

ALL OF 11 PUBLIC AND NEW YEAR HOLIDAYS FOR WORKERS AND EMPLOYEES FROM 2021

According to the 2019 Labor Code, workers and employees will be entitled to paid leave during public and New Year holidays, including:

- Calendar New Year holidays: 01 day (on January 1 of the calendar year);
- Lunar New Year holidays: 05 days;
- Victory Day: 01 day (on April 30 of the calendar year);
- International Workers Day: 01 day (on May 1 of the calendar year);
- National Day: 02 days (on September 2 of the calendar year and the day preceding or following that day);
- Death Anniversary of the Hung Kings 01 day (on March 10 of the lunar year).

Compared to the current regulation, from 2021, workers and employees are entitled to 11 days of public and New Year holidays in total (1 more day on the National Day).

Every year, based on practical situations, Lunar New Year and National Day holidays will vary, depending on the Prime Minister's decision (instead of the employer's decision under which the last day and the first 4 days of the lunar year, or the last 02 days and first 3 days of the lunar year, are two options according to Decree 45/2013/ND-CP).

2019 Labor Code is officially entering into force from January 1, 2021, replacing 2012 Labor Code.

INSTRUCTIONS ABOUT TAX SET-OFFS TO BE ISSUED TO ENTERPRISES WITH RELATED-PARTY TRANSACTIONS

This is the highlight of the Official Dispatch No. 2835/TCT-TTKT providing guidance on implementation of the Decree No. 68/2020/ND-CP of the General Department of Taxation.

According to this document, setting off corporate income tax (CIT) amounts paid in 2017 and 2018 for enterprises with related-party transactions under the provisions of the Decree 68 must adhere to the following instructions:

On carrying out the re-assessment of the CIT amount payable according to the new interest rate ceilings prescribed in the Decree No. 68/2020, in case of such amount is reduced, taxpayers will be entitled to proportionate deductions from relevant tax deferrals (if any). Below are the specific regulations:

** Concerning tax amounts not yet reviewed or audited:

- Taxpayers may set off CIT and CIT deferral differences against the CIT amount payable in 2020.

- In case of failure to carry out the complete set-off in 2020, such set-off will be continued with respect to CIT amounts payable in 5 consecutive years from 2020.

- Upon expiry of such period, the remaining CIT amount that fails to be completely set off will be left aside.

** Concerning tax amounts already reviewed or audited, and subject to review or audit conclusions and response decisions:

- Taxpayers may request directly supervisory Tax Departments or Subdepartments to re-determine the CIT amount payable.

- After final calculation results are given, the tax set-off in this case will be carried out in the same manner as in the first case.

For more details, please read the Official Dispatch No. 2835/TCT-TTKT dated July 14, 2020.

OVERVIEW OF NEW AND SIGNIFICANT REGULATIONS IN 2020 LAW ON ENTERPRISES

1. Abolishing regulations regarding notification of corporate stamp specimens before use

The Law sets forth regulations on corporate stamps as follows:

- Corporate stamps comprise those that may be engraved by stamp carving service businesses or those that exist in the form of digital signatures prescribed in the law on electronic transactions.

- Enterprises may, on their own initiative, decide on the type of their corporate stamp, quantity of their corporate stamps and information shown on stamps of their own, branches or representative offices and other affiliates.

- Handling and custody or storage of corporate stamps must conform to regulations included in charters of enterprises holding corporate stamps or rules adopted by enterprises holding corporate stamps themselves, their branches, representative offices or other affiliates. Enterprises must use their corporate stamps in transactions required by law.

This means that, in comparison with regulations on corporate stamps enshrined in the 2014 Law on Enterprises, the newly-adopted Law invalidates the regulation: "Before use of corporate stamps, enterprises are obligated to inform business registries of their corporate stamp specimens so that they are publicly posted on the National Corporate Registration Portal".

2. Adding more entities prohibited from establishing and managing enterprises

In detail, the 2020 Law on Enterprises is supplemented with more entities prohibited from establishing and managing enterprises, including:

- Persons who have cognitive and behavioral difficulties;
- Police workers serving in agencies and units of the People's Police of Vietnam (except for those who are appointed as authorized representatives to manage the State's contributed capital at enterprises);
- Entities which are legal commercial persons prohibited from business and operation in certain particular sectors prescribed in the Penal Code.

3. Shortening time limit for prior notice of temporary business suspension from 2021

As prescribed in Clause 1 of Article 200 in the 2014 Law on Enterprises, No later than 15 days before their business suspension or resumption, enterprises may suspend their business, but must inform business registries in writing of the start date and the duration of their business suspension or the deadline for their business resumption. This regulation applies in case the notifying enterprise resumes its business before the notified duration of business suspension.

However, upon the entry into force of 2020 Law on Enterprises, time limit for prior notice of temporary business suspension will be reduced. This is covered in the regulation included in this Law under which, not later than 3 working days before their temporary business suspension or resumption, enterprises are obliged to inform business registries in writing of the date of their business suspension or resumption before the notified duration.

This means that the time limit for prior notification of temporary business suspension will be shortened from the maximum of 15 to 3 working days.

4. Adding more application requirements for registration for inception of limited liability companies and joint stock companies

Compared to the Enterprise Law 2014, the 2020 Law on Enterprises sets out regulations under which application documentation for registration for inception of limited liability companies (Article 21) or joint stock companies (Article 22) must include copies of legal documents of legal representatives which are similar to those of members of limited liability companies and founding shareholders of joint stock companies.

5. Imposing an additional regulation regarding non-voting depository receipts

Compared to the 2014 Law on Enterprises, the 2020 Law on Enterprises includes an additional regulation on regarding non-voting depository receipts as follows:

Ordinary shares used as underlying assets for issuing non-voting depository certificates are referred to as underlying ordinary shares. Non-voting depository certificates have economic benefits and obligations corresponding to underlying ordinary shares, except voting rights.

The Government will regulate non-voting depository receipts.

6. Imposing the exception regulation on business closure occurring due to revocation of enterprise registration certificates

As stipulated in Point d of clause 1 of Article 207 in the 2020 Law on Enterprises, “An enterprise shall be dissolved if its enterprise registration certificate is revoked, unless otherwise provided in the Law on Tax Administration.”

This regulation ensures consistency with the equivalent one set out in the Law on Tax Administration.

As specified in Point g of clause 1 and 2 of Article 125 in the 2019 Law on Tax Administration,

“Article 25. Tax enforcement measures

1. Tax enforcement measures include:

g) Revoke the certificate of enterprise registration,...

2. The measures mentioned in Clause 1 of this Article shall terminate when tax has been fully paid to state budget.”

7. Changing the “state enterprise” definition

As defined in clause 11 of Article 4 in the 2020 Law on Enterprises, state enterprises includes enterprises of which 50 percent of the charter capital or total voting shares is held by the State as provided in Article 88 in this Law.

(meanwhile, under current regulations laid down in the 2014 Law on Enterprises, a state enterprise is an enterprise with 100 percent of its charter capital held by the State)

8. Forcing state enterprises to set up the Control Board

According to Clause 1 of Article 103 of the 2020 Law on Enterprises, based on the business size, a representative agency may issue its decision to establish a Control Board composed of 01 to 05 controllers, one of whom is appointed as the Board’s Head.

(According to the 2014 Law on Enterprises currently in force, appointing 01 Controller or setting up a Control Board consisting of 03 to 05 Controllers are two options).

The term of office of a Controller does not exceed 5 years, and upon expiration of such term, a Controller may be re-appointed to no more than 2 terms of office. If a Control Board has only 01 Controller, that Controller may also be the Board's Head and must meet the eligibility standards for the Head of the Control Board.

9. Amending the regulation on disposition of contributed capital shares in certain special cases

In detail, the existing regulations on the disposition of contributed capital shares in certain special cases are amended and supplemented as follows:

- If any member has limited capacity or lost capacity to perform civil act, has difficulty in cognitive and behavioral control, rights and obligations of that member in the company will be carried out through a representative. (The existing regulation prescribes that such rights and obligations may be carried out through guardians).

- In case a member gives a part or the whole of the contributed capital in a company to another person, the grantee will become a member of that company according to the following provisions:

- + If the grantee is an heir under the provisions of the Civil Code, this heir will automatically become a member of the company by default; (The existing regulation stipulates that the spouse, parent, child, or relative third in the line of succession, of the grantor is the member of the company by default...)

- + Unless the grantee is the subject of application of Point a of Clause 6 of Article 53, that person will only become a member of the company upon approval from the Board of Directors.

- An additional regulation prescribes that, in case a company's member is an individual held in detention, serving a prison sentence, is currently subject to administrative enforcement measures at a compulsory detoxification establishment or compulsory re-education establishment, that member may authorize others to perform some or all of their rights and obligations at the company.

- An additional regulation prescribes that, in case a member of a company is an individual banned from practicing certain jobs or works by the Court or a company's member is a legal commercial entity banned by the Court from doing business or operating in certain activities belonging to their business lines, he/she cannot do business or practice these banned jobs or works at that company, or the company temporarily suspends or terminates the relevant business line in accordance with the Court's decision.

10. Amending the regulation regarding common shareholder's rights

As prescribed in the 2014 Law on Enterprises, a shareholder or a group of shareholders must own 10% or more of total common ordinary shares for at least 6 consecutive months, or own a

smaller percentage thereof as stipulated in the company's charter to hold the rights prescribed in Clause 2 of Article 114 in this Law.

However, as prescribed in the 2020 Law on Enterprises, a shareholder or a group of shareholders must own 5% or more of total common ordinary shares for at least 6 consecutive months, or own a lesser percentage thereof as stipulated in the company's charter to hold the rights granted to common shareholders prescribed in Clause 2 of Article 115 in this Law.

11. Possibly transforming sole proprietorships into limited liability companies, joint stock companies or partnerships

According to Article 205 of the Enterprise Law 2020, a sole proprietorship company may be converted into a limited liability company, a joint stock company or a partnership under its owner's decision if all of the following conditions are satisfied:

- The converted company must fully meet the conditions prescribed in Clause 1 of Article 27 in this Law;
- The owner of a sole proprietorship company is committed in writing to take personal responsibility with all of his assets for all unpaid debts and to pay in full the debts due;
- The owner of a sole proprietorship company has a written agreement with the parties of the undischarged contracts about the converted company's acceptance and continued execution of those contracts;
- The owner of a sole proprietorship company makes a written commitment or has a written agreement with other capital-contributing members about the admission and employment of existing employees of that company.

Currently, the 2014 Enterprise Law only covers the transformation of sole proprietorship companies into limited liability companies.

12. Abolishing the regulation "Report on changes of information of company's managers"

Currently, the 2014 Law on Enterprises stipulates that enterprises must report to the business registration offices where they are headquartered within 05 days from the date of change in information about full name, name, contact address, nationality, Citizenship ID card/ Identity Card number, Passport or other legal personal identifications of the following people:

- Members of a Governing Board in a joint stock company;
- Members of a Control Board or a Controller;
- Directors or General Directors.

However, the 2020 Law on Enterprises makes this regulation invalid.

13. Adding more obligations taken on by shareholders

In addition to inheriting the provisions on obligations of common shareholders laid down in Article 115 of the 2014 Law on Enterprises, the 2020 Law on Enterprises sets out the following additional regulation:

“Secure information provided by the company in accordance with the company's charter and law; only use the information provided to exercise and protect its legitimate rights and interests; strictly prohibit distributing, duplicating or sending information provided by the company to the other organization or individual.”

14. Adding more responsibilities of a joint stock company's managers

Compared to existing regulations, the 2020 Law on Enterprises adds more responsibilities of a joint stock company's managers as follows:

Members of the Governing Board, Director/General Director and other managers who violate the provisions of Clause 1 of Article 165 of the 2020 Law on Enterprises will be personally or jointly responsible for compensating for lost benefits, returning claimed benefits and indemnifying the company and the third party.

15. Adding the regulation on more cases in which the status of partnership membership is terminated

According to Clause 1 of Article 185 in the 2020 Law on Enterprises, general partners are deprived of their status in the following cases:

- They voluntarily withdraw capital from the company;
- They are dead, missing or have lost their capacity to perform civil acts or have cognitive and behavioral difficulties;
- They are expelled from the company;
- They are executing prison sentence or being banned by the Court from practicing certain jobs or doing certain works according to the provisions of law;
- In other cases specified by laws.

Compared with the 2014 Law on Enterprises, this Law is supplemented with an additional regulation regarding the case of "having cognitive and behavioral difficulties" and "serving

imprisonment or being banned by the Court from practicing certain jobs or doing certain works as prescribed by law".

16. Abolishing the regulation "exercising the rights of owners of sole proprietorship companies in some special cases"

Compared to the current regulations, the 2020 Law on Enterprises is supplemented with the provision "exercising the rights of owners of sole proprietorship companies in some special cases" as follows:

- If a sole proprietorship company's owner is held in detention, serving a prison sentence, is currently subject to any administrative enforcement measure at a compulsory detoxification establishment or compulsory re-education establishment, that owner may authorize the other to perform some or all of their rights and obligations at the company.

- In case the owner of a sole proprietorship company dies, the heir or one of the heirs under will or law is the owner of the company under the agreement between the heirs. Where the heirs cannot reach agreement, they will register for conversion into a company or dissolution of the company.

- In case the owner of a sole proprietorship company dies without heirs; the heir disclaims his/her inheritance or is deprived of the right to inherit, the estate of the owner of the sole proprietorship company will be disposed in accordance with the civil law.

- If the company's owner has limited capacity or lost capacity to perform civil act, has difficulty in cognitive and behavioral control, rights and obligations of that owner in the company will be carried out through a representative.

- In case the owner of a sole proprietorship company is banned by the Court from practicing certain jobs or doing certain works within the business line of that company, the owner of the sole proprietorship company temporarily suspends or terminates the relevant business lines according to court decisions or transfers his/her sole proprietorship company to the other individual or organization.

2020 Law on Enterprises is officially entering into force from January 1, 2021, replacing the 2014 Law on Enterprises.

ABOUT US

Established in 2011, Song Bao Debt Collection Services Company Limited is an experienced company in the field of debt collection in Vietnam. Song Bao is proud to represent you to troubleshoot and recover your overdue debts at the lowest cost and the fastest time based on the policy NO DEBT RECOVERY – NO FEE COMMISSION.

Therefore, SB Debt Collection is: Best Solution – Best Success. From the very first day of its establishment, SB Debt Collection has been incessantly striving to improve its organization and service quality. Oriented management: SB Debt Collection selects the oriented management according to the results and the projects; as such “Management by objectives and Implementation of measures to handle debt in accordance with the laws” is our management approach.

With a dynamic staff, and experienced leaders and prestige contributors, all members of SB Debt Collection are sticking together to activities for the company’s benefits. We are committed to bringing you the best service, at the most competitive price.

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