



RECENT GUIDANCE ON TAX POLICIES FROM TAX AUTHORITIES

In this Spotlight, RSM Vietnam would like to update recent guidance issued by the authorities, including (1) **Decree 76/2018/NĐ-CP** on Law on Technology Transfer; and (2) **the 4th Draft Decree** on Electronic Invoices.

Decree 76/2018/ND-CP Guiding the Law on Technology Transfer

On 15 May 2018, the Government issued Decree 76/2018/ND-CP (“Decree 76”) detailing and guiding the implementation on the Law on Technology Transfer. Decree 76 takes effect from 01 July 2018 with two notable points as follows:

1. Guiding on registration of technology transfer

According to Decree 76, the below cases must be registered for technology transfer:

- Transfer of technology from oversea to Vietnam or vice versa; or
- Domestic technology transfer with using of state funding or state budget.

Other cases can also be registered, if needed.

Vietnamese Contracting party (technology transferee or transferor) is responsible for the registration of technology transfer with the State agencies of Vietnam.

Depending on the form of technology transfer and the competent authorities approving for investment project associated the transfer, either the Ministry of Science and Technology or the Provincial Departments of Science and Technology will issue the technology transfer registration certificates.



2. Pricing and payment methods of technology transfer

Decree 76 regulates the specific payment methods for technology transfer, including:

- Lump sum or installment payment in cash or in kinds;
- Conversion of the technology value into investment capital of an investment project or operation capital;
- Payment based on percentage (%) of net selling price or of the net turnover or of the pre – tax profit of the transferee; or
- Other payment methods agreed by parties.

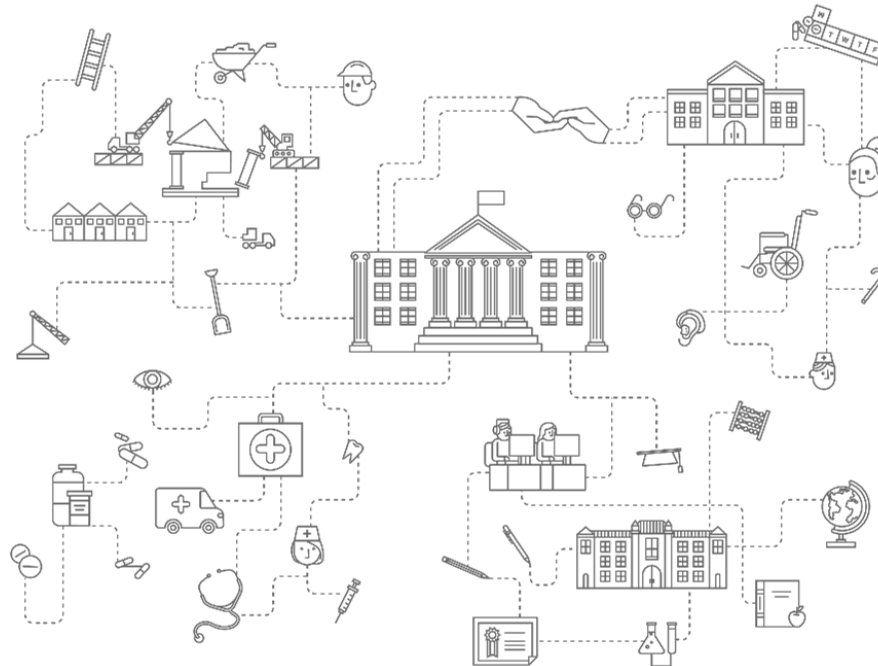
If technology transfer between the parties being affiliated or is based on the model of parent company – subsidiary in accordance the provisions of the tax laws, such transfer must be audited under the form of technology valuation upon requests by Tax Administration Authority.

Draft Decree on Electronic Invoices

On 09 July 2018, the Ministry of Finance released the 4th Draft Decree on Electronic Invoices (“e-Invoice”), which is supplemented with the following points:

1. Characteristics of e-Invoice

E-invoice is issued in a standard format and is subject to the management of the tax authority via the link to the e-invoice database.



2. Form of e-Invoice

According to the Draft Decree, there are two forms of e-Invoice (with or without verification code of tax authority) as follows:

- When using e-Invoice with verification code of tax authority, vendors shall issue and sign the invoice by digital signature on Web Portal of General Taxation Department (“GDT”) or using services of intermediary providers (“T-VAN”). In additions, the Draft Decree broadens and encourages subject using e-Invoice with verification code of tax authority including:
 - Individuals/Households businesses;
 - Enterprises with high tax risks;
 - Business organizations having the needs of using e-invoices with verification code of Tax Department.
- E-Invoices **without verification code** will be applicable to enterprise doing business in the fields of electricity; petroleum; posts and telecommunications; air, road, rail, sea, and waterway transportation; clean water; credit financing; insurance; medical; ecommerce business; supermarket; commercial and entrepreneurs, or economic organizations which have or will conduct transactions with tax authority by electronic means and satisfy the conditions on software, data transfer and storage. (*)

(*) Some sectors have been added in comparison with the previous Draft Decrees.

3. Regulations of converting e-Invoice to paper Invoice

The conversion of e-Invoice to paper Invoice is only for the purpose of recording and monitoring the invoices in accordance with the Law on Accounting and is NOT valid for executing transaction or payment, except for e-Invoices created from the cash register that has database link with of the tax authority.

For goods in transit, authorities or competent offices can access to the Web Portal of the GDT for detail information.

4. Regulations on third parties providing e-invoice services

According to the Draft Decree, T-VAN which provide e-Invoices services for enterprises shall satisfy requirements before registering to the tax authority as follows:

- T-VAN must be enterprises that **registered and established in Vietnam**;
- T-VAN must have a guarantee commitment from finance institutions;
- Human resources and technical equipment must adapt for conditions which set out specifically in this Draft Decree.





5. Effective date

The Decree will be applied to all enterprises established and operating under the provisions of Vietnamese laws and take effect after 45 days from the signing date. In addition, enterprises will have a transitional period of 24 months from the effective date of the new Decree to apply for using E-Invoice.

6. Building database on e-Invoice

Tax authorities will be responsible for building, collecting, processing, and sharing data of e-Invoices for related organizations.

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