

ALERT ON DECREE NO. 125/2020/ND-CP AND OFFICIAL LETTER NO. 4848/TCT-PC

**Sanctioning administrative
violations of taxes, invoices**

02 December 2020



General Introduction

- ❖ The Government has issued Decree No. 125/2020/ND-CP dated 19 October 2020 on sanctioning administrative violations of taxes and invoices (“Decree 125”), effective from 05 December 2020.
- ❖ On 12 November 2020, the General Department of Taxation has issued Official Letter No. 4848/TCT-PC to provide further guidance on new contents of sanctioning administrative violations of taxes, invoices and the implementation of Decree 125 (“Official Letter 4848”).

In this Alert, Deloitte Vietnam summarizes some of the main contents as well as key changes of Decree 125 and Official Letter 4848 for your reference.

Some main points and key changes in Decree 125

The purposes of promulgating Decree 125 include:

- Continue raising awareness of compliance and self-observance of tax laws;
- Continue the reformation of procedures in handling administrative violations;
- Provide handling measures of administrative violations on e-invoices expected to arise in the coming time when implementing e-invoices on a large scale; and
- Settle the shortcomings and inadequacies of the current regulations on handling of tax and invoice-related administrative violations.

From the effective date of this Decree, the following provisions cease to be effective

- Chapter I (Sanctioning administrative violations of taxes) and Chapter III (Effectiveness) of Decree No. 129/2013/ND-CP dated 16 October 2013; and
- Circular No. 166/2013/TT-BTC dated 15 November 2013, Circular No. 10/2014/TT-BTC dated 17 January 2014 and Circular No. 176/2016/TT-BTC dated 31 October 2016 of the Ministry of Finance on the sanctioning administrative violations of taxes.

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Some main points and key changes in Decree 125

Scope of coverage

This Decree provides regulations on administrative violations, sanctioning forms, sanctioning levels, remedial measures, competence to impose penalties, competence to make administrative violation records and a number of sanctioning procedures for administrative violations of taxes and invoices.

This Decree does not apply for:

- Administrative violations of fees and charges;
- Administrative violations of taxes on exported and imported goods collected by customs offices; and
- Violating regulations on tax registration procedures, violating regulations on notification of temporary suspension of business operations, and notification of continuing business operation ahead of time with business registration agencies.

Subject to sanction

- Supplement the provision that the authorized party must perform the taxpayer's obligation to register, declare and pay taxes in accordance with the tax law (e.g. Foreign contractors are obliged to pay withholding tax in Vietnam); If the authorized party commits a violation specified in Decree 125, the authorized organization or individual would be subject to be sanctioned (Clause 1, Article 3).
- Provide specific regulations on sanctioned entities being organizations, including dependent units and branches who directly declare, pay taxes and use invoices.

Definitions

- **Administrative violation of tax** is a faulty act committed by an organization or individual that violates the provisions of the law on tax administration, law on tax and other revenues, which is not a crime and according to regulations by law, must be sanctioned for administrative violations.
- **Administrative violation of invoices** is a faulty act committed by an organization or individual that violates the provisions of the law on invoices, which is not a crime and according to regulations by law, must be sanctioned for administrative violations.
- Supplement the explanations for: *"The case has many complicated details"*, *"The case is specially serious"*, *"Date of detection of the violation"*.



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Some main points and key changes in Decree 125

Aggravating or mitigating circumstances

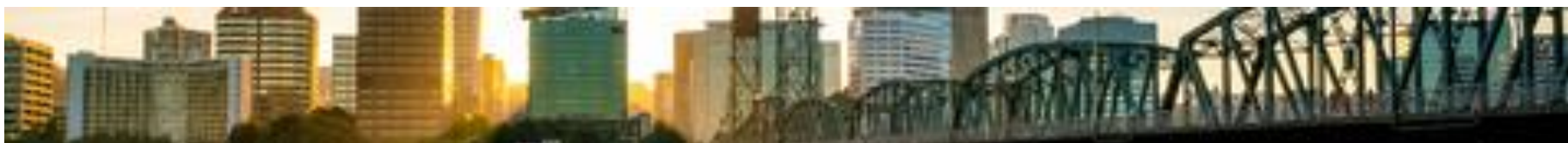
- Supplement clear provisions on aggravating circumstances of large-scale administrative tax violations; which are violations with a tax amount of VND 100 million or more, or the value of goods and services from VND 500 million or more (Clause 2, Article 6).
- Supplement clear provisions on aggravating circumstances of the administrative violation on large-scale invoices, which is the administrative violation with 10 or more invoices (Clause 2, Article 6).

Deadline for tax arrears

- Amend and supplement provisions on the deadline for tax retrospective collection up to 10 years back (from the date of detection of violations) to only apply to taxes and other revenues as self-declared and paid by organizations and individuals.
- For land revenues or other revenues whose financial obligations are determined by other competent agencies, the deadline for arrears shall comply with the provisions of relevant laws.

Cases not subject to sanction

- Supplement detailed provisions on force majeure cases where taxpayers are late in carrying out tax procedures and e-invoices due to technical problems of the IT system announced on the web portal of the Tax authorities (Clause 1, Article 9).
- Supplement two cases of **not** sanctioning administrative violations of taxes (Article 9) including:
 - Acts of administrative violations as resulted by applying the official ruling or decisions of relevant Tax authorities and competent state agencies;
 - Acts of violating tax procedures by individuals who directly make personal income tax finalization themselves, being late in submitting finalization dossiers but incur tax refunds; household and individual businesses having their tax imposed under Article 51, Law on Tax Administration.
- Supplement the provision to not impose penalties for violations of the deadline for notification of information change in tax registration in Clause 6, Article 11 for some specific cases.



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Some key changes in regulations of sanctioning administrative violations of taxes

Increase the fine range for the group of violations of tax procedures

- **Group of violations of regulations on the deadline for tax registration (Articles 10, 11):** This group of acts is built on the level of penalties according to the gradual accumulation in the **number of days of late submission** of tax registration dossiers, notification of regulations on deadline for tax registration, deadline for notification of business cessation, to resume business ahead of schedule; with a fine ranging from VND 1 million to VND 10 million (Article 10) and from VND 0.5 to VND 7 million (Article 11), which is 2 - 4 times higher than the previous fine range;
- **Group of acts of wrong declaration, incomplete declaration of contents in the tax declaration dossier but not leading to additional tax liabilities (Article 12):** This group of acts has the fine range from VND 0.5 to VND 12 million, which is 2.5 times higher than the previous fine range;
- **Group of acts of late submission of tax dossiers (Article 13):** This group of acts has the fine range from VND 2 to VND 25 million, which is 4 times higher than the previous fine range;
***Note:** The act of late submission of tax dossiers for more than 90 days falls into tax evasion, but taxpayers have fully paid tax and late payment interest into the state budget before Tax authorities announce their inspection decisions or before making inspection records, is not sanctioned for tax evasion, but will be sanctioned with a fine from VND 15 million to VND 25 million.*

- **Group of violations of regulations on information provision (Articles 14, 15):** This group of acts has the fine range from VND 2 to VND 10 million, which is approximately higher 1 - 2 times than the previous fine range;
- **Group of acts of wrong declarations leading to additional tax payable amounts or increase in the exempted, reduced, or refunded tax amounts (Article 16)**
 - Amend regulations on false declaration leading to additional tax payable amounts or increasing tax amounts to be exempted, reduced, or refunded: specifically, clearly stating “wrong declaration of tax bases or deducted tax amounts or false determination of cases subject to tax exemption, reduction, refund”;
 - Amend regulations on penalties for wrong declarations leading to additional tax payable amounts but taxpayers have self-remedied the issues; specifically, taxpayers have done that before tax agencies finished tax inspection at the taxpayers’ offices, will not fall into the cases of the sanction specified at Point a, Clause 1, Article 16;
 - Supplement penalties for wrong declaration on related parties transactions but the taxpayer has prepared transfer pricing (“TP”) documentation, or already sent the TP returns to the Tax authority in accordance with TP regulations.
- **Group of acts of tax evasion (Article 17):** amend provisions to apply the same level of fines to both individuals and organizations with acts of tax evasion.

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Some key changes in regulations of sanctioning administrative violations of invoices

Acts of administrative violations on invoices, sanctioning forms and remedial measures

- Elimination of sanctioning regulations for acts of violating regulations on self-printing invoices and creating e-invoices;
- Reduction of fines for acts of violating the regulations on loss, fire or damage of invoices before the issuance notice or invoices purchased from tax agencies but not yet used (Clauses 2 and 3, Article 25): reduce the fine range of VND 5 million to VND 18 million, to range of VND 1 million to VND 8 million.

Supplement a number of violations on e-invoices to sanction

- Violations against regulations on destruction of invoices, making e-invoices from cash registers without connection, or transferring electronic data with Tax authorities;
- Miss deadline to transfer data of e-invoices to Tax authorities;
- Transfer the data sheet of e-invoices with incomplete volume of the invoices issued in the period;
- Supply e-invoice software that does not meet the principles of invoices regulations.

Supplement a number of remedial measures

- Force to destroy the invoices (Article 27);
- Force to pay back illegal profits gained from conducting acts of administrative violations (Article 22).



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The competence and procedures for sanctioning administrative violations of taxes, invoices by the authorities

Supplement some provisions on procedures for sanctioning administrative violations of taxes, invoices

- Supplement provisions on making records of administrative violations and electronic records of administrative violation (for e-records, signatures of violating organizations and individuals are not required).
- Supplement provisions on the cases on the rights of taxpayers to request for explanation of administrative violations of taxes, invoices; including: violations detected through tax audit and inspection or cases of making e-records of administrative violations; and a number of other administrative violations as specified in Decree 125.
- Supplement provisions on the delivery and sending of electronic decisions for sanctioning administrative violations of taxes and invoices in case sanctioned organizations and individuals are eligible to conduct electronic transactions.





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