

**JULY**  
**2015**



## I. Changes in Personal Income Tax from July 30, 2015



On 24 July 2015, General Department of Taxation issued Official Letter No.2994/TCT-TNCN (Official Letter No.2994) presents some amendments, supplements of Circular No. 92/2015/TT-BTC, issued on 15 June 2015, guiding Value Added Tax (VAT), Personal Income Tax (PIT) related to individual resident doing business and guiding some amendments, supplements of PIT stipulated on Law amending and supplementing some articles related to Law on Taxation No. 71/2014/QH13 dated 26 November 2014 and Decree No. 12/2015/NĐ-CP dated 12 February 2015 of the Government.

❖ Official Letter No.2994 systemizes and presents some new, noticeable contents as follows:

- Insurance products outside the compulsory Social Insurance, even including insurance taken out from agencies without headquarters in Viet Nam (Item 3 Article 11 Circular No. 92/2015/TT-BTC) is not accounted as taxable income.

*As previously, no specific guidance on cases where the employer offers the employee optional insurance was provided.*

- Allowance for transport and travelling of employee without distinction of an individual or a group of individuals (Item 4 Article 11 Circular No.92/2015/TT-BTC) is not accounted as taxable income.

*As previously, this kind of allowance was exempted from PIT only for the case of “a group of individuals”.*

- Offer for funeral or wedding of an individual employee and their families (Item 5 Article 11) is not accounted as taxable income.

*As previously, no guidance that this kind of income is not accounted as taxable income was provided.*

- Profit earned from investing capital into private companies, one member limited liability companies is not accounted as taxable income (Item 6 Article 11).

*As previously:*

*Profit earned from investing capital into one member limited liability company (individual) was considered as taxable income from capital investment.*

- etc.

❖ Also, changes made to PIT finalization are shown as follows:

- The enterprise shall not finalize PIT when changing its business type if after changing, the new enterprise receives all tax obligations derived from the former enterprise (Item 1 Article 21);
- Foreigners are permitted to delegate a certain person to finalize their PIT after finishing their employment contracts and leaving Vietnam (Item 3 Article 21);

*As previously:*

*According to guidance at Point e.3 Item 2 Article 26 under Circular No.111/2013/TT-BTC:*

*Resident individuals who are foreigners after finishing working contracts in Vietnam shall have their PIT finalized with the tax office before leaving the country.*



## II. Transfer of capital attached with real estate shall be declared for Corporate Income Tax (CIT) in the form of real estate transfer

That is the content mentioned in the official letter No. 2765/TCT-CS dated 08 July 2015 issued by the General Department of Taxation on declaration for paying CIT of transfer of capital attached with real estate:

As stipulated in Article 14 of Circular No. 78/2014/TT-BTC, in the case of selling the whole of a one-member limited liability company which is owned by an organization under the form of transfer of capital attached with real estate, the CIT shall be declared in the form of real estate transfer.



Accordingly, when a foreign enterprise sells the whole of a one-member limited liability company in which that enterprise owned 100% capital in Vietnam to another foreign company under the form of transfer of capital attached with real estate, that enterprise shall declare to pay the CIT from the transfer of real estate.

The one-member limited liability company in Vietnam (the sold Company) shall be responsible for CIT declaration by the form 08 issued accompanying with Circular No. 78/2014/TT-BTC dated 18 June 2014.

Buying price of the transferred capital amount which is used as a tax base is the value of the contributed capital in the accounting books, records, documents at the transfer time with authentication of an independent Audit firm.

## III. Foreign Direct Investment (FDI) enterprises are now officially allowed to export scraps and import components for warranty

On 17 April 2015, the Ministry of Industry and Trade issued the official letter No. 3765/BCT-XNK in which it is mentioned that the FDI enterprises are entitled to export the scraps abroad and import the components, materials for the purpose of warranty.

Accordingly, when exporting scraps, FDI enterprises should pay attention to:

- Enterprises who directly do manufacture are allowed to export the scraps and waste without amendment to the investment certificate. Since the scraps and waste resulting from the process of production (as specified in the Investment Certificate) are under the ownership of the enterprise, the enterprise has the rights to dispose in compliance with the law regulations by such as selling domestically, exporting, etc.
- Enterprises who invest in the waste treatment system or do business by exporting the scraps and waste shall comply with the business contents approved in the Investment Certificate or the Business License.



Regarding the import of components, materials for warranty:



FDI enterprises are allowed not to make supplement of names, types of components, materials, HS codes to their investment certificates or business licenses. However, the FDI enterprises who perform the right of importing goods for trading are only allowed to import components, materials for warranty in conformity with products as shown in the license, buying and selling documents and customs declarations.



#### IV. Invoice preparation and value added tax (VAT) declaration are obligatory when receiving the fee advances for services provided



That is the content as guided in the official letter No. 45007/CT-HTr dated 10 July 2015 of the Tax Department of Ha Noi on the invoice preparation date when collecting the payment before or within the time of providing services. Accordingly:

At Point a Item 2 Article 16 of the Circular No. 39/2014/TT-BTC, in case that the enterprises collect the payment before or during the time of providing services, the invoices shall be prepared at the time when collecting the money, not to wait until finishing the services. Hence:

The VAT and CIT shall be calculated, declared for tax payment at the same time with the invoice preparation time (Item 2 Article 8 of the Circular No. 219/2013/TT-BTC, Item 2 Article 5 of the Circular No. 78/2014/TT-BTC).

#### V. Tax authority will coordinate on the inspection of social insurance payment

Official letter No. 768/TCT-TNCN dated 5 March 2015 of the General Department of Taxation is about the implementation of regulations on coordination between the Social Insurance agency and the Tax authority.

According to this official letter, the Tax authority and Social Insurance agency have agreed and signed a Bylaw of coordination on the management of collecting the compulsory social insurance, health insurance and unemployment insurance.

Accordingly, from now on, tax inspections and audits also include the examination of appropriation and payment of the social insurance. Upon the results, the Tax authority shall be responsible for informing the Social insurance agency the insurance payment state of affairs.

Also, the local Tax offices shall provide the on equal level Social insurance agencies the inspection list of enterprises in the year that is approved.



#### VI. Treatment for disputes between the enterprise and the tax authority during tax inspection



On 16 July 2015, the General Department of Taxation issued Decision No. 1276/QĐ-TCT on contents of the Regulation of settlement before signing the minutes of inspection at taxpayer's office towards the cases of potential appeal.

Accordingly, the Decision provides detailed regulations on the solutions for issues that may cause different interpretation between the enterprise and the tax authority during tax inspection, which are as follows:

Under Point 3.2 of this Regulation, upon completion of the inspection, if the enterprise refuses to sign the Minutes, within 5 working days since the minutes date, the inspection team leader will prepare a minutes on administrative violations whereby the tax authority will issue a Decision of administrative punishment. Within 30 working days, if the enterprise still refuses to sign the Minutes, the tax authority will issue a Decision on tax penalization, concurrently accept the results presented in the inspection Minutes.

However, Point 3.1 of this Regulation allows the enterprises to present their opinions on complicated contents. The Decision will take into effect since the signing date.

#### Notice

*"The purpose of this news is to provide the clients with further information. Although we have focused much on the ensure of accuracy, the information that is given on this news is not absolutely thorough and the clients would better consult professional opinions before application".*