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NEW GUIDANCE ON TAX DECLARATION AND PAYMENT UNDER LAW ON TAX MANAGEMENT

Introduction

On 28 February 2011, the Ministry of Finance issued **Circular 28/2011/TT-BTC** (“Circular 28”) to provide guidance on Law on Tax Management, and superseded Circular 60/2007/TT-BTC (“Circular 60”).

The amendments and supplementations in Circular 28 are to update and make it in line with latest changes in tax regulations so far, as well as to further simplify tax administrative procedures. Similar to Circular 60, the new one has 10 chapters covering from general provisions to detailed guidance on procedures and declaration methods. Below are our summary of salient points in Circular 28 in comparison with Circular 60 for your reference and implementation.

Important changes

Update tax filing regulations

- Amendments on declaration and payment of CIT and VAT for **dependent production unit** locating in areas other than its headquarter’s location are updated to be consistent with current CIT and VAT guidance. Accordingly, CIT must be declared where the head office is located; while VAT declaration falls under two options. If the production unit maintains a separate and sufficient accounting system and applies VAT credit method, VAT shall be fully declared and paid to local tax authorities where the production unit is located. Otherwise, the taxpayer must pay VAT at the deemed rate of 1% or 2% on taxable turnover (corresponding to output VAT rate of 5% or 10%) of the goods produced in that locality, while the VAT filing and the remaining VAT liability must be declared and paid at its headquarter’s location;
- Monthly or quarterly tax filings of PIT are determined as follows:
 - In the case that the first taxable month of the year, if tax liabilities for each tax return are equal to or higher than VND5 million, the taxpayer is required to conduct monthly filing; if the tax liabilities are **less than VND5 million**, tax payers can apply quarterly filing throughout the year.
 - In case no PIT liabilities are incurred in a month or a quarter, tax payer is not required to submit tax return.
- Circular 28 also specifies clearer guidance on **direct tax filing** where foreign contractors pay VAT under the credit method, and CIT under deemed method (i.e. hybrid method). Accordingly, the foreign contractors declare and pay tax directly to the tax authorities that manage its Vietnamese contracting party.

Simplify tax declaration forms, supporting documents

- Circular 28 emphasizes that language used in tax returns and supporting documents is Vietnamese.

Documents in foreign language can be translated into Vietnamese by the taxpayers. It is required that the taxpayers **sign and stamp** on the translation and are responsible for accuracy of the translation. In case of documents in foreign language which have a total length of more than 20 pages (A4 size), taxpayers is advised to submit an official letter to local tax authority, to have the permission of translating only the main content, terms and conditions pertaining to tax liabilities determination.

- Legalization and notarization are only required for a number of cases and of specific documents, such as **tax residency certificates** issued by foreign tax authorities.
- Declaration forms are updated in accordance with the trend of reforming administrative procedures and simplifying procedures.

Modify and supplement several regulations on tax declaration and payment in consistent with practical and more convenient trend for taxpayers

- Flexible treatment on overpaid tax amounts is applied, by allowing tax payers to offset overpaid amounts with outstanding tax liabilities and penalties, **even with outstanding tax liabilities of other taxes** (i.e. overpaid VAT offset with outstanding PIT or CIT), or offset with tax payable of next periods;
- Deadline for tax remittance and tax penalty payment is extended in more cases, e.g. land use rights tax, land lease cost for land allocated but not yet complete site clearance and/or the land not yet be handed over to taxpayers;
- More detailed guidance on **procedures for tax exemption** under double taxation avoidance treaties (e.g. procedure for getting tax exemption of **capital assignment**), additional procedures for offsetting tax paid in overseas into Vietnam tax payable, and additional procedures for getting tax residency certificate in Vietnam;
- Additional instruction on VAT refund for ODA projects, including project owners, contractors, ODA project offices.

Simplify procedures on tax management

- The tax office can use one or a combination of the following notification methods to taxpayers: direct contact, phone, text, e-mail;
- Legal representative of the business establishment may authorize subordinates or people outside the enterprise to deal with tax authorities;
- Legal representatives of tax agents have the rights to sign and seal as the legal representative of the taxpayer in documents to be submitted to tax authorities, providing that the taxpayer has engaged in the tax service contract with the tax agents.

Be stricter on tax management

- Methods to determine **deemed tax payable** amount by tax authorities are clearly stipulated in case taxpayers violate tax law, i.e. tax amount might be deemed based on the average tax payable amount of tax taxpayers who operate in similar field of industry, manufacturing/trading the same goods at the same location;
- **Repatriation** of an individual may be terminated by Immigration Administrative Agency if the individual has not yet fulfilled Vietnamese tax liabilities;
- Requirements for tax refund dossiers are provided for two cases: (i) tax refund before tax inspection, and (ii) tax audit before refund, under which the taxpayers can self-determine to apply the suitable method.

Effective date

- Circular 28 takes effect from 14 April 2011 and entirely replaced Circular 60;
- Tax return on once-off basis shall be applied from from 1 July 2011;
- Monthly tax return shall be applied from July 2011;
- Quarterly tax return shall be applied from Quarter III, 2011;
- Annual tax finalization return shall be applied from the tax finalization for tax year 2011;
- The provisions on tax refund, tax offset procedures shall be applied from 1 July 2011.

This **Alert** is published for the clients and professionals of the Deloitte - Vietnam offices. The contents are of a general nature only. Readers are advised to consult their tax advisors before acting on any information contained in this newsletter. For more information or advice on the above subject or analysis of other tax issues, please contact us.

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