



PwC Vietnam NewsBrief

Circular 80/2021 guiding the implementation of the Law on tax admin 2019 and Decree 126/2020



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At a glance...

On 29 September 2021, the Ministry of Finance released Circular 80/2021 providing guidance on a number of articles in the Law on Tax Admin 2019 and Decree 126/2020. The new Circular will be effective from 1 January 2022 and replaces a number of existing regulations, including Circular 156/2013.

Following our Newsbrief on 13 October highlighting the formalised taxing rules on cross-border e-commerce and digital business, this Newsbrief will focus on other notable points in relation to general tax admin matters included in this new Circular.



In detail ...

More guidance on tax allocation

Under Decree 126/2020, companies which have multiple business activities in different provinces, where such activities are accounted for centrally at the head office, must declare tax centrally at head office, but are required to apportion and pay such tax to the respective provinces. Circular 80/2021 dedicates a whole chapter to providing further guidance in this respect. We summarise some notable points as below.

- ❖ For VAT and CIT, the allocation rule shall be applied in the following cases:
 - Manufacturing dependent units/business locations
 - Real estate transfer
 - Construction activities (only applicable to VAT)
 - Hydropower plants located in various provinces
 - Electronic lottery business
- ❖ The VAT payable allocated to manufacturing dependent units/business locations located in different provinces is the revenue before VAT of the respective manufacturing dependent unit/business location multiplied by 2% (for goods subject to 10% VAT) or 1% (for goods subject to 5% VAT). In the event that the allocated VAT payable according to the above formula is higher than the VAT payable of the head office, the allocated VAT payable should be re-calculated based on the VAT payable of the head office, prorated by the ratio of the revenue (before VAT) of the respective manufacturing dependent unit/business location over the total revenue (before VAT).
- ❖ The new Circular also states that where a dependent unit directly makes sales, issues invoices and can properly record its input VAT and output VAT, then such dependent unit shall declare VAT and pay VAT directly to its local tax department. However, it is not clear under the new Circular whether for a dependent unit, which has both manufacturing and trading activities, the VAT payable should be based on the allocation principle as mentioned above, or based on its output VAT less its input VAT.

In detail ...

More guidance on tax allocation (cont')

- ❖ The allocation of CIT payable to manufacturing dependent units/business locations in different provinces will be based on the ratio of the respective manufacturing dependent unit/business location's expenses over the total expenses. However, for tax incentivized activities, the CIT payable must be determined based on the actual business results and incentive scheme applicable to such incentivized activities of the unit/location, rather than on the expense ratio.
- ❖ For transfer of real estate in different provinces, CIT and VAT shall be allocated to the provinces based on 1% of the revenues therefrom. This is different from the current mechanism where CIT payable to the province (where the transfer takes place) is calculated based on 20% of the net gain and the VAT is based on 2% of VAT taxable revenue from the transfer.
- ❖ The total amount of provisional CIT paid in the first 3 quarters of a tax year must not be less than 75% of the total CIT liability for the year ("75% rule"). This 75% rule is also applied to the allocated CIT payable to manufacturing dependent units/business locations in different provinces (including manufacturing dependent units/business locations that are entitled to CIT incentives).
- ❖ For employment income paid by a head office to employees working at dependent units/ business locations in different provinces, the PIT withheld for these employees will be paid to the State budget of the provinces where the employees are working. Where employees are transferred, rotated or seconded, the PIT withheld will be paid to the State budget of the provinces where the employees are working at the salary payment date. The PIT allocated to each province will not be re-determined at PIT finalization.

In detail ...

New forms attached to Circular 80/2021 must be used for 2021 tax finalisation

- ❖ All prescribed forms/templates for tax declaration and associated documents under the existing Circular 156/2013 will be replaced by those under the new Circular and applied for tax declarations from 1 January 2022. However, for annual tax finalisation, the new forms/templates will be applied for the tax year 2021 onwards.
- ❖ Important change for shipping lines: Tax declarations of foreign shipping lines was changed from quarterly declaration to quarterly provisional payment and annual finalisation in 2015. However, the tax declaration form of foreign shipping lines (Form 01/VTNN) which was initially designed for quarterly declaration was not updated to reflect this change, and so has still been used for annual finalisation thus far.

Addressing this, the new Circular has made a significant change to the template of this form to make it more appropriate for finalisation purposes. However, the new form (and its associated appendices) only mention CIT, so it is not clear how VAT should be declared as many charges/ surcharges of the foreign shipping lines are subject to both the CIT and VAT elements of the applicable withholding tax.

In detail ...

Clearer guidance for tax refund claims - but stricter controls

Clearer guidance

For VAT refunds, the new Circular sets out the supporting documents required to be submitted together with VAT refund requests for each category of VAT refund (e.g., export sales, investment projects etc.). It also sets out cases where VAT refunds can be clawed back. For example, in case exported goods are returned, the taxpayer must repay the refunded VAT corresponding to the export sales returns and pay corresponding late payment interest.

In case of liquidation, taxpayers are not required to submit a VAT refund claim. Instead, during the tax audit for liquidation purposes, the tax authorities will work out the final input VAT amount which is eligible to be refunded, and pay this after netting off any other taxes due.

The new Circular also sets out rules for handling overpaid tax, late payment interest and penalties (collectively referred to as the overpaid amounts). There are a number of changes compared with the existing guidance under Circular 156/2013. For instance,

- In principle, the overpaid amounts shall be firstly offset against payables of the same tax/nature. Under Circular 156/2013, this offsetting had to be applied for 6 consecutive months before a refund could be claimed. The new Circular removes this 6-month timeline, which means the remaining balance after the first offsetting can be claimed for a refund immediately.
- The new Circular also outlines the procedures to claim refunds for the overpaid amounts, where the guidance was not clear under Circular 156/2013.

Stricter control mechanism

Circular 80/2021 introduces various measures for resolving tax refund claims. These cover co-operation between the tax authorities, the customs authorities and banks to identify high risk claims and detect tax evasion.

In detail ...

Some welcome changes

- ❖ With respect to claims for tax treaty relief, the process has been changed from notification to approval under the new Circular. A deadline for the tax authorities' review and assessment of treaty claims is introduced. Within 30 days upon receipt of sufficient documents, the tax authority is required to issue a decision which approves the amount of tax eligible for exemption/ reduction, or notifies in writing to taxpayers the reasons for any rejection of the claim. This timeline can be extended for 10 days where the tax authority needs to conduct further examination to confirm the position. This is very useful as it eliminates the uncertainty hitherto faced – together with the attendant risk of substantial interest and penalties in case treaty claims were subsequently denied - and provides more comfort to taxpayers in pursuing their rights under tax treaties.
- ❖ The regulation on tax assessment of selling prices for automobile and motorbike trading under Circular 71/2010 has been abolished.

Various changes to tax audit procedures

Changes to cope with Covid situation

Tax audits are not required to be carried out onsite if IT infrastructure is sufficient to implement necessary audit procedures. This new provision forms a firmer basis for offsite tax audits, which developed under Covid.



In detail ...

Various changes to tax audit procedures (cont')

Other changes

For tax audits carried out at the tax authority's office (desktop review), the new Circular only allows taxpayers two rounds to provide explanations and/or additional information & documents. If after two rounds, no information or documents are provided or the provided information & documents do not meet the requirements of the tax authorities, the tax authorities may proceed to deem tax or to carry out a tax audit at the taxpayers' premises (onsite tax audit). This replaces the current regulations which are more relaxed in terms of desk-top review and do not have such a two- round limitation.

Activities of the tax audit team at the taxpayers' site shall be subject to a formal process of supervision from the management level of the tax authority. A supervision decision will be issued concurrently with the tax audit decision, and sent to the tax audit team, the supervisor, the taxpayer, and other relevant organisations/ individuals.

According to the current rules, upon completion of a tax audit, the tax audit team shall issue the tax audit minutes and the taxpayer has 5 working days to sign the tax audit minutes. In practice however, there can be many draft versions of the tax audit minutes. This creates uncertainty as to when a draft version would be considered as a final draft for the 5- working-day timeline to be triggered. The new Circular requires the tax audit team to officially announce and hand- over the final draft tax audit minutes to the taxpayers, and the taxpayers would then have 5 working days to review, and provide explanations. However, the taxpayers are still required to sign the tax audit minutes within 5- working- days upon receipt of the final draft tax audit minutes.

The tax audit plan for each year must be publicised on the websites of the tax departments or informed to taxpayers (by letters, phone, or emails) within 30 working days after the plan is approved.



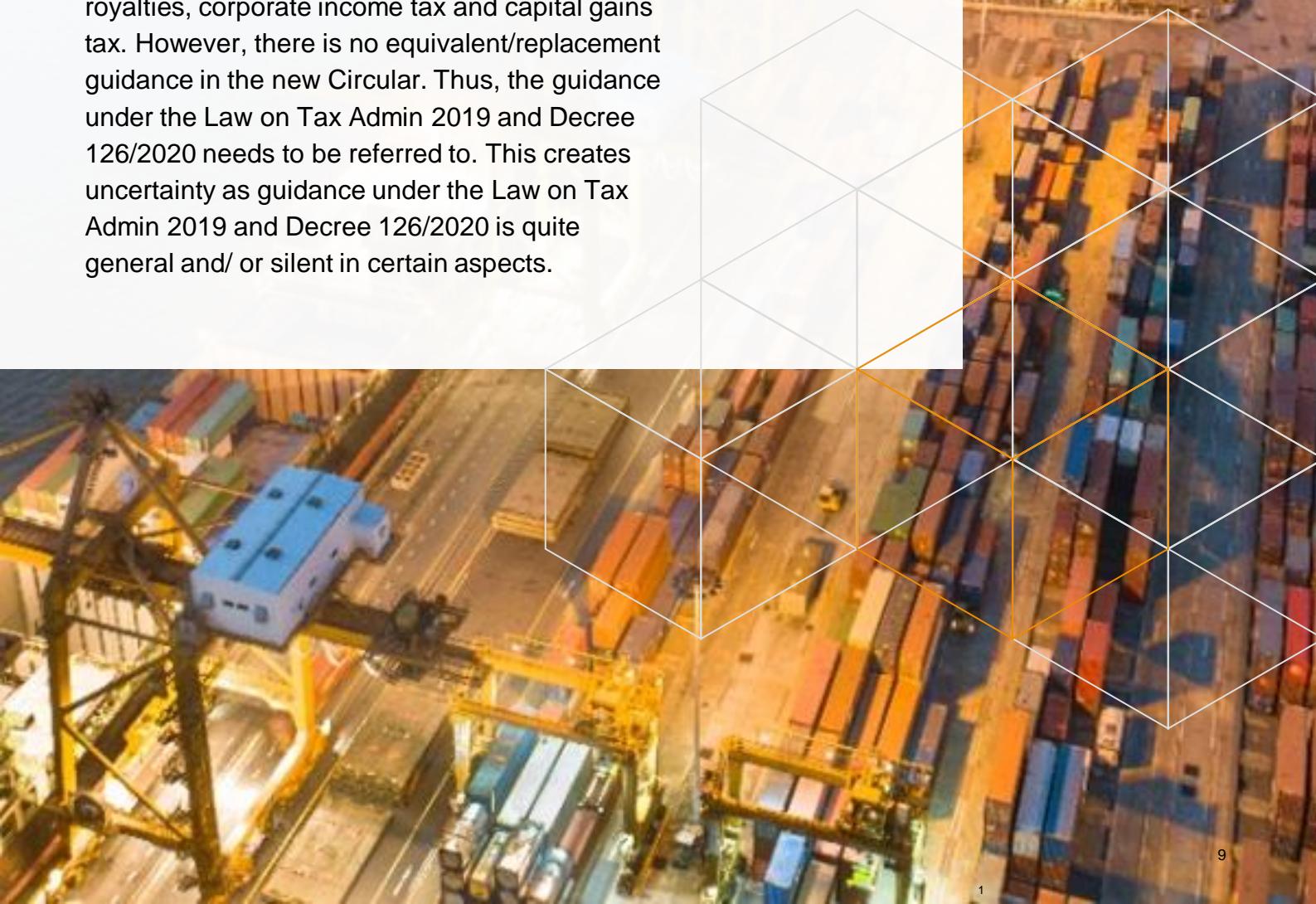


In detail ...

Taxation of oil and gas

The new Circular allows taxes pertaining to oil and gas activities and capital gains tax from the transfer of participating interests in petroleum contracts to be declared and paid in the foreign currency used in the transactions. The current regulations (Circular 36/2016) only allow USD in this respect.

The new Circular abolishes certain provisions under the oil & gas tax circular Circular 36 relating to declaration and payment procedures of royalties, corporate income tax and capital gains tax. However, there is no equivalent/replacement guidance in the new Circular. Thus, the guidance under the Law on Tax Admin 2019 and Decree 126/2020 needs to be referred to. This creates uncertainty as guidance under the Law on Tax Admin 2019 and Decree 126/2020 is quite general and/ or silent in certain aspects.



Contact us



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