

SOME NEW REGULATIONS OF DRAFT DECREE AMENDING THE DECREE ON INVOICES, RECORDS

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After a period of implementation, Decree 123/2020/ND-CP on invoices, and records (**Decree 123**) has created several advantages in tax management and brought about lots of practical benefits for enterprises. However, besides positive results achieved, through its implementation, Decree 123 has also revealed some obstacles and difficulties that require prompt amendment and supplementation, such as unclear provisions on e-invoices, e-records; methods for addressing incorrectly issued e-invoices, e-records, etc. In order to tackle the drawbacks of Decree 123 as well as further facilitate taxpayers, authorities, and organizations on activities related to invoices, and records, the Ministry of Finance is currently developing a draft to amend and supplement several provisions of this Decree (**Draft**). The following are some outstanding contents of the Draft Decree.

Amending, and supplementing the provisions on invoices

Firstly, specifying further details and supplements about the cases where sellers must issue invoices. Besides inheriting the available provisions on cases where sellers must issue invoices in Decree 123, the Draft provides more detail for these cases and also supplements three other cases, including (i) Temporary export and re-import, temporary import and re-export of materials, finished goods, machines, tools, and devices; (ii) Receipt of goods returned by buyers (unless the returned goods are properties that are required to be registered for use rights, possession rights under law; the properties are registered in the name of the buyers and such buyers use e-invoices); and (iii) Termination or cancellation of service provision. These amendments aim to assist taxpayers in determining and fulfilling their obligations related to invoice issuance, making the process easier and more favorable.

Secondly, amending and supplementing the invoicing time. Decree 123 has already provided guidelines for



this content in general cases; however, for certain special cases arising in practice but unpredicted by law, it is confusing for goods and service providers to determine invoicing time. Therefore, the Draft overcomes the limitation of Decree 123 by further specifying the time to issue invoices in certain special cases such as goods export (including export processing); credit grants; foreign currency exchange agency, services of foreign currency receipt and payment by economic organizations, credit institutions in order to make the provisions clearer for taxpayers in implementation, avoiding risk of incurring penalties.

Thirdly, amending and supplementing the methods for addressing issued e-invoices. Typically, in accordance with the Draft, addressing issued e-invoices follows specific requirements. Accordingly, *before canceling, adjusting, or replacing an incorrectly issued e-invoice*, whether a tax declaration has been done or not, the seller and buyer shall reach a written agreement stating the incorrect contents or the seller shall notify the buyer and announce on its website (if any). Additionally, the Draft also amends and supplements the guidelines *to handle incorrectly issued e-invoices* in several cases where tax declaration has not been/has been made, where the e-invoices contain incorrect contents, etc. Previously, Circular 78/2021/TT-BTC guiding the implementation of several articles of the Law on Tax Management 2019 and Decree 123 has governed the disposal of e-invoices in certain cases, but several various cases have arisen in practice that the sellers and buyers do not have any appropriate method to address. It can be seen that the Draft has diversified the likely mistakes in issuing e-invoices, which contributes to improving the legal framework related to invoices and records, ensuring consistency in addressing incorrectly issued e-invoices in conformity with the practical implementation of e-invoices.

Supplementing provisions on prevention and limitation of fraudulence in registration and use of e-invoices by enterprises

Some enterprises have made use of the simplified enterprise registration procedures, in reality, to register for using e-invoices even though they have no actual business activities and carry out short sales of invoices. Such behaviors cause difficulties for tax authorities in their management, and enterprises that have declared duplicate invoices, or received illegal records, must have all of their previously recognized invoices, and records reviewed. Therefore, the Draft has introduced a few provisions to minimize the abovementioned risk, namely:

Firstly, amending, and supplementing the provisions on registration for e-invoice usage. The Draft introduces new cases to register for using e-invoices through e-invoice service providers, such as (i) Dependent units of enterprises, business entities that meet requirements for separate value-added tax declaration through credit method; (ii) Organizations authorized to manage business cooperation contracts without the establishment of the separate legal entity, etc. Furthermore, the Draft provides guidelines on the procedures and timelines for enterprises, business entities, other organizations, households, and individual businesses to register for the use of e-invoices or modify information thereof. This regulation is intended to simplify and make administrative procedures more transparent for taxpayers as well as concretize the responsibilities of related authorities.

Secondly, amending, and supplementing the provisions on suspension of e-invoice usage. In order to mitigate improper activities related to value-added tax refunds, the Draft supplements six cases of suspending the use of e-invoices, including:

- i.** There is some signal to detect that an enterprise is established to buy, sell, use illegal e-invoices or engage in illegal use of e-invoices;
- ii.** Taxpayers are subject to tax-emphasized supervision and included in the list determined by tax authorities;
- iii.** Taxpayers have other abnormal signs according to tax authorities' criteria to evaluate tax risks;
- iv.** Tax authorities send the dossier of enterprises, business entities, other organizations, households, and individual businesses to police authorities based on criminal reports;
- v.** Business households switch from periodic declaration to fixed tax payment methods or separate declarations; and
- vi.** Taxpayers request for temporary suspension of e-invoice usage.

Supplementing provisions on disposal of incorrectly issued e-records

Currently, stipulations on addressing incorrectly issued e-records have not been provided for in Decree 123 and other guiding documents, which causes difficulties for both tax management authorities and other related subjects. Therefore, the Draft supplements provisions on disposing of incorrectly issued e-records in the following cases: (i) Issued records containing incorrect content (even when the records have already been sent to taxpayers); and (ii) Issued e-records on personal income tax containing errors but already sent to income recipients. Especially for the latter case, the responsibilities of organizations, and individuals paying income are also clearly and specifically stipulated for cases where tax settlement has been carried out or not yet been done. These regulations both facilitate taxpayers and create a more stringent tax management mechanism for tax authorities.

Currently, stipulations on addressing incorrectly issued e-records have not been provided for in Decree 123 and other guiding documents, which causes difficulties for both tax management authorities and other related subjects. Therefore, the Draft supplements provisions on disposing of incorrectly issued e-records in the following cases: (i) Issued records containing incorrect content (even when the records have already been sent to taxpayers); and (ii) Issued e-records on personal income tax containing errors but already sent to income recipients. Especially for the latter case, the responsibilities of organizations, and individuals paying income are also clearly and specifically stipulated for cases where tax settlement has been carried out or not yet been done. These regulations both facilitate taxpayers and create a more stringent tax management mechanism for tax authorities.