

TAX ALERT

Circular No. 80/2021/TT-BTC guiding the implementation of several Articles of the Law on Tax Administration and Decree No. 126/2020/ND-CP of the Government regulating several Articles of the Law on Tax Administration

19 October 2021



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Background information

On 29 September 2021, the Ministry of Finance issued Circular No. 80/2021/TT-BTC guiding the implementation of several articles of the Law on Tax Administration and Decree No. 126/2020/ND-CP dated 19 October 2020 of the Government stipulating several articles of the Law on Tax Administration (“Circular No. 80”). Circular No. 80 provides detail regulations on tax administration, including:

- Declare, calculate and allocate tax liabilities;
- Handling of tax payable amount, late payment interest and penalty;
- Procedures for tax refund; tax exemption and tax reduction;
- Taxpayer Information;
- Tax Inspection;
- Tax administration for e-commerce business, business on digital platforms and other services of overseas suppliers in Vietnam;

This Circular takes effect from 01 January 2022.

In this Alert, Deloitte Vietnam would like to update several notable contents in Circular No. 80 which may have significant impacts on tax compliance.



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Notable contents of Circular No. 80

DECLARATION OF VALUE ADDED TAX (“VAT”)

Allocate the payable VAT amount to the province having dependent unit being production facility

- Total VAT payable to the province where the production facility is located does not exceed the total VAT payable amount of the taxpayer at the head office:
 - The VAT payable amount to the province where the production facility is located is equal to (=) the revenue at the VAT-exclusive price multiplied by (x) by 2% (for goods subject to the 10% VAT rate) or 1% (for goods subject to the 5% VAT rate).*
- In case the total VAT payable to the province is higher than the total VAT payable at the head office:
 - The VAT payable to (each) province is equal to (=) the amount of VAT payable at the head office multiplied by (x) the ratio (%) of revenue at the VAT-exclusive price of products manufactured in (each) province to the total revenue at the VAT-exclusive price of the taxpayer's products.*
- The revenue used to determine the allocation ratio is the actual revenue generated in the tax period. In case of transferring the finished or semi-finished products to other internal units for sale, the revenue of manufactured products shall be determined based on the production cost.
- In case the re-declaration alters the actual generated revenue, it is required to determine and re-allocate the VAT payable amount of each tax period with errors which has been re-declared in order to determine the under-allocated or over-allocated VAT amount to each location.

Declare and pay VAT for dependent unit being the production facility

- The taxpayer shall declare VAT centrally and submit VAT declaration dossiers to the directly managing tax authorities; then pay the VAT amount allocated to each province where the production facility is located.

For dependent units directly selling goods, using invoices they registered or by taxpayers with the management tax authority of the dependent units, thus sufficiently monitoring and accounting for input and output VAT, such dependent units shall declare and pay VAT to the directly managing tax authorities of the dependent units.

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DECLARATION OF CORPORATE INCOME TAX (“CIT”)

Allocate the payable CIT amount for dependent unit being the production facility

- The payable CIT amount in each province where the production facility is located is equal to (=) the CIT payable amount of production and business activities multiplied by (x) the ratio (%) of the cost of each production facility over the total cost of the taxpayer (excluding costs of activities entitled to CIT incentives).
- The cost to determine the allocation ratio is the actual cost incurred in the tax period.
- The payable CIT amount of production and business activities is exclusive of CIT payable for activities entitled to CIT incentives. The payable CIT amount of activities entitled to incentives is determined according to the business results and the level of incentives of the activities entitled to incentives.

Declare, finalize and pay CIT for dependent unit being the production facility

Quarterly tax declaration and tax provision payment: The production facility is not required to submit quarterly tax declaration dossiers but must determine the quarterly CIT provisional amount according to regulations to pay CIT in each province where the production facility is located, including where the unit entitled CIT incentives is located.

CIT finalization:

- The taxpayer shall declare and finalize CIT for all production and business activities at the directly managing tax authority; pay the tax amount allocated to each province where the production facility is located;
- Particularly for activities entitled to CIT incentives, the tax finalization shall be conducted at the directly managing tax authority. The payable CIT amount of the activities entitled to CIT incentives shall be declared according to the form and submitted at the tax authority where the unit entitled to incentives is located and the directly managing tax authority;
- In case the quarterly provisional tax paid amount is lower than the payable tax amount allocated to each province according to the tax finalization, the outstanding amount must be paid to each province. In case the quarterly provisional paid tax amount is higher than the tax amount allocated to each province, it shall be determined as overpaid tax and handled according to regulations.

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PROCEDURE FOR HANDLING OVERPAID TAX, LATE PAYMENT INTERESTS AND PENALTIES

Handling overpaid tax amounts, overpaid late payment interests, overpaid penalties (overpaid amounts)

For overpaid tax amount, taxpayers can either (i) offset the with the outstanding tax, late payment interest, penalties (outstanding amounts) or (ii) deduct from the tax, late payment interest, and penalties incurred in the next period (incurring amounts) in the following cases:

- To offset with the outstanding amounts having the same economic content (subsection) filed at the same tax authority handled the overpaid tax amount (1);
- To offset with the incurring amounts having the same economic content (subsection) filed at the same tax authority handled the overpaid amount (2);
- For overpaid Personal Income Tax (“PIT”) of individuals authorizing the employers to handle PIT finalization, the employers shall apply offsetting rule as either (1) or (2) above. The overpaid PIT amount upon finalization equals (=) the overpaid tax amount minus (-) the remaining payable tax amount of the individual. Employers are responsible for paying the overpaid PIT to such individuals upon doing PIT finalization.
- In case the overpaid tax is in a foreign currency, it must be converted into VND at the opening selling rate of the day of Vietcombank at the time of determining the overpaid tax amount to offset.

Refund, refund by offsetting: After offsetting according to the above provisions, if there are still overpaid amounts or no outstanding amount, the taxpayer may send a request for refund or refund by offsetting other tax liabilities according to regulations.

Orders and procedures for offsetting overpaid tax, late payment interest and penalties

- Automatic offsetting on the tax system for the above (1) and (2). The tax authority will provide information to the taxpayers;
- Taxpayers having overpaid amounts to offset with the outstanding, the incurring amounts with the same economic content (subsection) and the same budget collection area of other taxpayers, shall submit a request for offsetting the overpaid amounts to tax authorities for handling.

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TAX REFUND PROCEDURES

Taxpayer can apply tax refund procedures in the following cases:

- VAT refund;
- Excise duty refund;
- Tax refund under Double Taxation Agreements and International Treaties

Receipt and classification of tax refund applications

- Taxpayers can submit tax refund applications to the tax authorities by two methods:
 - ✓ Send electronic documents through the portal of tax authorities;
 - ✓ Submit paper documents directly at the tax office or by post.
- In case taxpayers wish to cancel their tax refund applications, they must make a written request for cancellation using a template and send to the tax authority. In case the tax authority has announced the Decision on pre-tax refund inspection, taxpayers are not allowed to request cancellation of application dossiers.
- The Circular specifies 06 cases of dossiers subject to inspection before tax refund. Dossier subject to tax refund before inspection is out of these 06 cases.

Several principles for handling tax refund dossiers

- In reviewing tax refund dossiers:
 - ✓ For tax amounts that have been determined to be eligible for refund, taxpayers are entitled to the refund without waiting for the examination results of the entire tax refund dossier;
 - ✓ For tax amounts that need to be assessed, verified or require additional explanation, taxpayers are entitled to tax refund when they have fully satisfied the conditions as prescribed.
- In case taxpayers have outstanding tax amount, late payment interest, penalties and other amounts (outstanding amount), it is required to offset this outstanding amount with tax refund amount (tax refund by offsetting).

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APPLICATION OF MUTUAL AGREEMENT PROCEDURES (MAP)

Application of Mutual Agreement Procedures under Double Taxation Agreements (MAP)

- A taxpayer who is a resident of Vietnam shall submit a request for applying MAP to the General Department of Taxation when determining that the handling of a foreign tax authority has or will cause the taxpayer to pay tax not in accordance with the Tax Agreement (not including the MAP procedures for an Advance Pricing Agreement).
- A taxpayer who is a resident of a foreign country requests to apply MAP to the foreign tax authority where the foreign taxpayer is a resident.
- The application dossier for MAP is specified in Clause 04, Article 62 of this Circular.

Timeline for handling dossiers on tax exemption and reduction

- The timeline is 30 days from the date of receiving the complete dossiers; In case actual examination is required, the timeline will be 40 days from the date of receiving the complete dossiers.

Results of handling the dossiers

- Tax authority shall issue decisions on tax exemption and reduction; or notify the taxpayer in written document the reason for not being eligible for tax exemption or reduction; or notify taxpayers whether or not they are eligible for tax exemption or reduction under a Tax Agreement or other International Treaty.

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TAX INSPECTION

Tax inspection at the tax office

- Profiles of taxpayers are classified into 03 levels of risk: low, medium and high. For high-risk situations, the tax authority will inspect tax files at the tax office and handle according to the following cases:
 - ✓ If taxpayer justifies that the declared tax amount is accurate, the tax files will be accepted;
 - ✓ If the taxpayer cannot justify that the declared tax amount is accurate, the tax authority shall impose the tax payable amount if there are sufficient grounds for imposition. In case there are not sufficient grounds to impose the tax payable amount, the tax authority shall issue a decision on inspection at the taxpayer's premise or push further into inspection and audit plan according to the risk management principles;
 - ✓ If the taxpayer has explained or supplemented information and documents but the tax authority has sufficient grounds to determine tax administrative violations, the tax authority shall make a record of administrative violations and handle according to regulations.

Publishing the annual inspection plans and topics

- Annual inspection plans and topics (including the subsequent amended ones) by competent authorities must be publicized on the website of the tax authority or notified to the taxpayer and its directly managing tax authority (notified in writing copy or phone or email) within 30 working days from the date of issuing the decision approving or amending the inspection plans and topics.

Tax inspection at the taxpayer's premise

- For the case of inspection at the taxpayer's premises: If the database satisfies the conditions for using information technology applications, it is not necessary for the tax authorities to conduct tax inspection at the taxpayer's premises.

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TAX ADMINISTRATION FOR E-COMMERCE ACTIVITIES

Tax administration for e-commerce activities, digital business and other services of overseas suppliers in Vietnam

- For tax procedures in Vietnam (e.g. registration for conducting electronic tax transaction, registration for tax code, tax declaration, tax calculation and tax payment), overseas suppliers can directly perform or authorize the Vietnamese party to perform; or directly perform then authorize the Vietnamese party to continue the later filing.
- Overseas suppliers is required to declare and pay tax on a quarterly basis. They shall pay VAT and CIT according to the direct deemed rate method as follows:
 - ✓ Revenue subject to VAT is the revenue received by the overseas suppliers. The deemed rate for calculating VAT is prescribed at Point b, Clause 02, Article 08, Decree No. 209/2013/ND-CP dated 18 December 2013;
 - ✓ Revenue subject to CIT is the revenue received by the overseas suppliers. The deemed rate for calculating CIT is prescribed in Clause 03, Article 11, Decree No. 218/2013/ND-CP dated 26 December 2013.
- When determining a transaction arising in Vietnam for tax declaration and calculation, the overseas supplier shall perform the following:
 - ✓ Using 02 non-conflicting information including one related to the payment of organization (individual) in Vietnam and the other on the residency status or on the access status of the organization or individual in Vietnam;
 - ✓ In case the payment information of organization or individual cannot be collected or is in conflict with the remaining information, the overseas supplier is allowed to use 02 non-conflicting information including one on the residency status and the other on the access status of organization or individual in Vietnam.

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TAX ADMINISTRATION FOR E-COMMERCE ACTIVITIES

Responsibilities of relevant organizations and individuals in Vietnam when purchasing goods and services from overseas suppliers

- For organizations established and operating under Vietnamese laws, organizations registered to operate under Vietnamese laws (Vietnamese parties), that purchase goods and services of overseas suppliers or distribute goods and provide services on behalf of overseas suppliers who do not register, declare and pay tax in Vietnam, then the Vietnamese parties are obliged to declare, withhold and pay tax on behalf of the overseas suppliers according to Circular No. 103/2014/TT-BTC dated 06 August 2014 of the Ministry of Finance;
- Commercial banks and intermediary payment service providers are responsible for withholding and paying on behalf of the overseas suppliers in case individuals purchase goods and services of the overseas suppliers who has not registered, declared and paid tax in Viet Nam;
- The General Department of Taxation is responsible for notifying the name and website address of the overseas suppliers who have not yet registered, declared and paid tax to Head Office of the commercial bank or the intermediary payment service provider. The Head Office shall be responsible for notifying this list of overseas suppliers to their branches so that the branches can declare, withhold and pay tax obligations when making payments for transactions with the overseas suppliers;
- In case an individual purchases goods and services from an overseas supplier by credit card or other forms, but the commercial bank or intermediary payment service provider cannot withhold or pay on its behalf, the commercial bank or intermediary payment service provider shall be responsible for monitoring the amount of money transferred to the overseas supplier and send such information periodically on the 10th day of each month to the General Department of Taxation;
- The declaration, withholding, payment and monitoring of money transferred to overseas suppliers by commercial banks and intermediary payment service providers shall be performed from the date when the General Department of Taxation notifies the head office of the bank or intermediary payment service provider.

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