

# LEGAL UPDATES

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## New regulations on issuance of work permit

On 03 February 2016, the Government promulgated the Decree No. 11/2016/NĐ-CP detailing the implementation of some articles of the Labor Code regarding foreign laborers working in Vietnam.

Accordingly, this decree provides detailed regulations on the procedures of declaration, application for confirmation on employment of foreign laborers; conditions and procedures for issuance, re-issuance of work permits; exemption from applying for work

permits and expulsion of foreign workers without the work permit.

One of the most noticeable highlights of this Decree is the supplementation of cases in which the foreign laborers are exempt from applying for the work permits. Accordingly, the laborers who enter into Vietnam to work as experts, administrators, executive officers or technicians with the working term is under 30 days and the accumulated duration within a year is not exceeding 90 days will be exempt from applying for the work permits (Clause 2, Article 7).

Additionally, the enterprise who employs foreign laborers having working term under 3 months shall not carry out the determination of demand of foreign laborers to the provincial People’s Committee (Clause 1, Article

4).

The Decree takes effect as from 01 April 2016 onwards. The Decree No. 102/2013/NĐ-CP dated 05 September 2013; Point a Clause 4 of the Resolution No. 47/NQ-CP dated 8 July 2014 will turn out of date as from the date this Decree becomes effective.

## Guidance on payment of Social insurance (SI), Health insurance (HI), and Unemployment insurance (UI)

Vietnamese Social Insurance Department has released the Official letter No. 489/BHXH-BT guiding some contents on wages as basis for paying SI, HI and UI for the employees paying those under the salary regime determined by the employer; and guidance on solving some of social insurance policies.

## Guidance on payment of Social insurance (SI), Health insurance (HI), and Unemployment insurance (continued)

Accordingly, from 01 January 2016 onwards, the monthly wage applying as basis for paying SI, HI and UI shall comply with the provisions of Article 30 of Circular No. 59/2015/TT-BLĐTBXH dated 29 December 2015 of the Ministry of Labour, Invalids and Social Affairs, detailing and guiding the implementation of some articles of the Law on Social insurance on compulsory social insurance.

Minimum monthly wage using as basis to pay SI, HI and UI shall be equal to the regional minimum salary; whereas the maximum rate on which to pay SI, HI shall be equal to 20 times of the basic salary, that to pay UI shall be equal to 20 times of the regional minimum salary as stipulated by the Government (regional minimum salary applied from 01 January 2016 onwards shall comply with the provisions in the Decree No. 122/2015/NĐ-CP).

The monthly wage using as basis to pay SI, HI and UI of the employees doing the simplest works or jobs in normal working conditions shall not be lower than the regional minimum salary.

### Determination of interest on late payment, evasion of payment of social insurance

The Ministry of Finance has promulgated the Circular No. 20/2016/TT-BTC guiding the implementation of financial management mechanism regarding SI, HI, UI and management costs regarding SI, HI



and UI.

Accordingly, in the case of late payment of SI, HI, UI, the interest imposed on the late payment is determined on the monthly basis by the following formula:

$$\text{Interest amount charged in a month (n)} = \frac{\text{Accumulated late payment amount at the end of the month (n-2)}}{\text{Interest rate on late payment (\%/month)}} \times$$

In which:

- (n) is the month for which to determine the interest amount due to late payment.
- (n-2) is the month which is 02-month consecutively prior to the month (n).
- Interest rate on late payment (%/month) is the monthly average interest rate regulated by Vietnamese Social Insurance Department at the beginning of the year according to Point c Clause 3 Article 6 of Decision No. 60/2015/QĐ-TTg.

Circular No. 20/2016/TT-BTC takes effect as from 20 March 2016 onwards.

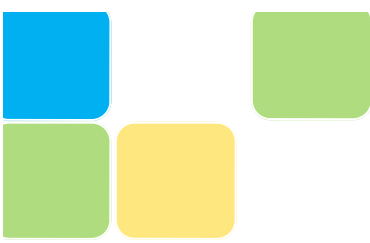
### Expense for purchases of services paid by personal credit card is still deductible.

**Official letter No. 3819/TCT-CS dated 06 September 2014 of General Department of Taxation on the policies of corporate income tax**

*In case that the enterprise assigns the staff to work overseas incurring expenses which is higher than 20 million dong, which were paid by that staff's personal credit card, it will be considered eligible for non-cash payment and deductible expense when determining the taxable income if it satisfies the following conditions:*

- *Having appropriate invoices, vouchers issued by the suppliers of goods, services;*
- *Having the enterprise's Decision or written documents for assigning the employees to go on business trips;*

*However, the enterprise should enforce the budget policy or internal regulations which prescribe/or allow: the employees to make the payment for expenditures by their own credit cards and then those expenses will be repaid to the employees by the enterprise.*



## Expense for purchases of services paid by personal credit card is still deductible. (continued)

On 16 February 2016, General Department of Taxation released the official letter No. 593/TCT-CC providing guidance on the policies of corporate income tax. Accordingly, in case that the enterprises incur service expenses paid by credit card under personal name, if the conditions as stipulated in the official letter No. 3819/TCT-CS dated 06 September 2014 are satisfied, those will be accepted as deductible expenses.

## New regulations on conditions for establishment of Branch, Representative office (RO)

On 25 January 2016, the Government promulgated the Decree No. 07/2016/NĐ-CP stipulating the details of Commercial Law on Representative offices, branches of foreign businessmen in Vietnam.

This Decree stipulates the details of conditions, procedures for the establishment and operation of Representative Office (RO), Branch of foreign businessmen in Vietnam. Accordingly, one of the noticeable highlights of this Decree is to supplement the



regulation: the foreign businessmen are **not** allowed to establish more than one RO or Branch which have the same name in the same area of a Province/City (Article 3).

With respect to the conditions for establishment of RO, Branch, the operation duration stated in the License of the foreign businessmen shall be at least 1 year as from the date of application submission (Clause 3 Article 7, Article 8).

Additionally, the Decree also supplements some prohibitions such as: Branch, RO of foreign businessmen are not allowed to use office premises for lending or leasing (Article 28); the chief representative of the Branch of foreign businessmen shall not concurrently hold the position of the Legal representative of Vietnamese enterprise (Clause 8 Article 33).

The Decree comes into effect from 10 March 2016 onwards. It replaces the Decree No. 72/2006/NĐ-CP dated 25 July 2006 and repeal Article 2 Decree No. 120/2011/NĐ-CP dated 16 December 2011.

### Note:

*"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".*

