

NEW POINTS ON TAX ADMINISTRATION

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On October 30, 2022, the Government issued Decree 91/2022/ND-CP (**Decree 91**) amending Decree 126/2020/ND-CP guiding the Law on Tax Administration (**Decree 126**). Decree 91 takes effect from the time of promulgation and includes a number of outstanding contents as follows:

Firstly, supplementing regulations on the final date of the time limit for submission of tax declaration documents, time limit for tax payment, time limit for tax administration agencies to handle application documents, and validity period of decisions on enforcement of administrative decisions on tax administration. Accordingly, if the last day of the above-mentioned time limits falls on a statutory holiday, the working day immediately following that holiday will be taken as the final date. Previously, Decree 126 did not regulate this issue.

Secondly, supplementing the provision that if a personal income tax declarant is an organization or individual paying income and subject to monthly or quarterly declaration of personal income tax, such declarant is not required to submit the personal income tax declaration documents if there is no withholding personal income tax of income recipients in such month/quarter.

Thirdly, amending regulations on provisional paid tax amounts. Accordingly, enterprises shall temporarily pay corporate income tax for 4 quarters with the provisional paid amount not lower than 80% of the total payable corporate income tax amount according to the annual finalization. It replaces the previous regulations that enterprises temporarily pay for the first 3 quarters with the amount provisionally paid not less than 75% of the total payable corporate income tax according to the annual finalization (point b, clause 6, Article 8, Decree 126).

It should be noted that the regulation on provisional tax payment analyzed above will apply from the tax year 2021 as follows:

(i) By the effective date of Decree 91 (October 30, 2022), if the provisional paid tax for the first 3 quarters of the tax year 2021 is not less than 75% of



the payable amount according to the annual finalization, taxpayers do not have to implement the provisions on the rate of provisional payment for 4 quarters specified in Clause 3, Article 1, Decree 91.

(ii) By the effective date of Decree 91 (October 30, 2022), if the provisional paid tax for the first 3 quarters of the tax year 2021 is lower than 75% of the payable amount according to the annual finalization, and the late payment amount is not increased, the taxpayers are entitled to follow the rate of provisional payment for 4 quarters specified in Clause 3, Article 1 of Decree 91.

In the case that the competent agency for inspection and examination has calculated the late payment amount according to point b, point c, point g, clause 6, Article 8, Decree 126, and after applying the rate of provisional payment for the 4 quarters prescribed in clause 3, Article 1 of Decree 91, the late payment amount reduces, the taxpayers shall submit a written request for reduction of late payment amount under Form No. 01/GTCN in the Appendix attached with Decree 91 to the tax agency where the late payment amount incurs (either the directly managing tax agency or the tax agency of the locality where enterprises having activities eligible for corporate income tax incentives). After the reduction, if any late payment amount is overpaid, Article 60 and Chapter VIII of the Law on Tax Administration No. 38/2019/QH14 and its guiding documents shall apply.

Fourthly, supplementing regulations on the time when organizations declare, pay taxes on behalf of individuals who receive dividends or bonuses in form of securities. Decree 126 already addresses tax declaration on behalf of individuals who receive dividends, bonuses in form of securities; however, companies have not yet successfully developed the software to track investors' personal incomes for tax deductions; therefore, it is necessary to delay the

implementation of this regulation. Under Decree 91, regulations on tax declaration on behalf of individuals in Decree 126 shall be implemented from January 1, 2023. In case of individuals receiving dividends in form of securities, the individuals being existing shareholder who receives bonuses in securities are recorded in the investors' securities account until December 31, 2022 and the securities companies, commercial banks where they open securities custody accounts, fund management companies to which individuals entrust their investment portfolios, securities issuers have not yet declared or paid taxes on their behalf. Such individuals shall declare and pay personal income tax in accordance with the laws on personal income tax and be neither administratively sanctioned for late submission of tax declaration documents nor subject to late-payment amounts (if any) as prescribed in clause 11, Article 16 of the Law on Tax Administration from December 05, 2020, to the end of December 31, 2022.

In addition, Decree 91 also promulgates a new form of Notice on cessation of the use of invoices, replacing Form No. 04-1/CC in Appendix III attached with Decree 126.

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 91 aims to overcome a number of obstacles and difficulties in the process of implementing the provisions of Decree 126. For example, the amended regulation on provisional paid tax amounts is to solve obstacles when implementing the regulations in practice because under Decree 126, by the time limit for provisional payment of corporate income tax of the third quarter, enterprises need to estimate the total payable corporate income tax amount of the whole year as a basis to determine the amount of provisional tax payment of the first 3 quarters of the year (this deadline is October 30 every year for enterprises of which fiscal year coincides with the calendar year). It is unreasonable to require enterprises to estimate the tax payable for the whole year while there are 2 months left to end the year in terms of time, not creating favorable conditions for taxpayers. Or the amendment of regulations on the final date of the time limit for tax declaration submission, time limit for tax payment, time limit for tax administration agencies to handle application documents, and validity period of decisions on enforcement of administrative decisions on tax administration also aims to overcome obstacles for both enterprises and tax authorities when implementing the regulations in practice.

Enterprises should update and research the provisions of Decree 91 to ensure the implementation of tax obligations in compliance with the law.