



Special Alert

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Owners of e-commerce exchanges are subject to more tax exposure for online transactions

On 1 June 2021, the Ministry of Finance issued Circular No. 40/2021/TT-BTC guiding value added tax (“VAT”), personal income tax (“PIT”) and tax administration for business households and individuals (“**Circular 40**”).

Under the current laws and regulations of Vietnam, all business households and individuals whose annual revenue from production and business activities exceeds VND100 million (about USD4,350) are subject to VAT and PIT. For the first time, Circular 40 provides, at Article 8.1(dd), that owners of e-commerce exchanges must be responsible for the declaration and payment of VAT and PIT on behalf of individuals doing business through their e-commerce exchanges. Such liability for declaration and payment of VAT and PIT must be in accordance with the roadmap applied by the tax authorities, and during the time that the declaration and payment of these taxes by the owners of e-commerce exchanges has not been implemented, they must provide the tax authorities, upon request, with the information of such business individuals. The said roadmap has yet to be issued by the tax authorities.

Article 8.1(dd) is expected to help tax authorities manage tax in respect of business activities through e-commerce exchanges, i.e. online transactions, more effectively. However, there are some controversies on the legal basis and feasibility of such provision.

1. According to Article 24.1 of the 2007 Law on Personal Income Tax, as amended in 2012 (the “**PIT Law**”), individuals having income which is subject to the applicable tax are responsible for the declaration and remittance of that tax amount to the state budget, and finalization of tax as regulated; and income-paying organisations and individuals (income-paying units) must be responsible for the declaration, withholding and remittance of the tax amount into the state budget, and finalization of tax in respect of income payable to the taxpayers, which is subject to

the applicable tax. Owners of e-commerce exchanges are service providers and receive service fees from users doing business through their e-commerce exchanges, but are not an "income-paying" unit, and therefore, the provision of Circular 40 requiring owners of e-commerce exchanges to declare and pay VAT and PIT on behalf of individuals doing business through their e-commerce exchanges, is not consistent with Article 24.1 of the PIT Law.

2. As per Article 45 of the 2019 Law on Tax Administration, taxpayers shall register their tax codes with and submit tax declaration dossiers to the tax authorities of the location where the taxpayers conduct or register their business. In fact, registered business locations of owners of e-commerce exchanges and business locations of their users are different from each other, and therefore, there may be confusion to the owners of e-commerce exchanges in respect of locations where they have to submit the tax declaration and pay tax amounts as required under Article 8.1(dd) of Circular 40.
3. In order to implement Article 8.1(dd), e-commerce exchanges must have a mechanism for supervision of big transactions of parties doing business thereon, and the owners of the e-commerce exchanges will need more personnel for handling work related to this monitoring, declaration and payment of tax. This will cause financial and manpower burdens for the e-commerce exchange owners. In addition, there is no mechanism for e-commerce exchange owners to identify individuals who have revenue of VND100 million or less a year and are thus exempt from VAT and PIT.
4. Finally, Article 8.1(dd) will trigger an inequality as to the convenience provided to users between e-commerce exchanges and market places provided by social networks service providers, such as Facebook, which will be an obstacle for development of users for e-commerce exchanges, and therefore goes against the government's policy of encouraging the development of the digital economy.

In connection with issues mentioned above, Ms. Nguyen Thi Lan Anh, Director of the Tax Administration Department of small and medium enterprises and individual and business households, attached to the General Department of Taxation ("GDT"), has stated in a press interview that the declaration and payment of tax on behalf of business individuals by the e-commerce exchange owners will not be applied from 1 August 2021, but will be applied after data standards for information connection have been built with the cooperation between the GDT and the owners of e-commerce exchanges, and databases of the tax authorities and of the e-commerce exchanges have been upgraded for complying with those data standards.

Circular 40 will take effect from 1 August 2021 and replaces Chapters I and II of Circular No. 92/2015/TT-BTC dated 15 June 2015 providing guidelines for VAT and PIT incurred by residents doing business; guidelines for implementation of amended contents relating to PIT provided by the Law No. 71/2014/QH13 on amendment and supplementation to a number of articles of tax laws and the Government's Decree No. 12/2015/ND-CP dated 12 February 2015 guiding the implementation of the Law No. 71/2014/QH13, and providing amendments and supplementations to a number of articles of tax decrees as from the effective date.

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