

1. VALUE ADDED TAX

❖ Some new points of Decree 126/2020/ND-CP

OL No. 5189/TCT-CS dated 07 November 2020 issued by the Tax Department to present the contents of Decree No. 126/2020/ND-CP detailed instruct some articles of the Law on Tax Administration. Some new notable points about VAT are as follows:

- Dossier of additional tax declarations

In Section 5.1, New Point 2 stipulated:

The taxpayer should only apply for increasing the refundable VAT in case the tax declaration of the next period and the dossier for tax refund is not yet submitted. (Point b, Clause 4, Article 7)

- VAT of an investment project

In Section 5.2, New Point 2 regulated:

The taxpayer should declare VAT for each investment project which is subject to VAT refund and submit to direct management tax authorities of the project. At the same times, taxpayers should offset the input VAT for purchasing goods and service of the project with the VAT payable of operational business (if any) in the same tax period (Point d, Clause 2, Article 7 and Point a Clause 1, Article 11)

- Determine the VAT declaration period

In Section 5.2, New Point 5 guided:

- In case taxpayers who declared tax monthly are fulfills the requirements to declare VAT quarterly, the taxpayers may convert to declare VAT by quarter or continue to declare by month.
- The deadline for monthly/quarterly tax declaration is stable for the whole calendar year. In case, a taxpayer who is declaring tax monthly is sufficient the conditions of declaring by quarter and wishes to convert, the taxpayer should submit official written (Appendix I hereof) to the tax management authority. In case, a taxpayer is not eligible for a quarterly declaration, the taxpayer should not resubmit the monthly tax declaration for previous quarters but the Table for determining the monthly tax payable

increasing compare to paid VAT by quarter and calculating late tax fine. (Point 9)

- Location for Tax declaration submission

In Section 5.2, New Point 6 regulated as:

In case, a taxpayer centralized accounting at the headquartered but have the dependent units or business location in different provinces, the taxpayer should declare VAT at the tax management of the headquarter and calculate, allocate tax payables to tax management authorities of each province. (Clause 2, Article 11)

2. PERSONAL INCOME TAX

❖ PIT after labor contract termination

OL No. 99060/CTHN-TTHT dated 13 November 2020 issued by the Tax Department of Ha Noi City guidance on PIT withholding after the termination of a labor contract as follows:

In case, the company pay benefits and other income as salaries, wages for employees (with labor contract over 3 months) after the termination of a labor contract, the Company should withhold and declare PIT with rate of 10% for payments higher than 2.000.000 VND (except deductible and exempt income).

❖ PIT with payment for employees in Covid

OL No. 97748/CT-TTHT dated 10 November 2020 issued by Tax department of Ha Noi City guidance about PIT for isolation expenses of employees in Covid epidemic as follows:

In case, the Company had arisen isolation expenses in COVID epidemic for general director of limited liability company (not own by the individual) is foreign experts work in Vietnam are isolated according to regulations, the Company should include those expenses into taxable income when calculating PIT as according to point đ.3.2 Clause 2 Article 2 of the Circular No. 111/2013/TT-BTC if the beneficiary's name is clearly indicated.

❖ PIT for dividend payment by stock

OL No. 99912/CTHN-TTHT dated 17 November 2020 issued by the Tax Department of Ha Noi

City guidance on PIT for paying dividend by stock as follows:

The individuals who received dividends by stocks are not required to declare and pay PIT. However, the individuals should declare and remit PIT for income from the capital investment with a rate of 5% and income from transferring securities with a rate of 0.1% when transferring these stocks.

❖ **Family allowances for foreigner employees**

OL No. 4590/TCT-DNNCN dated 28 October 2020 issued by General Tax Department guidance on family allowances for foreigner employees as follows:

In case, the taxpayer who is a foreign expert work in Vietnam is a resident when finalizing PIT for the first year (from July 2019 to June 2020), the taxpayer applies a family deduction of 9 million/month (for self) and 3.6 million/month (for dependent) from July 2019 to December 2019 and 11 million/month (for self) and 4.4 million/month (for dependent) from January 2020 to June 2020.

❖ **Some new points of Decree 126/2020 / ND-CP**

OL No. 5189/TCT-CS dated 07 November 2020 issued by the Tax Department to present the contents of Decree No. 126/2020/ND-CP detailed instruct some articles of the Law on Tax Administration. Some new notable points about PIT are as follows:

- **Dossier of additional tax declarations:**

In Section 5.1, New Point 1 stipulated as:

In case, the organizations or individuals paying income prepared the supplement of PIT finalization, the organization or individual should also prepare the adjustment of monthly or quarterly PIT declaration which the erroneous.

- **Personal income tax declaration**

In Section 5.14, Clause a, New Point 1 regulated as:

The income payers should declare PIT by month or quarter even if there is no tax withholding arisen (Point b Clause 3 Article 7).

- **Location for Tax declaration submission**

In Section 5.14, Clause c, New Point 3 guided as:

In case, an individual earns salaries from more than one source including PIT is directly declared and PIT withholding at income payers, the taxpayer should submit the PIT finalization at the tax management authorities

with a higher income. (Point b.1 Clause 7 Article 11)

3. CORPORATE INCOME TAX

❖ **Determine the time of corporate income tax reduction**

OL No. 997746/CT-TTHT dated 10 November 2020 issued by the Tax Department of Ha Noi City guidance on determining the period of CIT reduction:

In case, the Company is subject specified in Article 1 of Decree No. 114/2020/ND-CP dated 25 September 2020 and the total revenue of 2020 does not exceed VND 200 billion, the Company is enabled for the 30% reduction of the CIT payable in 2020. Based on the conditions for CIT reduction in 2020, the Company should determine the reduction for CIT in payable quarterly and finalization according to the provisions of Articles 2 and 3 of Decree No. 114/2020/ND-CP.

In case of fiscal year different from the calendar year, the CIT period should be determined by fiscal year as specified in Clause 2, Article 3 of the Ministry's Circular No. 78/2014/TT-BTC dated 18 June 2014 of Finance.

❖ **Depreciation expense of fixed assets suspended due to COVID 19 epidemic**

OL No. 12452/BTC-TCT dated 09 October 2020 issued by the Ministry of Finance guidance on corporate income tax policy for depreciation expenses of fixed assets suspended due to COVID-19 epidemic as follows:

Due to the impact of the COVID-19 epidemic which leads to a decline in the market's demand, enterprises face difficulties and must suspend the operations of some fixed assets for less than 9 months in the CIT period of 2020. After that, the fixed assets continue using for production and business activities. The fixed assets are considered as temporarily suspended for seasonal production as specified at Point 2.2, Clause 2, Article 4, Circular No. 96/2015/TT-BTC.

Accordingly, the enterprise is allowed to amortize and depreciation expense of the fixed assets during suspension under 9 months are calculated into deductible expenses when calculating tax.

❖ **Temporary remittance of estimated CIT**

OL No. 5189/TCT-CS dated 07 November 2020 issued by the Tax Department to present the contents of Decree No. 126/2020/ND-CP detailed instruct some articles of the Law on Tax Administration. Some new notable points about CIT are as follows:

In Section 5.4, New Point 2 guided as:

- Regarding the obligation to temporarily remit quarterly CIT, the total of estimated CIT remit in 03 first quarters of the year should be at least 75% of the CIT finalization payable and apply from the tax period of 2021.
- Otherwise, the fine for late tax payment should be applied on the arrears calculating from the deadline for CIT remittance of the third quarter to the date of arrears payment. (Point b Clause 6 Article 8)

4. OTHER

❖ Associated transactions

Decree No. 132/2020/ND-CP dated 05 November 2020, the Government promulgates regulations on tax management for enterprises with associated transactions as follows:

Expand the definition of affiliated parties:

- Both enterprises are managed or controlled on personnel, financial and business activities by individuals in one of the following relationships:
 - o Step-mother, step-father, mother-in-law, father-in-law
 - o Step-son, step-daughter, daughter/son-in-law. with the others such as a wife, husband, natural/foster father, natural/foster child, natural/foster older/younger sibling, brother/sister-in-law.
- The enterprises engaged in the following transactions with individuals who controlled and managed enterprises or individuals under one of the relationships prescribed in point g of this clause:
 - o The transactions for "transferring, receiving at least 25% of contributed capital of owner's equity" of the enterprise in the tax period;
 - o The transaction for "borrowing, lending at least 10% of owner's equity" at the time of transaction in the tax period.

❖ Administrative sanctions for violations on tax and invoice

On 12 November 2020, the General Department of Taxation issued Official Letter No. 4818/TCT-PC guidance on some new points in the administrative sanctions for violations of taxes and invoices and the implementation of Decree No. 125/2020/ND-CP. Accordingly:

The General Department of Taxation has synthesized the new regulations on sanctions for tax and invoices in Decree No. 125/2020/ND-CP and takes effect from 05 December 2020 which some notable points as:

- In case, the branches or business locations who are directly declared and remitted tax had violated the regulations on tax or invoice, the sanctions are only applied for branches or business locations but not the enterprise itself.
- When the party has an obligation to declare and remit tax on behalf (as prescribed) had violated behave, the sanctions applied for the party declared on behalf only.
- Wrongly declared leading to underpayment or an increase of refundable tax will be considered particularly serious if violating for 3 or more consecutive tax periods.
- The act of wrongly declaring many items on the dossiers of the same tax at one time will be sanctioned as 01 false act but fined at the highest rate for aggravating circumstances applied due to many violations.
- The act of late submitting many notifications and reports of invoices at one time will be sanctioned as 01 act of late submission but fined at the highest rate for aggravating circumstance applied due to many violations.
- Tax violations are considered large-scale (to increase the level of tax fine) if the amount of tax arrears, tax evasion or wrongly exempted, reduced, refunded tax are from VND 100 million and more.
- Invoice violations are considered large-scale (to aggravate penalties) if violating 10 invoices or more.
- Each aggravating/mitigating circumstance will increase or decrease 10% of the fine, previously 20%.
- Exemption from sanction for late submission of PIT finalization in case the individual directly finalized and has incurred tax refund.

❖ Declaration of licensing fees

OL No. 5189/TCT-CS dated 07 November 2020 issued by the Tax Department to present the contents of Decree No. 126/2020/ND-CP detailed instruct some articles of the Law on Tax Administration. Some new notable points about license fee are as follows:

In Section 5.21, New Point 1 prescribed as:

License taxpayers (except for household and individual business) are newly established

(including medium and small enterprises converted from the household) and existing businesses that establish new dependent units or business location or start operating (hereafter enterprises), the enterprises should submit the license fee declaration by 30 January of the next year of the establishment or starting operation. (Point a Clause 1 Article 10)

In Section 5.21, New Point 2 stipulated as:

In case, the capital is changed during the year, the taxpayer shall submit the declaration by 30 January of the succeeding year of the year occurred adjustment (Point a Clause 1 Article 10).

5. LABOR

❖ From 01 February 2021, the Decree guiding the Labor Code takes effect

On 14 December 2020, the Government issues the Decree No. 145/2020/ND-CP detailing and guiding the implementation of a number of articles of the Labor Code regarding working conditions and industrial relations.

- According to the new regulation, from 01 February 2021, employer employing 1,000 female employees or more must have a room for breast milk collection and storage at the workplace.
- Noticeably, this Decree specifies acts regarded as sexual harassment at the workplace such as: Physical behavior including sexual actions, gestures, contact, or physical impact on the body or sexual suggestions; Verbal sexual harassment, including using direct speeches, via the telephone or electronic means, etc.

Specifically, the employer must promptly prevent, handle an act of sexual harassment at the workplace and take measures to protect secret, honor, reputation, dignity and safety of the person being sexually harassed, person making a complaint or denunciation and person being complained or denounced, when the complaint or denunciation of such act arises.

- Besides, the employee working in a special sectors, occupations and jobs unilaterally terminates the labor contract or the employer unilaterally terminates the labor contract for these employees, the period of prior notification is as follows:
 - o At least 120 days, for indefinite-term labor contracts or labor contracts with a term of 12 months or more;
 - o At least a quarter of the term of the labor contract, for labor contracts with a term of less than 12 months.

Of which, specific sectors, occupations and jobs include: Air crew members; aircraft maintenance technicians, aviation instruments repair specialists; dispatchers; Enterprise managers as prescribed by the Law on Enterprises, the Law on Management and Use of State Capital Invested in Production and Business at Enterprises; Crew members working on Vietnamese ships operating abroad; crew members are hired by Vietnamese enterprises to work on board foreign seagoing ships; Other cases as prescribed by law.

Abbreviations

OL	CIT
Official Letter	Corporate Income Tax
GDT	PIT
General Department of Taxation	Personal Income Tax
TIN	VAT
Tax Identification Number	Value Added Tax

Contact:

KHAI MINH CONSULTING COMPANY LIMITED

Unit 704, 7F, Citilight Tower, 45 Vo Thi Sau Street

Dakao Ward, District 1, Ho Chi Minh City, Vietnam

Tel: 84 28 3820 5731 / 2

Fax: 84 28 3820 0906

(English)

Tran Mai Tuong Vy

tran.mai.tuong.vy@kmc.vn

Nguyen Van Mui

nguyen.van.mui@kmc.vn

(Japanese)

Le Quoc Duy

le.quoc.duy@kmc.vn

Nguyen Thi Thao Uyen

nguyen.thi.thao.uyen@kmc.vn

This newsletter aims to update and summarize general regulations associated with tax, accounting, investment and labor in Vietnam. You should refer to expertise before making decision.