

# NewsBrief

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## New decree implementing the Law on tax administration 2019

### At a glance

Tiếp theo Luật quản lý thuế được ban hành vào tháng 6 năm ngoái, Chính phủ vừa ban hành Nghị định 126/2020/NĐ-CP quy định chi tiết thi hành một số điều của luật quản lý thuế.

Nghị định này bao gồm một số quy định chính về thuế đối với hoạt động thương mại điện tử. Các biện pháp xử phạt nghiêm khắc hơn cũng được đưa ra, cùng với một loạt các thay đổi trong thủ tục quản lý thuế. Trên tinh thần của luật, nghị định đặt ra những quyền hạn mới mà theo đó cơ quan thuế có thể không màng đến hình thức của giao dịch và ấn định thuế - điều khoản về chống tránh thuế đầu tiên của Việt Nam. Về hóa đơn điện tử, chứng từ điện tử và chế độ xử phạt, các nghị định riêng cũng đã cùng lúc được ban hành.

This decree is a large document - comprising 9 chapters and 44 articles, and will be effective from 5 December 2020 subject to some transitional rules.

## E- commerce activities

- ✓ Under the Law on tax administration 2019, banks are generally required to withhold and pay tax on behalf of overseas businesses which conduct e-commerce activities and derive income from Vietnam.
- ✓ The decree extends the above requirements to payment intermediary service companies and clarifies that the above withholding requirement is applicable to transactions where Vietnamese individuals purchase goods & services from overseas suppliers conducting e-commerce and digital-based business activities (“e-commerce foreign contractors”). In this respect, banks and payment intermediary service companies are required to:
  - Withhold and pay tax on behalf of the e-commerce foreign contractors on a monthly basis if such contractors do not register to pay tax in Vietnam. The General Department of Tax will work with relevant authorities to determine the name and website address of e-commerce foreign contractors which do not register in Vietnam and provide this information to the banks and payment intermediary service companies.
  - Keep records of payments remitted to overseas and provide this data to the General Department of Tax on a monthly basis if the Vietnamese individual customers use a payment method whereby withholding cannot be performed (e.g. payments via credit cards).
- ✓ Banks are also required to provide the following information to the tax authorities:
  - Bank accounts details of the taxpayers: within 90 days from the effective date of this decree (i.e. by 5 March 2021);
  - Information on transactions made via such accounts where requested by the local tax authorities following a tax audit or when they are implementing coercive measures.
- ✓ The decree also introduces that a 10-digit tax code will be granted to foreign companies which incur tax liabilities in Vietnam, which is understood will also cover e-commerce foreign contractors.

## Tougher sanctions, including Vietnam's first general anti-avoidance provisions

- ✓ The tax authorities are granted additional powers to deem tax, including where taxpayers.
  - Enter into transactions without a business rationale in order to avoid tax. This aligns with the new principle of “operational substance rules” introduced in the Law on tax administration 2019, which indicates that a substance over form approach is expected to be increasingly applied by the tax authorities. This underlines the importance of being able to justify the commercial substance for transactions and have evidence available to support this.
  - Use illegal invoices for the purchase and exchange of goods, even where there is a real underlying transaction and the associated tax has been declared, for example, purchase of goods/ services from companies that are no longer operated at the registered locations.
  - Fail to comply with a decision to conduct a tax audit.
  - Fail to properly declare related party transactions.
- ✓ More guidance is provided regarding the deeming of tax in export and import transactions, including the bases that Customs can refer to in order to deem tax and the cases where Customs can deem tax.
- ✓ Cases where the tax authorities can publicise information on taxpayers are expanded to cover, inter alia, failure to submit tax returns and/ or pay taxes within 90 days of the due date, and failure to comply with administrative decisions – e.g. to pay taxes imposed after a tax audit.
- ✓ The legal representative of a company can be prohibited from leaving Vietnam if the company has not paid assessed taxes.

## Changes to tax admin procedures

- ✓ There are some new rules on Advance Pricing Agreements.
- ✓ For companies which are not required to prepare quarterly financial statements, the quarterly provisional CIT liability will be based on the quarterly business results and tax regulations. This implies that companies are expected to be more accurate in their calculation of provisional CIT liabilities.
- ✓ Following on from this, the total amount of provisional CIT paid in the first 3 quarters of a tax year must not be less than 75% of the total CIT liability for the year. Any shortfall will be subject to interest, counting from the deadline for payment of the quarter 3 provisional CIT liability. Interestingly, this requirement is also applicable to foreign shipping lines, which are taxed in Vietnam under the foreign contractor tax regime.
- ✓ Companies which have multiple business activities in different provinces, where such activities are accounted centrally at the head office, must declare tax centrally at head office, but are required to apportion and pay such tax in the respective provinces. This is generally consistent with the previous regulations for CIT with respect to companies having manufacturing units located in different provinces, but is new in terms of other taxes, e.g. VAT. The above guidance does not however apply in certain cases to sectors such as transportation, insurance, construction.

However, for dependent units or business locations which are entitled to CIT incentives, companies are required to separately determine (not allocate) the CIT payable.

- ✓ Guidance is provided regarding the responsibilities of organisations to declare and pay tax on behalf of taxpayers. Some notable points include:
  - Organisations (can be securities companies, banks or investee companies, depending on the situations) must declare and pay PIT on behalf of individuals arising on stock dividends, stock bonuses, profits reinvested as capital, and capital contribution by individuals in the form of immovable property/shares/securities.
  - Organisations which pay bonus, sales support, promotion, trade discount, payment discount, cash or non-cash support to business households/ individuals which pay taxes on deemed method are required to declare and pay PIT on behalf of such business households/ individuals.
- ✓ The decree also provides guidance on tax returns, cases where taxes are declared on a monthly, quarterly, annually or on a transactional basis, places to submit tax returns, etc.

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