

Decree No. 126/2020/ND-CP guiding to implement the Law on Tax Administration 2019

RSM Vietnam – Tax newsbrief





The Government has just issued Decree No. 126/2020/ND-CP (Here in after referred to as "Decree 126") elaborating some Articles of the Law on Tax Administration 2019. This Decree includes 9 chapters and 44 articles taking effects on December 5th, 2020 and having some key points as follows:

1. Regulations on tax declaration and payment of organizations with taxpayers

Decree 126 additionally provides some responsibilities of organization that declare and pay tax on behalf of taxpayers, such as:

- Securities enterprises, banks or investee enterprises, 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
- Organizations which pay bonus, sales support, promotion, trade discount, payment discount, cash or non-cash support to business households/ individuals on deemed method are required to declare and pay PIT on behalf of such business households/ individuals

(Nonetheless, Decree 126 does not have guidance on specific tax rates that organizations declare and pay PIT on behalf of these business households / individuals when paying the above bonuses and supports)

2. Regulations on the taxation of E-commerce activities

- Decree 126 guides some articles of Law on Tax Administration 2019 for e-commerce activities, in particular the responsibilities of banks and intermediary payment service providers (hereinafter referred to as "Payment service providers") as follows:
 - Payment service providers are responsible for withholding and paying tax monthly on behalf of the foreign companies which operate e-commerce activities and incur income from Vietnam, but do not register to pay tax in Vietnam (hereinafter referred to as "foreign e-commerce contractors"). Banks and Payment service providers will implement based on the notification of The General Department of Tax and relevant authorities on the name and website address of these foreign e-commerce contractors
 - Payment service providers also have responsibility for monitoring and providing data monthly on payments transferred to foreign e-commerce contractors to the General Department of Taxation if foreign e-commerce contractors and individuals in Vietnam use payment methods in which above withholding cannot be implemented
- The decree also announces that a 10-digit tax code will be issued to foreign companies which incur tax liabilities in Vietnam (e.g. foreign e-commerce contractors)



3. Tighten sanctions about Vietnam's anti-avoidance provisions

- Supplementing powers of the tax authorities over tax imposition in cases:
 - Taxpayers implement misleading or false transactions for purpose of avoiding tax. This underlines the significance of justifying and indicating documents and vouchers to demonstrate the new principle of "operational substance rules" specified in the Law on tax administration 2019
 - Taxpayers purchase and exchange of goods with illegal invoices even in cases of goods and services exist and the relevant tax obligations have been declared (for example, transactions from companies no longer operate at registered addresses)
 - Taxpayers fail to execute a decision of tax examination and inspection
 - Taxpayers fail to comply with provisions about declaring related party transactions
- The tax authorities can prohibit the legal representative of relevant taxpayers from leaving if such enterprise has not paid fully taxes
- The tax authorities can may publicize the information of taxpayers, who fail to file and pay tax within 90 days from the due date; or fail to comply with administrative decisions such as failure to pay the imposed taxes decided by a tax audit

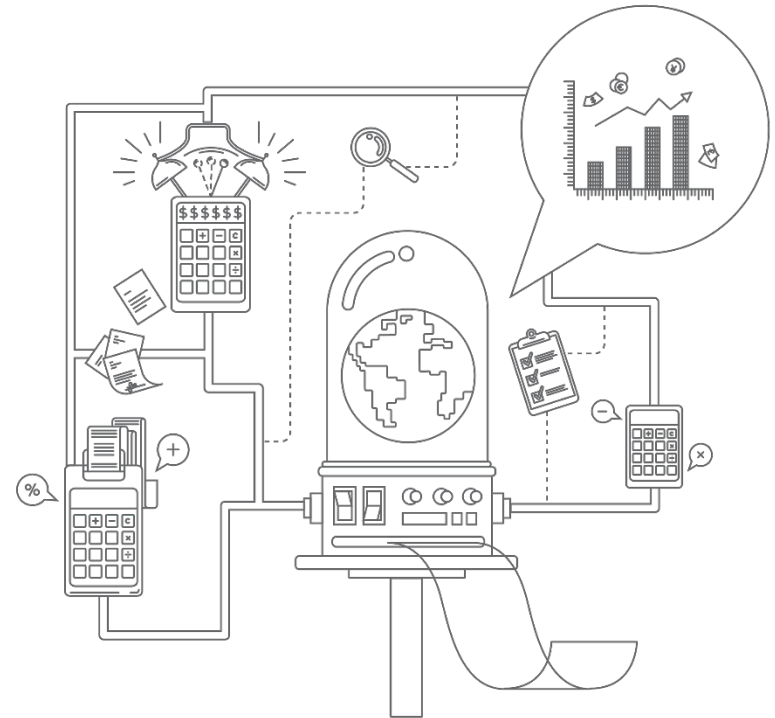
4. Other new adjustments In tax administrative procedures

Decree 126 also provides some other new rules as following:

- Enterprises with related party transactions are required to adjust to some new requirement of Advance Pricing Agreements for determining taxable prices
- The enterprises, which are not required to prepare quarterly financial statements, will carefully calculate the provisional CIT liability based on the quarterly business results (instead of quarterly financial statement) and tax regulations
- Enterprises need to ensure that in the first three quarters of a tax year, the cumulative amount of the provisional CIT paid must be at least 75% of the total CIT liability for the year. Any deficiency shall be subject to late interest liability, counting from the deadline for payment of the provisional CIT liability of quarter 3 until the payment date of such deficient tax liability. In addition, this provision also applies to foreign shipping lines that are subject to Vietnamese foreign contractor tax regime
- Enterprises, whose business activities are conducted in difference provinces and such activities are accounted centrally at the head office, must declare tax (CIT and other taxes such as VAT) at head office and allocate the tax payable to the respective provinces. Before this regulation taking effect, central tax declaration was only applicable for CIT

However, this guidance does not apply for:

- Some specific sectors including transportation, insurance and construction
- Enterprises have dependent units or business locations which are entitled to CIT incentives. In this case, enterprises are required to separately determine (not allocate) the payable CIT amount
- Moreover, Decree 126 also supplements some provisions and provides guidance on tax declaration forms, cases where taxes are declared on a monthly, quarterly, annually or on a transactional basis, places to submit tax declaration forms, etc.



CONTACT US

Ho Chi Minh City

5th Floor, Sai Gon 3 Building
140 Nguyen Van Thu Street
Da Kao Ward, District 1
Ho Chi Minh City, Vietnam

Le Khanh Lam

Partner

Head of Tax & Consulting Services

T: +84 28 3827 5026

E: lam.le@rsm.com.vn

Le Xuan Mao

Director

Tax & Consulting Services

T: +84 28 3827 5026

E: mao.le@rsm.com.vn

Hanoi

25th Floor, Tower A, Discovery Complex
302 Cau Giay Street
Dich Vong Ward, Cau Giay District
Hanoi, Vietnam

Nguyen Thanh Lam

Partner

Head of Hanoi Office

T: +84 24 3795 5353

E: lam.nguyen@rsm.com.vn

Danang

5th Floor, Dai Thang Building
264 Xo Viet Nghe Tinh Street
Cam Le District
Danang, Vietnam

www.rsm.global/vietnam

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