

# Tax Alert

October 2021

## **Circular 80/2021/TT-BTC guiding the Law on Tax Administration No. 38/2019/QH14 and Decree No. 126/2020/ND-CP**

On 29<sup>th</sup> September 2021, the Ministry of Finance issued Circular 80/2021/TT-BTC (“Circular 80”) providing detailed guidelines for implementation of a number of articles of the Law on Tax Administration No. 38/2019/QH14 and Decree No. 126/2020/ND-CP. In this release, KPMG highlights some notable changes in respect of the tax payment allocation mechanism, principles of tax declaration and tax administration introduced under Circular 80 and Decree 126/2020/ND-CP.

### **1. Allocation of tax payment for taxpayers adopting centralized accounting regime who have dependent business units operating in provinces different from the head office’s location**

According to Circular 80, where taxpayers with centralized accounting having operations and business activities in provinces other than the head office, the tax declaration and submission will be centralized at the head office’s province, while the tax liability payment will be allocated to each province where the business is carried out. Specifically, with regard to certain taxes:

- For Value Added Tax (“VAT”) and Corporate Income Tax (“CIT”), the above mentioned allocation rule shall be applied in the following cases:
  - Production dependent unit
  - Electronic lottery business
  - Real estate transfer
  - Construction activities (only applicable to VAT)
  - Hydropower plants located in various provinces
- Circular 80 stipulates in detail the tax allocation method for each of the above cases and the settlement of provisional/finalized tax amount.
- Notably, for incentivized activities, the CIT payable to be allocated must be determined based on the business results and incentive scheme applicable to such incentivized activities rather than based on the expense ratio.
- For Personal Income Tax (“PIT”) on employment income paid by the head office for employees working at dependent units and business locations in different provinces, the PIT payment will be allocated in the following manner:
  - The PIT allocable to the provinces is based on the actual PIT withheld for the relevant employee
  - In case the employees are transferred, rotated or seconded, the PIT will be allocated to the provinces where the employees are working at the salary payment date.
  - The PIT allocated to each province will not be re-determined at the PIT finalization stage.

## 2. Changes in tax declaration and finalisation

- Tax declaration is not required where a taxpayer only generates income which is not subject to taxes.
- Where the amendment to the submitted tax declaration does not change the tax liabilities, the taxpayer is only required to submit the explanation of the amendment and supporting documents. An amended tax declaration is not required.
- The taxpayer is only allowed to amend the VAT declaration to increase the proposed VAT refundable amount when the tax return of the next tax period has not yet been submitted and the tax refund application has not been submitted.
- By default, PIT declaration is on a monthly basis except for the case where organizations are eligible for quarterly VAT declaration and they can choose to declare PIT on a quarterly basis.
- The adoption of VAT and PIT declaration either on a monthly or quarterly basis must be consistent throughout the calendar year. Previously, the basis of tax declaration must be kept stable for the whole calendar year and throughout a three year-period.
- Where the taxpayer has already submitted an annual tax finalization, any subsequent amendment will be reflected on the amended annual tax finalization only. However, in case of the PIT finalization under the employer's tax code, besides the amendment made to the annual tax finalization, the taxpayer is also required to amend the corresponding monthly or quarterly PIT declarations having errors or omissions.
- PIT for income from capital transfer must be declared on a transaction basis, with the due date for tax declaration and payment being the 10<sup>th</sup> day from the date the tax liability arose. Previously, the deadline for tax payment followed the notice from the tax authorities.
- Organisations are responsible to withhold and declare PIT on behalf of individuals earning income from dividends being securities, individuals who are shareholders and receive bonus being securities, individuals whose dividends are converted into the additional capital contribution, individuals who contribute capital in kind by real estate, shares, and securities. The tax declaration and payment will be at the time when the individual transfers securities of the same type, transfers capital, or withdraws capital. Previously, the obligation to declare and pay PIT belongs to the individuals earning the relevant income.

## 3. Tax relief under the Double Tax Avoidance Agreements (“DTA”) and other International Treaties (“IT”)

Under the old regulations on tax administration, the notification for tax relief under the DTAs and ITs is made on a self-assessment basis. Upon receipt of the tax relief notification dossier from the taxpayer, the tax authorities do not issue any decision or notice on the tax relief eligibility. Under Circular 80, the tax authorities will issue a written notice on whether or not the taxpayer is eligible for tax relief under the DTAs or other ITs within 30 days or 40 days (in case a further investigation is required to have a clear basis for the notice) from the date of receipt of the notification dossier.

Circular 80 takes effect from 1<sup>st</sup> January 2022, nullifying 7 tax administration circulars (including Circular 156/2013/TT-BTC) and certain provisions of other 14 circulars. Tax declaration forms under Circular 80 will be applied from the tax period commencing 1<sup>st</sup> January 2022. However, the forms will also be applied to the tax finalization for the tax year 2021.

Please contact KPMG for further analysis and consultancy on any tax implications of the Circular to your business.

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