

Decree 126 guiding the Law on Tax Administration

The Government promulgates Decree 126/2020/ND-CP dated 19 October 2020 detailing the implementation of various articles of the Law on Tax Administration. Decree 126 takes effect on 5 December 2020.

We would like to set out some notable regulations in Decree 126 for your reference:

Tax declaration, tax calculation and tax filing location

- Where a supplementary declaration does not change the tax obligation, the taxpayer is only required to submit an explanation for the supplementation and relevant documents instead of submitting an amended tax return.
- When amending the personal income tax (“PIT”) finalization of the organization or individual paying employment income, it is required to simultaneously amend the corresponding monthly or quarterly declarations with updated information.
- PIT on employment income shall be declared on a monthly basis (applicable to both the organization/individual paying income and the individual who declares directly to the tax authority), unless taxpayers are eligible for quarterly declaration.
- An organization who makes payment of bonuses, sales support, promotions, trade discounts, payment discounts, cash or non-cash support payment to household and individual businesses paying tax under a deemed method, shall declare and pay tax on behalf of such individuals.
- The total provisional corporate income tax (“CIT”) amounts for the first three quarters of the tax year must not be less than 75% of the CIT payable at fiscal year-end finalization. Where the taxpayer underpays the provisional tax amount for the first three quarters, the interest on late payment of tax shall be calculated based on the tax underpaid for the period from the day after the due date for the third quarter CIT payment to the actual payment date of the outstanding CIT payable to the State budget.

- The location for filing the tax return can either be at the head office or in another province for a taxpayer who has multiple business activities in different provinces or some specific industries. The location will depend on many factors such as tax type, operational industry, accounting record method, taxpayers’ project characteristics. Detailed guidance is prescribed under Article 11 of the Decree.

- An Enterprise eligible for CIT incentives must declare CIT at the place of the dependent units whose income is entitled to the incentives. The enterprise must separately determine the CIT payable of the incentive activities with the managing tax authority where the dependent units are located and is not allowed to allocate to CIT payable of the other dependent units of the taxpayer.

Deem taxation

- The Decree regulates many cases for which the tax authority can deem tax to be due. For example: Failure to comply with a tax audit decision within 10 working days or failure to comply with a tax inspection decision within 15 days from the signing date of the decision.
- For raw materials and supplies imported for processing or production for export, the customs authorities may impose additional tax on both the negative difference (i.e. the actual stock count is smaller than the customs reported value) and the positive difference (i.e. the actual stock count is higher than the customs reported value) if the customs authorities can identify the cause of the discrepancy. In case the customs authorities are unable to identify the cause of the discrepancy, the customs authorities are only allowed to deem tax to the negative difference of the raw materials and supplies.

Fulfillment of tax obligations upon leaving Vietnam

- The Decree specifies the sequence and procedure for suspension of immigration exit if the individuals have not fulfilled their tax obligations.

Responsibility to provide information, disclose taxpayer information and duties and obligations of commercial banks

- The Tax authority has the right to publicize the information of taxpayers on mass media in a number of instances. For example: the Taxpayer does not file their tax declaration dossier by the 90th day from the stipulated deadline; the taxpayer refuses to provide documents or information to tax authority; the Taxpayer does not comply with tax audit decisions and other requests.
- Commercial bank and intermediary payment service providers are responsible for withholding and paying the tax liabilities of overseas suppliers who do not have a permanent establishment in Vietnam and are doing e-commerce business or digital-based businesses with organizations and/or individuals in Vietnam:
 - Where the overseas supplier has not registered, declared and paid taxes, the commercial bank or the intermediary payment service provider shall, on a monthly basis, withhold and pay tax liabilities for each product, goods and service where the individual buyer makes payment to the overseas supplier.

- The General Department of Taxation will coordinate with relevant agencies to identify and publish the names and website addresses of the overseas suppliers who have not yet registered, declared or paid taxes and notify the commercial bank or intermediary payment service provider to enable identification of the overseas suppliers' transaction accounts and perform the withholding and payment of tax liabilities of such overseas suppliers.

- Where an individual buys goods or services from an overseas supplier with a card payment or other form of payment where the commercial bank or intermediary payment service provider cannot withhold and pay tax on their behalf, the commercial bank or the intermediary payment service provider shall be responsible for monitoring the amount transferred to the overseas supplier and send monthly notices to the General Department of Taxation.

In addition, Decree 126 provides for the application of an Advance Pricing Agreement regarding enterprises engaging in related party transactions.

Please contact KPMG for further advice on the changes in Decree 126 and its specific impact to your business.

Contact us

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