

# LEGAL UPDATES

01 & 02/2019

## HIGHLIGHTS

- 1** Works and reports the enterprises must carry out in March 2019
- 2** Still being allowed to import already-used machinery in the year 2019
- 3** Imported goods resold to EPEs are entitled to import duty refund and export duty exemption
- 4** Maximum overtime working hours of 30 hours/month is still effective
- 5** Applications for work permit must be undergone the consular legalization and translated into Vietnamese
- 6** Salary expense of foreign workers without work permit is not deductible upon tax determination

# WORKS AND REPORTS

## THE ENTERPRISES MUST CARRY OUT IN MARCH 2019

# 1

### Notifying changes in working employees in February 2019 (if any)

- Deadline: Before March 03, 2019
- Legal grounds: Clause 2, Article 16, Circular No. 28/2015/TT-BLĐTBXH dated 07/31/2015.

If there are changes (increases/decreases) in the number of working employees, the enterprises have to send a notification of such changes before the 3rd of the following consecutive month to the employment service center where the enterprise's headquarters is located.

# 3

### Submitting report on the use of invoices of February 2019

- Deadline: Before March 20, 2019
- Legal grounds: Article 27, Circular No. 39/2014/TT-BTC dated 03/31/2014.

Every month, the enterprises report on the use of invoices to the managing tax office (even when there is no invoice used in the period) not later than the 20th of the following month.

Enterprises which are subject to the monthly report on use of invoices are:

- Enterprises using self-printed invoices or invoices printed on order which commit invoice-related violations subject to administrative sanctions against tax evasion or fraud.
- Enterprises with high tax risks and obliged to buy invoices printed on order of tax offices.

► Note: The use of invoices must be reported on a monthly basic within 12 months from the date of establishment or the date of shifting to buy invoices printed on order of tax offices.

# 2

### Submitting the personal income tax (PIT) declaration of February 2019

- Deadline: Before March 20, 2019
- Legal grounds: Point a, Clause 3, Article 10, Circular No. 156/2013/TT-BTC dated 11/06/2013.

In the month, the enterprises which have performed the withholding of PIT must submit the PIT declaration dossiers to the tax office directly managing the enterprises, no later than the 20th of the month succeeding the month in which tax is incurred.

► Note: The above provisions apply to the enterprises applying the declaration of tax on a monthly basic. If there is no PIT which has to be withheld in the month, the enterprises do not need to make the declaration for that month.

# 4

### Submitting the value added tax declaration of February 2019

- Deadline: Before March 20, 2019
- Legal grounds: Article 15, Circular No. 151/2014/TT-BTC dated 10/10/2014 and Point a, Article 3, Article 10, Circular No. 156/2013/TT-BTC dated 11/06/2013.

Every month, the enterprises which has total earnings from selling goods and providing services of the previous consecutive year over 50 billion dongs must submit the value added tax declaration of that month, no later than the 20th day of the following month.

# 5

### Paying the Trade union fee of March 2019

This is the obligation of the enterprises, regardless of whether or not the enterprises have organized a trade union.

Rate of contribution to the Trade Union fund is 2% of the salary fund which is a base for paying social insurance for employees and must be paid at the same time of payment of compulsory social insurance for the employees.



## Submitting the declaration of corporate income tax finalization of 2018

- Deadline: Before March 31, 2019
- Legal grounds: Point dd, Clause 3, Article 10, Circular No. 156/2013/TT-BTC.

The enterprises must submit the corporate income tax finalization dossiers to the managing Tax Agency not later than the 90th day after the day ending the calendar year or the fiscal year (for enterprises that choose their fiscal period other than the calendar year).

## Withholding to pay social insurance, health insurance, unemployment insurance premiums of March 2019



- Deadline: Before March 31, 2019
- Legal grounds: Article 7, Decision No. 595/QĐ-BHXH dated 04/14/2017.

Every month, no later than the last day of the month, the enterprises withhold the compulsory social insurance, health insurance and unemployment insurance premiums on the monthly salary fund of employees participating in such insurance.

At the same time, it is deducted from the monthly salary to pay the above insurance premiums of each employee at the rate as prescribed to the district social insurance agency where the enterprise's head office is located while the enterprise's branch office will make the payment to the social insurance agency where the branch is operating.



## Finalizing personal income tax of 2018

- Deadline: Before March 31, 2019
- Legal grounds: Point d, Clause 1, Article 16, Circular No. 156.

The enterprises must finalize the personal income tax whether arising or not arising tax withholding in the year and carry out the finalization on behalf of individuals as authorized no later than the 90th day after the day ending the calendar year.

## STILL BEING ALLOWED TO IMPORT ALREADY-USED MACHINERY IN THE YEAR 2019

Official Letter No. 367/TCHQ-GSQL dated January 15, 2019 of the General Department of Customs stipulates the time limit for implementation of regulations on import of already-used machinery, equipment and technological lines.

The official letter requests the provincial Customs departments to continue handling import procedures for already-used machinery, equipment and technological lines under the direction of the Government at Point 8 of Resolution No. 162/NQ-CP dated December 31, 2018.

In the periodic meeting in December 2018, the Government agreed to continue applying the provisions at Clause 6, Article 72 of Decree No. 69/2018/ND-CP on importing machinery, equipment and technological lines already used by the time the Prime Minister's Decision on this issue takes effect, instead of being imported until the end of December 31, 2018 (Point 8, Resolution No. 162 / NQ -CP).

## IMPORTED GOODS RESOLD TO EXPORT PROCESSING ENTERPRISES (EPEs) ARE ENTITLED TO IMPORT DUTY REFUND AND EXPORT DUTY EXEMPTION

Official letter No. 1011/TXNK-CST dated January 23, 2019 of the General Department of Customs responds to the inquiries related to import duty refund and export duty exemption.

According to the provisions at Point a, Clause 1, Article 34 of Decree No. 134/2016/ND-CP, imported goods which must be re-exported or exported into the non-tariff areas are considered for refund of import duty and exemption of export duty.

Accordingly, in case the Company imports goods from foreign countries or from EPEs and then resells them to other EPEs, the Company will be refunded its already-paid import duty and also exempted from export duty.

However, the imported goods resold to other EPEs must ensure the conditions of not being used, processed or processed in Vietnam (Point c, Clause 1, Article 19, Law on Import Export No. 107/2016/QH13).

## MAXIMUM OVERTIME WORKING HOURS OF 30 HOURS/MONTH IS STILL EFFECTIVE

Official Letter No. 337/LDTBXH-PC dated January 15, 2019 of the Ministry of Labor, War Invalids and Social Affairs stipulates the maximum overtime working hours in a month.

According to the provisions at Point b, Clause 2, Article 106 of Labor Code No. 10/2012/QH13, the maximum of overtime hours (overtime) must not exceed 12 hours/day, 30 hours/month and 200 hours/year (or 300 hours/year for special cases).

According to the Ministry of Labor, the above Labor Code is taking effect, therefore, the regulations on the maximum overtime working hours of not exceeding 30 hours in a month is still effective.

Currently, the Ministry of Labor is being assigned to draft the revised Labor Code, including amending the regulations on maximum overtime hours as proposed by many enterprises and associations, but this issue only in the process of study and discussion.

**F**or regulations on overtime working hours, many enterprises and associations are proposing to extend the maximum limit and abandon the monthly overtime working limit to create flexibility in agreement on working overtime so as to improve production and business efficiency for enterprises and increase income for employee.

## APPLICATIONS FOR WORK PERMIT MUST BE UNDERGONE THE CONSULAR LEGALIZATION AND TRANSLATED INTO VIETNAMESE

Official letter No. 14191/CVL-QLLD dated December 28, 2018 of the Ministry of Labor, War Invalids and Social Affairs responds to the procedures for applying for a work permit for foreigners.

Applications for work permits for foreigners to work in Vietnam are stipulated in Point a, Clause 9, Article 10 of Decree No. 11/2016/ND-CP.

Accordingly, papers issued by foreign countries which are included in the dossiers applying for the work permit must be undergone the consular legalization (except for the case of exemption), translated into Vietnamese and authenticated under the provisions of Vietnam's laws.

# SALARY EXPENSE OF FOREIGN WORKERS WITHOUT WORK PERMIT IS NOT DEDUCTIBLE UPON TAX DETERMINATION

Official letter No. 6351/CT-TTHT dated February 15, 2019 of Department of Taxation of Hanoi City responds to the expenses paid to foreign workers without work permit.

In case the enterprises employ foreign workers to perform tasks in Vietnam but such foreign workers have not yet granted the work permit in accordance with regulations, there are not enough grounds to record and deduct the expenses paid to such worker.



**A**ccording to Article 171 of the Labor Code No. 10/2012/QH13, the employee who is a foreign citizen must present a work permit when carrying out the procedures related to the exit, entry and present as required from the competent state agency.

The foreign citizen coming to work in Vietnam without work permits will be expelled from the territory of Vietnam. The employer who employs foreign citizen without a work permit to work for him/her, shall be handled as prescribed by law **W**.



**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.”