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ALERT ON THE DRAFT CIRCULAR ON TAX ADMINISTRATION

Draft Circular of the Ministry of Finance guiding the Law on Tax Administration, and Decree No. 126/2020/ND-CP

17 March 2021

General Introduction

On 02 March 2021, the Ministry of Finance published the content of the Draft Circular guiding the implementation of a number of articles of the Law on Tax Administration and Decree No. 126/2020/ND-CP dated 19 October 2020 of the Government guiding a number of articles of the Law on Tax Administration ("Draft Circular") seeking comments from organizations and individuals. The Draft Circular provides changes in tax declaration, tax calculation, tax distribution; handling tax dispute, late payment interest, and fines; tax exemption and reduction; tax inspection; tax administration for e-commerce business, digital-based business, etc.

In this Alert, we would like to summarize some notable contents in the Draft Circular, which are expected to have significant impacts on tax compliance of businesses for your reference.

1. Declaration, calculation, distribution and payment of Value Added Tax for taxpayers having dependent units in different provinces, or business locations in different provinces which are production establishments
2. Declaration, calculation, finalization, distribution and payment of Corporate Income Tax for production establishments in provinces other than the head - office's province
3. Cases of handling overpaid tax, late payment interest and fines
4. Publicity of annual inspection plan
5. Permanent establishment of foreign supplier
6. Tax administration for e-commerce business, digital-based business activities of foreign suppliers who do not have fixed business establishments in Vietnam

Currently, Deloitte Vietnam is working on the contents of the Draft Circular to give specific comments to the Ministry of Finance. In case you have any questions or concerns related to the Draft Circular, please contact Deloitte Vietnam for assistance in summarizing those contents to give comments to the Ministry of Finance.

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Some notable contents of the Draft Circular

1. Declaration, calculation, distribution and payment of Value Added Tax ("VAT") for taxpayers having dependent units in different provinces, or business locations in different provinces which are production establishments

- Taxpayers make VAT declaration and submit tax declaration documents for all dependent units and business locations to the tax agency who directly manages the head office;
- The allocation of VAT obligations and payment is based on the ratio (%) between the VAT taxable revenue of the dependent units/business locations over the total VAT taxable revenue of the taxpayer. The revenue used to determine the allocation ratio is the actual revenue generated in the preceding year. In case there is no revenue of the preceding year, the taxpayer shall self-determine and consistently apply for the whole year. At the end of the year, based on the actual revenue generated in the whole year, the taxpayer shall re-determine the allocation ratio and payable VAT amount of each location;
- VAT taxable revenue does not include internal revenue generated between the head office and dependent units and internal revenue generated among dependent units. In case the taxpayer conduct the production and sale in a complete cycle, the revenue should be internal transfer price recorded on the delivery notes cum internal transport notes;
- Tax payment: Taxpayers shall do filing base on the payable tax amount allocated for each location to prepare payment vouchers and pay taxes into the State budget for each province according to regulations;

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Some notable contents of the Draft Circular (cont.)

2. Declaration, calculation, finalization, distribution and payment of Corporate Income Tax ("CIT") for production establishments in provinces other than the head office 's province

- **Quarterly payment:** On a quarterly basic, taxpayers shall temporarily pay CIT of each production establishment to relevant province where the production establishment is located;

- **Tax finalization**

  - The taxpayer shall do tax finalization by consolidation for all dependent businesses (including production establishments in different provinces) with the direct tax management authorities where the head office is located, and allocate the payable CIT amount of each production establishment for each province;

  - In case there is a production establishment eligible for CIT incentives, the CIT payable after finalization shall not be allocated to that production establishment. The taxpayer must determine separately the payable CIT amount of the production establishment having incentives with its local Tax authorities;

- **Allocation of tax liabilities**

  - The payable CIT amount in each business location shall be allocated using the cost ratio (%), e.g expenses incurred at that production establishment and the total expenses of the taxpayer;

  - Expenses used to determine the allocation ratio are actual costs incurred in the tax period (excluding expenses arising from internal transactions between the taxpayer's dependent units and expenses of the production establishments that are entitled to incentives according to the provisions of law);

  - In case the tax amount allocated to each province is greater than the tax amount temporarily paid for each quarter, the taxpayer must pay the additional tax to the State budget to that province. If the tax amount allocated to each province is smaller than the tax amount temporarily paid for each quarter, the exceeding amount shall be considered the overpaid and be handled according to regulations.

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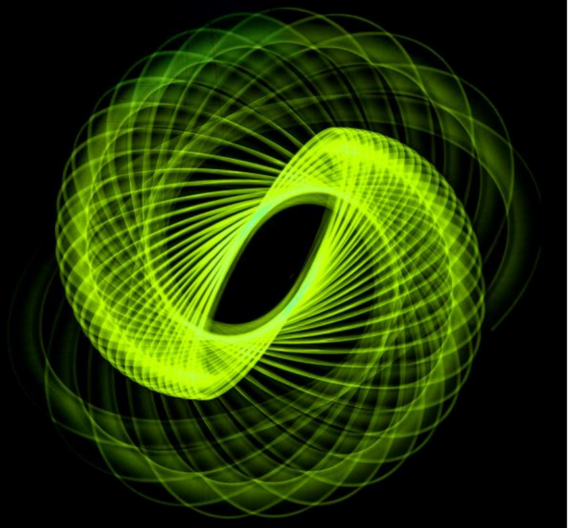

Some notable contents of the Draft Circular (cont.)

3. Cases of handling overpaid tax, late payment interest and fines

- Taxpayers can offset against the outstanding tax, late payment interest, and fines (“**Debt**") or absorb in the payable tax, late payment interest, or fines (“**arising revenue**") of the next period in the cases:
  - Offsetting the overpaid amounts against liabilities with the same economic content (sub-category) incurring in the same location;
  - Offsetting the overpaid amounts against the revenues with the same economic content (sub-category) incurring in the same location;
  - Offsetting the overpaid amounts against debts or revenues with the same economic content (sub-category) and in the same location collecting the State budget of other taxpayers.
- Refund, refund cum offset: taxpayers who have overpaid amounts after making offset by the above methods but still remain overpaid amounts may submit dossiers requesting for refund or refund cum offset against the State budget revenues according to regulations. The taxpayer is entitled to refund the overpaid amount when there is no debt.

4. Publicity of annual inspection plan

The annual inspection plan (including the adjusted plan) must be published on the website of the tax agency or notified to the taxpayer and the tax agency directly managing the taxpayer (written notice or by phone or e-mail) within 30 (thirty) working days from the date of issuance of the decision to approve or modify the inspection plan.

5. Permanent establishment of foreign supplier

Overseas supplier who does not have a fixed place of business in Vietnam having e-commerce business, digital-based business activities with organizations and individuals in Vietnam (hereinafter referred to as foreign supplier) is considered to have a permanent establishment in Vietnam.

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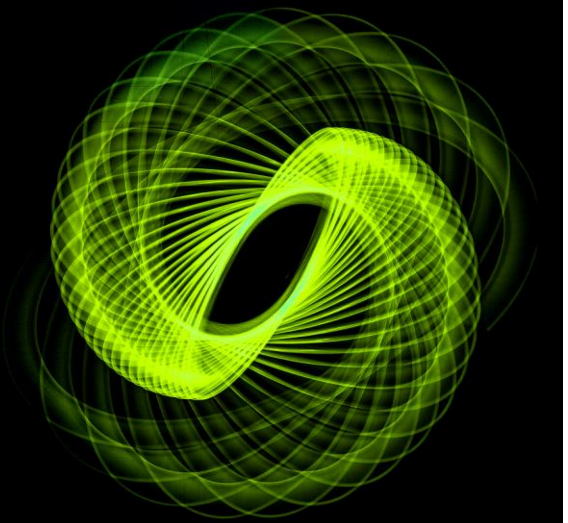

Some notable contents of the Draft Circular (cont.)

6. Tax administration for e-commerce business, digital-based business activities of foreign suppliers who do not have fixed business establishments in Vietnam

- Overseas supppliers register electronic tax transactions together with tax registration through the General Department of Taxation’s website and are granted a 10-digit tax code;
- Overseas suppliers can directly or authorize lawful tax agent to carry out tax registration, tax declaration and tax payment in Vietnam;
- The tax amount is calculated on the basis of the revenue received by the overseas supplier arising in Vietnam in accordance with the tax laws (Clause 2, Article 12 and Clause 2, Article 13 Circular No. 103/2014/TT-BTC) for each product or service applicable to foreign organizations, individuals doing business in Vietnam or having income in Vietnam;
- Adjustment of the declaration: If the declared tax amount is past the tax payment deadline, the foreign supplier is only allowed to adjust the declaration in case the payable tax amount increases;
- Overseas suppliers directly pay taxes via bank in foreign currency or VND into the State budget revenue account. In cases where an overseas supplier overpaid the payable tax amount according to the declaration, the overseas supplier may automatically offset against the payable tax amount in the next period of tax declaration and payment.

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