



LEGAL DOCUMENTS UPDATE NEWSLETTER IN DECEMBER 2020

DECEMBER 2020

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- Tax Department upgraded the application of HTKK version 4.5.0 to declare tax comply with new tax declaration regulations

**PERSONAL INCOME TAX****DECEMBER 2020****New points about PIT declaration according to Decree 126/2020/ND-CP****Summary:****I. For an individual who directly declares:**

- In case the individual has incomes from salaries and wages, direct tax declaration may choose monthly or quarterly declaration.

(Point a, c, Clause 1, Article 8, Decree 126/2020/ND-CP)

- About location of PIT finalization submission for individual, who has more than 2 sources of income from salaries and wages belonging to the case of direct declaration and the PIT already withheld by income payer, the tax payer should submit the PIT finalization dossiers at the tax department in charge of the biggest source of income.

(Point b.1, Clause 7, Article 11, Decree 126/2020/ND-CP)

- Supplement regulations in case individuals leasing out overseas real estates shall submit tax declaration dossiers to the tax department where the tax payer is directly controlled by.

(Point g, Clause 6, Article 11, Decree 126/2020/ND-CP)

II. For The organization or person that pay incomes:

1. In case the income payers withholding PIT from obligator shall declare PIT monthly.

In case income payers are eligible to declare VAT quarterly, they can choose to declare PIT quarterly.

(Point a Clause 1, Article 8, Decree 126/2020/ND-CP)

2. In the case income payers not withholding PIT monthly or quarterly, they must still submit PIT declaration.

(Clause 3, Article 7, Decree 126/2020/ND-CP)

3. Beside supplementation of PIT finalization for the income from salary and wage, the erroneous monthly or quarterly tax declaration during the year shall also be supplemented.

(Point a, Clause 4, Article 7, Decree 126/2020/ND-CP)

References :

- Decree 126/2020/ND-CP issued by the Government
- Official Letter No. 5189/TCT-CS dated 07th December 2020 issued by General Tax Department.

**CORPORATION INCOME TAX****DECEMBER 2020**

Regulations on provisional CIT in the first 3 quarters shall be at least 75% of the annual CIT payable according to CIT finalization which takes effect in 2021

Summary:

According to Point b, Clause 6, Article 8, Decree 126/2020/ND-CP taking effect on 05th Dec 2020:

The total amount of provisional corporate income tax paid in the first 03 quarters of the year shall be at least 75% of the finalized CIT payable. Otherwise, late payment interest shall be applied on the Tax arrears from the day after the deadline for paying corporate income tax in the third quarter to the date of payment of the arrears.

According to Official Letter No. 5189/TCT-CS dated 7th December 2020 issued by General Tax Department, the above Decree will be applied from the 2021 tax period.

Please note that the deadline for quarterly CIT provision payment is on the 30th of the quarter succeeding the quarter when the tax liability arises at the latest

References:

- Paragraph 2, Clause 1, Article 55, Law No. 38/2019/QH14 about Tax Administration.
- Point b, Clause 6, Article 8, Decree 126/2020/ND-CP
- Official Letter No. 5189/TCT-CS dated 7th December 2020 issued by General Tax Department

**FOREIGN CONTRACTOR TAX****DECEMBER 2020****Official Letter No. 101317/CTHN-TTHT dated 23rd Nov 2020 issued by Hanoi Tax Department on contractor tax policy for data access****Summary:**

According to this Official Letter, in case the Foreign Company has income from data access rights, the Foreign Company is subjected to the contractor tax.

If the Foreign Company does not meet the conditions of direct tax declaration in Vietnam, the Company in Vietnam is responsible for withholding tax before making payment to the Foreign Company, specifically as follows:

- Regarding CIT: Income from providing data access is income from copyright as prescribed in Clause 3, Article 7, Circular No. 103/2014/TT-BTC, the percentage of CIT calculated on assessable CIT income is 10%.
- Regarding VAT: Data access rights of Foreign Companies which are not technology transfer, intellectual property, or software product/service is subjected to VAT, the percentage to calculate VAT on assessable VAT income is 5%.

However, the Hanoi Tax Department also requested the Company to contact the competent State Authorities in charge of science and technology, intellectual property, information, and communication to have a specific basis for determining the type of activities provided by the Foreign Company. Therefore, appropriate tax policies will be applied, in accordance with regulations.

References:

- Point m, Clause 1, Article 14; Clause 2, Article 22 of the Law on Intellectual Property No. 50/2005/QH11 as amended and supplemented by Law No. 36/2009/QH12
- Article 4, Law on technology transfer No. 07/2017/QH14
- Article 3, Decree No. 71/2007/ND-CP guiding the implementation of a number of articles of the Law on Information Technology regarding the information technology industry
- Article 4, Article 11, Circular No. 219/2013/TT-BTC guiding the implementation of the Law on Value Added Tax
- Article 1; Clause 2, Article 4; Clause 3, Article 7; Article 8; Article 11; Article 12; Article 13, Circular No. 103/2014/TT-BTC dated 6th August 2014 of the Ministry of Finance. Guidelines for fulfillment of tax liability of Foreign Entities doing Business in Vietnam or Earning income in Vietnam

**VALUE ADDED TAX****DECEMBER 2020**

Official Letter No. 5218/TCT-DNL dated 08th December 2020 issued by General Tax Department about determination of VAT deductible incase internal transaction occurs

Summary:

According to this Official Letter, in case the Company has dependent cost – accounting units which are located in the same province with the head office, declaring VAT together with the head office, the Company uses invoice, record revenue, expense and calculates VAT according to internal transactions of the dependent cost – accounting units to evaluate the performance between the Company’s internal units, if this is not the revenue received from customers, the revenue used to determine the deducted input VAT rate does not include internal revenue; the total input VAT for allocation does not include input VAT from internal transaction.

References:

- Clause 2, Article 14, Circular No. 219/2013/TT-BTC supplement and amended at Clause 9, Article 1, Circular No. 26/2015/TT-BTC

**OTHER (BUSINESS LICENSE FEE)****DECEMBER 2020**

Change of Charter Capital or Investment Capital but no change in level of the business license fee still requires submission of the declaration

Summary:**Old regulations:**

According to Article 5, Circular 302/2016/TT-BTC (guiding Decree 139/2016/ND-CP) issued by the Government, the organization of manufacturing and trading of goods and services only needs to declare license fee is one time when the business activity is engaged no later than the last day of the month of beginning production and business activities.

Similarly, according to the guidance in Official Letter No. 1279/TCT-CS issued by the General Department of Taxation dated 4th April 2017, in case the organization of production and trading of goods and services have a change in Charter capital or Investment capital which do not need to submit business license fees declaration.

Current regulations:

According to Article 10, Decree 126/2020/ND-CP effective from 5th December 2020, cases business license fee declaration is required include:

- Newly established business license fee payers (except for business households and individuals) (including the establishment of additional dependent units, business locations, or commencement of production and business activities).

Deadline: 30th January of the year after the year of establishment or commencement of production and business activities.

- During the year has a change in capital

Deadline for submission: 30th January of the year after the year the changed information occurred.

Thus, if customers have a change in the capital in 2020, please submit a business license fee declaration before 30th January 2021.

Please note, the penalty for late declaration from 5th December 2020 is up to VND 25 million.

The deadline for payment business license fees in 2021: 30th January 2021 at the latest

**OTHER (TAX PROCEDURE)****DECEMBER 2020****Circular No. 105/2020/TT-BTC dated 03rd December 2020 issued by the Ministry of Finance about guidance of tax registration****Summary:**

This Circular provides detailed guidance on taxpayers who directly register with Tax Department, tax code structure, dossiers, procedures, and tax registration forms.

Some tax registration procedures, which are different from the old regulations, are mentioned as follows:

For individuals have incomes from salaries or wages paid from abroad by organizations and individuals, tax registration dossier is as follows:

- + Tax registration declaration Form No. 05-DK-TCT.
- + Copy of valid citizenship card, ID card for individuals who have Vietnamese nationality; copy of valid passport for individuals who have foreign nationality or Vietnamese people living abroad.
- + Copy of the appointment letter of Company in case the foreign individual is not resident in Vietnam who is assigned to Vietnam to work and receive income abroad.

Dependent registration documents include:

- + Power of attorney (if register through by Company)
- + Tax registration declaration Form No. 20-DK-TCT (if register by Company) or Form No. 20-DK-TCT (if register directly to Tax Department)
- + Documents of dependents:
 - Copy of valid citizenship card or ID card for dependents having Vietnamese nationality from full 14 years old.
 - Copy of valid birth certificate or passport for dependents having Vietnamese nationality under 14 years old.
 - Copy of valid passport for dependents who are foreigners or Vietnamese nationals living abroad.

**OTHER (TAX PROCEDURE)****DECEMBER 2020****Circular No. 105/2020/TT-BTC dated 03rd Dec 2020 issued by the Ministry of Finance about guidance of tax registration****Summary:**

This Circular regulates the disclosure of Tax registration information of taxpayers on the website of the General Department of Taxation in the following cases:

- Taxpayer ceases operation, has completed the procedures for Tax Identification Number deactivation.
- Taxpayer ceases operation, has not completed procedures for Tax Identification Number deactivation.
- Taxpayer temporarily suspend operations or business.
- Taxpayer is not operating at the registered address.
- The taxpayer recovers the tax code according to Form No. 19/TB-DKT enclosed with this Circular.
- Taxpayer has violated on tax registration.

Circular 105/2020/TT-BTC takes effect from **17th January 2021**.

This Circular replaces Circular No. 95/2016/TT-BTC dated 28th June 2016, and Article 9 Circular No. 156/2013/TT-BTC dated 6th November 2013.

Thus, from 17th January 2021, many tax registration forms will be changed. Please refer to the attached appendix to this circular to use the appropriate tax profile registration form.

**OTHER (TAX DECLARATION)****DECEMBER 2020****Tax Department upgraded the application of HTKK version 4.5.0 to declare tax comply with new tax declaration regulations****Summary:**

On 8th January 2021, Tax Department released version 4.5.0 of the application to support HTKK declaration, meeting the provisions of Decree 126/2020/ND-CP guiding the Law on Tax Administration, Decree 132/2020/ND-CP on tax administration for enterprises with related party transactions, Decree 114/2020/ND-CP on CIT payable reduction in 2020, Resolutions of the Standing Committee National Assembly on administrative unit arrangement. As follows:

1. Upgrading the application to comply with Decree No.126/2020/ND-CP dated 19th October 2020:

- Upgrading and removing the date of making the supplement declarations must be greater than the deadline for submitting the declaration;
- Checking the supplement declarations must not be overdue 10 years;

2. Upgrading the application to comply the Decree No. 132/2020/ND-CP dated 5th November 2020

- Supplement 04 appendices to related party transactions, Form No. 01, 02, 03, 04, attached to declaration Form 03/TNDN for the tax period from 2020

3. Upgrading the application to meet Decree No. 114/2020/ND-CP dated 25th September 2020

- Supplement the CIT exemption appendix enclosed with declarations 02/TNDN, 03/ TNDN, 04/TNDN to meet Decree No. 114/2020/ND-CP for the tax period 2020.

4. Upgrading and updating changes in administrative areas

- Renamed Phu Quoc District, Kien Giang Province into Phu Quoc City, Kien Giang Province
- Merging District 2, District 9, Thu Duc District into Thu Duc City in Ho Chi Minh City

Starting from 9th January 2021, when making tax declarations related to the above-mentioned upgrade content, taxpayers will use the declaration functions at HTKK 4.5.0 application instead of previous versions.

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