

LEGAL UPDATES

April/2016



1. Circular No. 53/2016/TT-BTC amending the enterprise accounting system

On March 21, 2016, the Ministry of Finance issued the Circular No. 53/2016/TT-BTC amending, supplementing some articles of Circular No. 200/2014/TT-BTC guiding on the enterprise accounting system.

Accordingly, upon the liquidation or transfer of trading securities (calculated by each kind of stock), cost of trading securities is determined by one of the following methods: first-in first-out method or weighted average cost.

The enterprise must apply consistently the method selected to calculate the cost of trading securities in the fiscal year.

In case of changing the method of calculating the cost of trading securities, the enterprise must present and disclose as prescribed by the accounting standards.

Simultaneously, Circular No. 53/2016/TT-BTC also amended and supplemented many other regulations of Circular No. 200/2014/TT-BTC, as: Principles of determining the exchange rate, translating the accounting vouchers into Vietnamese and so on...

Accordingly, the vouchers that rarely arise or arise many times but having the different contents must be translated fully into Vietnamese. With respect to the vouchers that arise many times with the same contents, the initial voucher must be translated fully into Vietnamese, from the second one, the major contents shall be translated : Name of the voucher, name of the unit and individual preparing the voucher, name of the unit and individual that receive the economic content of the voucher, title of the person signing on the vouchers and so on. The translator must sign with the full name and take the responsibility on the content translated into Vietnamese.

However, the documents accompanied to the accounting vouchers as: types of contracts, documents attached with the payment vouchers, investment project document, finalization statements and other related documents are not required to be translated into Vietnamese, except for the case that there is the request from the competent state authorities.

Besides, the Ministry of Finance also amended the principles on determining the exchange rate. Accordingly, the actual transaction rate when buying and selling the foreign currencies (foreign currency purchase contract for immediate delivery, term contracts, future contract, option contracts, swap contracts) is the rate presented in the foreign currency purchase and sale contract signed between the enterprise and commercial banks and so on...

In case that the contract does not specify the payment's exchange rate: the enterprise shall account based on the actual transaction rate.

In addition to the actual transaction rate mentioned above, the enterprise can select the actual transaction rate which is approximate to the average transfer purchase rate of the commercial banks where the enterprise often makes the transactions. The approximate rate must ensure the disparities which do not exceed +/-1% compared with the average transfer purchase rate.

Circular No. 53/2016/TT-BTC takes into effect from the signing date and shall be applicable for the fiscal year starting on or after January 01, 2016 *tu* 53/2016/TT-BTC.

The enterprises are allowed to select to apply the exchange rate stipulated at Article 1 Circular No. 53/2016/TT-BTC for the financial statements as of 2015.

AMENDING THE ENTERPRISE ACCOUNTING SYSTEM

1

Circular No. 53/2016/TT-BTC

FOREIGN EXCHANGE MANAGEMENT TO THE FOREIGN LOANS OF ENTERPRISES

2

Circular No. 05/2016/TT-NHNN

TELEPHONE AND TRAVELING EXPENSES CONSIDERED AS DEDUCTIBLE EXPENSES

2

Official letter No. 1166/TCT-TNCN

TAX INCENTIVES FOR REGULAR INVESTMENT

3

Official letter No. 4769/BTC-TCT

RECOGNITION OF TRADE UNION PAYMENT OF PREVIOUS YEARS

4

Official letter No. 1564/TCT-DNL

MATERIALS IMPORTED FOR PRODUCTION TO EXPORT

4


Official letter No. 448/GSQL-GQ2



2. Guide on some contents of the Foreign Exchange Management to the foreign loan borrowings and repayment of the enterprise

On April 15, 2016, the State Bank issued the Circular No. 05/2016/TT-NHNN ("Circular No. 05") amended and supplemented some articles of Circular No. 03/2016/TT-NHNN dated February 26, 2016 of the State Bank guiding on some contents of the Foreign Exchange Management to the foreign loan borrowings and repayment of the enterprise.

Accordingly, Circular No. 05 amended and supplemented some regulations at Circular No. 03/2016/TT-NHNN, including:

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- i) Amending, supplementing Article 4 on some principles in the management of foreign loan activities in the form of goods imported with the deferred payment;
 - ii) Amending, supplementing Clause 2 Article 24 stipulating on the account used for foreign loan borrowing and repayment of the Borrower who is the FDI enterprise;
 - iii) Amending Article 28 on the change of account use for the foreign loans;
 - iv) Amending Article 32 on the transfer to make the repayment of the foreign loan in the form of goods imported with the deferred payment;
 - v) Amending, supplementing Clause 2 Article 34 on the cases of remitting payment related to the foreign loan which is not through the foreign loan account.

The amendment of those regulations mentioned above is for the purpose to provide the favorable conditions for the enterprises in the payment activities of foreign loans in the form of goods imported with the deferred payment and support the business operation of credit organizations.

The Circular takes into effect since April 15, 2016.

3. Telephone and traveling expenses are deductible when calculating the personal income tax

That is the content guided at Official letter No. 1166/TCT-TNCN dated March 21, 2016 of the General Department of Taxation. Accordingly, the payment for traveling expenses is calculated as deductible expense when determining the taxable income to pay the corporate income tax (CIT), and as the deductible income when determining the income subject to personal income tax (PIT).

Simultaneously, the payment for telephone fees for a certain individual is calculated as deductible expense when determining the taxable income to pay the CIT, and as the deductible income when determining the income subject to PIT if the conditions and levels of the benefit are specified in one of the following documents:

- Labor contracts.
- Collective labor agreement.
- Financial statutes of the Company, Corporation, Group.
- Regulation on bonuses adopted by the Chairman of the Board of Directors, General Director, Director.

Besides, if the enterprise pays the telephone fees for the employees higher than the regulated amount, the difference shall be counted in the income subject to the PIT.

4. New guide on the tax of regular investment activities

An operating enterprise has regular investment activity during 2009 - 2013 period, such regular investment activity was not expansion investment and was entitled to enjoy corporate income tax (CIT) incentives which were being applied to the project.

This is the basic content in Official letter No. 4769/BTC-TCT that the Ministry of Finance provides the instruction to the tax departments of provinces and cities.

According to the guide, the regular investment activity is the activity executed from 1 of 3 independent sources to additionally invest machinery, equipment regularly for the project which is enjoying CIT incentives, including:



- 1- Basic fund of fixed assets depreciation of the enterprise;
- 2- Using the profit after tax for the re-investment;
- 3- Using the capital within the scope of investment capital already registered with state management agencies.

The regular additional investment in machinery, equipment from the above - said sources must ensure the condition that it **does not increase the production and business capacity** in accordance with the business plan already registered or approved of the project which is enjoying EIT incentives.

1- If the investment certificate/investment license states the project's scale, the regular investment with the increase of scale, compared with that in the already - granted investment certificate, is not regarded as regular investment and is not entitled to CIT incentives.

2- If the project's scale is not stated in the investment certificate/investment license or the unit only supplements, replaces machinery, equipment regularly and it does not belong to cases being granted the investment certificate, this criteria shall not be applied.


3- In the case the enterprise has regular investment activity that results in the increase of production and business capacity compared with that in the investment certificate/investment license, CIT incentives are not applied to the incomes from the extra compared with the production and business capacity stated in the investment certificate/investment license.



5. Guiding on recognition of trading union expense paid for the prior years

On April 14, 2016, the General Department of Taxation issued the Official letter No. 1564/TCT-DNL guiding on the deductible expense when determining the income subject to the corporate income tax (CIT).


Accordingly, in case that the Company has just established its trading union and additionally paid the trade union fees of previous years as requested by the County Federation of Labor in compliance with the regulations of the Law on Trade Union and Decree No. 191/2013/ND-CP, the trading union expenses of the previous years then can be accepted as deductible expense when calculating CIT of the year that the actual payment was made.



Pursuant to Decree No. 191/2013/ND-CP, the enterprises, irrespective of the local or foreign-invested capital one, are obliged to pay the union fee at the rate of 2%, on the monthly basis, on the salary used as a base to pay the social insurance.

Pursuant to Decision No. 271/QĐ-TLĐ of the Vietnam General Confederation of Labor, if the managers and accountants of the enterprise implement the collection and payment of trade union fee well, they are entitled to receive a bonus of 1.5% on total trade union fund collected by the union.

6. Normal enterprises (not export processing enterprises) are not required to make finalization of materials imported for production to export



This is the content guided at Official letter No. 448/GSQL-GQ2 dated April 5, 2016 of the General Department of Customs on implementation of the finalization report regarding to the enterprises importing for production to export.

Pursuant to the guide at Point 1 Official letter No. 2646/TCHQ-GSQL dated April 01, 2016, regarding to the enterprises importing the materials for production to export, they do not have to implement the finalization report on the situation of using materials under Article 60 Circular No. 38/2015/TT-BTC, exception for the case that they are export processing enterprises.

Accordingly, in case that the Company is a normal enterprise (not export processing enterprise), the Company is not required to prepare the finalization report on the materials imported for production to export.

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".