



# LEGAL UPDATES

## JANUARY 2014



### I - Guiding personal income tax (PIT) finalization 2013

On January 24 recently, the General Department of Taxation has promulgated Official Letter No. 336/TCT-TNCN guiding the implementation of PIT finalization of the year 2013 with some noteworthy contents as follows:



#### Cases in which PIT declaration and finalization have to be carried out

- Organizations, individuals paying income are subjects to PIT have to carry out tax finalization on behalf of individual authorizing;
- Individuals having income from salary, wage, business, agency activities, multi-level sales, having income from securities transfer requiring fixed tax at the rate of 20% have to PIT finalization;
- Organizations, enterprises in merge, dissolution, bankruptcy, etc. have to PIT finalization for tax amounts deducted before 45 days.

#### Cases in which finalization has been authorized

- Individuals only have income from salary, wage and sign contract over 03 months, they are entitled to authorize for finalization even they have not worked enough 12 months;
- Individuals not only have income from salary, wage and sign contract over 03 months but also have other current income, they are entitled to authorize unit paying income for finalization or carry out finalization by themselves.

#### Reduction based on family circumstance

- In the period individuals have not been calculated deduction for self-relief, dependents enough 12 months, they are entitled to reduction enough 12 months;
- Family circumstance reduction for dependents has been calculated from the time point the nurturing obligation has been arisen.

Reduction for dependents has been calculated from the month the nurturing obligation has been arisen, in case dependent declaration form has not determined the arising time point correctly, the individuals are entitled to re-register upon tax finalization.

#### Determining average income subject to PIT

- For the period from January 01, 2013 to June 30, 2013: self-relief is 4,000,000 dongs per month;
- For the period from July 01, 2013 to December 31, 2013: self-relief is 9,000,000 dongs per month;
- Average income in 2013 has been determined as follows: Average income = (Total income in the whole year – total reduction in the whole year)/ 12 months.

Dossiers of tax finalization declaration shall be implemented under form in Circular No. 28/2011/TT-BTC (not in accordance with Circular No. 156/2013/TT-BTC).

Taxpayer can make reference to Appendix 1 of this Official Letter to have formula of detailed tax calculation.

## II - Guiding the implementation of agreements on the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and assets between Vietnam and countries and territories taking into effect in Vietnam

### Double Taxation Avoidance Agreements

On 24 December 2013 the Ministry of Finance has promulgated the Circular No. 205/2013/TT-BTC guiding the implementation of agreements on the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and assets between Vietnam and countries and territories taking into effect in Vietnam. Accordingly:

From February 06, 2014, there is much guidance on the implementation of agreements for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and assets shall be applied with some noteworthy content as follows:

- In case individual having a regular residence in Vietnam but in practice he/she is present in Vietnam under 183 days in the taxable year and he/she fails to prove that he/she is a resident of some country, he/she is the resident in Vietnam;
- The resident of a country signing the Agreement with Vietnam has income from directly using, exploring or leasing immovable property in Vietnam has to pay taxable income in Vietnam;
- The resident receiving dividends which Vietnamese law provides that tax collection has not been applied or tax collection with tax rate less than provisions in agreement has been provided, provisions of Vietnamese Law has been implemented.

This Circular takes into effect from February 06, 2014, replacing the Circular No. 133/2004/TT-BTC dated December 31, 2004 of the Ministry of Finance guiding the implementation of agreements on the avoidance of double taxation with respect to taxes on income and assets between Vietnam and countries taking into effect in Vietnam.

Procedure of application of agreements has been implemented in accordance with provisions of Law on Tax administration and current guiding documents.

## III - Guiding the penalty for administrative violation on invoices

On January 17, 2014 the Ministry of Finance promulgated the Circular No. 10/2014/TT-BTC guiding the penalty for administrative violation on invoices. According, penalty limitation of administrative violation in the field of invoices is 01 year. For behaviors of administrative violation leading to tax evasion, tax fraud, late payment of tax, deficient declaration of tax duty, penalty limitation of administrative violation under tax law is 05 years.



Also according to the Circular, contents required to be correct on self-printed invoices, electronic invoices are invoice symbols, symbols of invoice form, invoice number.

Besides, the Circular also specifies penalty level for behaviors of none declaration under law for cases of loss, fire, damage of invoices prior to issuance notice. Specifically as follows:

- Without penalty if declaring with tax authority within 05 days as from the date of loss, fire, damage of invoices;
- Warning penalty if declaring with tax authority within the time from the sixth day to the tenth day as from the date of loss, fire, damage of invoices and there are extenuating circumstances; there are no extenuating circumstances, the penalty level of 6 million dongs shall be applied;
- Paying fines from 6 – 18 million dongs if declaring with tax authority after the tenth day as from the date of loss, fire, damage of invoices.

This Circular takes into effect as from 02 March 2014.

## IV - Tightening the management of use of self-printed or outsource printed invoices

On January 17 recently, the Government has promulgated the Decree No. 04/2014/ND-CP amending a number of articles of management of invoices, in which there is the tightening of conditions in order that enterprises can be entitled to self-printed or outsource printed invoices.

According to provisions in this Decree, the enterprises which are using self-printed or outsource printed invoices and having violated behaviors of invoices fined on administrative violation on tax, tax fraud shall not be entitled to continue using invoices printed.

Ban time limit on using self-printed or outsource printed invoices is 12 months as from the date of the decision on the penalty for administrative violation, during this time the enterprises have to buy invoices issued by tax authority to use.

In addition, the enterprises of high-risk types of taxes as required by the tax authority shall also have to stop using self-printed or outsource printed invoices and move to use invoices of tax authority.

Those provisions shall be applied as from 01 March 2014.

## V - Advance pricing agreement

On December 20, 2013 the Ministry of Finance promulgated the Circular No. 201/2013/TT-BTC (the Circular 201) detailing and guiding the application of advance pricing agreement (APA) to tax administration and it takes into effect as from February 05, 2014.

Accordingly, there are some noteworthy points in the Circular 201 as follows:

### Scope of regulation

The guidance on application of advance pricing agreements (hereinafter referred to as APA) to tax administration, between:

- between a tax authorities and a taxpayer, or
- between Vietnamese tax authorities, taxpayers, and a tax authority of a country or territory with which Vietnam has concluded a tax treaty for a certain period of time.

### Subjects of application of APA

An organization that manufactures and/or sells goods/services that:

- pays tax under the Law on Corporate income tax (CIT);
- makes tax declarations using the method in Clause 1 Article 11 of the Law on CIT No. 14/2008/QH12 (corporate income tax payable equals assessable income multiplied by tax rate);
- makes business transactions with related parties;
- submits an APA application before implementing the obligation of declaring and paying tax on the first year of the period covered by the APA.

### Contents of APA

To specify tax calculation basis, pricing methodologies, or market prices.

### Time point an APA must be concluded

Before the taxpayer submits dossiers of CIT declaration.

### Some key rules for concluding APAs:

- Parties negotiate the application of law to payment of corporate income tax on the related transactions on following arm's length principle;
- Determine arm's length price in related transactions that suit the nature of the business, generate profits in order to pay income tax;
- While negotiating an APA, the taxpayer shall declare and pay tax in accordance with current law;
- The method for arm's length price determination in related transactions shall comply with legislative documents guiding the determination of market prices in transactions among related parties. When deciding on a method for market price determination in an APA, the nature and calculation method of the method is more important than its name.

**Procedure for processing APA application**

Including the following periods:

- Consultation before official submission of the application;
- Official submission of the application;
- Evaluation of the APA application;
- Negotiation of the APA
- Conclusion and use of the APA.

**Authorities have the power to handle applications for APA in Vietnam**

- Departments of Taxation of provinces shall negotiate and implement APAs within their duties.
- The General Department of Taxation shall receive applications, hold negotiations, conclude, amend, renew, revoke, invalidate APAs, supervise and inspect the implementation of APA.
- The Ministry of Finance shall approve the plan for negotiating, concluding, amending, renewing, revoking, and invalidating APAs.

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