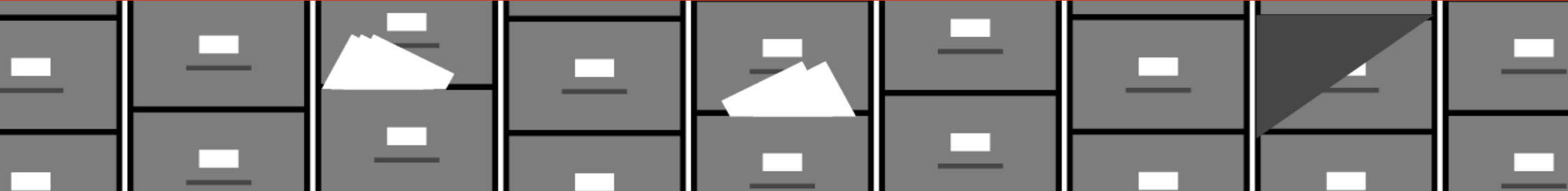


New law on tax administration has finally been issued



12 July 2019

At a glance...

In June, the new law on tax administration 38/2019/QH14 was approved by the National Assembly. The new law will take effect from 1 July 2020, except for its provisions on invoices and e-documents, which will come into force on 1 July 2022.

A decree and circular will be issued in due course to provide more detailed guidance on the new law.



Below are some notable points:

1. **Tax risk management principles are introduced, with a focus on transfer pricing and enhancement of international cooperation**
 - New principles of tax administration are introduced, including independent transactions rules (*“nguyên tắc giao dịch độc lập”*), operation substance rules (*“nguyên tắc bản chất hoạt động, giao dịch quyết định nghĩa vụ thuế”*), principles for determination of taxable prices in related party transactions and provisions related to advance pricing agreements. These rules indicate an increasingly “substance over form” approach.
 - Concurrently with the implementation of the above principles, the tax authorities will be granted additional powers to deem tax, including in the following circumstances where taxpayers:
 - o Make illegal use of invoices for the purchase and exchange of goods, even where there is a real underlying transaction and the associated tax has been declared.
 - o Enter into transactions without a business rationale in order to avoid tax.
 - o Fail to comply with regulations on declaration of related party transactions.
 - The means & scope of cooperation between Vietnamese tax authorities and their counterparts overseas are broadened in various areas, e.g. information exchange, technical cooperation.

2. E- commerce activities, e- tax transactions and consolidation of e- invoice rules

E- commerce activities

- The State Bank will play a role in the taxation of e-commerce activities, including the building and development of a nationwide payment system to facilitate the collection of taxes from e-commerce activities.
- Banks will also be required to play a role in the taxation of e-commerce activities by way of withholding and making tax payments on behalf of overseas parties which conduct e-commerce activities and derive income from Vietnam. This will place a significant burden on commercial banks, and it remains unclear exactly what is required and how this will work in practice.
- For activities of e-commerce, doing business based on digital platforms and other services conducted by overseas suppliers without permanent establishments in Vietnam, the overseas suppliers must register for tax in Vietnam or authorise others to do so. Further guidance in this respect will be issued by the Ministry of Finance.
- The meaning and intended application of the above provisions are vague but there is a clear intention of taxing e- commerce and digital platform based business more consistently, and to impose compliance obligations on either overseas or Vietnamese entities in order to do this. This would be a new departure as Vietnam has not hitherto generally required foreign companies doing business with/ in Vietnam to register for tax. More details should be forthcoming in the implementing decree and circular.

E- tax transactions

- Taxpayers and tax authorities which fully satisfy the conditions for conducting e-tax transactions will be required to conduct e-transactions for tax purposes.
- “E-tax transactions” are defined under Circular 110/2015 as inter alia conducting tax administrative procedures prescribed by the tax admin law electronically.

E-invoices

- A section sets out guidance on e-invoicing, which aligns with the guidance under the new decree on e-invoicing (i.e. Decree 119/2018 - please see our NewsBrief dated 27 September 2018 for background on this).
- These provisions will take effect from 1 July 2022 (i.e. 2 years after the effective date of the tax admin law), while Decree 119/2018 on e-invoices requires all taxpayers to apply e-invoices from 1 November 2020. This suggests a slippage in the implementation of e-invoicing and further developments in this respect need to be closely monitored.

3. Changes to tax admin procedures

Various changes are made. Some of which will be welcomed by taxpayers, others less so, including:

Welcome developments for taxpayers:

- Taxpayers will not be subject to admin penalties and late payment interest if they declared and paid taxes in accordance with rulings issued by the tax authorities at the time. This is a positive development as previously the ability to rely on such rulings was less clear.
- The deadline for individuals to file their annual PIT return is extended by one month.
- In a welcome move to more fairness & symmetry between taxpayers and tax authority, taxpayers are entitled to interest on any tax refunded as a result of appeal/ litigation.
- After the filing deadline, if mistakes in submitted tax returns come to light, taxpayers are allowed to submit revised returns up to 10 years after the filing deadline, but this must be done before the tax authorities issue a decision to commence a tax audit of the years in question.
- In case the tax authorities' online portal is down on the deadline date for submission of tax returns, taxpayers are allowed to submit returns and make online tax payments whenever the online portal resumes operations.
- For years for which a decision to carry out a tax audit has already been announced, or which have already been tax audited, taxpayers are still allowed to submit revised tax returns. Guidance is provided for different scenarios in this regard.
- Taxpayers must be informed as to the timeline for handling tax refund claims by the tax authorities, and the legal basis for any denial of a claim.
- Tax registration certificates will be issued within 3 working days (rather than 10 working days as currently).

And some welcome ones for the tax authorities:

- Coercive measures are set out which the tax authorities can apply if taxpayers do not follow administrative decisions. This underlines the current position whereby taxes assessed after a tax audit must be paid pending any appeal/ litigation (unless there is a decision on interim measures/ injunctive relief obtained).
- The legal representative of a company can be prohibited from exiting Vietnam if his/her employer has not paid its taxes due.
- When pursuing a tax appeal or litigation, taxpayers have to pay the tax amount, penalties, and late payment interest imposed by the tax authorities in full. The current tax admin law only mentions the tax amount itself as having to be paid, although in practice full payment of the tax amount, penalties, and late payment interest is enforced.





Other changes:

- There are two types of tax audit - a tax inspection and a tax examination. The former is longer and more specific issue focussed, while the latter is shorter and has a wider coverage. Under the new law, the maximum tax examination period is increased from 5 to 10 working days.
- The law does not specify timelines for tax inspections, but refers to the Law on inspection and certain implementing regulations for guidance.
- Re-inspections can be conducted in certain circumstances, within 2 years from the date the earlier inspection conclusion was signed off.
- With respect to the sale of crude oil, provisional CIT and royalty is required to be paid within 35 days from the date of sale (for domestic sale) and 35 days from the date of customs declaration (for export sales). In the current oil and gas legislation, the deadline is 35 days from date of sale (the day on which the sale of crude oil is made at the point of delivery) for both domestic and export sales.

Contact us

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. For further information, please reach out to us.

Ha Noi office:



Nguyen Hong Giang

Partner

+84 24 3946 2246 Ext. 1502

n.huong.giang@pwc.com

Ho Chi Minh City office:



Richard Irwin

Partner

+84 28 3823 0796 Ext. 4880

r.j.irwin@pwc.com

www.pwc.com/vn



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