

## TAX ALERT - THE TAXATION OF DIGITAL AND E-COMMERCE BUSINESS UNDER CIRCULAR 80

Notable updates on tax filing mechanism for foreign companies conducting e-commerce and digital businesses

26 November 2021



### Background

- On 29 September 2021, the Ministry of Finance (“MoF”) issued Circular 80/2021/TT-BTC (“Circular 80”) providing detailed guidance on the Law on Tax Management No. 38/2019/QH14 dated 13 June 2019 and Decree 126/2020/ND-CP dated 19 November 2020. Notably, Circular 80 has a separate chapter that introduces specific tax filing mechanism for foreign companies that conduct e-commerce, digital businesses and other services in Vietnam without having a Permanent Establishment (“PE”) (collectively referred to as “foreign suppliers”). This Circular will come into effect from 1 January 2022.
- On 21 November 2021 the MoF issued Decision No. 2146/QD-BTC on issuance of the general plan for implementation of tax administration of E-commerce business in Vietnam governed by Circular 80 .
- We summarize some notable guidance concerning taxation of income earned by foreign suppliers from Vietnam and our high-level comments relating to the implementation of the new tax filing mechanism as follows:

### Contents

- This Tax alert covers the following contents:
  1. *Overview of the new tax filing mechanism*
  2. *Who is impacted by the new tax filing mechanism?*
  3. *What happens if a foreign supplier chooses not to register, declare and pay tax directly or via an authorized Vietnamese party in Vietnam?*
  4. *Are there any tax benefits if foreign suppliers choose to register, declare and pay tax directly or via an authorized Vietnamese party in Vietnam?*
  5. *New Decision on issuance of the general plan for implementation of tax administration of E-commerce business in Vietnam*
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  7. *Final thoughts*
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### Overview of the new tax filing mechanism

- Circular 80 has introduced a new mechanism to collect taxes from foreign suppliers rather than a new type of tax on income earned by foreign suppliers doing e-commerce and digital based businesses and other services in Vietnam.
- Generally, any foreign entities earning income from Vietnam without setting up a legal entity in Vietnam are taxed under the withholding tax regime, irrespective of their PE status. However, there has been no practical withholding mechanism to collect taxes from payments made by Vietnamese individuals to foreign suppliers until the introduction of the new tax filing mechanism in Circular 80 that could be summarized as below:
  - ✓ Where payments are made by Vietnamese corporate customers to foreign suppliers, such Vietnamese corporate customers are obliged to withhold, declare and pay taxes on behalf of the foreign suppliers. This is the same as the existing withholding tax mechanism.
  - ✓ Where payments are made by Vietnamese individuals to foreign suppliers:
    - Foreign suppliers could directly or authorize a Vietnamese party to register, declare and pay tax via the electronic information portal of General Department of Taxation (“GDT”) by creating an e-transaction account and obtaining a tax code granted by the GDT. Tax filings and payment will be on a quarterly basis.
    - In the event that foreign suppliers fail to comply with the above-mentioned obligations to declare and pay tax, the tax authorities would issue a notification to commercial banks and/or intermediary payment service providers (collectively referred to as “commercial banks/ IPSP”) which provides the name and website address of foreign suppliers and require commercial banks/ IPSP to withhold, declare and pay tax on behalf of foreign suppliers on a monthly basis.
    - If Vietnamese individuals use cards or other methods to pay for foreign suppliers which leads to the inability of the commercial bank/ IPSP to withhold and pay tax, the commercial bank/ IPSP is required to provide the GDT with monthly reports on detailed payments made to foreign suppliers.

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### Overview of the new tax filing mechanism

- ✓ Vietnamese tax payable would consist of two portions, Corporate Income Tax (“CIT”) and Value Added Tax (“VAT”) that would be determined on a basis of deemed rate method applied to taxable revenue in accordance with the applicable CIT and VAT regulations, ranging from 1% to 10% for CIT and 1% to 5% for VAT subject to the nature of goods/services provided by foreign suppliers. In case the applicable deemed tax rates cannot be separately determined for each type of income, the highest tax rates will be applied.
- ✓ A tax relief for CIT portion pursuant to an applicable tax treaty is allowable if stated conditions are met. Generally, a notification dossier is required to be submitted within 15 days prior to the deadline of the tax filing.



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### Who's impacted by the new tax filing mechanism?

- Technically, any foreign suppliers who (i) has no PE in Vietnam and (ii) conducts e-commerce and digital based businesses and other services in Vietnam would be subject to the new tax filing mechanism.
- It could be seen that the scope of the new mechanism is relatively broad, including not only foreign suppliers in the field of e-commerce and digital based businesses but also those with other services provided to Vietnamese customers.
- Whilst the new mechanism is seen to have little impact on the tax filing obligations of foreign suppliers doing business with Vietnamese corporate customers that are still being fulfilled under the current withholding mechanism, foreign suppliers receiving payments from Vietnamese individuals would be mostly impacted.
- Although the mechanism would be applied to foreign suppliers of all services in general, with the focus on taxing foreign suppliers without having a PE in Vietnam, the aim of this mechanism seems to target foreign suppliers deriving income from e-commerce businesses and digital services at the first stage.
- Of note, in the context of Vietnamese regulations, e-commerce activities are defined as carrying out a part or whole of the e-commerce process through electronic means connected to the Internet, mobile telecommunications network or any other open networks. Meanwhile, digital-based business activities are business activities of business entities through an intermediary digital system to connect with customers, all connection activities take place in a digital environment.



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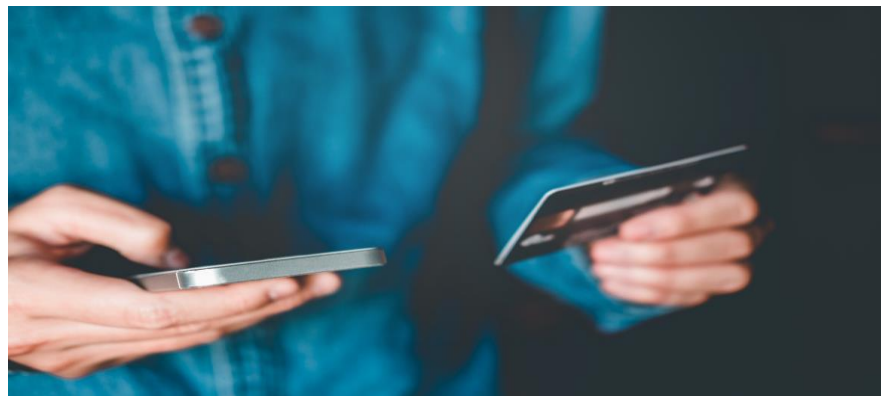
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### What happens if a foreign supplier chooses not to register, declare and pay tax directly or via authorized Vietnamese party in Vietnam?

- The GDT would be the authority that administers the implementation of the new tax filing mechanism. For the cases of non-compliance at the first stage, the GDT would publish the names and websites of foreign suppliers for public awareness. In addition, Vietnamese tax authorities might take further actions, including:
  - ✓ coordinating with foreign tax authorities to urge foreign suppliers to declare and pay taxes in Vietnam;
  - ✓ clawing back tax in case foreign suppliers do not correctly declare and pay tax;
  - ✓ cooperating with other relevant authorities to implement measures in case foreign suppliers do not comply with the Vietnamese tax obligations.



### Any tax benefits if foreign suppliers choose to register, declare and pay tax directly or via authorized Vietnamese party in Vietnam?

- In case foreign suppliers choose not to register, declare and pay tax directly or via authorization in Vietnam and commercial banks/ IPSP subject to the requirement by the GDT would then be responsible to withhold, declare and pay taxes on behalf of the foreign suppliers, there might be negative tax impacts to be considered as follows:
  - ✓ Highest CIT and VAT rates would likely be applied by commercial banks/ IPSP for their conservative purposes;
  - ✓ Commercial banks/ IPSP would withhold taxes on all payments made to foreign suppliers, irrespective of whether the payment would be in scope or not;
  - ✓ Foreign suppliers could not claim tax treaty relief for CIT portion in Vietnam, although they might not have a PE in Vietnam and hence would likely be satisfied with one of the most important conditions of claiming tax treaty benefits as regulated.
- Said differently, through proactively registering, declaring and paying taxes in Vietnam, foreign suppliers could be a better position to:
  - ✓ Apply more proper CIT and VAT rates;
  - ✓ Properly determining taxable revenue;
  - ✓ Claim tax treaty relief for CIT portion, where applicable.

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### New Decision from the Ministry of Finance on issuance of the general plan for implementation of tax administration on e-commerce business in Vietnam under Circular 80

- On 12 November 2021, the Ministry of Finance has issued Decision No. 2146/QD-BTC on issuance of the general plan for implementation of tax administration on e-commerce business in Vietnam governed under Circular 80.
- According to this Decision, the Ministry of Finance issue the short-term and long-term plan from the current time to the year 2025 to require the GDT, certain divisions of Ministry of Finance, State Bank to liaise with other competent authorities (i.e. Ministry of Police, Ministry of Information and Communications, Ministry of Industry and Trade, E-commerce Association) to conduct the following main activities:

No	Proposed activities	Timeline
<b>For short term plan</b>		
1	Request GDT to research, amend and supplement the current tax regulations and develop the guiding documents and process for offshore suppliers to register, declare and pay tax in Vietnam	By 31 December 2021
2	Strengthen propaganda on tax policy and tax management for e-commerce activities via media method	Up to 2023
3	Tax audit/ inspection on e-commerce business including onshore and offshore suppliers	Up to December 2023
4	Prepare the work process and mechanism among these competent authorities and report to Prime Minister on solutions to implement tax management for e-commerce	By 31 December 2021
5	Build up tax portal for offshore suppliers to register, declare and pay tax in Vietnam	by 31 December 2021
6	Build up IT solutions and infrastructure to connect and store information from e-commerce operators and to collect and analyze information and data on e-commerce activities, business on digital platforms and cross-border transactions.	Prior to December 2022

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### New Decision from the Ministry of Finance on issuance of the general plan for implementation of tax administration of e-commerce business in Vietnam (cont'd)

No	Proposed activities	Timeline
<b>For short term plan (cont'd)</b>		
7	Build up database on enterprises and individuals doing e-commerce business	Prior to December 2022
8	Strengthen the exchange of tax information with overseas tax authorities for offshore e-commerce and digital services activities	Within 2022
9	Build up and report to Prime Minister about the negotiation and engagement with the multilateral and bilateral agreement in relation to offshore e-commerce and digital services activities.	From 2022
<b>For long-term plan</b>		
1	Research and build-up policy of digital service tax in case of being governed by Double Tax Avoidance Agreement	Prior to 2024
2	Revise and update tax regulations for the following tax matters	Prior to 2024
a	Regulate the obligation of tax withholding, declaration and payment of e-commerce operators on behalf of individuals	
b	Regulate the obligations of tax withholding, declaration and payment of offshore e-commerce operators and digital suppliers on behalf of Vietnamese individuals prior to allocate/pay the income to Vietnamese individuals	
c	Regulate the obligations of tax withholding, declaration and payment of the banks and intermediaries on behalf of individuals on the income allocated to individuals	
d	Regulate the banks and intermediaries to transmit and connect with the system of the tax authorities on the transactional information of onshore and offshore e-commerce activities	

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### Potential progress of this mechanism upon consideration of the international tax reform (Pillar 1)

- As part of the efforts initiated by the Organization for Economic Cooperation and Development (“OECD”) to address tax challenges arising from the digitalization of the global economy, a consensus regarding international tax reform has been reached among 136 members of OECD by proposing two major changes to the Inclusive Framework of BEPS in which Pillar 1 is in relation to distribution of the taxing rights of the largest and most profitable multinationals amongst jurisdictions.
- Implementation of this proposal would require the passage of a multilateral agreement between countries including but not limited to removal of all digital services taxes (“DST”) and other relevant similar measures. A detailed definition of what constitutes a relevant similar measure will be included in the multilateral agreement and the accompanying explanatory notes.
- Although Vietnam does not have the DST, the question is whether the new tax collection mechanism introduced under Circular 80 can be considered as a form of DST and therefore whether it would be abolished once Vietnam officially approves for Pillar 1 to be enforced.
- By the issuance of Circular 80 to be effective from early 2022, whilst the consent of Vietnam on the implementation of Pillar 1 was expressed in July 2021, it could be seen that in short term to medium term, Vietnam might focus its efforts to collect taxes from both the largest and not as large e-commerce companies and new tax filing mechanism other than waiting until the practical implementation of Pillar 1.

### Final thoughts

- The uniqueness of Vietnamese withholding tax regime has meant some critical differences in approach to taxing digital services in comparison to positions adopted elsewhere.
- The Vietnamese tax authorities’ immediate approach is envisaged to be encouraging compliance through education and information sharing at the very first stage while more aggressive actions to ensure compliance would likely come later.
- Although no time frame is given, the authorities are likely to shift from education to audit in the short term, and so there is a limited opportunity to get comfortable on positions taken.





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### Deloitte's assistance

- We provide various tax services to clients affected by the new tax filing mechanism regime and our services include but not limited to the following:



#### Tax advisory

- Assess whether the client's current business models would be in scope of the new tax collection mechanism;
- Advise what is determined as Vietnam-sourced revenue and how such Vietnam-sourced revenue would be taxed (e.g. proper tax rates);
- Advise clients on possibility and procedures of claiming tax treaty relief in Vietnam for such Vietnam-sourced revenue.



#### Tax compliance

- Assist in registration, declaration and payment, particularly calculating taxable revenue and corresponding tax liabilities.
- Assist in claiming tax treaty relief, where applicable.



#### Tax controversy

- Assist in responding to the tax authorities' queries e.g. challenges on determination of taxable revenue and tax rates.
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- When there are only less than two months for the effectiveness of the new tax filing mechanism, we recommend clients that might be impacted by the mechanism to study and assess the potential impact thereof and prepare for the compliance process as soon as they could. Particularly, assessment whether their current business activities in Vietnam would be in scope of the mechanism and determination of taxable revenue and proper tax rates as well as possibility of claiming tax treaty would matter at the very first stage, prior to any decision on compliance to be made.

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