



PwC Vietnam NewsBrief

Circular 80/2021 - Formalising taxing rules on cross-border e-commerce and digital business



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At a glance..

The Circular provides detailed guidance on the Law on Tax Administration on various matters. However, this Newsbrief will only focus on the tax filing mechanism for foreign companies doing e-commerce, digital business and other business in Vietnam without a permanent establishment. There is a specific definition for e-commerce and digital business.

Having only less than three months to go, 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

Base case

- The Circular sets out a clearer mechanism for foreign companies, either by themselves or via their authorised person(s), to directly register, declare and pay taxes in Vietnam.
- The taxes comprise value added tax (“VAT”) and corporate income tax (“CIT”).
- Specifically, foreign companies
 - will be awarded with a tax code
 - can declare tax online at the portal of the General Department of Taxation (“GDT”) on a quarterly basis
 - can pay tax online



How the mechanism works in alternative cases

If foreign companies do not directly register, declare and pay tax in Vietnam, Vietnamese organisations and parties have the following responsibilities:

- If the Vietnamese purchasers or **distributors** 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 companies 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 companies to the GDT on a monthly basis.

(* Wording in **red** are notable points from the author’s point of view. It could be a development from the draft Circular or a concerned point from practical perspective.

How to determine taxable income?

Principle

- The tax payable will be determined based on the revenue derived in Vietnam at the deemed rates in accordance with the current VAT and CIT regulations.
- The tax rates would depend on the nature of goods or services provided by foreign suppliers.

Revenue derived in Vietnam

- The Circular introduces the mechanism to collect data for determining taxable revenue, specifically:
 - (i) information relating to payments made by the purchasers (organisations and individuals) (e.g. BIN number of credit card, bank account, etc); and
 - (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 VietnamIf (i) cannot be obtained or it contradicts with (ii), then information relating to the residential status and IP address can be used.
- Taxpayers or their authorised person are required to archive relevant documents and information and promptly present to Vietnam tax authorities if being requested and/or during the course of a tax audit. The archive period is generally 10 years aligning with the statute of limitation.

Claiming tax treaty

Principle

- Foreign companies in a country which has a tax treaty currently in force with Vietnam may consider applying tax treaty benefits for the CIT portion.
- There is no separate provision for claiming tax treaty benefits for foreign companies doing e-commerce or digital business. Thus, foreign companies in those fields may consider claiming tax treaty benefits similarly to other foreign companies.

Claiming tax treaty benefits

- There is a separate clause providing guidance on claiming tax treaty benefits including the procedures and documents required for the submission.
- Notably, the tax authorities will review and either approve or deny the tax treaty claim. This will remove the current uncertainty in applying tax treaty benefits of foreign companies.

Enforcement

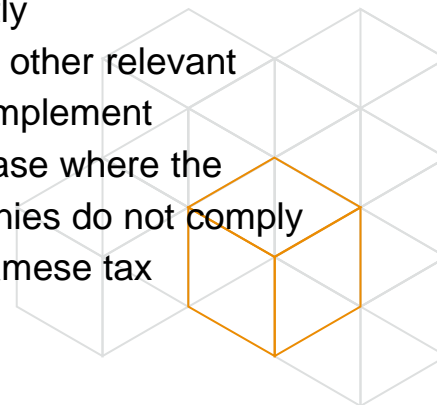
Principle

- The GDT will handle the registration, declaration and payment of foreign companies.
- The GDT will publish a list of foreign companies that have registered and pay tax in Vietnam (either directly or via authorised persons).
- It will also publish the names of foreign companies which have not registered for tax in Vietnam.

Other measures

The Vietnamese tax authorities will:

- cooperate with other overseas tax authorities to push foreign companies to declare and pay taxes
- recapture tax if the foreign companies do not declare and pay tax correctly
- cooperate with other relevant authorities to implement measures in case where the foreign companies do not comply with the Vietnamese tax obligations.





Effectiveness

Principle

While the Circular will become effective from 1 January 2022, the direct registration, declaration and payment of taxes of foreign companies will only be implemented from the notice of the GDT that the online portal has come into operation.



Contact us

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