

Tax & Legal Update

September 2021

I. TAX UPDATE

1. Draft Resolution on tax relief measures in 2021

For continuous support to businesses and individuals adversely impacted by the Covid-19 pandemic, the Ministry of Finance ("MoF") has submitted to the Prime Minister a draft Resolution on tax relief measures in 2021 with details as follows:

- Reduce Corporate Income Tax ("CIT") payable by 30% in 2021 for taxpayers whose total revenue in 2021 is not more than VND200 billion and total revenue in 2021 is lower in comparison with that of 2020. The criterion of a revenue decrease is not applied to newly established taxpayers, taxpayers converting forms of enterprises, transforming forms of ownership, consolidation, merger, division, separation, dissolution, or bankruptcy in the tax period 2021.
- Exemption from Personal Income Tax ("PIT"), Value Added Tax ("VAT") and other tax payables arising from production and business activities in quarter III and IV of 2021 for business households and individuals doing business in all fields, locations, forms and methods of tax declaration and payment.
- Reduce the VAT rate by 30% (for taxpayers adopting the deduction method) or 30% of the deemed VAT percentage (for taxpayers adopting the deemed method) from 1 October 2021 to the end of 31 December 2021 for enterprises and organizations conducting production and business activities in a number of industries such as transportation, accommodation services, catering services, etc.
- Exempt from interest on late payment of tax, late payment of land use fees, and late payment of land rent arising in 2020 and 2021 for enterprises and organizations (including dependent-accounting units and other business units) making losses in 2020.

2. Corporate Income Tax

- (i) *Consulting fees paid to related parties are not deductible if explanation on the fee calculation basis is not provided and the fee calculation method is inconsistent amongst affiliated companies within the group*

According to Official Letter 1524/TCT-DNL dated 17 May 2021 of the General Department of Taxation ("GDT") citing the opinion of the State Auditor, where the company pays service fees to related parties (e.g. for consulting on corporate governance, consulting on transfer of management skills and market development) but fails to explain the method and the basis of fee setting and the consulting fee is not consistent for the same services amongst affiliated companies within the group, the related costs will not be eligible for deduction when calculating CIT.

- (ii) *Abolishing Circular 179/2012/TT-BTC on recording, evaluating and handling exchange rate differences in enterprises*

For consistency with the provision of Circular 200/2015/TT-BTC, on 27 May 2021 the MoF issued Circular 37/2021/TT-BTC abolishing all contents of Circular 179/2012/TT-BTC on recording, evaluating, and handling of exchange rate differences. Previously, it was stipulated under Circular 179 that the buying rate of commercial banks (if taxpayer opens bank accounts at one bank) or the average exchange rate of banks (if taxpayers open bank accounts at more than one bank) are used to re-evaluate the final balance of a foreign currency account at the end of the accounting period. Thus,

with the abolishment of Circular 179, taxpayers will apply the actual exchange rate following Circular 200 to re-evaluate items denominated in foreign currencies.

Apart from the above, according to Circular 179, enterprises were not allowed to distribute profits or pay dividends from the profit originating from the gain due to re-evaluation of foreign currency accounts at the end of the accounting period. Circular 200 only recommends enterprises to be cautious when distributing profits arising from foreign exchange gains.

Circular 37 takes effect from 11 July 2021.

(iii) Decree 78/2021/ND-CP on the contribution to the Disaster Prevention Fund

On 1 August 2021, the Government issued Decree 78/2021/ND-CP regulating the Disaster Prevention Fund, with the contribution rates for enterprises and employees as follows:

- For enterprises: The annual compulsory contribution level is 0.02% of the total asset value according to the financial statements made as of 31 December, with a maximum of VND100 million, and is accounted as deductible expense for CIT calculation purposes.
- For employees: The annual contribution of employees working under labor contracts is equal to half of the regional minimum salary divided by the number of monthly working days as stipulated under the labor contract.

Decree 78 takes effect from 15 September 2021, replacing Decree 94/2014/ND-CP and Decree 83/2015/ND-CP.

3. Value Added Tax and invoicing

(i) Conversion from a normal enterprise into an export processing enterprise (“EPE”) is not eligible for VAT refund

According to Official Letter 3393/TCT-CS dated 9 September 2021 if the enterprise has been converted into an EPE, the investment project of that enterprise is not eligible for VAT refund. In addition, the conversion from a normal enterprise to an EPE does not fall under the cases of enterprise form conversion under the Enterprise Law, therefore is not eligible for VAT refund under the current VAT regulations.

(ii) Circular 43/2021/TT-BTC amending Circular 219/2013/TT-BTC on VAT for medical equipment

On 11 June 2021, the MoF issued Circular 43/2021/TT-BTC amending Circular 219/2013/TT-BTC on VAT rates for medical equipment. Accordingly, taxpayers can apply the 5% VAT rate to medical instruments and equipment if one of the following documents are available: import license; certificate of registration for circulation; the document certifying the declaration of eligibility for circulating the medical equipment. In addition, Circular 43 also abolishes the requirement to obtain certification from the Ministry of Health for some medical equipment in order to apply the 5% VAT rate.

Circular No. 43/2021/TT-BTC takes effect from 1 August 2021.

(iii) Circular 78/2021/TT-BTC guiding Decree 123/ND-CP on invoices and vouchers

On 17 September 2021, the MoF issued Circular No. 78/2021/TT-BTC guiding the implementation of a number of articles of the Law on Tax Administration No. 38/2019/QH14, Decree No. 123/2020 /ND-CP of the Government on invoices and vouchers. Circular 78 takes effect from 1 July 2022.

Regarding e-invoicing, from 1 July 2022 all businesses, economic organizations, business households and individuals must use e-invoices (except for small and medium enterprises, cooperatives, households and individuals doing business in difficult and extremely difficult socio-economic areas who do not transact with tax authorities by electronic means, do not have information technology infrastructure, do not have an accounting software, etc. as prescribed under Decree 123/2020/ND-CP). Businesses are encouraged to apply e-invoicing before 1 July 2022.

Circular No. 78 details the contents of e-invoices, including: authorization to issue e-invoices; sample of various types of e-invoices; symbol of e-invoice types; use of e-invoices with the verification code of the tax authorities; use of e-invoices in other typical cases; e-invoices with the verification code of the tax authorities which are generated from the cash register with an electronic data transfer connection to the tax authority’s system; criteria to select an e-invoice service provider.

In addition, the Circular also stipulates content requirements for paper-based invoices, including: types of invoices, symbol of invoice types, invoice symbol, name of invoice copy printed by the tax authorities; the use of receipts for collection of taxes, fees and charges by tax authorities for individuals; and guidelines for application during the transition period.



II. LEGAL UPDATE

1. New regulations on cross-border advertising services

Decree No. 70/2021/ND-CP ("**Decree 70**"), issued on 20 July 2021 and, effective from 15 September 2021, amends and supplements *Decree No. 181/2013/ND-CP* by providing guidelines on various articles of the Law on Advertising. In particular, Decree 70 amends and supplements regulations on the provision of cross-border advertising services with some notable points as follows:

- Defines “provision of cross-border advertising services” and “electronic information sites for cross-border advertising services”, which expands the scope of electronic information sites to include websites and applications providing advertisement.
- Revokes the requirements on cross-border advertising service providers to provide advertisement through an advertising agency and notify the Ministry of Culture, Sports and Tourism before conducting such activity. The Ministry of Information and Communication ("**MIC**") will be the in-charge management authority of cross-border advertising services.
- Supplements the responsibilities of the cross-border advertising service providers to efficiently manage and enhance the quality of their advertising services. In particular, the cross-border advertising service providers must provide the MIC with contact information and server locations, must not upload advertisement having illegal content, and must also prevent and remove illegal information and provide information to the MIC and relevant authorities about organizations and individuals related to cross-border advertising activities having signs of violation.
- Entitles the MIC and other competent authorities of Vietnam to enforce measures to prevent illegal advertising in certain circumstances. The preventive measures can only be removed after such illegal advertisements has been handled by the cross-border advertising service providers at the request of the MIC.

With Decree 70, the cross-border advertising services are highly regulated, which will impact the activities of the cross-border advertising service providers.

2. Draft decree amending and supplementing regulations on management of multi-level marketing

The Government is drafting a Decree amending and supplementing *Decree No. 40/2018/ND-CP* on management of multi-level marketing ("**Decree 40**"). The draft contains the following notable provisions:

- Amends the definition of “multi-level marketing ("**MLM**") enterprise” by adding the requirement of being granted a certificate of MLM operation registration (the "**Certificate**") by competent authorities to enhance the legitimacy of such enterprises.
- Tightens the compliance requirement on issuance of the Certificate; in particular, enterprises deliberately engaged in MLM business activities before being granted the Certificate will not be considered for issuance of the Certificate.
- Supplements the conditions applicable to foreign investors in the MLM business sector. Accordingly, the foreign investors establishing new enterprises or contributing capital, purchasing shares/capital contribution in the enterprises operating in this business sector must have at least three (03) consecutive years of MLM operation in another country.
- Supplements the provision on the percentage of commission on individual sales and the enterprise’s bonus plan which must ensure that the total commissions and bonuses paid to the participants on the basis of their personal sales results should count for at least 20% of the total commissions and bonuses paid by the enterprise to participants per year. This regulation encourages the participants to sell rather than only focus on building multi-level network as current situation.

3. Draft regulation on marketing authorization registration of tolled drugs and technology-transferred drugs in Vietnam

- The draft Circular replacing *Circular No. 23/2013/TT-BYT* on drug toll manufacturing was first drafted in 2014 and recently updated in early July 2021. The draft is expected to be issued within this year and named as *Circular on marketing authorization registration of tolled drugs and technology-transferred drugs in Vietnam*.
- The draft Circular amends several of regulations on drug toll manufacturing and marketing authorization of tolled drugs, and simultaneously supplements new regulations on technology transfer in the field of drug manufacturing and marketing authorization of technology-transferred drugs. The draft is expected to support domestic enterprises to access new and high technologies in drug manufacturing and achieve high productivity in the future.

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