-BLDTBXH dated September 23, 2008 amending and supplementing Circular No. 03/2007/TT-BLDTBXH dated January 30, 2007 giving guidelines on implementing a number of articles of Decree No. 152/2006/ND-CP dated December 22, 2006 of the Government giving guidelines on a number of articles of Social Insurance Law in respect of compulsory social insurance.

II - Labor - Social insurance (continued)

Some noteworthy amendment and supplement:

+ If an employee had paid social insurance premium before, then ceased contribution and came back to work and suffered from illness right in the first month of coming back to work and paid social insurance premium, then salary and wage rate which is a basis to be entitled to sickness benefit is salary and wage rate which is a basis to pay social insurance premium of this month.

+ If an employee had paid social insurance premium before, then ceased contribution and came back to work and suffered from labor accident, occupational disease right in the first month of coming back to work and paid social insurance premium, then salary and wage rate which is a basis to be entitled to labor accident benefit, occupational disease benefit is salary and wage rate which is a basis to pay social insurance premium of this month.

+ Time of being eligible for retirement pension age: Time of being eligible for retirement pension age is on 1st of the consecutive following month after the birth month of the year in which the employee is eligible for retirement pension age. In case there is no birth date and birth month (only birth year) on employee's dossier, the date of being eligible for retirement pension age is on January 01 of the consecutive following year after the year in which the employee is eligible for retirement pension age.



+ Time of being eligible for retirement pension when impaired working capacity: Time of being eligible for retirement pension when impaired working capacity for people meeting conditions of age and time of social insurance payment will be counted from the 1st of consecutive following month after the month in which the employee is diagnosed as impaired working capacity of 61% or more.

+ Time of being eligible for retirement pension:

* For the employee who is paying obligatory social insurance premium, time of being eligible for retirement pension is shown in resignation decision prepared by employer when the employee meets condition of being eligible for retirement pension as regulated. The employer takes responsibility for submitting documents to social insurance organizations no later than 30 days before the date on which the employee is eligible for retirement pension. If the employer submits the documents late compared with regulations, a clarification letter showing specific reason is required to provide.

* For an employee who is reserving period of social insurance payment, time of being eligible for retirement pension is that stated in an application when he is eligible for retirement pension as regulated. This Circular takes into effect from **December 01, 2012**.

III - Relevant documents

- Decision No. 2404/QD-BTC dated September 27, 2012 of the Ministry of Finance promulgating Value-Added Tax Refund Inspection Regime subject to advanced Tax Refund, post audit.
- Official Letter No. 7557/CT-KK&KTT dated October 15, 2012 of Provincial Tax Department of Ho Chi Minh City promulgating guidelines on declaration, payment and reports for tax exemption – reduction in accordance with Circular No. 140/2012/TT-BTC.
- Decree No. 81/2012/ND-CP dated October 08, 2012 of the Government amending and supplementing a number of articles of Decree No. 68/2008/ND-CP dated May 30, 2008 and Decree No. 109/2002/ND-CP dated December 27, 2002 of the Government amending and supplementing a number of articles of Decree No. 195/CP dated December 31, 1994 of the Government detailing and giving guidelines on a number of articles of Labor Code regarding working and rest time.



- Software supporting tax declaration HTKK upgraded to version **3.1.4**: Supplementing a number of appendix samples in terms of exemption and reduction on value added tax, corporate income tax under excel file issued accompanied with Circular No. 140/2012/TT-BTC including:
 - + Appendix of corporate income tax exemption – Form No. 01/MGT-TNDN
 - + Appendix of value added tax exemption – Form No. 02/MT-GTGT
- Upgrading declaration function of a declaration No. 07/KK-TNCN: Application in supporting of calculating an item of total amount of personal income tax arisen in the period [29] under form No. 07/KK-TNCN according to Partially Progressive Tax Tariff and at the same time permission for amending this value in case a personal has taxable income reaching the rate of incurring personal income tax Grade 1 of Partially Progressive Tax Tariff eligible for tax exemption from July 01, 2012 to December 31, 2012 in accordance with Circular No. 140/2012/TT-BTC.

Notes

"This newsletter is designed for the information of readers. Whilst every effort has been made to ensure the accuracy, information contained in this newsletter may not be comprehensive and recipients should not act upon it without seeking professional advice".