



# NEWSLETTERS

Legal Updates August, 2013

## Extension of filing tax declarations to 23/8/2013

Today (20/8) General Department of Taxation has extended the tax return through network to the end of 23/8/2013 for declaring on July, 2013.

Currently, online declaration system is overloaded by a large number of enterprises uses focuses on the last day, some enterprises are not filed declarations for this date.

So the department had extended the filing declarations more 3 days to end on 23/8.

According to Dispatch 8355/BTC-TCT, the enterprises are not eligible to declare quarterly, it shall declare the tax on 7/2013 according to current regulations.



→ Extension of filing tax declarations to 23/8/2013

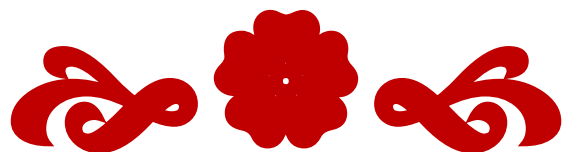
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→ DISPATCH

No: 8355/BTC-TCT

On carrying out a few of provisions taking effect from 01/7/2013 at the Law amending and supplementing a number of articles of the Law on tax administration

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**DISPATCH****No: 8355/BTC-TCT*****On carrying out a few of provisions taking effect from 01/7/2013 at the Law amending and supplementing a number of articles of the Law on tax administration***

On 20/11/2012, the National Assembly passed Law on amending and supplementing a number of articles of the Law on tax administration, taking effect on 1/7/2013.

In the present time, the Ministry of Finance is urging in coordinating with concerned agencies to submit to the Government for promulgation of Decree detailing the implementation of Law on tax administration and Law amending and supplementing a number of articles of Law on tax administration and promulgation of Circular guiding implementation. Let provisions to take effect on 01/7/2013, pending competent state agencies promulgate legal documents guiding implementation of the Law, the Ministry of Finance guides implementation of some content applicable from 1/7/2013 as follows:

**A. Quarterly VAT declaration**

1. Subjects of quarterly VAT declaration:

- Quarterly VAT declaration applies to persons paying VAT with total turnover of goods sale and service provision of the adjacent previous year attaining from VND 20 billion or less than.

If taxpayers have just begun operation of production and business, they shall perform monthly VAT declaration. After having had production and business operation for full 12 months, from the next calendar year, based on the turnover level of goods sale and service provision of the adjacent previous year, they shall perform VAT declaration on a monthly basis or quarterly basis.

Taxpayers shall self-define that they are subject of monthly VAT declaration or quarterly VAT declaration to perform VAT declaration in accordance with regulation.

If a taxpayer eligible for quarterly VAT declaration, this taxpayer must not declare VAT of July, 2013 but must declare quarter III/2013 (VAT payable to budget of July, August and September, 2013) not later than 30/10/2013. If a taxpayer is not eligible for quarterly VAT declaration, this taxpayer must declare VAT of July, 2013 not later than 20/8/2013 in accordance with current regulation.

If a taxpayer who is eligible for and belongs to case of quarterly VAT declaration wish to transfer to monthly VAT declaration, this taxpayer must send a notification to directly-managing tax agency not later than time limit of submitting the VAT declaration of July, 2013.

2. Period of quarterly VAT declaration:



VAT declaration on a quarterly basis or monthly basis shall be stable whole calendar year and stable under a 3-year cycle. Especially the first stable cycle is defined from 1/7/2013 till the end of 31/12/2016.

3. Method of defining turnover from goods sale and service provision of the adjacent previous year to serve as condition for defining subject of monthly VAT declaration:

Turnover from goods sale and service provision defined is total turnover on VAT declarations of tax periods in calendar year (including turnover subject to VAT and turnover not subject to VAT).

If taxpayers perform tax declaration at head office for their affiliated units, turnover from goods sale and service provision is included turnover of affiliated units.

## **B. Content related to extension of tax payment, installment payment of tax debts, calculation of delayed amounts applicable to late tax payment**

### **I. Installment payment of tax debts**

#### 1. Conditions for installment payment of tax debts

Tax agencies have promulgated decision on application of coercive measures for execution of tax administrative decisions but taxpayers have no ability to pay fully in once tax amount, fine, amount due to late payment including amount due to late tax payment and amount due to late fine payment (hereinafter abbreviated to tax amounts).

1.2. Having payment guarantee of credit institutions. The guarantee party is credit institution established and operating according to Law on credit institutions and must take responsibility for meeting fully conditions of performing guarantee operation as prescribed by law.

1.3. Guarantee documents (guarantee letter, guarantee contract, and so on) of the guarantee party with concerned tax agency (the guarantee party must commit with the receiving-guarantee party that the guarantee party will pay in lieu of taxpayer (the guaranteed party) without condition and immediately all guaranteed tax amount when taxpayer fail to perform or perform insufficiently tax liability as prescribed in this Article.

The guarantee documents must include main contents as prescribed by law on bank guarantee and must have principle contents as follows: Name, tax identification number, account of deposit, address, telephone number, facsimile number of the guaranteed taxpayer; Name, tax identification number, address, telephone number, facsimile number of the guarantee party; grounds of guarantee; type of tax, guarantee amount ; date of issuing guarantee; effect of guarantee documents; time limit of remittance of the guaranteed tax amount; commitments of the guarantee party. If passing time limit of tax payment as prescribed, the guarantee party must perform guarantee obligation as prescribed at Clause 2 Article 114 of the Law on tax administration.

The guarantee document of the guarantee party must be signed by: Legal representative of credit institution, the person controlling risks of guarantee operation, and the person appraising the guarantee amount. The authorization for signing guarantee documents (if any) must be issued in writing and ensure to be conformable with provisions of law.



1.4. Taxpayer must commit to halve the guaranteed tax amount so as to pay gradually monthly, not later than the end day of month.

## 2. Responsibility of taxpayer and the guarantee party

2.1. The taxpayer must pay the amount due to late payment arising over the tax amount allowed paying gradually at the rate of 0.05% each day allowed paying gradually.

2.2. If expiring time limit of monthly installment payment of tax amount but taxpayer has not yet paid, the guarantee party shall pay in lieu of taxpayer, including: All tax amounts accepted for installment payment; amount due to late payment arising over the tax amount allowed paying gradually at the rate of 0.05% each day allowed paying gradually and 0.07% each day since expiring time limit of gradual tax payment as committed.

2.3. If passing time limit of installment payment of tax amount but taxpayer fails to pay or the guarantee party fails to perform obligation of payment in lieu of taxpayer, within 10 working days after the expired date of tax payment, tax agency shall have document to send to the guarantee organization requesting for performing the guarantee obligation.

## 3. Procedures for and dossiers of paying tax debts by installments

3.1. Document of taxpayer requesting for installment payment of tax debts, in which clearly state the tax debt amount, tax amount requesting to be allowed paying by installments, duration registered for installment payment and commitments about implementation schedule of paying tax debts by installments to state budget.

3.2. The guarantee document of the guarantee party about the outstanding tax amount which is requested for installment payment.

3.3. Decision on coercive execution of tax administrative decision of head of tax agency directly managing taxpayer relating to the tax amounts requested for installment payment.

## 4. Competence of settlement

Head of tax agency directly managing taxpayer shall decide the tax amounts allowed paying by installments and time limit of installment payment.

## 5. Time limit of settlement:

5.1. In case where dossier is full, within ten working days, after receiving dossier, the directly-managing tax agency shall have document and send it to taxpayer:

- Decision on installment payment of tax debts if the taxpayer is eligible as mentioned above.

- Notification of refusal for installment payment of tax debts if the taxpayer is not eligible as mentioned above.



In case of detecting that guarantee documents have illegal signs, tax agency shall have written discuss with the guarantee party for verifying and handling as prescribed by law.

5.2. In case where dossier is not full, within three working days, after receiving dossier, the tax agency must notify in writing to taxpayer for completing dossier.

The taxpayer must complete dossier within five working days, after receiving, the tax agency's notification of supplementing dossier. If the taxpayer fails to complete dossier at the request of tax agency, tax agency shall perform tax payment enforcement as prescribed.

## **II. Calculation of amount due to late payment applicable to late tax payment**

1. Cases subject to payment of amount due to late tax payment include:

Taxpayers delay tax payment in comparison with time limit prescribed, time limit of tax payment extension, time limit stated in notification of tax agencies, time limit stated in decision on handling of tax agencies.

1.2. Taxpayers pay lack tax amount due to declaring wrongly payable tax amount, the exempted tax amount, the reduced tax amount, the refunded tax amount of the previous periods, but the taxpayers had detected mistakes and be self-conscious to declare supplementation, pay full the lack tax amount to state budget included before tax agencies, competent state agencies announce decisions on tax examination, tax inspection or after tax agencies, competent state agencies conclude, decide on tax handling post-examination or inspection.

1.3. Taxpayers pay lack tax amount due to declaring wrongly payable tax amount, the exempted tax amount, the reduced tax amount, the refunded tax amount of the previous periods, which are detected by tax agencies, competent state agencies.

1.4. If agencies, organizations collecting tax amounts, fines, amounts due to late payment of taxpayer but fail to remit the collected amounts into state budget, it is required to pay amount due to late payment from the expired time of remitting amount into state budget until such tax amount is remitted into state budget as prescribed.

2. Cases of adjusting decreasing the amount due to late payment

2.1. If a taxpayer has payable VAT arising from extra-provincial mobile operation as prescribed but has not yet paid in time limit provided, when declare to sum up at head office, the amount of late payment shall be counted for only the payable tax amount.

2.2. In case where the tax debts are arisen due to mistakes and tax agencies, competent state agencies have confirmed in the minutes and tax amounts are adjusted by tax agencies, it is not required to include these tax debts in calculating amount due to late payment.

2.3. If a taxpayer has the paid tax amount more than the tax amount defined under the result of settling complaint of competent agency or judgment, decision of Court, the taxpayer may adjust to decrease the amounts due to late payment corresponding to the tax amount, amount of late payment and fines paid in excess.



2.4. Case where a taxpayer is extended time limit of tax payment but the tax agency had calculated amounts due to delayed payment in the periods which have been allowed extension before issuing decision on extension.

The amount due to late payment is adjusted on the basis of request in writing of taxpayer, and provided that tax agencies have considered and approved through a notification (except for case specified in point 2.4 this Clause).

### 3. Defining amount of delayed tax payment

Taxpayers self-define amounts of delayed payment based on tax amounts delayed payment, date number of delayed payment and level of amounts delayed payment according to the level prescribed in Clause 32 Article 1 of the Law on amending and supplementing a number of Articles of Law on tax administration

In case where a taxpayer fails to self-define or define incorrectly with the amount delayed payment, the directly-managing tax agency shall define the amount of delayed payment and notify the taxpayer, specifying as follows:

#### 3.1. For the tax debts arising prior to 01/7/2013:

0.05% of each day counted on the tax amount delayed payment from the expired date of tax payment till the ninetieth (90th) date.

0.07% of each day counted on the tax amount delayed payment from the ninety-first (91st) date of delayed payment.

3.2. For the tax debts arising prior to 01/7/2013 but after 01/07/2013, taxpayers still fail to pay, the amount of delayed payment is calculated as follows: Prior to 01/07/2013, comply with the Law on tax administration, from 01/7/2013, comply with the Law on amending and supplementing a number of articles of the Law on tax administration.

3.3. The date number of delayed tax payment (including holidays, days off as prescribed by law) is counted from the next date of the last date of time limit of tax payment as prescribed by tax law to the date taxpayers pay full the tax amounts into the state budget.

4. Monthly, quarterly, if taxpayers fail to pay tax amounts, fines, amounts of delayed payment as debts of the previous months, previous quarters, tax agencies shall notify about the remaining amounts of tax debts, amounts of delayed payment which are payable and counted to the last date of previous month, previous quarter.

## **C. Contents related to administration of personal income tax, presumptive households and individuals leasing assets**

### **I. Determination of PIT declaration on a monthly basis or quarterly basis**

From 1/7/2013, determination of PIT declaration on a monthly basis or quarterly basis applicable to organizations and individuals paying incomes shall comply as follow:



## 1. For organizations and individuals paying incomes which have operated prior to 1/7/2013



Organizations and individuals paying incomes which have operated prior to 1/7/2013, defined form of PIT declaration on a quarterly basis or monthly basis for whole 2013, from July, 2013, re-adjust under the arising reality. Specified as follows:

E.g. 1: If company A, from July, 2013, is determined to be case of quarterly VAT declaration, in 6 last months of year, company A shall perform quarterly PIT declaration, including cases defined form of monthly PIT declaration from the beginning of year 2013, including case where in 6 last months of year 2013, arising withholding of PIT of any type of declaration more than VND 50 million.

E.g. 2: If company A, from July, 2013, is determined to be case of monthly VAT declaration, and prior to 1/7/2013, defined under case of monthly PIT declaration. July, 2013, arising the PIT withholding at declaration No. 02/KK-TNCN less than VND 50 million and declaration No. 03/KK-TNCN of VND 50 million, company A further declare PIT monthly for 6 last months of year 2013.

E.g. 3: Also with case of company A at E.g.2 but in July, 2013, arising the PIT withholding at declaration No. 02/KK-TNCN and declaration No. 03/KK-TNCN less than VND 50 million, company A will adjust form of quarterly tax declaration to apply to the 6 last months of year 2013.

## 2. For organizations and individuals paying incomes which are established and operate from 01/7/2013

Organizations and individuals paying incomes which are established and operate from 01/7/2013 shall define form of tax declaration under a monthly basis or quarterly basis according to principles at point a mentioned above to apply to the 6 last months of year 2013.

## II. For enterprises doing business of multi-level goods sale

From 01/07/2013, the PIT withholding for individuals participating in network of multi-level goods sale (individuals operating multi-level goods sale) will apply under the ratio table for individuals operating as insurance agent.

## III. For individuals directly declaring tax with tax agencies:

- From 1/7/2013, individuals earning incomes from wage, salary belonging case of direct tax declaration with tax agencies shall perform quarterly tax declaration.

- From 1/7/2013, individuals, business individuals groups being non-resident subjects but having fixed business location in Vietnam's territory shall perform tax declaration like as individuals, business individuals groups being resident subjects.

## IV. For transfer of real estate



- For individuals transferring real estate and doing procedures for transfer from 1/7/2013, time to define income subject to PIT from transfer of real estate will be the time when individuals do procedures for transfer at competent agencies (prior to 1/7/2013, it is the effective time of transfer contract).
- For individuals transferring real estate, doing procedures for transfer from 1/7/2013 and tax agencies defined under PIT rate of 2% will not adjust under tax rate of 25% over difference.

#### **V. For incomes from inheritances, gifts**

For individuals earning incomes from inheritances, gifts being real estate, do procedures for register of ownership to real estate being inheritances, gifts from 1/7/2013, the time to define incomes from inheritances, gifts is time when individuals do procedures for register.

#### **IV. For incomes from capital transfer of resident individuals**

For individuals earning incomes from transfer of contribution capital part and do procedures for transfer at competent agencies from 1/7/2013, the time to define incomes from capital transfer will be the time when individuals do procedures for transfer.

#### **VII. For non- resident individuals earning incomes from capital transfer**

For non-resident individuals earning incomes from transfer of contribution capital part from 1/7/2013, these individuals are not required to declare tax directly with tax agencies, but the receiving-transfer party shall perform withholding of PIT before paying incomes for the individuals transferring.

#### **VIII. For business households paying tax under presumptive tax method**

- For business households paying tax under presumptive tax method operated before 1/7/2013 and being defined the payable number of presumptive tax of 2013 by tax agencies, these business households are not required to re-adjust the rate of incomes subject to PIT.
- For business households paying tax under presumptive tax method being established and operate from 1/7/2013, these business households shall perform presumptive tax declaration and apply the rate of VAT according to the official dispatch No. 763/BTC-TCT dated 16/1/2009, the rate of taxable incomes according to the official dispatch No. 15908/BTC-TCT dated 26/12/2008.
- For business households paying tax under presumptive tax method and using invoices retailed by tax agencies for each serial number from 1/7/2013, these business households must declare VAT, PIT according to each arising time on invoice and pay VAT, and PIT before receiving invoice.
- For new business households which have just operated from 01/7/2013, the turnover level not having to pay VAT, PIT under presumptive tax method is defined by basing on: according to the general minimum wage in accordance with regulation of Government (taking effect in 2013) about the region-based minimum wage levels for laborers working in companies, enterprises, cooperatives, cooperative groups, farms, households, individuals and agencies, organizations employing laborers; and the rate of incomes subject to PIT under the official dispatch No. 15908/BTC-TCT dated 26/12/2008 of the Ministry of Finance.





The turnover level not having to pay VAT, PIT under presumptive tax method is defined follows:

$$\begin{array}{l} \text{The monthly turnover not} \\ \text{having to pay tax under} \\ \text{presumptive tax method} \end{array} = \frac{\text{The general minimum wage level}}{\text{The rate of incomes subject to PIT}}$$

**IX. For individuals leasing assets**

From 1/7/2013, individuals earning incomes from asset lease may select one of two forms of tax declaration on a quarterly basis or tax declaration under each arising time, regardless of contracts have been signed before 1/7/2013, regardless of the payment period in contracts.



**X. For issuing tax identification number for dependents**

- For dependents arising from 1/7/2013 and provided that taxpayers must declare fully information according to the form 16/DK-TNCN promulgated together with the Circular replacing Circular No. 28/2011/TT-BTC. On the basis of information in the form 16/DK-TNCN, tax agencies shall issue tax

identification number to dependents and notify to taxpayers.

- For dependents arisen prior to 1/7/2013, temporarily further calculate for reduction based on family circumstances. Tax agencies shall issue tax identification number to these subjects at time of finalization of year 2013.

The detailed guidance shall comply with guiding documents of the Government and the Ministry of Finance.

The Ministry of Finance requests Taxation Departments for implementation.

