

LEGAL UPDATES

August
ISSUE NO.1

2021
EDITION



INQUIRIES@LIKONLAW.COM



+84 828 022 279



SUITE 6A, 6TH FLOOR, HALO BUILDING,
51-53 VO VAN TAN, VO THI SAU WARD,
DISTRICT 3, HO CHI MINH CITY, VIETNAM

1. Circular No.40/2021/TT-BTC guiding Value-Added Tax (“VAT”), Personal Income Tax (“PIT”) and tax administration of household businesses and individual businesses (“Circular 40/2021/TT-BTC”) takes effect as of 1st August 2021

Clarifying the concept of “household business”

Previously, Circular No.92/2015/TT-BTC on Guidelines for VAT and PIT for residents doing business, guidelines some amendment, supplement contents on PIT of the Law No.71/2014/QH13 on Amendments to Tax Law and Decree No.12/2015/ND-CP dated 12th February 2015 on Guidelines the Law on amendments to Tax Law and decrees on taxation (“**Circular 92/2015/TT-BTC**”) does not regulate the concept of household business. According to Circular 40/2021/TT-BTC, “household business” means a business or manufacture facility established by an individual or members of a household who take fully responsibility by all of their property for its business operation. This regulation is consistent with the concept of household business stipulated in Decree 01/2021/ND-CP on Business registration.

In case the household business is registered by household members, one of them shall be authorized as the household business’ representative. The individual who registers household business or the person authorized by household members as the household business’ representative shall be the household business owner.

Households doing in agriculture, forestry, aquaculture, salt production, street vendors, peddlers, merchant traders, travelling vendors, seasonal traders, low-earners are not required to apply for household business



registration, except in conditional business lines. The provincial People's Committees shall regulate the levels of lower incomes in their provinces.

Adding tax calculation methods for household business and individual businesses

Previously, according to Circular 92/2015/TT-BTC, household business, individual business mainly paid VAT, PIT through the presumptive tax method. It means that tax is calculated according to the rate on presumptive revenue imposed by the tax authority.

From 1st August 2021, Circular 40/2021/TT-BTC added 02 tax calculation methods for household business and individual business, including:

- (i) declaration method: tax is calculated proportional tax on actual revenue earned per month or quarter; or
- (ii) tax calculation method in case organizations, individuals declaring and paying tax on behalf of other individuals.

Subjecting incomes to VAT, PIT

Like Appendix I Circular 92/2015/TT-BTC, Appendix I Circular 40/2021/TT-BTC also regulates 04 groups of business lines subjecting to VAT, PIT; and additional incomes subjecting to VAT, PIT.

For example: Bonuses, sales support, promotions, commercial discounts, payment discounts, cash or non- cash payment support for presumptive taxpayers (VAT: 1% and PIT: 0.5%); advertising on digital information products and/or services (VAT: 5% and PIT: 2%), compensation for breaching the contract, other compensations (PIT: 0.5%) etc.



Adding subjects declaring and paying taxes on behalf of individuals

Previously, Circular 92/2015/TT-BTC only stipulates that enterprise, economic organization shall declare and pay tax on behalf of individuals in the case of property leasing, if the property leasing contract agreed that enterprises, economic organization is a tax-payer.

Currently, in addition to the above circumstance, Clause 1 Article 8 Circular 40/2021/TT-BTC added cases that organizations shall declare and pay tax on behalf of individual as follows:

- (i) organization has business cooperation with individuals;
- (ii) organization pays bonuses, sales support, promotions, commercial discounts, payment discounts, cash or non-cash payment support, compensations for breaching the contract, other compensations for presumptive tax-payers;
- (iii) organization in Vietnam which is a partner of an overseas digital platform provider (without permanent establishment in Vietnam) according to agreement with the overseas digital platform provider;
- (iv) organization which is the owner of an e-commerce trading floor; and
- (v) organization, individual which is authorized by the other individual to declare and pay tax on his/her behalf pursuant to civil law.

2. Circular No.55/2021/TT-BTC guiding the management, allocation, advancement and refund of costs for enforcement of judgments for



commercial legal entities (“Circular 55/2021/TT-BTC”) takes effect as of 25th August 2021

Management principles of costs for enforcement of judgment of commercial legal entities

Circular 55/2021/TT-BTC stipulates that commercial legal entities subject to enforcement must bear all costs for enforcement activities in accordance with Article 43 Decree 44/2020/ND-CP regulating on coercive enforcement of judgments against commercial legal entities. The commercial legal entity subject to coercion shall pay all enforcement costs to the enforcement decision-making agency in accordance with the provisions of Circular 55/2021/TT-BTC.

Contents of costs for enforcement of judgments of commercial legal entities

Enforcement costs are determined based on the actual costs incurred in the process of implementing the enforcement decision suitable with the prices of each locality. Enforcement costs include:

- a) the cost of mobilizing people to implement the enforcement decision;
- b) remuneration for the valuator to organize the auction, expenses for organizing the asset auction;
- c) the cost of hiring means of dismantling and transporting of objects and assets;
- d) the cost of hiring or maintaining the distrained property;
- e) the cost of transferring the implementation of the enforcement decision;
- f) the cost of taking legal action; and



g) other actual costs (if any).

The above expenses shall be made based on the actual, legal and valid contract, contract liquidation, minutes of handing over distrained assets (for costs on leasing or preserving distrained assets), invoices and spending document according to current regulations and has been approved by the enforcement decision maker.

Allowances for those directly mobilized to participate in the enforcement and enforcement- protection are as follows: The expenditure for the person in charge of implementation of the enforcement decisions that belongs to the enforcement agency is 150,000 VND/person per day of enforcement participation, the expenditure for persons mobilized to participate in the implementation of enforcement decisions is 100,000 VND/person/day for enforcement participation.

Payment and advance payment of enforcement costs

Before organizing enforcement, the enforcement decision-making agency approves estimated cost for enforcement. After approving, the enforcement decision-making agency will send the estimated cost for enforcement, enforcement decision, decision on deducting money from the commercial legal entity's account for the entity subject to enforcement, the credit institution, State Treasury, securities company that is managing the account of the commercial legal entity must take judicial measures and the enforcement authority of the same level.

In case of implementing the enforcement by freezing the account, after receiving the decision on deduction of money from the account of the



commercial legal entity that has to undertake the judicial measure, the credit institution or the State Treasury shall take managing the account of the commercial legal entity, the securities company where the commercial legal entity opens a security account must deduct the money from the account and transfer it to a competent criminal judgment enforcement agency for enforcement.

In case the enforcement costs have not been collected from the subject of enforcement because the subject does not voluntarily pay or because of other objective reasons, based on the approved estimated cost for enforcement, the enforcement agency shall request the enforcement decision-making agency to advance the enforcement costs from the estimated enforcement cost budget for implementation.

Finalization and refund of advance payment of enforcement costs

When the implementation of the enforcement decision is completed, the enforcement agency shall submit to the enforcement decision issuer for approval of the final settlement of enforcement costs and send the approved settlement of enforcement costs to the entity subject to enforcement (in case the subject of enforcement has paid the enforcement cost).

If the approved enforcement costs settlement amount is lower than the amount already paid by the subject of enforcement, the enforcement decision-making agency shall refund the difference to the subject of enforcement. If the approved enforcement costs settlement is higher than the amount already paid by the subject of enforcement, the entity subject to enforcement shall



have to pay the outstanding amount to the enforcement decision-making agency.

If an advance on enforcement costs has been made, based on the approved settlement of enforcement costs, the enforcement decision-making agency shall send a written notice of the approved settlement of enforcement costs to the entity subject to enforcement to pay the enforcement costs. Within 10 days from the date of receipt of the notice, the entity subject to enforcement shall pay the enforcement costs to the enforcement decision-making agency.

In case it is impossible to recover the enforcement costs because the entity subject to enforcement is bankrupt or dissolved but has no money or property to pay the enforcement costs, the enforcement agency shall report to the decision issuer.

3. Circular No.73/2021/TT-BCA prescribing passport forms, laissez-passers and relative forms (“Circular 73/2021/TT-BCA”) takes effect from 14th August 2021

Issuing new passport form with an electronic chip

After citizen’s identity card, passport shall also be the next type of personal paper to be attached an electronic chip according to the form specified in Circular 73/2021/TT-BCA.. Passport containing electronic chip refers to a passport embedded with electronic equipment storing encoded information of its owner and digital signature of issuing body.



Article 2 Circular 73/2021/TT-BCA provides new passport form. An electronic chip which stores the passport owner's encrypted information and the issuer's digital signature, is attached on the passport's back cover. In addition, an electronic chip can also store biometric characteristics, photos or personal information of citizens.

Is it mandatory to change to a new passport with an electronic chip?

According to Clause 2 and Clause 3 Article 6 Circular No. 73/2021/TT-BCA: *"Blank passports and laissez-passers template provided to agencies before the effective date of this Circular but did not fully issued, shall continue to be used, no later than 1st January 2022, the agencies must unify according to the passport, laissez-passers form specified in this Circular. Passports, laissez-passers issued before 1st January 2022 are still valid until the end of the time-limit stated on passports and laissez-passers".*

As such, passports issued before 1st January 2022 are used until the end of the time-limit as prescribed above. It means that from this time to 1st January 2022, citizens are not required to change to passports containing electronic chips.



DOCUMENTS ISSUED IN AUGUST 2021

DATE OF ISSUE	NO.	NAME OF DOCUMENT	ISSUED BY	MAIN CONTENTS
02/8/2021	05/2021/T-BCT	Circular	Ministry of Industry and Trade	Prescribing some content on electrical safety
04/8/2021	1425/QD-TTg	Decision	The Prime Minister	Appointing focal agencies for implementing the Free Trade Area between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland (UKVFTA)
04/8/2021	105/2021/TT-BQP	Circular	Ministry of Defense	Regulations on the formulation, signing and implementation of international agreements in the People's Army
07/8/2021	553/XKN-XXHH	Official Dispatch	Department of Import and Export	Determining the origin of imported and exported goods
12/8/2021	26/2021/QD-TTg	Decision	Prime Minister	List of industries and sectors to convert the business units-public into the joint stock companies



16/8/2021	09/2021/TT-BXD	Circular	Ministry of Construction	Guidance on implementation of some contents of the Government's Decree No. 100/2015/ND-CP dated 20 th October 2015 on Development and management of social housing and the Government's Decree No. 49/2021/ND-CP dated 01 st April 2021 Amending and supplementing a number of articles of Decree No. 100/2015/ND-CP
16/8/2021	79/2021/ND-CP	Decree	Government	Amending, supplementing a number of articles of Decree No. 97/2018/ND-CP dated 30 th June 2018 on re-lending ODA loans and foreign preferential loans.
16/8/2021	255/QD-VKSTC	Decision	Supreme People's Procuracy	Promulgating regulations on procedures for procuring judgments and decisions on settlement of administrative cases of



				courts
17/8/2021	4065/TCHQ-TXNK	Official Dispatch	General Department of Customs	Importing goods for processing but no production or processing facilities
17/8/2021	1972/QDD-BCT	Decision	Ministry of Industry and Trade	Establishment of a Domestic Advisory Group (DAG) in Vietnam
20/8/2021	5799/VPCP-KTTH	Official Dispatch	Government office	Exempting import tax on raw materials to produce COVID-19 antigen rapid test sticks for epidemic prevention and control.
20/8/2021	94/NQ-CP	Resolution	Government	Thematic meeting on Legal Development August 2021
21/8/2021	4034/QD-BYT	Decision	Ministry of Health	Announcement of new administrative procedures promulgated in the field of pharmacy within the scope of management functions of the Ministry of Health

