

Draft Circular on tax administration Specific guidance on cross-border e-commerce and digital business

At a glance...

The draft Circular provides detailed guidance of the Law on Tax Administration on various matters. However, this Newsbrief will only focus on the tax filing mechanism for foreign suppliers doing e-commerce and digital business in Vietnam.

By giving only a short timeline for public consultation, the MoF indicates its intention to promptly finalise this Circular. Therefore, we recommend businesses who are affected by the new guidance to study and assess the potential impact thereof and prepare for the compliance process.

New tax filing mechanism

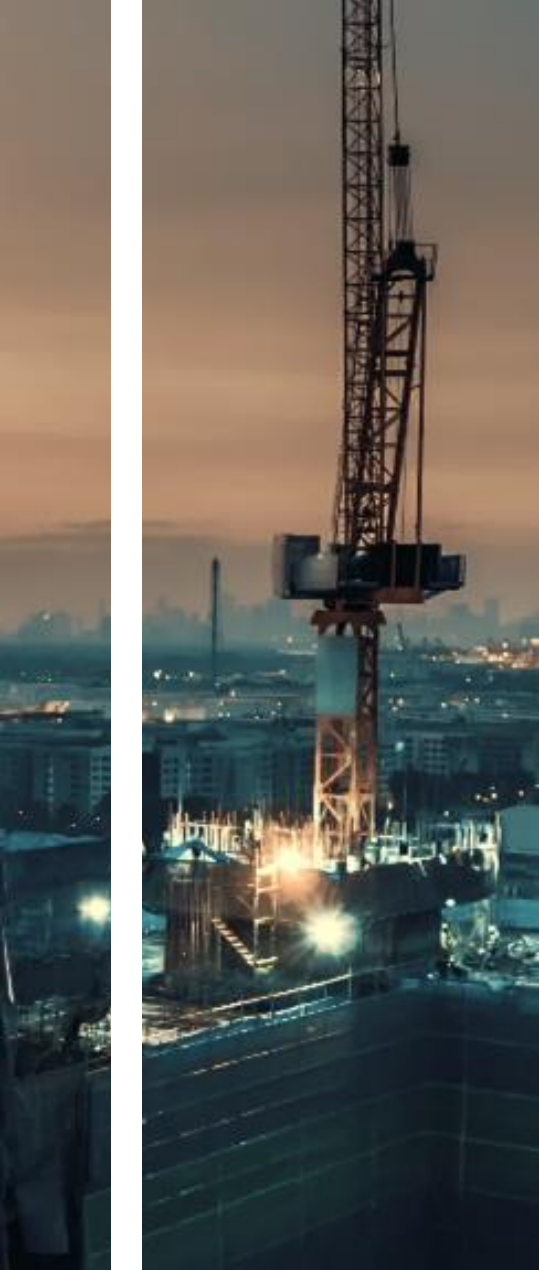
- The draft Circular sets out a clearer mechanism for foreign suppliers, either by themselves or via their authorised person(s), to directly register, declare and pay taxes in Vietnam.
- Specifically, the foreign suppliers
 - will be awarded with a tax code of 10 digits
 - can declare tax online at the portal of the General Department of Taxation (“GDT”) on a quarterly basis
 - can pay tax online
- If foreign suppliers do not directly register, declare and pay tax in Vietnam, Vietnamese organisations and parties have the following responsibilities:
 - If the Vietnamese purchasers have business registration, they are responsible to withhold and declare tax on behalf of the foreign suppliers (same as the current mechanism of foreign contractor tax).
 - If the Vietnamese purchasers are individuals, banks or payment intermediary companies are required to withhold and declare tax on a monthly basis. The GDT will provide the names and websites of such foreign suppliers to the banks and/or payment intermediaries for tax withholding.
 - If the individuals use cards or other payment methods from which the banks or payment intermediary companies cannot withhold, the banks or payment intermediary companies are required to track and report payments made to foreign suppliers to the GDT on a monthly basis.
- There remain many open questions as to how the mechanism would actually work in practice.



How to determine taxable income?

- The tax payable will be determined based on the revenue derived in Vietnam at the deemed rate in accordance with the current foreign contractor tax regime. The tax rate would depend on the nature of goods or services provided by foreign suppliers.
- The draft Circular introduces mechanism to collect data for determining taxable revenue, specifically:
 - (i) information relating to payment made by the purchasers (organisations and individuals) (e.g. BIN number of credit card, bank account, etc)
 - (ii) information relating to the residential status of the purchasers (e.g. payment address, delivery address, etc) and/or information relating to the access point of the purchaser (e.g. SIM card, IP address, etc) in Vietnam

If (i) cannot be obtained, then information relating to the residential status and IP address can be used.
- However, whether such information is available and sufficient for tax filing purposes for all players in this sector is still a concern.



When the new tax filing mechanism becomes effective?

- Based on the draft Circular, the new filing mechanism will be effective when the circular is effective. However, the actual tax registration and tax filing can only be carried out when the e-portal developed by the GDT is officially launched.
- The draft Circular also provides that if the e-portal is (likely) available after the effective date of the Circular, taxpayers are required to keep track of their taxable revenue from the effective date of the Circular until the official launch of the e-portal. No interest and late payment penalty will be applied for this period.

Virtual PE

- One notable point is the “permanent establishment” concept in Article 84 of the draft Circular which provides “foreign suppliers having no fixed place of doing business in Vietnam, but has e-commerce and/or digital transactions with Vietnamese organisations and individuals are deemed to have a permanent establishment (“PE”) in Vietnam”.
- This is an extension of the PE definition set out in the Law on corporate income tax and clear intention of Vietnam to introduce the virtual PE concept.

Contact us

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