

Vietnam Tax Updates February 2021

Vietnam Accounting & Taxation Changes

This February 2021 publication of our Tax and Accounting Updates looks at recent guidance for finalisation of Personal Income Tax obligations in Vietnam for the 2020 tax year, along with our regular review of recent Official Letters released by the Tax Authorities.

GUIDANCE FOR FINALISATION OF PERSONAL INCOME TAX FOR THE TAX PERIOD OF 2020

To assist with facilitating tax finalisations for the 2020 tax year that are compliant with current regulations, the General Department of Taxation has recently issued a guidelines on the finalisation of annual Personal Income Tax ("PIT") as below:

1. The Increased Deductions Level

According to Resolution 954 of the Standing Committee of the National Assembly on implementing reductions in PIT for Vietnamese taxpayers for the 2020 tax year:

- The personal deduction increased to VND11,000,000 per month, and
- The dependent deduction increased to VND4,400,000 per dependant per month.

2. Individuals Subject to PIT Finalisation

As a rule, individuals must finalize PIT in the following cases:

- Has additional tax payable of over VND50,000 after the finalisation. If it is below this level, individuals will be exempted from the finalisation (Decree 126/2020/ND-CP).
- Having overpaid tax and seeking a refund.

3. Authorization for Tax Finalisation

- Process for individuals authorizing the finalisation to the income-paying organization remains the same as in previous years.

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- The authorizing individuals are still allowed to apply the increased dependent deductions without going through any additional procedures. Organisations will apply the new level themselves.

4. Deadline for Submission of Finalisation Documents

According to the Law on Tax Administration for the tax period of 2020:

- Enterprises undertaking the tax finalisation, the lodgement will be no later than the last day of the 3rd month from the end of the calendar year.
- Individuals undertaking self-finalisation, the lodgement will be no later than the last day of the 4th month from the end of the calendar year.

5. Application of Tax Declaration and Finalisation

To support taxpayers and facilitate tax declaration and submission of tax declaration documents, the General Department of Taxation continues to implement the PIT finalisation declaration through electronic applications.

- Use the latest free version available at website <https://thuedientu.gdt.gov.vn> or
- Declare directly on the e-portal of General Department of Taxation.

However, it is necessary to register an online tax account with the tax authority.

6. Tax Payment Method

Tax payments can be made through applications such as Internet Banking, Mobile Banking, etc. However, it is necessary to send payment to the accurate account number of the State Treasury, the PIT item code of 1001 and Chapter 557 or 757 (depending on whether it is the Department or Sub-Department level).

In addition, banks' websites also provide details on account information of each tax office and guidance to pay taxes electronically.

7. Place of Filing the Finalisation

The General Department of Taxation's e-portal also assists in identifying the in-charge tax office for finalisation and provides guidance on how to submit the electronic finalisation documents for those who have registered an online tax transaction account. Otherwise, for individuals have not registered an account yet, they must submit the hard copy of the finalisation form directly at the tax office.

OFFICIAL LETTERS RELEASED

Official Letters are releases showing the Tax and other Authorities' interpretation and application of Vietnam's Taxation Laws, providing guidance to taxpayers in Vietnam.

Conditions for VAT Exemption when Importing Construction Materials for EPEs

On 27 January 2021, the General Department of Customs issued Official Letter 395/TCHQ-TXNK on VAT on imported goods to build factory/office for export processing enterprises ("EPEs").

Accordingly, contractors importing materials to build offices and workshops for EPEs are only entitled to VAT exemption when they meet the following conditions:

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- Before importing materials, a written notice must be sent to the Customs to notify the import of materials for fixed assets of the EPE attached with the List of materials.
- Imported materials are transferred directly to the EPE, not imported into the domestic market.
- The import declaration is registered under the code E13 - Enter in the fixed assets of the EPE.

If the above conditions are not met, the contractor must declare and pay VAT upon importing materials. After that, when exporting materials to the EPE, the applicable VAT rate is 0% and VAT amount will be deducted and refunded in accordance with Article 2 of Circular No. 25/2018/TT-BTC of the Ministry of Finance.

Guidance on Leasing Activities of Unused Offices for FDI Enterprises

On 28 December 2020, the Ministry of Construction released the Official Letter 6260/BXD-QLN with guidance on leasing unused office areas.

According to Clause 1, Article 3 of the Law on Real Estate Trading, leasing houses and other constructions is an activity of a real estate business.

FDI enterprises are advised to refer to Article 10 and Point a Clause 3, Article 11 of the Real Estate Business Law and Article 5 of Decree 76/2015/ND-CP to determine the scope for leasing office and if a real estate company license is required.

Point a, Clause 3, Article 11 of the Real Estate Business Law 66/2014/QH13 stipulates that FDI enterprises may trade real estate in the following forms:

- Rent buildings for sublease;
- Build houses on the land which is leased by the State for lease; build houses or constructions other than houses on such land for sale, for lease or lease purchase;
- Receive total or a part of real estate project from investors to build buildings on it for sale, for lease or lease purchase;
- Build houses on land which is allocated by the State for sale, for lease or lease purchase;
- Build buildings on the land which is leased out or transferred in industrial parks, industrial complexes, export-processing zones, hi-tech zones, or economic zone for trading for the proper land use.

Organisations engaging in real estate business activities are required to establish a real estate company, except for small and irregular real estate business activities as prescribed in Article 5 of Decree 76/2015/ND-CP.

Expenditures on Quarantining for Foreign Experts Serving Prevention and Control of COVID-19

On 26 November 2020, the General Department of Taxation released the Official Letter 5032/TCT-CS on determining deductible expenses of Corporate Income Tax ("CIT") and Personal Income Tax ("PIT") regarding expenditures on quarantining foreign experts serving prevention and control of COVID-19.

Based on the applicable law:

1. Determining Deductible Expenses when Calculating the Taxable Income of CIT

- The costs of quarantining at hotels could be deductible if the employment contract between the company and the employee specifies that the employee's accommodation cost will be paid by the company.
- Payments for air tickets may be deductible if the travel fare conditions are met.
- Costs of testing COVID-19 are considered as welfare paid directly to employees and deducted if the benefit conditions are met.

2. Determination of Taxable Income of PIT

In case foreign employees have the COVID-19 quarantine costs paid by their employer upon their entry into Vietnam, these payments are considered as their benefits thus they will be included in their taxable income.

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Tax Policy for Overseas E-commerce Digital Based Enterprises

Upon receiving a petition to consider tax violations of a foreign film studio, the General Department of Taxation issued Official Letter 5353/TCT-CS dated 17 December 2020 answering tax policy for digital-based enterprises. Accordingly, the current tax policy does not differentiate between traditional business activities and E-commerce business activities. Overseas companies doing business in Vietnam on a digital basis will have to pay contractor tax (including VAT, CIT) in accordance with Circular 103/2014/TT- BTC.

Customers using E-commerce services of overseas companies, if they are businesses, will have to withhold and pay contractor tax on behalf of the overseas services provider. Conversely, if customers are individuals, the foreign company must directly or authorise a third party to declare and pay contractor tax on its behalf.

The General Department of Taxation also noted that the Tax Administration Law 38/2019/GH14 has provisions on tax administration for foreign digital-based companies doing business in Vietnam.

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