

- **LEGAL UPDATES ON CORPORATE INCOME TAX IMPACT ON PERSONAL INCOME TAX CALCULATION PER CIRCULAR 96/2015/TT-BTC**
- **LEGAL UPDATES ON LABOUR AND SALARY POLICIES PER CIRCULAR 23/2015/TT-BLĐTBXH**

## **A. LEGAL UPDATES ON CORPORATE INCOME TAX (CIT) IMPACT ON PERSONAL INCOME TAX ("PIT") CALCULATION PER CIRCULAR 96/2015/TT-BTC**

According to Circular 111/2013/TT-BTC, fixed payments for business trips and uniforms are excluded from PIT taxable income, providing the payments adhere to CIT taxable income limits regulations.

On June 22, 2015, the Ministry of Finance issued Circular 96/2015/TT-BTC providing guidance on CIT which includes changes relating to fixed payments for business trips and uniforms as follows:

### **I. EXPENSES FOR EMPLOYEE BUSINESS TRIPS:**

Limits on allowances for business trips are no longer applied. Expenses for business trips with invoices/receipts will be included in deductible expenses for CIT purposes. In cases where businesses apply fixed payments for business trips in compliance with financial policies or corporate policies, these will also be included in deductible expenses.

According to previous regulations, deductible expenses for CIT calculations excluded allowances for business trips, both overseas and domestic, exceeding 2 times the conventional business trip allowance regulated by the Ministry of Finance for government employees.

*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:*

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## II. EMPLOYEES' UNIFORM PAYMENTS:

Limits on payment for employees' in-kind uniforms are no longer applied. Deductible business expenses include payments supported by invoices or receipts.

Deductible business expenses do not include payments in cash for employee uniforms which exceed 5 million dong per person per year.

Deductible business expenses include payments in cash for employee uniforms up to a maximum 5 million dong per person per year, and pay for employees' in-kind uniforms with invoices and receipts, where both cash and in-kind uniforms are provided.

Previous regulations stipulated deductible expenses excluded uniform payments in cash and in-kind exceeding 5 million dong per person per year. Deductible uniform expenses for taxable income were capped at 5 million dong per person per year totally, where both cash and in-kind uniforms were provided.

As payments for business trip expenses and uniforms which are deductible for CIT calculation are exempt from PIT, it is important for enterprises to note these changes for their employees' PIT calculations.

**Circular 96/2015/TT-BTC is effective from August 6, 2015, and applicable for CIT for the year of 2015 onwards.**

## B. LEGAL UPDATES ON LABOUR AND SALARY POLICIES PER CIRCULAR 23/2015/TT-BLĐTBXH

On June 23, 2015, The Ministry of Labour Invalids and Social Affairs ("MOLISA") issued Circular 23/2015/TT-BLĐTBXH ("Circular 23") on guidance for salary items in Decree 05/2015/NĐ-CP. Changes to note are as follows:

### I. COMPREHENSIVE DEFINITION OF SALARY

Salary in the employment contract, as mutually agreed between employer and employee for a particular role, includes:

- a) The job salary or title salary in accordance with the salary scale developed by the employer, according to the Labor Code.
- b) Allowances such as additional pay for work conditions and complexity, living conditions, incentives to attract candidates to roles where market rates are higher than the salary scale.
- c) Any other additional payments, apart from salary or allowances, related to work or title performance as mentioned in the employment contract. Such additional payments exclude bonuses, mid-shift meals, pay for funerals and marriage of employees' relatives, employees' birthdays, accident at work payments to employees in need, work-related illness and other non-work allowances mentioned in the employment contract.

## **II. PAYMENT TERMS FOR MONTHLY SALARY EMPLOYEES:**

Details follow:

- a) Monthly salary employees are to receive their salary payment on a monthly basis or fortnightly basis, within the month that the employees working.
- b) Fixed payment time in the month is subject to mutual agreement.

This new change will be challenge for enterprises using a monthly timesheet covering a full calendar month, particularly large enterprises who making payroll payment in the following calendar month due to timesheets being incomplete at the end of the current month.

In support of the enterprises affected, Talentnet has forwarded this concern to DOLISA and MOLISA for further guidance. Feedback from these statutory authorities will be updated for those concerned.

## **III. WAGE PAYMENT:**

Wage payments (monthly, weekly, daily, or hourly wages) are dependent on an employee's actual work on a monthly, weekly, daily, or hourly basis:

- a) Monthly wage is paid for one contracted month's work.

- b) Weekly wage is paid for one week's work, calculated as the monthly wage multiplied by 12 then divided by 52 weeks.
- c) Daily wage is paid for one day's work, calculated as the monthly wage divided by the normal monthly working days **(based upon calendar days, and with at least 4 days off per month on average)** by law and applied by enterprises.
- d) Hourly wage is paid for one hour's work, calculated as the daily wage divided by the number of conventional normal working hours.

It should be noted that enterprises applying fixed monthly working days for payroll calculation need to review and revise their daily wage payment policy accordingly.

## IV. AMENDMENTS TO NIGHT OVERTIME PAY CALCULATIONS

### 1. Night overtime pay

$$\begin{array}{l} \text{Night} \\ \text{overtime} \\ \text{pay} \end{array} = \left( \begin{array}{l} \text{Actual} \\ \text{hourly pay} \\ \text{on normal} \\ \text{working} \\ \text{day} \end{array} \times \begin{array}{l} \text{At least} \\ 150\% \text{ or} \\ 200\% \text{ or} \\ 300\% \end{array} + \begin{array}{l} \text{Actual} \\ \text{hourly} \\ \text{pay on} \\ \text{normal} \\ \text{working} \\ \text{day} \end{array} \times \begin{array}{l} \text{At} \\ \text{least} \\ 30\% \end{array} + 20\% \times \begin{array}{l} \text{Day hourly pay} \\ \text{on normal} \\ \text{working day, or} \\ \text{on weekly rest} \\ \text{day, or on paid} \\ \text{holiday} \end{array} \right) \times \begin{array}{l} \text{Total} \\ \text{night} \\ \text{overtime} \\ \text{hours} \end{array}$$

In this situation, hourly pay on a normal working day as stipulated in Circular 23 is calculated in two ways:

- Pay rate must be at least 100% of the actual hourly pay rate on a normal working day, if NO day overtime work is required before the night overtime work.
- Pay rate must be at least 150% of actual hourly pay rate on a normal working day, if day overtime work is required before the night overtime work.

Therefore, night overtime pay on a normal working day is calculated as follows:

- Where no day overtime work is required before night overtime work on the same day:  $150\%A + 30\%A + 20\% \times (100\%A) = 200\%A$
- Where day overtime work is required before night overtime work on the same day:  $150\%A + 30\%A + 20\% \times (150\%A) = 210\%A$

In which, A is actual hourly pay on a normal working day.

With these new regulations, it is important for enterprises to apply either the rate of 200% or 210% for related overtime work, or just the rate of 210% for night overtime work on a normal working day, regardless of whether any day overtime is worked.

## 2. Actual hourly pay calculation for overtime pay rate:

The actual hourly pay rate is determined by the actual monthly pay rate in the month of overtime work (less overtime pay, night work pay) divided by the actual working hours in this month (excluding overtime hours).

For daily or weekly wages, the actual hourly pay rate is determined by the actual pay of the work day or work week (less overtime pay, night work pay) divided by actual working hours on that day or in that week (excluding overtime hours).

*Therefore, any enterprise applying a fixed hourly pay rate (monthly base pay divided by fixed days or hours) for overtime pay calculation would need to consider revising the hourly pay rate in compliance with the regulations.*

**Circular 23/2015/TT-BLĐTBXH is effective from August 8, 2015, and provisions in Circular 23 are implemented as of the effective date of Decree 05/2015/NĐ-CP dated January 12, 2015 (March 1, 2015).**