

SOME NEW REGULATIONS ON ELECTRONIC INVOICES

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On September 17, 2021, the Ministry of Finance issued Circular 78/2021/TT-BTC guiding the implementation of several articles of the Law on Tax Administration, Decree 123/2020/ND-CP prescribing invoices and documents (**Circular 78**), completing the provisions on electronic invoices (**e-invoices**). Circular 78 will take effect from July 1, 2022, with the following key contents:

Firstly, Circular 78 stipulates the details of delegation to issue e-invoices. In comparison with the previous provisions in Circular 39/2014/TT-BTC guiding the implementation of Decree 51/2010/ND-CP and Decree 04/2014/ND-CP on invoices for the sale of goods, provision of services, delegation for invoice issuance (**Circular 39**), Circular 78 provides more specific guidance on the procedures to notify tax authorities about the delegation to issue e-invoices. Specifically, the parties must notify tax authorities according to the procedure for changing e-invoice registration information specified in Article 15, Decree 123/2020/ND-CP (**Decree 123**). In the announcements on the change of registration information for using e-invoices under Form 01DKTD/HDDT, both parties must fill the information of the used digital certificate in Part 5 "List of digital certificates in use". Remarkably, the delegated party's announcement must provide the name, the delegating organization, and the taxpayer identification number in column 5 Part 6 "Registration of invoice issuance delegation". Besides, Circular 78 does not require the delegated party to post the delegation announcement at the place of selling goods or providing services. Instead, both parties must publicize the delegation to issue invoices on their websites or publicly announce on the mass media. Upon delegation termination, Circular 78 does not require the parties to make any written confirmation, but to delete the relevant posts, announcements on their websites or publicly announce on the mass media. In addition, Circular 78 does not require reporting the use of invoices made under delegation, but asks the delegating party to transfer the e-invoice data to the direct managing

tax authority for the invoices made under delegation without tax authority's identification code.

Secondly, Circular 78 allows taxpayers to convert the application of e-invoices without tax authority's identification code into e-invoices with tax authority's identification code. Accordingly, taxpayers may choose to voluntarily apply e-invoices with tax authority's identification code, or in some situations, e-invoices with tax authority's identification code must be applied. In a compulsory situation, when the tax authority determines that a taxpayer is subject to a high tax risk under Circular 31/2021/TT-BTC, and issues a notice on conversion to e-invoices with tax authority's identification code, such taxpayer will have 10 working days to implement the conversion procedure. Accordingly, the taxpayer will submit the Declaration on change of e-invoice use information according to Form 01DKTD/HDDT under Appendix IA attached to Decree 123/2020/ND-CP (**Decree 123**) through the portal of the General Department of Taxation as prescribed in Article 15 of this Decree. After 12 months from the date of compulsory conversion to application of e-invoices with tax authority's identification code, the taxpayer can re-convert to e-invoices without tax authority's identification code.

Thirdly, Circular 78 stipulates the cases where household businesses and individual businesses must use e-invoices, including:

- (i) For household businesses or individual businesses that pay taxes according to the tax declaration method, they are required to issue e-invoices;
- (ii) For household businesses or individual businesses that pay presumptive tax, if they need to issue invoices, the tax authority shall provide e-invoices separately on an on-demand basis; and
- (iii) For household businesses or individual businesses that declare taxes on an on-demand basis, if they need to issue invoices, the tax authority shall provide e-invoices separately on an on-demand basis.

It is noted that for household businesses or individual businesses that do not conduct transactions with tax authorities by electronic means, have neither information technology infrastructure, accounting software system nor e-invoice set up the software to use e-invoices and transmit invoice data to buyers and tax authorities, it is not necessary to immediately apply the e-invoices. However, those household businesses and individual businesses are supposed to

gradually switch to using e-invoices within a maximum period of 12 months. For household businesses and individual businesses operating before July 1, 2022, this period will be calculated from July 1, 2022.

Fourthly, taxpayers must issue an invoice for every transaction. Circular 78 abolishes the validity of Circular 39/2014/TT-BTC guiding the implementation of Decree 51/2010/ND-CP and Decree 04/2014/ND-CP on invoices for the sale of goods and provision of services. Circular 78 does not provide any regulation on issuing invoices as Article 16 of Circular 39. It means that the law does not give any exclusions for issuing invoices for any transaction valued less than VND 200,000. Therefore, when Circular 78 takes effect, taxpayers must issue invoices for all transactions even if their value is under VND 200,000.



Fifthly, Circular 78 provides the roadmap for applying e-invoices. According to the Ministry of Finance's Official Letter 10847/BTC-TCT dated September 20, 2021 on coordination for e-invoice deployment as prescribed in the Law on Tax Administration 2019 and Decree 123, 6 provinces that will focus on building information technology infrastructure and solutions for this task in the initial phase include Ha Noi, Ho Chi Minh City, Hai Phong, Phu Tho, Quang Ninh, Binh Dinh. In the case where enterprises in these areas have not met the conditions on information technology infrastructure and still want to continue using invoices in the old form, such enterprises must send the invoice data to the tax authorities according to Form 03/DL-HDDT under Appendix IA attached to Decree No. 123/2020/ND-CP along with the submission of the added-value tax declaration. Newly established enterprises may register to use invoices according to the guidance by tax authorities. The first phase is expected to take place from November 2021 to March 2022. In the next phase, e-invoices will be deployed in all remaining provinces and cities.

COMMENTS AND RECOMMENDATIONS

Firstly, the application of e-invoices brings tremendous benefits to individuals and businesses as well as convenience in state management in taxation. Circular 78 and Decree 123 have provided the guidelines for individuals and businesses to gradually switch to using e-invoices. Enterprises should study and prepare appropriate information technology infrastructure to apply e-invoices in accordance with Circular 78 and Decree 123.

Secondly, according to the roadmap, e-invoices will be first applied in Ha Noi, Ho Chi Minh City, Hai Phong, Phu Tho, Quang Ninh, Binh Dinh. Therefore, businesses in the above 6 provinces should prepare a plan for prompt application of e-invoices to match the general roadmap given by the Ministry of Finance.