

LEGAL UPDATES

09/2018

HIGHLIGHTS

- 1 Overview of electronic invoices
- 2 FDI enterprises have the right to export goods derived from import
- 3 It is required to declare clearly the profit of each year upon transferring profit abroad
- 4 Enterprises using online advertising on Google/Facebook must be responsible for withholding of foreign contractor tax

OVERVIEW OF ELECTRONIC INVOICES

Decree No. 119/2018/ND-CP dated September 12, 2018 stipulates the regulations on electronic invoices (e-invoices) for sale of goods and provision of services. Accordingly, the e-invoices will officially replace paper invoices from November 01, 2020.

Although those current paper invoices are still valid by November 2020, after November 2018, the tax authority will ask enterprises to change to use e-invoices. If because of not eligible for the information technology infrastructure to convert, then for each declaration period of value added tax, the enterprises must additionally submit the Declarations of the data of sales invoices, similar to the previous list of invoices before.

We would like to briefly cite the main points on the e-invoices, applicable from November 01, 2018 as follows.

1 SUBJECTS OF APPLICATION

All types of enterprise, regardless of domestic capital, foreign capital or government capital. It also includes enterprises in the field of insurance, securities, oil, gas and bank.

(Decree No. 119/2018/ND-CP dated September 12, 2018)

3 TYPES OF INVOICES

E-invoices also have all kinds including VAT invoices, sales invoices and other types of stamps, tickets, receipts, goods dispatch and consignment note and etc. However, all should be created and stored electronically, i.e do not use paper.

E-invoices are divided into 2 groups:

Group 1 – use the kind without the authentication code of the tax authority: including enterprises in the fields of electric power, petroleum; post and telecommunication; air, road, rail, sea and waterway transports; credit finance; insurance; health; e-commerce business; supermarket business; trade.

Group 2 – use the type with authentication code of the tax authority: including most enterprises not belonging to Group 1, including enterprises in Group 1 but having a high risk of tax.

The authentication code is a series of numbers and strings automatically issued by the tax authority based on the content of the e-invoice prepared by the seller. This code shall be assigned to the invoice before sending to the buyer.

(Article 12 Decree No. 119/2018/ND-CP dated September 12, 2018)

2 SCOPE OF APPLICATION

It starts to apply from November 01, 2018 and 24 months later will completely replace paper invoices. Accordingly, paper invoices shall no longer be valid after November 01, 2020.

Paper vouchers – printed paper of e-invoices – only worth keeping to record the accounting books; and shall not be valid for use in transactions or payments.

(Clause 3 Article 10 Decree No. 119/2018/ND-CP dated September 12, 2018)

4 MANDATORY STANDARDS

E-invoices still have mandatory standards as current paper invoices, including names, symbols, sample symbols and invoice numbers.

However, as an e-invoice, it must have a digital signature or electronic signature of the issuer.

In addition, the time of preparing e-invoices (exact date, hour, minute, second) shall be shown on the invoices. This standard shall discourage those who want to issue invoices backdated.

5 REGISTRATION FOR USE

The registration is performed online by declaring the information (Form No. 01 attached with Decree No. 119/2018/ND-CP) at the website of the General Department of Taxation.

Immediately in the following working day, the tax authority will respond if the registration is approved or not.

The Ministry of Finance will have specific guidance on procedures to register to use e-invoices.

(Article 14 Decree No. 119/2018/ND-CP dated September 12, 2018)

6 NO EXCEPTIONS TO INVOICES UNDER 200,000 DONGS

Different from paper invoices, e-invoices shall be prepared for each time of selling goods, providing services and each time of delivery (for which have to be delivered several times), not dependent on the payment value.

Accordingly, there are no exceptions that allow preparing the total invoice for goods and services having the value under 200,000 dong.

(Article 12 Decree No. 119/2018/ND-CP dated September 12, 2018)

7 IN TRANSIT VOUCHERS

During the transportation and delivery, it is not necessary to bring paper invoices.

The market management shall self-access to the website of the General Department of Taxation to check.

However, it is necessary to bring a paper voucher of the e-invoice to be presented in the case of goods being transported to the place having no internet.

(Article 29 Decree No. 119/2018/ND-CP dated September 12, 2018)

8 HANDLE MISTAKES

If e-invoices are prepared wrongly (no distinguishing wrong standards or contents and also no distinguishing if it is delivered to the buyer or not), necessary procedures must be performed to cancel and re-prepare new invoices. It is settled as follows:

If it is not delivered to the buyer, the enterprise shall send notification to the tax authority with Form No. 04 (attached with Decree No. 119/2018/ND-CP). The tax authority shall re-issue a new different code to the new invoice number.

If it is already delivered to the buyer, it shall be performed as above, accompanying with the minutes signed by the buyer and the sender, recording mistakes.

(Article 17, Article 24 Decree No. 119/2018/ND-CP dated September 12, 2018)

9 TRANSITION PROVISIONS

Various types of paper invoices such as print order, self-printed or buying from the tax authority still have the valid until October 31, 2020. Provisions on invoices stipulated at Decree No. 51/2010/ND-CP and Decree No. 04/2014/ND-CP still remain in force until the end of the day October 31, 2020.

E-invoices issued by November 01, 2018 remain valid.

During the period from November 01, 2018 to October 31, 2020, the tax authority shall ask each enterprise to change to use e-invoices. If because of failing to meet information technology infrastructure requirements, then the enterprise can continue to use paper invoices until October 31, 2020 but for each declaration period of value added tax, the enterprise must additionally submit Declarations on the invoice data (Form No. 3), similar to the previous "list" of invoices before.

New enterprises that are established after November 01, 2018, will have to use e-invoices, unless ineligible for information technology infrastructure, then they can temporarily use paper invoices.

Tuition receipts, fees will have to switch to electronic receipts, but according to the private schedule prescribed by the Ministry of Finance.

(Article 35, Article 36 Decree No. 119/2018/ND-CP dated September 12, 2018)



FDI ENTERPRISES HAVE THE RIGHT TO EXPORT GOODS DERIVED FROM IMPORT

Official letter No. 2829/GSQL-GQ2 of General Department of Customs provides the guidelines on customs procedures for export under rights of FDI enterprises.

As prescribed in Clause 1 Article 7 of Decree No. 09/2018/ND-CP, FDI enterprises having exportation right are allowed to export goods purchased in Vietnam, goods processed in Vietnam and goods legitimately imported into Vietnam.

The enterprises perform customs procedures as prescribed in Article 48 of Decree No. 08/2015/ND-CP (amended and supplemented in Clause 21, Article 1 of Decree No. 59/2018/ND-CP).

Customs dossier is not required a written acceptance to receive back the goods of foreign goods owner (except for the case of exporting the goods to return the seller of such shipment).

Customs procedure code for export of intact goods is B13 - export of already-imported goods.

IT IS REQUIRED TO DECLARE CLEARLY THE PROFIT OF EACH YEAR UPON TRANSFERRING PROFIT ABROAD

Official letter No. 57077/CT-TTHT dated August 15, 2018 of Department of Taxation of Ha Noi City provides guidance on transferring the profit abroad.

As prescribed in Article 4 of Circular No. 186/2010/TT-BTC, foreign investors have the right to transfer the profit back to their home countries, but they must ensure the conditions in which all financial obligations towards the Vietnamese State have been fulfilled; the financial statements, the declaration of corporate income tax finalization have been submitted and the transfer of profit have been notified. In which, notice of transfer of profit abroad must comply with the form prescribed in Circular No. 186/2010/TT-BTC and must be presented with a specific amount of profit transferred of each year (in case of transfer of profits accumulated over years).

The investor is allowed to self-decide the amount of profit which will be transferred abroad, but must ensure the compliance with the provisions of Circular No. 186/2010/TT-BTC.

The time to transfer the profit abroad is after 07 working days from the date of sending the notice to the tax authority.

ENTERPRISES USING ONLINE ADVERTISING ON GOOGLE/FACEBOOK MUST BE RESPONSIBLE FOR WITHHOLDING OF FOREIGN CONTRACTOR TAX

Official letter No. 3149/TCT-CS dated August 15, 2018 of the General Department of Taxation provides tax policies for online advertising costs.

Accordingly, for the case that the Company hires an advertising sport on Google, Facebook owned by foreign entities, the foreign party must be subject to the foreign contractor tax in Vietnam as prescribed in Circular No. 103/2014/TT-BTC.

Before paying service fees, the Company is responsible for withholding, declaration and settlement of the payment of the foreign contractor tax, which comprises of VAT and corporate income tax (CIT).

Online advertising costs serving for the business production activities, having sufficient invoices, payment documents as prescribed in Article 4 of Circular No. 96/2015/TT-BTC are allowed for recognition upon calculation of CIT.

It should be noted that in the cases where the foreign party fails to provide invoices to the Company, then the declarations and tax payment vouchers must be presented as bases for recognition.

NOTICE

The purpose of this news is to provide the clients with further information. Although we have focused much on the ensure of accuracy, the information that is given on this news is not absolutely thorough and the clients would better consult professional opinions before application.