



LEGAL NEWS

Labor - Salary

Force employees to take off work to use up their leaves, is it legal?

Is the employee paid a wage amount for the untaken leave day?

In case the employee has not yet taken an annual leave or has not yet fully taken the number of annual leave days, the benefits shall be as follows:

- In case the employee has not yet taken an annual leave due to employment termination or job loss:



Pursuant to Clause 3, Article 113, Labor Code 2019, *the employee is entitled to receive a wage amount for the untaken leave days.*

- **In case the employee has not yet taken annual leave due to not having demands to work without having leaves:**

In this case, the employer *shall not pay a wage amount for the untaken leave days.* Therefore, the employee shall take advantage of leaves before the end of the year.

In addition to the year-end leave, the parties may agree to take the previous year's leaves. In accordance with Clause 4, Article 113, Labor Code 2019, the employee may reach an agreement with his/her employer on taking of annual leaves in installments or aggregate leaves every 3 years at most.

Therefore, the employee who has not yet taken annual leave due to not having demands shall receive a wage amount for the untaken leave days at the end of the year and is



allowed to have an agreement with the employer to add up the next year's leaves.

The employer forces employees to take time off work to use up their leaves, is it legal?

In accordance with Clause 4, Article 113, Labor Code 2019, the employer shall take responsibility for prescribing annual leaves after consulting the employee's opinions. This schedule must be informed to the employee before being into implementation.

Actually, annual leaves shall be flexible due to the employee's demand for working in the company in order to create favorable conditions for the employees.

However, the employers shall require the employee to allocate to take annual leaves so as not to have effects on production progress and business.

In accordance with law provisions, *the employers must publicize the annual leave schedule and then require the employees to take the annual leaves. In the case that the employer does not issue an annual leave schedule but forces employees to take off work to liquidate their leaves will be considered a violation of annual leave.*

The employer shall be imposed with a fine of between VND 10,000,000 and VND 20,000,000 for violating the law provisions on weekly or annual leaves or public holidays. This fine is doubled with the fine of between VND 20 - 40 million (*in accordance with Clause 2, Article 18 and Clause 1, Article 6, Decree No. [12/2022/ND-CP](#)*).

Although the company does not have the right to force employees to take work to liquidate the remaining year's leaves when the employer does not issue an annual leave schedule, to ensure the benefits of leave, if the request is reasonable, employees should actively do.

In accordance with Labor Code 2019, in case the employee has not yet taken annual leave, the employee is not paid with wage amount for the untaken leave days.

The employee can be defaced with untaken annual leaves if having no agreement with the employer. This is a great disadvantage for the employee.

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What is the tax withholding of personal income tax?

What is the tax withholding of personal income tax?

Tax withholding of personal income tax means that income payers calculate and withhold payable tax amounts from the incomes of taxpayers before paying incomes (Clause 1, Article 25, Circular No. 11/2013/TT-BTC).



Tax withholding of personal income tax includes many cases (different incomes) as follows:

- Income of non-resident individuals
- Incomes from lottery agency, insurance, agency; incomes from enterprise's activities, lease of assets.
- Tax withholding for incomes from capital investment.
- Tax withholding for incomes from the stock transfer.
- Tax withholding for Income from contribution capital of non-resident individuals.
- Tax withholding for incomes from prize-winning.
- Tax withholding for incomes from copyright or franchising.
- Tax withholding for other cases (10% withholding rate before paying incomes)
- Tax withholding for wages and salaries (pay personal income tax quarterly or monthly).

In the above cases, the article pays attention to tax withholding for personal income tax for incomes from wages and salaries. Or speaking in other ways, taxpayers pay withholding incomes (temporarily for paying tax) monthly, or quarterly, in particulars:

+ For resident individuals who sign labor contracts of three (3) months or more, including those signing such contracts with many entities, income payers shall withhold tax according to the Partially Progressive Tax Tariff, including the cases signing labor contracts of 03 months in many places.



+ For resident individuals who sign labor contracts of three (3) months or more but cease their jobs before such contracts expire, income payers shall also withhold tax according to the Partially Progressive Tax Tariff.

+ For foreigners working in Vietnam, income payers shall base themselves on the taxpayers' working duration in Vietnam as written in contracts or documents on sending these foreigners to Vietnam to work to temporarily withhold tax according to the Partially Progressive Tax Tariff (for individuals who have worked in Vietnam for at least 183 days in a tax year) or the Whole Personal Income Tax Tariff (for individuals who have worked in Vietnam for less than 183 days in a tax year).

Therefore, tax withholding means that income payers calculate and withhold payable tax amounts from the incomes of taxpayers before paying. There are differences among incomes:

- Tax withholding for incomes from wages and salaries means temporarily paying to the end of the year and making settlements to overpaid/underpaid tax and requiring tax refund.
- Besides, there are some taxpayers' incomes that are withheld and paid into the state, for example prize-winning.

2. Must have tax declaration for not incurring withholding tax?

Sub-point d.1, Point d, Clause 6, Article 8, Decree No. 126/2020/ND-CP prescribes this problem as follows:

“Organizations and individuals paying incomes from salaries or wages shall make tax finalization declaration and make tax finalization on behalf of the authorizing individuals, regardless of withholding tax or not. If paying no income, they are not required to make personal income tax finalization declaration.”

Therefore, paying incomes from salaries or wages shall make tax finalization declaration and make tax finalization declaration on behalf of the authorizing individuals, regardless of withholding tax or not.

It means that it is compulsory to make tax finalization declarations and make tax finalization in the tax year, regardless of income level.

At the same time, organizations and individuals must not make tax declarations of personal income tax in the tax year (from January 01 to the end of December 31).

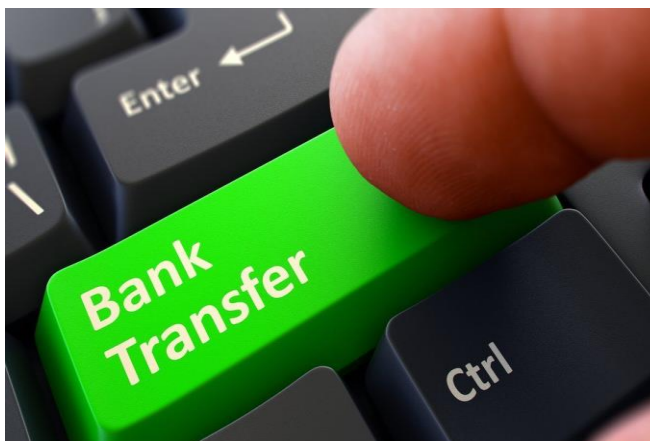
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Calculation of enterprise income tax from capital transfer

Scope of application for income from capital transfer

Clause 1, Article 14, Circular No. 78/2014/TT-BTC prescribing the scope of application for incomes from the capital transfer as follows:

- An enterprise's income from the capital transfer is income earned from the transfer of part or the whole of the



capital amount the enterprise has invested in one or many other organizations or individuals (including the sale of the whole enterprise).

The time of capital transfer is the time of transfer of capital ownership.

- In case an enterprise sells the whole single-number limited liability company which it owns in the form of capital transfer together with real estate, it shall declare and pay enterprise income tax for the transfer of real estate and fill in the enterprise income tax return promulgated together with the Circular 78.

- In case an enterprise transfers capital and receives in return property or other material benefits (stocks, fund certificates, etc.) instead of cash and earns income from the such transfer, such income is liable to enterprise income tax.

The value of property, stocks, or fund certificates shall be determined based on their selling prices on the market at the time of their receipt.

Calculation of enterprise income tax from capital transfer

Pursuant to Clause 2, Article 14, Circular No. 78/2014/TT-BTC, the taxed income from the capital transfer is determined as follows:

$$\text{Payable taxed income} = \text{Taxed income} \times 20\%$$

In order to calculate the payable taxed income, Taxed income from capital transfer shall be determined as follows:

$$\text{Taxed income} = \text{Transfer price} - \text{Purchasing price of the transferred capital} - \text{Transfer expenses}$$

Of which:



(1) *The transfer price* is the total actual value earned by the transferor under the transfer contract.

If installment or deferred payment is made under the capital transfer contract, the contract's turnover excludes installment or deferred payment interests in the contractual term.

If the payment price is not stated in the transfer contract or when the tax agency has grounds to determine that the payment price does not match the market price, it may inspect and fix the transfer price.

For an enterprise that transfers part of its contributed capital at a transfer price not matching the market price, the tax agency may re-valuate the whole enterprise at the time of transfer for re-determining the transfer price in proportion to the transferred contributed capital amount.

The transfer price shall be fixed on the basis of investigation documents of the tax agency or capital transfer prices in other cases at the same time, of the same economic organization or under similar transfer contracts at the time of transfer. In case the transfer price fixed by the tax agency is inappropriate, it shall be based on the valuation by a professional valuation organization competent to determine transfer prices at the time of transfer in accordance with law provisions.

If an enterprise transfers capital to an organization or individual, the capital amount transferred under the transfer contract valued at VND 20 million must have non-cash payment documents. In case the capital transfer has no non-cash payment documents, the tax agency may fix the transfer price.

(2) *The purchasing price* of the transferred capital amount is determined on a case-by-case basis as follows:

In case of transfer of contributed capital for enterprise establishment, it is the value of the contributed capital amount recorded in accounting books, invoices, and documents at the time of transfer and certified by parties investing in the enterprise or to the business cooperation contract, or shall be based on audit results provided by an independent audit company for wholly foreign-owned enterprises.

In the case of capital redemption, it is the value of the capital amount at the time of redemption. The purchasing price shall be determined based on the contract on redemption of the contributed capital amount and payment documents.

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LEGAL UPDATES

Finance - Banking

SBV increases the interest rate of VND deposits (October 25, 2022)

On October 24, 2022, the State Bank of Vietnam issues [Decision No. 1812/QD-NHNN](#) on the maximum interest rate applicable to VND deposits. The above interest rates are applicable from October 25, 2022.

In accordance with Decision 1812, the State Bank of Vietnam decides to adjust the interest rate of VND deposit from October 25, 2022, as follows:

- Increase the maximum interest rate applicable to demand deposits and deposits with a term of less than one month shall be from 0.5% per annum to 1.0% per annum.
- Increase the maximum interest rate applicable to deposits with a term of one month to less than six months shall be from 5.0% per annum to 0.6% per annum;
- Increase the maximum interest rate applicable to deposits for People's credit funds, micro-financial institutions shall be from 5.5% per annum to 6.5% per annum.

The interest rates applicable to term VND deposits of organizations and individuals at credit institutions and foreign bank branches arising before October 25, 2022, shall be implemented until their expiry.

In case the agreed time limit expires and the organizations or individuals do not come to withdraw their deposits, the credit institutions or foreign bank branches shall fix the interest rate applicable to those deposits as prescribed in Decision No. 1812/QD-NHNN.

Besides, on October 24, 2022, the State Bank of Vietnam issues Decision No. 1089/QD-NHNN and Decision No. 1813/QD-NHNN to adjust other interest rates:

- Decision No. 1809/QD-NHNN increases the refinancing interest rate from 5.0% per annum to 6.0% per annum; the re-discount interest rate from 3.5% per annum to 4.5% per; the overnight lending interest rate in inter-bank electronic payment and lending to offset the capital shortage in the clearing of the State Bank of Vietnam for other banks from 6.0% per annum to 7.0% per annum.
- Decision No. 1813/QD-NHNN increases the maximum short-term loan interest rate in VND of the credit institutions for borrowers to meet the capital demand in service of a number of economic sectors and industries from 4.5% per annum to 5.5% per annum; the People's credit funds and micro-financial institutions shall apply the maximum short-term loan interest rate in VND which is increased from 5.5% per annum to 6.5% per annum.



SBV does not adjust the exchange rate of USD/VND to 5%

On October 17, 2022, the State Bank of Vietnam issues **Decision No. 1747/QĐ-NHNN** on the spot exchange rate between Vietnam dong and foreign currencies by permitted credit institutions.

Accordingly, banks, credit institutions, and branches of foreign banks are allowed to trade in foreign currencies and provide foreign currency services or determine the buying and selling spot exchange rate (spot) for transactions between Vietnam dong and foreign currencies in accordance with the principles as follows:

For US Dollars: the spot exchange rate shall not exceed $\pm 5\%$ of the average exchange rate in the inter-bank foreign currency market, announced by the State Bank on the same date ($\pm 3\%$) in previous regulations)

For other currencies: Determined by the permitted credit institutions.

- The difference between the buying rate and selling rate shall be determined by permitted credit institutions.

Chief Officer, Director of Monetary Policy Department, Heads of State Bank's units, Chairman of the Board of Directors, Chairman of the Board of members, and General Director (Director) of permitted credit institutions shall be responsible for implementing this Decision.

Industry

Supplement industrial chemicals subject to conditional production and trading

On October 18, 2022, the Government issues Decree No. **82/2022/ND-CP** on amending and supplementing a number of articles of Decree No. 113/2017/ND-CP detailing and guiding the implementation of a number of articles of the Law on Chemicals.

Accordingly, Decree 82 supplements industrial chemicals subject to conditional production and trading as follows:

- Acetylene 29012910; Ammonia (anhydrous): 28141000; Chlorine: 28011000; Fluorine: 28013000;
- Hydrogen: 28041000; Hydrogen sulphide: 28111990; Hydrogen fluoride: 28111100;
- Nitric acid: 28080000; Sulfur dioxide: 28112920; Phosphorus (White, yellow, red):



28047000.

Group-1 industrial precursors:

- Chlorocyclopentane: 29038900; Bromocyclopentane 29033990; Cyclopentyl magnesium bromide: 29319090;
- Bromobenzonitrile 29269000; 2-Chlorobenzonitrile 29269000; 1-phenyl-1-propanone 29143900.

Besides, Decree 82 also supplements the cases not subject to the grant of certificates of eligibility for production of and trading in industrial chemicals subject to conditional production and trading such as:

- Activities of chemical dilution and mixing without chemical reactions forming industrial chemicals subject to conditional production and trading to put into use and production of other products and goods.
- Chemical composition in the mixtures of substances listed as industrial chemicals subject to conditional production and trading has the content in the mixtures of substances less than 0.1%.

Decree 82 takes effect on December 22, 2022.

LIST OF UPDATED LEGAL NORMATIVE DOCUMENTS

Finance - Banking		
1	Decision No. 1812/QD-NHNN dated October 24, 2022 of the State Bank of Vietnam on the maximum interest rate applicable to deposits in Vietnamese dong of organizations and individuals at credit institutions and foreign bank branches as prescribed in the Circular No. 07/2014/TT-NHNN dated March 17, 2014	Issuing date: 24/10/2022 Effective date: 25/10/2022 Effect status: In force
2	Decision No. 1813/QD-NHNN dated October 24, 2022 of the State Bank of Vietnam on the maximum short-term loan interest rate in Vietnamese dong of credit institutions and foreign bank branches for borrowers to meet the capital demand in service of a number of economic sectors and industries as prescribed in Circular No. 39/2016/TT-NHNN dated December 30, 2016	Issuing date: 24/10/2022 Effective date: 25/10/2022 Effect status: In force
3	Decision No. 1747/QD-NHNN dated October 17, 2022 of the State Bank of Vietnam on the spot rates between Vietnamese dong and foreign currencies of licensed credit institutions	Issuing date: 17/10/2022
		Effective date: 17/10/2022
		Effect status: In force
Labor - Salary		
4	Decree No. 83/2022/ND-CP dated October 18, 2022 of the Government providing regulations on retirement later than the prescribed retirement ages applicable to cadres and civil servants holding leadership or manager titles	Issuing date: 18/10/2022 Effective date: 20/10/2022 Effect status: In force
Industry		
5	Decree No. 82/2022/ND-CP dated October 18, 2022 of the Government amending and supplementing a number of articles of the Government's Decree No. 113/2017/ND-CP dated October 09, 2017, detailing and guiding the implementation of a number of articles of the Law on Chemicals	Issuing date: 18/10/2022 Effective date: 22/12/2022 Effect status: Not yet applied

6	Circular No. 14/2022/TT-BCT dated September 30, 2022 of the Ministry of Industry and Trade amending and supplementing a number of articles of the Circular No. 02/2017/TT-BCT dated February 10, 2017 of the Minister of Industry and Trade, prescribing methods, order of setting, appraisal and approval of electricity transmission prices	Issuing date	30/09/2022
		Effective date:	22/11/2022
		Effect status:	Not yet applied
Transport			
7	Resolution No. 128/NQ-CP dated October 05, 2022 of the Government on submitting to the National Assembly the draft resolution on pilot grant of the right to choose to use car number plates through auction	Issuing date	05/10/2022
		Effective date:	05/10/2022
		Effect status:	Not yet applied

Thank you for your reading!

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