

# LEGAL UPDATES ABOUT PERSONAL INCOME TAX (PIT) – EMPLOYMENT – SALARY

## A. GUIDELINES FOR PIT

On November 18, 2015, HCMC Tax Department issued Official Letter No. 11160/CT-TTHT (Letter 11160) to a HCMC-based enterprise to clarify and provide guidelines for PIT practice, including the following points to note:

### 1. Payments to employees for weddings or funerals

Payments to employees for weddings or funerals for themselves or their family members (including their children, parents and parents in law) paid in accordance with the employer's policy and in line with the Law on Corporate Income Tax are not subject to PIT.

Payments to employees for their newly born babies, birthdays, birthday vouchers, mooncakes, lucky money (if any) are subject to PIT.

### 2. Visa application fees for employees on business trips abroad

According to Letter 11160, visa application fees for employees on business trips abroad are not subject to PIT upon submission of sufficient invoices and supporting documents as stipulated in Article 4 of Circular 96/2015/TT-BTC and when classed as deductible expenses for CIT.

*This is not a formal legal document.*

*All information in this document is for reference and general guidance purposes only.*

*Kindly contact to Talentnet consultant to apply with respect to specific cases:*

**Payroll and HR Outsourcing Services**

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## B. REGION-BASED MINIMUM WAGES IN 2016

On November 14, 2015, the Government issued Decree 122/2015/NĐ-CP regulating region-based minimum wages. From January 1, 2016, region-based minimum wages for enterprises in the relevant regions will be increased by between 11.6% and 12.9% compared to the current levels.

Details are as follows:

Region	Current (Decree 103/2014/ NĐ-CP)	New, from Jan 1, 2016 (Decree 122/2015/ NĐ-CP)	Increase rate
1	3,100,000 VND/month	3,500,000 VND/month	12.9%
2	2,750,000 VND/month	3,100,000 VND/month	12.7%
3	2,400,000 VND/month	2,700,000 VND/month	12.5%
4	2,150,000 VND/month	2,400,000 VND/month	11.6%

## C. BASIC WAGE FROM MAY 2016

On November 11, 2015, the National Assembly approved the National Budget Proposal for 2016, in which the National Assembly has decided to increase the basic wage from 1,150,000 VND/month to 1,210,000 VND/month (a 5% increase, equal to 60,000 VND).

Simultaneously, the capped salary base for SI, HI, and UT contributions will be increased accordingly, from 23,000,000 VND to 24,200,000 VND (an increase of 1,200,000 VND). It's important for enterprises to prepare their budget for 2016.

The increase in the basic wage takes effect from May 01, 2016, and will be subject to further guidance in a Decree from the Government.

## **D. REGULATIONS FOR FEMALE EMPLOYEES AS STIPULATED IN DECREE 85/2015/NĐ-CP**

The Decree provides guidance on some articles in the Labor Code about regulations for female employees, including female employee representatives, employment rights of female employees, working condition improvements, health care to female employees, the right to unilaterally terminate or suspend the labor contract when pregnant, employers' support to build kindergartens, or to partially pay child care fees, the arrangement of child care service in enterprises with many female employees, and other support from employers.

### **Female employees are eligible for the following healthcare services:**

The Decree clearly indicates the improvement of working conditions for female employees, namely employers are required to provide enough bathrooms, restrooms at workplace, and are encouraged to implement flexible working time appropriate to the expectations of female employees.

- In a periodic health examination, an obstetric examination is to be offered to female employees.
- During menstruation, female employees are approved to leave of 30 minutes/day and a minimum of 03 days/month with full salary payment for time off.
- While raising children under 12 months of age, female employees are approved leave of 60 minutes/day for breastfeeding, milking, storing breast milk, resting with full salary payment for time off.
- Pregnant employees may unilaterally terminate or suspend the labor contract if they have confirmation from a competent medical facility that the continuation of working will impact negatively on the embryo.
- Financial support from employers to build kindergartens or to partially pay child care fees.
- Rest time will be mutually agreed between employers and employees provided it is appropriate to workplace conditions and the expectations of female employees.

**Decree 85/2015/NĐ-CP takes effect from November 15, 2015.**

## **E. OFFICIAL LETTER 3945/ LĐT BXH-LĐT L FROM MOLISA TO CLARIFY SOME ARTICLES IN THE LABOR CODE**

This official letter from MOLISA responding to an enterprise mentions the following points:

- The length of a working period for calculating a severance allowance means the total working time the employee actually worked for the employer minus the period of unemployment insurance payment and any working period for which the employer has already paid a severance allowance. The actual working time includes paid periods of leave under the provisions of the Law on Social Insurance.
- The time when employees pay for unemployment insurance will include: the time when employers have paid for unemployment insurance premiums in accordance with the law, and any time when the employer paid, in line with the employee's payroll period, an amount equivalent to the unemployment insurance premiums in accordance with the law.
- As mentioned in the Letter, according to Item 3 Article 186 of the 2012 Labor Code, for employees not subject to Social, Health and Unemployment Insurance contributions, in addition to salary or wages for the job concerned, the employer is responsible for paying to employees an additional amount equal to the premiums payable for Social, Health and Unemployment Insurance and unused annual leave, as set out in current regulations.
- In terms of salary for OT working, public holidays, and untaken annual leave, the Letter confirms the salary based on job duties or titles, and including salary allowances and any other additional payments, is used as the basis for payment to employees for OT working, public holidays, and untaken annual leave.

It's important for enterprises which are paying employees for OT working, public holidays, and untaken annual leave to refer to the guidance to ensure proper compliance.

## F. GUIDANCE ON UNEMPLOYMENT INSURANCE IN CIRCULAR 28/2015/TT-BLĐTBXH

Circular 28/2015/TT-BLĐTBXH (Circular 28) dated 31 July 2015 from the Ministry of Labour – Invalids and Social Affairs provides guidance on the implementation of Article 52 of the Law on Employment and Decree No. 28/2015/NĐ-CP detailing the implementation of a number of Articles on unemployment insurance. Following are the key points:

1. Where an employee concludes multiple labor contracts that are all subject to mandatory unemployment insurance and is currently covered by unemployment insurance under the first effective labor contract, upon termination or change of such contract resulting in ineligibility for unemployment insurance, the employer who is a compulsory participant in unemployment insurance under the next labor contract, **within 30 days from the date of termination or change of the first labour contract, shall** prepare and submit the application for unemployment insurance for the employee to the social security agency.
  2. Employees who are enjoying unemployment benefits are defined as refusing jobs without reason in the following cases:
    - Employees fail to participate in recruitment for the jobs introduced by the Employment Service Center and matching their qualifications as provided by the employees in Form No. 01 of Circular 28.
    - Employees fail to participate in recruitment for the jobs introduced by the Employment Service Center and similar to their previous work.
    - Employees pass the interview recommended by the Employment Service Center where employees are enjoying unemployment benefits but refuse the jobs, unless the jobs are different from the job ads issued by the employers.
- Note: after 2 unreasonable rejections of the jobs introduced by the Employment Service Center where the employees are enjoying unemployment benefits, the employees are ineligible for unemployment benefits any more.
3. Employees who are enjoying unemployment benefits are not required to submit a monthly report on their job search if they perform seasonal labor contracts or under-3-month contracts, are on maternity leave .... during the job search. Employees must fully implement the regulations in this Circular for this article to be applied.