

GUIDANCE ON TAX DECLARATION AND PAYMENT FOR INDIVIDUALS HAVING INCOME FROM DIGITAL INFORMATION CONTENT PRODUCTS AND SERVICES

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On June 1, 2021, the Ministry of Finance issued Circular 40/2021/TT-BTC guiding value added tax, personal income tax and tax administration of household businesses and individual businesses (**Circular 40**). Compared to Circular 92/2015/TT-BTC, Circular 40 has some changes in subject classification, tax calculation methods, determination of relevant organizations' responsibilities, etc. Especially, Circular 40 has expanded the applicable subjects, typically individuals having income from digital information content products and services; individuals doing business at border markets and border-gate markets; organizations and individuals declaring and paying tax on behalf of other individuals, etc. However, this article will only focus on individuals having income from digital information content products and services.

In practice, individuals having income from digital information content products and services are commonly YouTubers, TikTokers, individuals providing advertising services on digital platforms such as Google, Facebook or programmers having income from application sales, etc. In essence, tax declaration and payment of these subjects is being performed in accordance with regulations of Circular 92/2015/TT-BTC. However, with the strong development of the business of digital information content products and services, Circular 40 has recognized and provided specific guidelines for these subjects (hereinafter referred to as "**individual businesses**"), details are as follows:



Firstly, regarding tax calculation rule: Individual businesses must pay value added tax (VAT) and personal income tax (PIT) if the turnover from business activities within a calendar year is over 100 million Viet Nam Dong.

Secondly, regarding tax calculation basis: Individual businesses will calculate taxes according to the taxable turnover, tax rate and tax calculation formula as follows:

- Taxable turnover is the tax-inclusive turnover (in taxable case) from all sale of goods, processing fees, commissions, and service provision payments during the tax period from production and sales of goods and services, including bonuses, sale supports, promotions, commercial discounts, payment discounts, cash or non-cash supports; price subsidies, surcharges, extras, and additional fees entitled under regulations; compensations for contract breaches and other compensations (only included in the taxable turnover subject to PIT); other turnovers earned by individual businesses regardless of whether they have been collected or not.
- Individuals must pay tax at the rate of 5% VAT/taxable turnover and 2% PIT/taxable turnover.
- Tax payable amount is determined according to the following formula:

- VAT payable amount = Taxable turnover subject to VAT x VAT rate

- PIT payable amount = Taxable turnover subject to PIT x PIT rate

Thirdly, regarding tax calculation methods: According to Circular 40, individual businesses can choose either the method of unscheduled declaration (upon incurrance of tax) on actual turnover arisen or the method of monthly or quarterly declaration (periodic declaration). The contents of periodic declaration method are specified in Article 5 and Article 11 of Circular 40. However, this method requires

taxpayers to comply with the accounting regime and have sufficient invoices and documents – one of the requirements which is difficult for some small individual businesses to follow. Thus, in fact, unscheduled declaration method is used more commonly due to its flexibility, ease of application, and conformity with business characteristics of many taxpayers. The followings are some notable contents when individual businesses apply unscheduled declaration method:

- Taxpayers applying the unscheduled declaration method to declare tax whenever their taxable turnover is earned. Although the accounting regime is not compulsory to follow, taxpayers still have to file invoices, documents, contracts, records proving the legality of their goods and services and enclose them with the unscheduled tax declaration records.
- Tax declaration records include:
 - Tax return for household businesses and individual businesses according to form No. 01/CNKD enclosed with Circular 40;
 - Documents attached to the unscheduled tax declaration records include: Copy of the economic contract for provision of goods/services; copy of the acceptance, contract liquidation minutes; relevant documents to prove if the goods are self-produced; etc.
 - Agency receiving tax declaration records: Tax sub-department of the area where an individual resides (permanently or temporarily).
 - Deadline for submitting tax declaration records: no later than **the 10th day from the date incurring tax obligation, instead of the 30th day of the quarter following the quarter with arising taxable turnover under Circular 92/2015/TT-BTC.**
 - Deadline for paying tax: no later than the last day of the time limit for tax declaration record submission.

COMMENTS AND RECOMMENDATIONS

In early 2019, NHQuang&Associates organized a workshop on Guidance for PIT payment for individual businesses having income from

abroad – a social activity to support individual businesses to declare and pay taxes in accordance with the law. With the new provisions of Circular 40, it can be seen that there are not many changes in tax declaration and payment instructions for individuals having income from digital information content products and services. The biggest change is the deadline for submitting unscheduled tax declaration records – the 10th day from the date incurring tax obligation, instead of the 30th day of the quarter following the quarter with arising taxable turnover under Circular 92/2015/TT-BTC. Besides, the frequency of tax payment can be increased to 12 times per year (monthly) instead of 4 times per year (quarterly) in the case where individuals have regular monthly income from trading digital information content products and services.

It should be further noted that individuals contracting with a partner company in Viet Nam of an overseas digital platform provider shall not declare tax themselves, instead, it will be declared and paid by such organization. This is also a new point of Circular 40 when expanding the subjects that are responsible for declaring and paying tax on behalf of individuals. Accordingly, the organization that owns an e-commerce platform must also perform the above obligation, but this regulation seems inappropriate in practice. Specifically, representatives of some e-commerce platforms reveal that e-commerce platforms are not income payers, and only provide technology infrastructure to connect sellers and buyers. In addition, e-commerce platforms do not have any database to control the income of individuals, etc. From the above shortcomings, in the General Department of Taxation's webinar on June 15, 2020, several e-commerce platform representatives recommended the competent authority to revise the roadmap for applying this new regulation so that these organizations can prepare for data collection and reporting as required by tax authority.

Circular 40 will take effect from August 1, 2021. Therefore, individual businesses having income should notice the above regulations to declare and pay tax correctly and fully, preventing related legal risks. To facilitate tax declaration and payment, especially when the frequency of tax declaration and payment increases significantly, individual businesses can declare and pay taxes online via the National Public Service Portal and the General Department of Taxation's Portal.