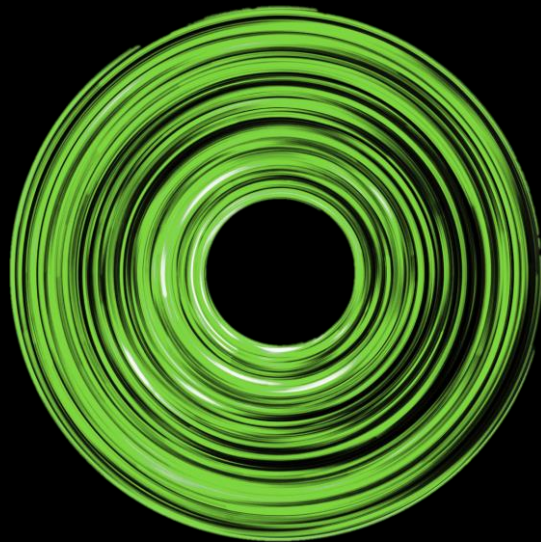


ALERT ON THE LAW ON TAX ADMINISTRATION NO. 38/2019/QH14

Decree No. 126/2020/ND-CP
providing detailed regulations
of a number of articles under
the Law on Tax Administration
No. 38/2019/QH14

03 November 2020



Background

On 19 October 2020, the Government has recently issued Decree No. 126/2020/ND-CP ("Decree 126"), which provides detailed regulations on the implementation of a number of articles under the Law on Tax Administration No. 38/2019/QH14 ("Law on Tax Administration No. 38"). It is applicable to management of taxes and other state budget revenues, except for the case of such enterprises having associated transactions, having application of invoices, documents, and sanctioning of administrative violations in the tax field, and invoices, sanctioning of administrative violations in the custom field.

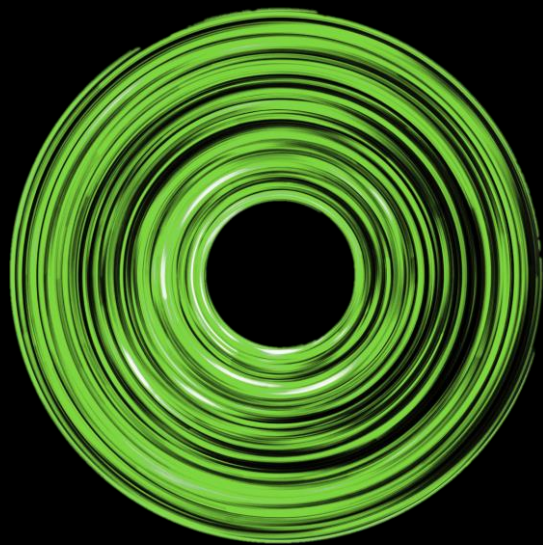
Decree 126 shall become effective on 05 December 2020, aiming to modify a number of legal documents on tax administration and to provide a basis of consistent implementation for the Tax authorities as well as for taxpayers, in accordance with the law.

Content

Decree 126 consists of **9 chapters, 44 articles**, and is structured as follows:

- Chapter 1: General provisions; including 6 articles (from Article 1 to Article 6);
- Chapter 2: Tax declaration and tax calculation; including 7 articles (from Article 7 to Article 13);
- Chapter 3: Tax imposition; including 4 articles (from Article 14 to Article 17);
- Chapter 4: Tax payment deadline, responsibility for fulfillment of tax liability; including 4 articles (from Articles 18 to Article 21);
- Chapter 5: Tax refund, tax charge-off, tax cancellation, late payment interest and fines; including 4 articles (from Article 22 to Article 25);
- Chapter 6: Responsibilities for providing information, publishing taxpayer information, and duties and powers of commercial banks; including 5 articles (from Articles 26 to Article 30);
- Chapter 7: Tax enforcement; including 7 articles (from Article 31 to Article 37);
- Chapter 8: Other problems; including 4 articles (from Article 38 to Article 41);
- Chapter 9: Implementation provisions; including 3 articles (from Article 42 to Article 44).

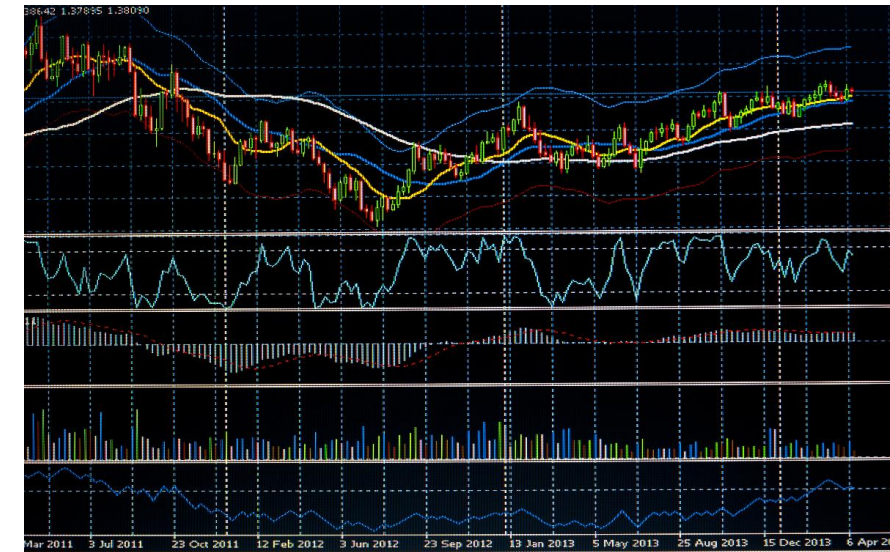
In this Alert, Deloitte Vietnam summarizes some notable contents as follows:

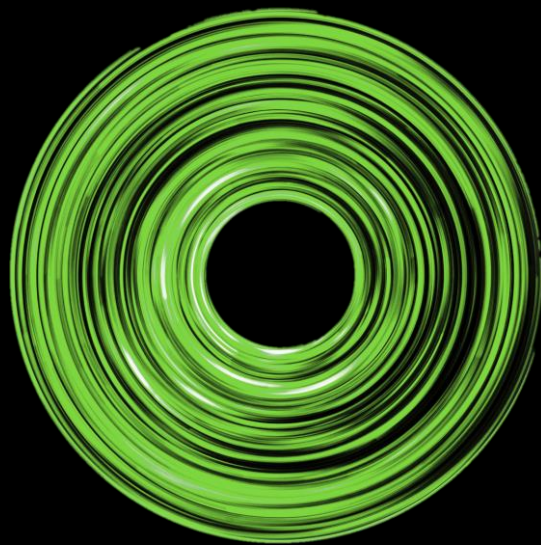


1. Tax administration for taxpayers during suspension of operations or business (Article 4)

- The base for determining the suspension time of business operation:
 - For taxpayers who combine taxpayer registration with business registration: suspension period is recorded on National Information System;
 - For taxpayers who are requested by competent authorities: the time stated in the document issued by a competent state agency;
 - For taxpayers who are not subject to business registration: notify the supervisory Tax authority at least 01 working day before suspending the business.
- Rights and obligations of taxpayers during the suspension period of business operations:
 - It is not required to submit tax declaration dossiers, except for cases of suspension of business operations not in a full month, quarter, calendar year or fiscal year, monthly or quarterly tax declaration, and year-end audit report are still required;
 - Tax authorities shall re-determine the flat tax payable by household businesses and individual businesses;
 - It is not allowed for using invoices and it is not required to submit invoice using report. In case taxpayers are allowed to use invoices, they are required to submit tax declaration dossier and invoice using report, in accordance with the law;

- Compliant with decisions and notices of tax administration agencies on urging debt collection, coercive enforcement of administrative decisions on tax administration, organizing audits and inspections on compliance with tax regulations, and handling of administrative violations on tax administration.
- Taxpayers who directly register with Tax authorities are not allowed to register for suspension of business operations when the Tax authority has issued a notice of taxpayer's inactivity at the registered address.





2. Declaration and payment of Corporate Income Tax ("CIT") (Article 8)

- Taxpayers who are subject to quarterly financial statement preparation in accordance with the accounting law shall determine the quarterly estimated CIT based on quarterly financial statements and tax laws.
- Taxpayers who are not subject to quarterly financial statement preparation in accordance with the accounting law shall determine the quarterly estimated CIT based on quarterly business performance and tax laws.
- The total amount of CIT is temporarily paid for the first three quarters of the tax year must not be lower than 75% of the CIT payable according to the annual finalization.
- In case the taxpayer underpays the tax amount to be temporarily paid for the first three quarters of the year, the late payment interest shall be calculated based on the underpayment of tax amount from the day after the last day of the time limit for payment of CIT of the third quarter to the day of actually paying the outstanding tax to the State budget.
- The above regulations on quarterly payment and annual CIT finalization also apply to foreign carriers.



3. Case of tax imposition (Article 14)

Additional cases where Tax authorities have the power to impose tax:

- Failure to comply with the tax examination decision within 10 working days from the day on which such decision is signed, unless the examination time is postponed as prescribed;
- Failure to comply with the tax inspection decision within 15 days from the day on which such decision is signed, unless the inspection period is postponed as prescribed;
- Purchase and exchange of goods/services using illegal invoices or illegally using invoices with real goods/services as determined by agencies with investigation, inspection and examination functions and the taxable revenue and expenses have been declared;
- Conducting transactions which are not in accordance with the economic nature or the actual arising in order to reduce the taxpayer's tax liability;
- Failure to comply with obligation to declare and determine associated transaction prices or to provide information under regulations on tax administration for enterprises with associated transactions.

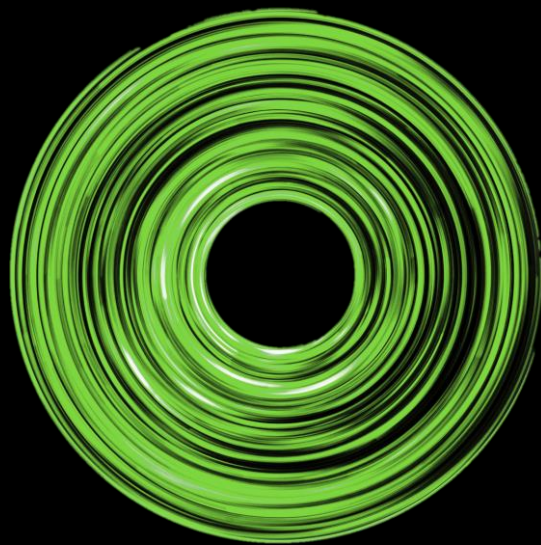
4. Fulfillment of tax liability upon taxpayer's exit (Article 21)

Supplementing cases of immigration suspension is where individual, individual who is the legal representative of the taxpayer is an enterprise who is being forced to execute the administrative decision on tax administration but has not fulfilled the tax obligation.

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5. Publishing of taxpayer information (Article 29)

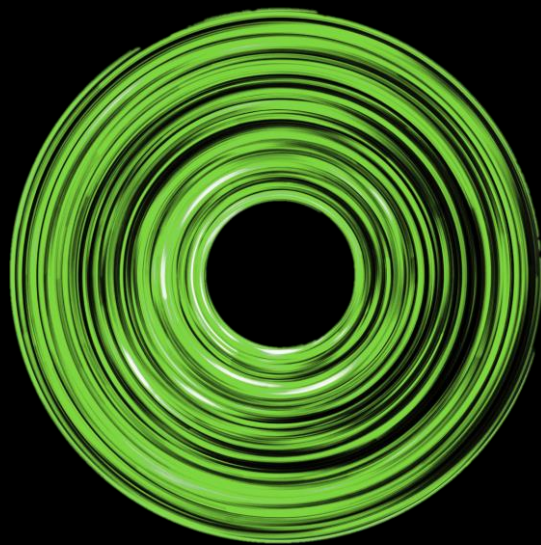
Expanded cases in which tax administration agencies can publish information about taxpayers, in addition to tax evasion, tax law violations, and failure to comply with requests of tax administration agencies, specifically:

- Failure to submit the tax declaration dossier within 90 days from the deadline for submission in accordance with current tax laws;
- Termination of operation, failure to complete procedures for TIN deactivation, inactivity at the registered address;
- Opposing or preventing tax officers and customs officers from performing official duties;
- Overdue for more than 90 days from deadline for tax payment and other State budget revenues or from the expiration date for execution of administrative decisions on tax administration that the taxpayer or guarantor fails to voluntarily comply;
- Individuals and organizations that do not comply with administrative decisions on tax administration but attempt to liquidate assets or abscond;
- Other information is publicly available in accordance with the law.

6. Duties and powers of commercial banks ("CB"), payment intermediary services providers ("ISP") (Article 30)

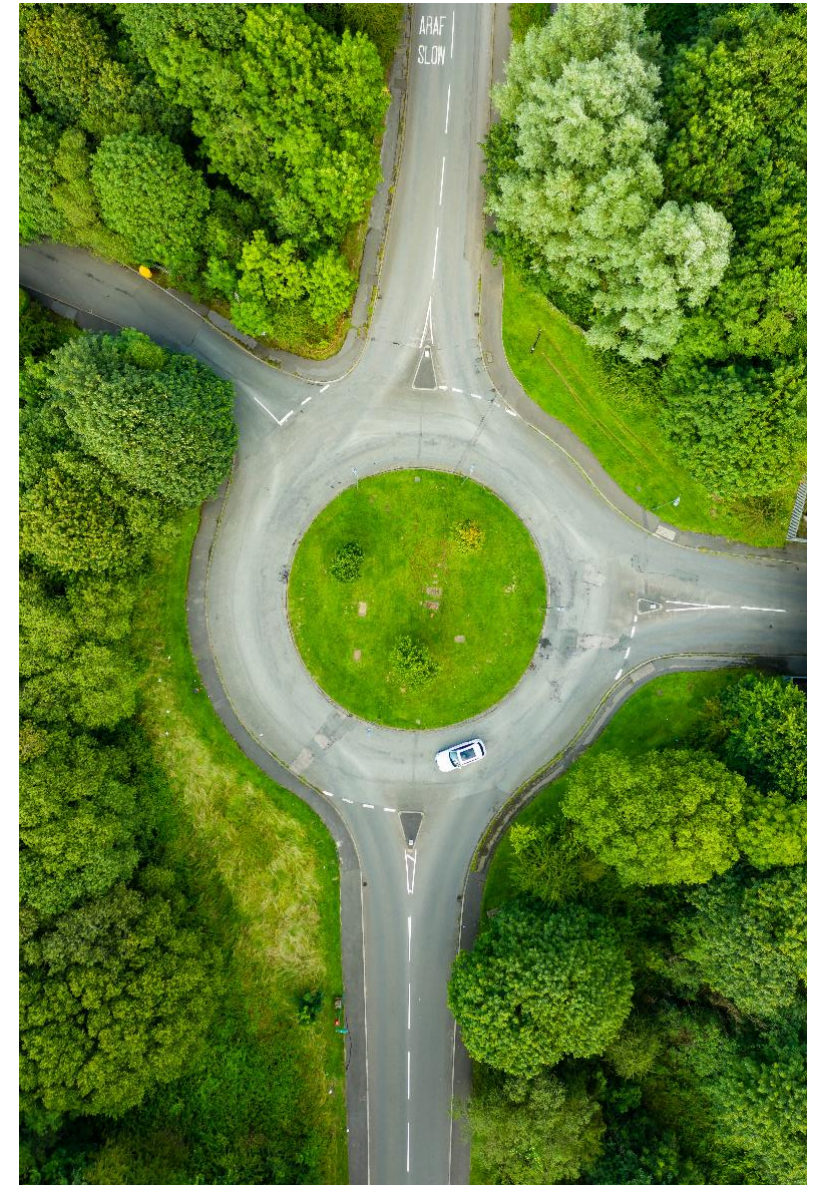
- Provide information on taxpayers' payment bank accounts to Tax authorities within 90 days from the effective date of this Decree. Bank Account information shall be updated on a monthly basis for 10 days of the following month. The method of providing information is in the electronic means;

- Provide transaction information via bank account, account balance, transaction data based on the request of the Head of Tax Authorities for the purpose of inspection, verification and determination of payable tax obligations, and organizing the implementation of suitable tax administration measures in accordance with the tax law.
- Deduction and payment on behalf of tax liabilities for overseas suppliers who do not have a permanent establishment in Vietnam but conducting e-commerce or digital-based business activities with organizations and individuals in Vietnam according to the provisions of Clause 3, Article 27 of the Law on Tax Administration No. 38. Specifically:
 - Overseas suppliers have not made tax registration, declaration and payment: CB and ISP shall withhold and pay tax obligations on behalf of overseas suppliers;
 - The General Department of Taxation shall coordinate with relevant agencies to identify and publish the names and website addresses of the foreign suppliers that have not yet registered, declare and pay taxes and notify them to the CB, ISP;
 - CB, ISP are responsible for monitoring the amount transferred to overseas suppliers and monthly sending to the General Department of Taxation if individuals purchase goods and services from foreign suppliers and pay by credit card or by other forms that CB, ISP can not perform deduction;
 - Every month, CB and ISP are responsible for declaring and remitting into the State budget the amount deducted and pay on behalf of the overseas supplier's tax liability according to the form issued by the Ministry of Finance.



7. Advance Pricing Agreements (“APA”) (Article 41)

- Point 3, Article 41: provides new application forms (i.e., Form 01/APA-TV, 02/APA-CT, and 03/APA-MAP). In particular :
 - Taxpayers who request to apply for an APA shall submit an official APA application form (Form No. 02/APA-CT) together with an official APA dossier package to the General Department of Taxation;
 - In case the taxpayer applies for a bilateral or multilateral APA, the taxpayer shall submit Form No. 03/APA-MAP;
 - Taxpayers may consult with the General Department of Taxation before submitting the official APA application. Taxpayers are required to submit Form No. 01/APA-TV in this case.
- Point 7, Article 41:
 - The effectiveness of APA is in accordance with Point 16, Article 3, the Law No. 38/2019/QH14 on Tax Administration (before taxpayers file their tax returns).
 - For bilateral or multilateral APA which related to tax management of foreign tax competent, the Ministry of Finance will report the Government for its consideration and making decision.
- Point 12, Article 41: the Ministry of Finance will provide detailed guidance on the application of APA.





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