



WHO TAKES RESPONSIBILITY WHEN A BUSINESS DOES NOT ISSUE FINANCIAL STATEMENTS ON TIME?

1. OVERVIEW OF ISSUES RELATED TO OBLIGATIONS TO PREPARE AND SUBMIT FINANCIAL STATEMENTS OF ENTERPRISES

No.	Criteria	Common company	State-owned company	Public company	Large-scale public company and listed company
1	The applicable accounting regime	<ul style="list-style-type: none"> - Circular 132 (applicable to micro-enterprises, excluding SOEs); - Circular 133 (applicable to small and medium enterprises); - Circular 200. <p>After 2025, large-scale parent companies are subject to mandatory application of international standards (IFRS) under Decision 345 when developing consolidated financial statements.</p>	<p>Circular 200.</p> <p>After 2025, large-scale parent companies are subject to mandatory application of international standards (IFRS) under Decision 345 when developing consolidated financial statements.</p>	<p>Circular 200.</p>	<p>Circular 200.</p> <p>After 2025, large-scale parent companies are subject to mandatory application of international standards (IFRS) under Decision 345 when developing consolidated financial statements.</p>
2	Types of financial statements	<p>Annual financial statements.</p>	<p>Annual financial statements, Semi-annual financial statements and Quarterly financial statements.</p>	<p>Annual financial statements.</p>	<p>Annual financial statements, Half-yearly financial statements and Quarterly financial statements.</p>
3	Submission deadlines	<ul style="list-style-type: none"> - Sole Proprietorship and Partnership: 30 days from 	<ul style="list-style-type: none"> - For annual financial statements: 	<p>For annual financial statements: 10 days from the date of signing the</p>	<ul style="list-style-type: none"> - For annual financial statements: 10 days from the date of signing the audit

		<p>the end of the annual accounting period.</p> <p>- For other accounting units: 90 days from the end of the annual accounting period.</p>	<p>+ Common accounting unit: 30 days from the end of the annual accounting period.</p> <p>+ Parent company, State corporation: 90 days from the end of the annual accounting period.</p> <p>- For semi-annual financial statements: before July 31 every year¹.</p> <p>- For quarterly financial statements:</p> <p>+ Accounting unit: 20 days from the end of the quarterly accounting period;</p> <p>+ Parent company, State Corporation: no later than 45 days.</p>	<p>audit report but not more than 90 days from the end of the fiscal year.</p>	<p>report but not more than 90 days from the end of the fiscal year.</p> <p>- For semi-annual financial statements: 05 days from the date of signing the review report but not more than 45 days from the end of the first 6 months of the fiscal year.</p> <p>- In the case of a parent company: within 5 days from the date of signing the review report but not more than 60 days from the end of the first 6 months of the fiscal year.</p> <p>- For quarterly financial statements: 20 days from the end of the quarter. In the case of a parent company: 30 days from the end of the quarter.</p> <p>- For the review of quarterly financial statements: 5 days from the date of signing the</p>
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¹ According to Article 109.1(d) of the 2020 Law on Enterprises.

					review report but not more than 45 days from the end of the quarter.
4	Audit requirements	Only compulsory for foreign-invested enterprises ² .	Audit is only compulsory for annual financial statements (except for SOEs operating in the field of state secrets) ³ .	Must be audited by an approved auditing organization.	<ul style="list-style-type: none"> - For annual financial statements: must be audited by an approved auditing organization⁴; - For semi-annual financial statements: reviewed by an approved auditing organization.
5	Filing agencies	<ul style="list-style-type: none"> - Tax Department; - General Statistics Office; - Management Board of Export Processing Zones, Industrial Parks and Hi-Tech Parks (applicable to enterprises located in these zones if required). 	<ul style="list-style-type: none"> - Tax Department; - General Statistics Office; - Departments of Finance of provinces and centrally run cities (applicable to SOEs located in provinces and centrally run cities); - Department of Corporate Finance (applicable to Central SOEs); - Department of Finance and Banking or Department of Management and Supervision of 	<ul style="list-style-type: none"> - Tax Department; - General Statistics Office; - SSC; - SE; - Disclosure of information on the company's website. 	<ul style="list-style-type: none"> - Tax Department; - General Statistics Office; - SSC; - SE; - Disclosure of information on the company's website.

² According to Decree 17.

³ According to Decree 17.

⁴ According to Decree No 84/2016/ND-CP, the Ministry of Finance considers, approves and publicizes the list of auditing organizations and the list of practicing auditors approved to conduct audits for the entities with public interest before November 15 of each year and the SSC reviews, approves and publicizes the list of auditing organizations and the list of practicing auditors approved to conduct audits for public interest in the securities sector by November 20.

			<p>Insurance (applicable to types of SOEs such as commercial banks, lottery companies, credit institutions, insurance enterprises, securities trading companies);</p> <ul style="list-style-type: none"> - Periodically announced on the website of the company and the agency representing the owner. 		
6	<p>Submission form of financial statements</p>	<ul style="list-style-type: none"> - For the tax department: submit online through the e-Tax page. - For the General Statistics Office: submit online through the Business Statistics page. 	<ul style="list-style-type: none"> - For the tax department: submit online through the e-Tax page. - For the General Statistics Office: submit online through the Business Statistics page. 	<ul style="list-style-type: none"> - For the tax department: submit online through the e-Tax page. - For the General Statistics Office: submit online through the Business Statistics page. - For SSC, SE: submit online on the information disclosure system of SSC, SE. <p><u>Notes:</u> when submitting, the audit report and written explanation (if any) must be attached.</p>	<ul style="list-style-type: none"> - For the tax department: submit online through the e-Tax page. - For the General Statistics Office: submit online through the Business Statistics page. - For SSC, SE: submit online on the information disclosure system of SSC, SE. <p><u>Notes:</u> when submitting, the audit report and written explanation must be attached (if required by law)</p>

2. RESPONSIBILITIES FOR PREPARING AND SUBMITTING FINANCIAL STATEMENTS

2.1. Statutory responsibilities for preparing and submitting financial statements:

Pursuant to Accounting Standard No. 21 attached to Decision 234, the Director or head of the enterprise is responsible for preparing and presenting financial statements. Decision 234 does not specify who is the head of an enterprise. However, stemming from the provision that financial statements must be signed by the legal representative in the Law on Accounting, we understand that the head of an enterprise is its legal representative. Accordingly, it could be understood that the person responsible for preparing and submitting financial statements is also the legal representative of the enterprise. In practice, enterprises often decentralize powers and responsibilities towards: The Director/ General Director is one who runs production and business activities, is usually in charge of preparing then sign to issue or submit financial statements to the Chairman of the Board of Members/ Board of Directors/ the Company President for promulgation – depending on who is the legal representative of the company.

In addition to the preparation/ organization for preparation before officially signing the financial statements, in order to ensure the legal effectiveness, these financial statements shall also require the consideration and approval of the competent authority. This is governed by the

Law on Enterprises, the Charter and internal regulations of each enterprise. The common model shall be the Director/ General Director submits the financial statement to the Board of Members/ Board of Directors/ the Company President for consideration and approval. For joint-stock companies, the financial statements must also be approved by the General Meeting of Shareholders to be officially legally binding on shareholders.

2.2. Responsibility for preparing and submitting financial statements in case of failure to duly issue them?

2.2.1. Legal consequences for failure to duly issue the financial statement?

a. General sanctions:

* Penalties for violating the obligation to submit the financial statement to tax authorities⁵:

- Late payment: Fine from VND 5,000,000 – VND 20,000,000.
- Non-payment: Fine from VND 40,000,000 – VND 50,000,000.

* Penalties for violating the obligation to submit the financial statement to statistical offices⁶:

- Late submission: Warning or fine from VND 1,000,000 – VND 10,000,000.
- Non-payment: Fine from VND 10,000,000 – VND 20,000,000.

b. Separate sanctions for listed companies: Transaction restriction or transaction

⁵ According to Article 12 of Decree 41.

⁶ According to Article 7 of Decree 95.

suspension for late submission of the audited annual financial statement/semi-annual financial statement with review⁷.

2.2.2. Who is responsible when enterprises fail to duly issue the financial statement?

a. Responsibility to reimburse/compensate the enterprise for fines, expenses or damages incurred?

* In principle, the *responsibility to refund/compensate enterprises for the fines, expenses or damages incurred belongs to the person in charge of preparing and submitting* the financial statement at its due issuance date, if it is proved that their violation leads to the enterprise's failure of financial statement submission.

* However, *this liability will be exempted* in the following cases:

- The legal representative has already implemented the financial statement preparation, but then, is laid off/dismissed at the issuance time (not due to violation of obligations in preparing the financial statement), and the enterprise cannot duly appoint a new representative to sign the financial statement, or the new legal representative refuses to sign the financial statement;

- The General Director/ Director has implemented the financial statement preparation, but the Chairman of the Board of Members/ Chairman of the Board of Directors/ the Company President, as the legal representative does not sign the financial statement, unless it is proved that

the issuance failure is due to the responsibility unfulfillment of the General Director/ Director;

- The General Director/ Director has implemented the financial statement preparation, but the Board of Members/ Board of Directors/ the Company President does not approve it, in case the enterprise has internal regulations requiring financial statements to be approved by the Board of Members/ Board of Directors before issuance, unless it is proved that the disapproval is due to the responsibility unfulfillment of the General Director/ Director;

- The legal representative has delegated full authority to another manager to take responsibility for preparing, signing, issuing and submitting the financial statement, simultaneously, the legal representative has fulfilled the role of supervising, urging and supporting (if necessary) for the authorized person according to internal regulations of the enterprise.

b. Responsibilities of the new legal representative in preparing, signing, issuing and submitting financial statements for previous fiscal years?

- In principle, *the new legal representative (similarly for the case of a new chief accountant) must be responsible for finalizing, issuing and submitting financial statements* to ensure the legal compliance, promptly overcome legal consequences or economic losses caused by the absence of financial statements. This stems from the role

⁷ According to Articles 39 and 41 of the Regulation on Listing and Trading in Listed Securities, promulgated together with Decision 17.

of the legal representative as presenting the enterprise and taking responsibility for “*exercising rights and obligations in an honest and prudent manner to protect the enterprise’s lawful interests*” (under Article 13.1(a) of the 2020 Law on Enterprises).

- However, given the fact that this is an existing matter of enterprises that is not caused by the fault of the new legal representative, so **the legal representative can accept and implement his/her responsibilities upon the following conditions:**

(i) Having the right to request financial statements for being audited or reviewed by a professional and reputable auditing unit to ensure their truthfulness, accuracy and completeness;

(ii) Having the right to request the Board of Members/ Board of Directors/ Company Owner to approve the contents of financial statements before signing for official promulgation;

(iii) Having the right to reserve opinions and include qualified opinions for controversial or unclear contents in financial statements;

(iv) Have the right to refuse to sign the financial statements in case the Board of Members/ Board of Directors/ Company Owner does not meet any of the aforementioned conditions;

(v) In case the legal representative does not have sufficient professional capacity to review and determine the accuracy and authenticity of the contents and data in the financial statements, the legal representative has the right to authorize another competent and reliable manager to prepare, sign and

submit financial statements for the enterprise, and simultaneously request the Board of Members/ Board of Directors/ Company Owner to approve this authorization.

c. Personal liability of the persons preparing and signing financial statements for the activities and transactions recorded in the financial statements?

Here, it is necessary to clearly define 2 types of liability related to financial statements: 1. Liability for contents and data recorded in financial statements; 2 – Liability for activities and transactions of the enterprise as the basis for recording contents and data in financial statements.

Regarding liability 1, pursuant to Article 29.2(d) of the 2015 Law on Accounting, **the persons who sign a financial statement are responsible for its content.**

Regarding liability 2, there are no specific legal regulation, but in essence, the persons signing the financial statements, who is the new legal representative of the enterprise, will **only be personally responsible for the activities and transactions of the enterprise if he/she is previously the one who decided/contributed to making decisions for** such activities, transactions in the previous fiscal year. For example, in the case of a single-member limited liability company owned by an individual, a Director is hired and appointed as the legal representative, but then is dismissed in advance of the financial statement issuance time. Subsequently, the owner directly holds the position of Director and legal representative of the company. In this case, this person will be responsible or jointly responsible for the activities and transactions of the company if he previously



approved or allowed the former director to carry out these activities or transactions.

Therefore, there are two types of liability related to financial statements that should not be confused. The new legal representative should himself understand his responsibilities in signing and issuing

financial statements for enterprises, including financial statements for the previous fiscal years. The preparation and signature of financial statements does not mean being bound by personal responsibility for activities and transactions that have taken place in the past.

Legal basis:

- The 2015 Law on Accounting;
- The 2020 Law on Enterprises;
- Decree No. 41/2018/ND-CP on penalties for administrative violations in the fields of accounting and independent audit (“**Decree 41**”);
- Decree No. 95/2016/ND-PC on penalties for administrative violations in the field of statistics (“**Decree 95**”);
- Decree No. 17/2012/ND-CP on detailing and guiding the implementation of a number of articles of the law on independent audit (“**Decree 17**”);
- Circular No. 200/2014/TT-BTC on guidelines for accounting policies for enterprises (“**Circular 200**”);
- Circular No. 133/2016/TT-BTC on accounting for small and medium enterprises (“**Circular 133**”);
- Circular No. 132/2018/TT-BTC on providing guidance on accounting regimes on extra-small enterprises (“**Circular 132**”);
- Circular No. 96/2000/TT-BTC on providing guidelines on disclosure of information on securities market (“**Circular 96**”);
- Circular No. 202/2014/TT-BTC on guiding the preparation and presentation of consolidated financial statements (“**Circular 202**”);
- Decision No. 165/2002/QD-BTC promulgating and publicizing six (06) Vietnamese Accounting Standards (phase 2) (“**Decision 165**”);
- Decision No. 234/2003/QD-BTC on the issuance and publication of six Vietnamese Standards on Accounting (batch 3) (“**Decision 234**”);
- Decision No. 17/QD-HDTV on promulgating regulations on listing and trading of listed securities (“**Decision 17**”);
- Decision 345/QD-BTC dated March 16, 2020 on approving the Scheme for Application of Financial Reporting Standards in Vietnam (“**Decision 345**”).

Abbreviation:

SOEs	State-owned enterprises	SSC	State Securities Commission
SE	Stock Exchange	IFRS	International Financial Reporting Standards

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**ATA
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SERVICES**

-
- Hotline: 091.4645.112
 - Email: contact@ata-legal.com
 - Website: <https://ata-legal.com>
 - Address: 184 Nguyen Tuan street, Nhan Chinh ward, Thanh Xuan district, Hanoi.