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LEGAL PERSPECTIVE ON REGULATIONS RALATED TO PERSONAL INCOME TAX WHEN EARNING INCOME THROUGH E-COMMERCE PLATFORMS IN VIETNAM, TAKING THE CASE OF INDIVIDUALS DOING BUSINESS THROUGH TIKTOK APPLICATION

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Abstract

According to data from the website of the Ministry of Industry and Trade of Vietnam (Ministry of Industry and Trade, 2022), the growth of Vietnam's e-commerce industry increased by 20% compared to 2021, which is a bright spot in Vietnam's economy, affirming the development potential and position of this industry in the national economy. Prominent among them, business activities on e-commerce platforms and social networks of Vietnam are developing very strongly, especially in recent year with the appearance of TikTok Shop. According to the data of Metric Data Science Company, although officially operating in February 2022, until now, TikTok shop has become the third largest retail e-commerce platform in Vietnam after Shopee. and Lazada (Metric, 2023). However, along with the development, challenges are posed in state management, in which prominent tax-related issues such as revenue management, tax payers, identification of tax bases, etc. base and type of income to calculate tax, control business transaction through this application. This study will analyze the current situation of tax management of individuals through the Tiktok application, thereby making recommendations related to the collection of personal income tax of these individuals.

Key words: *tax management, e-commerce, personal income tax.*

1. Introduction

In recent years, more and more people are using TikTok application for various purposes, this is a social network originating from China whose original name is Douyin or Vibrato, released in 2016, active This social network activity is dominated by individuals (known as Tikoker) posting short video clips for entertainment or sales purposes through live streaming from a specific activity in progress. or lead an online shopping link, this activity is currently being used by users for many purposes such as information sharing and sales (Luong Hanh, 2023). On the website of Tiktok (n.d.) it is mentioned that the relationship between TikToker selling goods on Tiktok's e-commerce platform (hereinafter referred to as TikTok Shop) and Tiktok is a partnership, whereby TikTok Shop will charge the seller when the order is successfully delivered, and vice versa, the seller has a channel to reach out to a wide range of customers, earning more profits. The fact by using tiktok shows that, with the strength of short video production, it attracts users in a strong and personal way because as long as they create entertaining content, the opportunity to find customers. will be very quick. This is considered the main strength to attract sellers of TikTok Shop than other e-commerce platforms. This raises management issues, especially tax administration for these subjects. This study will summarize regulations related to state management of personal income tax of subjects working on e-commerce platforms, specifically "TikToker" understood as users of an application

platform called TikTok to buy and sell goods and products through viewers at live streams. Then, point out the current situation in the management of personal income tax collection and propose solutions related to this activity for TikTokers.

2. Literature review

According to Clause 1, Article 3 of the Law on Tax Administration (2019), tax is "a compulsory payment to the state budget of organizations, households, business households and individuals according to the provisions of tax laws." According to the Law on Enterprise Income Tax (National Assembly, 2008), enterprise tax is a tax that the state directly collects into the state budget on the taxable income of enterprises (organization of production and trading activities of goods and services). For personal income tax, based on the Law on Personal Income Tax (National Assembly, 2007), and in Clause 2, Article 4 of Circular 40 of the Ministry of Finance (Ministry of Finance, 2021) guiding value-added tax, personal income tax and tax administration for business households and individuals, individuals with income from business activities of 100 million/year or more will pay personal income tax and value added tax. The concept of "e-commerce platform" is also clearly stated in Clause 9, Article 3 of Decree 52/2013/ND-CP (Government, 2013), whereby, "E-commerce trading floor is a commercial website E-commerce allows traders, organizations and individuals who are not website owners to conduct part or the whole process of buying and selling goods and services on it. Currently, Vietnam has many e-commerce platforms such as Tiki, Shopee, Lazada... According to Circular 40/2021/TT-BTC (Ministry of Finance, 2021) and Law on Personal Income Tax, amended 2014 (National Assembly, 2014) types of taxable income include business income, salary income, wages, income from capital investment, income from capital transfer or real estate...Regardless whether it is a traditional business form or a business form through an e-commerce platform, revenues from business and production activities are subject to tax. For the business line of distribution and supply of goods, the personal income tax rate is 0.5%, for business products and services, the tax rate is 2%, and for business products, the tax rate is 2%. If services include raw materials, the tax rate is 1.5%. Income tax is calculated according to the general formula: "Taxable income x Tax rate". For freelancers and businesses through an e-commerce platform, the personal income taxable revenue is equal to the business revenue on the floor. As for people earning incomes from salaries and wages, the taxable income is equal to wages and salaries minus insurance, family deductions, overtime, night work, etc. The tax rate of Those who have income from wages and salaries are calculated gradually, the lowest is 5% and the highest is up to 35%, depending on the taxable income/year or tax/month. For people who earn income from salaries and wages, income-paying organizations and individuals are responsible for declaring and paying tax instead; for self-employed subjects, business individuals and business households, obligated to declare and pay taxes on their own. According to Circular No. 80/2021/TT-BTC (Ministry of Finance, 2021) and Decree 126/2020/ND-CP (Government, 2020) TikTok will "be responsible for tax declaration in Vietnam for supply activities in Vietnam." provide TikTok Ads (TikTok Ads)". TikTok Ads is a way to promote products and brands for TikTokers, businesses and individuals doing business on the e-commerce platform TikTokshop,... to make their channel known to more people. This is an optional feature, users can register and pay. Regarding the regulations on tax declaration and collection in TikTok, if Tiktoker using the TikTok Ads service is able to provide a tax code to TikTok, it will be responsible for declaring and paying taxes to the State, and If Tiktoker using the TikTok Ads service is an enterprise that cannot provide a tax code, TikTok will represent the collection of 5% value-added tax and 5% corporate income tax and then return it to the General Department of Taxation of Vietnam. (TikTok, n.d.). Through the above analysis show that the direct sales business and the activities of receiving and promoting products of tiktokers

through Tiktok are activities for which that individual will be subject to personal income tax when meeting the following conditions: minimum taxable income.

3. Personal income tax management through Tiktok-shop in practice.

3.1 Tax administration for Vietnam's e-commerce industry.

According to Prof. Dr. Hoang Van Cuong - Member of the National Assembly's Finance and Budget Committee, Vice President of National Economics University at the conference on "Tax management for e-commerce activities" on September 29th in 2022, he said that "the issue of digital transformation in the tax field is being implemented quickly, the tax declaration portal is active". There have been many e-commerce platforms (258 platforms) providing information on the e-commerce portal, including big ones like Shopee, Lazada, Sendo... (PV, 2023). Legal issues, basically the implementation of tax collection for e-commerce activities has been possible, the State also tries very hard to provide a legal corridor and guidelines for tax management for this type of business. In terms of management, the Ministry of Industry and Trade, the Ministry of Finance, the General Department of Taxation and the State banks have closely coordinated. According to Ms. Nguyen Thi Thanh Huyen, Head of Electronic Information Department, Department of Broadcasting and Electronic Information, Ministry of Information and Communications (Ministry of Information and Communications) (Government Electronic Newspaper, 2022) said: "When building While developing regulations, the tax sector has also emphasized the role of the state bank in controlling money sources so that we can review and check whether tax collectors are adequate or not, and the MIC also always ready to coordinate with the Ministry of Finance, the Ministry of Industry and Trade as well as other ministries and sectors to support digital transformation contents for specialized work. When the E-Tax Gate started operating from March 21, 2023, we regularly exchanged information with units of the General Department of Taxation to understand whether businesses are now providing cross-border services. How did you pay taxes?". In practice, tax collection through e-commerce platforms is still confusing, according to the Ministry of Industry and Trade (Ministry of Industry and Trade, 2022), the growth of Vietnam's e-commerce is always at a high rate of over 20% per year, however, compared to the tax paid to the state budget from this sector, it has not proportionately, causing inequality between traditional business people and business through e-commerce floors. In addition, issues related to tax management for cross-border business activities via e-commerce platforms are also facing many problems. According to Ms. Nguyen Thi Thanh Huyen, Head of Electronic Information Department, Department of Broadcasting and Electronic Information, Ministry of Information and Communications (Government Electronic Newspaper, 2022), one of Vietnam's biggest barriers Male in this field is not able to manage cash flow. Currently, paying for transactions through e-commerce platforms in cash is still very popular, from 85% to 90% of total transactions (Nguyen Tran Hung, 2022). Furthermore, for purchases made through an e-commerce platform, the buyer can return the item and get a refund. In addition, it is difficult to determine the seller's revenue on the e-commerce platform for many reasons, one of which is related to the lack of a database to declare revenue transferred to a bank account of seller. According to the General Department of Taxation (M.P, 2022) on December 8th 2022, only 16 banks have registered to authenticate accounts with the Tax agency through eTax Mobile. Thus, the seller can completely choose a lot of banks that have not been registered with the tax agency to avoid declaring their revenue.

3.2 Tax management of TikTok shop.

The number of TikTokers is huge and increasing, according to a report by Market Research Company DataReportal (Ministry of Industry and Trade, 2023), Vietnam ranked 6th in the top 10 countries with the largest number of TikTok users in the world, with about 49.9 million users. A representative of TikTok

Vietnam said that “*there are days when 700,000 – 800,000 people shop in Vietnam, the number of sellers is also about tens of thousands*” (Nguyen Lam Thanh, 2022). With such a number of buyers and sellers, there is a strong growth in revenue for both the TikTok shop and the sellers on this application. According to statistics of the Metric e-commerce data platform (Metric, 2022), the average revenue of this platform is 56.6 billion VND/day and the average total products sold is 434,000 products/day. In particular, the goods that bring in the highest revenue for TikTok Shop are products with prices ranging from 100,000 to 200,000 – accounting for 39%, equivalent to VND 647 billion a month. According to data from the Ministry of Industry and Trade (Ministry of Industry and Trade, 2022), the goods and services that people choose to shop the most online include: Clothing, shoes, cosmetics, household appliances, technology and electronics; books, etc. Particularly for TikTok Shop, the most developed categories include fashion, food, cosmetics and electronics. Big brands like Maybelline, P&G, Inochi... also follow the trend of choosing this platform as their e-commerce business partner (TikTok Shop Vietnam, 2023). On the sales situation with the above-mentioned large sales, the personal income tax management of TikTokers is having inadequacies. Firstly, as stated in the rationale, TikTok only collects value-added tax and corporate income tax for businesses using the TikTok Ads service that are not tax-registered in Vietnam. TikTok's tax does not include objects such as business individuals, profiting from businesses on TikTok or even businesses that do not use the TikTok Ads service. Second, According to Circular 40/2021/TT-BTC (Ministry of Finance, 2021) guiding value-added tax, personal income tax and tax management for business households and individuals and the Tax Law Personal income, as amended in 2014 (National Assembly, 2014), the tax rates of people earning income from salaries and wages and the tax rates of business individuals are hugely different. For example, the 1-year income of a salaried person is equal to the income of an individual trading goods on the e-commerce platform TikTok Shop, which is 1 billion VietNam Dong. However, the personal income tax rate of wage earners is 35%, and e-commerce traders are only 0.5% to 5%, and in the specific case of Tiktokers. For sale and purchase of goods, the tax rate is 0.5%. In addition, the problem of employee being subjected to too high a tax rate, it also shows an unfairness in tax obligations, thus posing a requirement to manage and control revenue through the Tiktok platform. The relationship between TikTokers selling products on TikTok and TikTok or the relationship between TikTokers who receive product advertising and the party ordering the product advertising service is not labor relation. Therefore, tax declaration for these subjects is much more complicated than for those who have an employment relationship. So, the current Personal Income Tax Law has many loopholes for TikTokers who make money through TikTok because of the low tax rate and lax management.

3.3 Income of Tiktokers by receiving product advertising in practice

In many countries, TikTok pays TikTokers based on the number of views each person uploads (Tiktok, n.d). However, in Vietnam, this application has not yet allowed users to open the feature to make money directly. Therefore, the main income through this platform of Vietnamese TikTokers is selling, receiving product ads, placing product links on their personal pages (each visit corresponds to the amount that TikToker receives). With the influence and ability to create effects and trends, many businesses and sellers do not spare money to advertise products from TikTokers. The remuneration for each advertisement depends on the number of followers TikToker has on the platform. For example, TikToker Pham Minh Hieu, owner of TikTok channel Hieu Shyn with a following of 1.3 million people has shared, through the work of receiving product ads for brands, the monthly income of TikToker This amount ranges from 70 to 100 million (Mai Cham & Ngoc Linh, 2023). Another TikToker is also extremely popular today – Tran Hoang Long, this TikToker currently owns the TikTok Long Chun channel with more than 5 million followers and has shared a month of at least his revenue of several hundred million, there are months the

number is up to 1 billion (HA, 2023). In fact, it is difficult to verify how much revenue TikTokers earn from the TikTok platform and to tax personal income to these objects, due to the lack of strict tax management and almost there are no regulations to manage the tax of these entities. For example, for activities such as TikTokers that directly sell on the TikTok platform, the basis for tax calculation can now be based on sales invoices. However, if TikToker's job is to receive product ads for brands or place product links to make money, it is very difficult to verify the income. In order to understand TikToker's revenue through receiving product ads for brands, it is necessary to understand the contract and agreement of the two parties on the amount of money to pay for TikToker, the time of cooperation..., and determining whether this cooperation contract exists or not is very difficult. Similar to the activity of sourcing products and making money from each visit the link of TikTokers. The use of current sources is free, anyone can do it, the fact that a TikTok user links the source of a product does not necessarily mean that person will earn money if someone accesses this source. There are many cases that make it extremely difficult to verify that TikTokers earn money from performing product advertising content as well as to calculate taxes for these objects.

4.Recommendations

In addition to strengthening propaganda to make people more aware of their tax obligations, modernizing the information technology system in tax declaration, strengthening inspection, examination and sanctioning, the State must It is necessary to accelerate the unification of tax policy agreements in the field of e-commerce for trading partners. Prof. Dr. Hoang Van Cuong (Government Electronic Newspaper, 2022) said: *"The management here is not the management of people involved in transactions but the management of economic activities. If economic activities take place, no matter where you are, but if you have economic activities in my area, I will provide evaluation criteria and legal subdivisions and you must be responsible for paying taxes."* Based on this spirit, the law on personal income tax for individuals doing business on the e-commerce platform, specifically TikTokers, should be revised in the direction of focusing on buying and selling transactions, not just focus on the subject of the transaction. The authors would like to propose five recommendations for improvement as follows:

Recommendation 1: Authorize tax collection when individuals do business through e-commerce platforms.

According to Clause 7 Article 1 of Decree 91/2022/ND-CP amending and supplementing Decree No. 126/2020/ND-CP (Government, 2022), e-commerce platforms are only responsible for providing information, issue invoices to the authorities to serve the management and tax collection. In fact, Vietnam has applied the method of "authorizing tax collection" in many areas such as agricultural land use tax of households and individuals; Tax on non-agricultural land use of households and individuals; Tax for business households and individuals paying tax by the presumptive method... according to Circular 80/2021/TT-BTC dated September 29, 2021 (Ministry of Finance, 2021) and achieved many achievements positive. Therefore, the implementation of "tax collection mandate" in e-commerce activities should also be considered. If the party "authorized to collect tax" was previously a number of agencies, organizations and individuals, in the case of doing business through e-commerce platforms, the "authorized tax collection" party will be the exchanges to E-commerce, because e-commerce platforms will be the best source for understanding the purchase and sale transactions in terms of quantity of goods and transaction amount. The "authorization of tax collection" will bring many benefits. The first benefit is speed and convenience for taxpayers. Taxpayers do not need to directly contact tax officials or directly declare tax. This also limits the situation of "forgetting" to pay taxes, errors in tax declaration. Next, the "authorization of tax collection" for e-commerce platforms will help simplify administrative procedures related to tax

payment, including electronic declaration procedures. "Authorization of tax collection " is also a very effective solution to the difficult cash flow management problem. According to Clause 1, Article 4 of Decree 123/2020/ND-CP (Government, 2020), Official Letter No. 8625/TB-CTTPHCM (Ho Chi Minh City Tax Department, 2022), the purchase and sale through the trading floor E-commerce will always have to have an invoice and if in case the buyer returns the goods, the seller must cancel this sales invoice and make a tax reduction declaration. The purchase and sale through the e-commerce platform will always have an e-invoice, and the trading floor side will be the most knowledgeable about this invoice as well as the regulations on returning goods on the e-commerce platform. floor. So, if " authorization of tax collection" for e-commerce platforms, it also means that these exchanges must know the canceled invoices to reduce taxes. At this time, the seller's revenue declaration will be faster and more accurate because the tax collector knows the revenues as well as the receipts and proofs in the purchase and sale transaction.

However, the issue of "tax collection authorization" will lead to other problems, typically the regulation on "responsibility to declare and pay tax" for tax regulations, regulations on "customer information security".... And above all, the application of "tax collection authorization" will be a burden for e-commerce platforms, at this time the risk factor will be very high for those who use these platforms. And the "authorization of tax collection" for e-commerce platforms can only ensure accurate revenue, while cash flow is difficult to determine which is also a limitation of this solution, because currently buyers Using cash payment method when buying goods on e-commerce floor is still a lot.

However, this is still a very potential solution because of the benefits it brings. In fact, there are already large exchanges that implement this measure, typically TikTok. Although it has only stopped at collecting taxes on behalf of sellers without a tax code, TikTok also shows the potential to expand to the rest. And this measure should also be considered as a long-term solution, because the trend of payment via banking is growing. There are many international e-commerce platforms that are implementing this solution such as eBay, Amazon, Bestbuy, Traveloka... These exchanges require 100% payment by electronic form and taxes will be included in the payment. products that customers buy. There are even many e-commerce platforms that collect cross-border taxes on products and services (airline tickets, room bookings,...) such as eBay, Traveloka... The development towards modernization is an inevitable trend, so integration in the field of e-commerce is also essential. Therefore, it is not only correct to apply the "tax collection authorization" measure in a more comprehensive way, but also promising solution to help change the problems related to tax administration in e-commerce and especially commerce cross-border electronics.

Recommendation 2: Collect value-added tax at source.

According to the Organization for Economic Co-operation and Development (OECD), collect value-added tax at source is a recommended solution and has also been successfully applied in some countries, as examples of international e-commerce platforms such as: eBay, Amazon, Bestbuy, Traveloka... these platforms are applying "authorization to collect taxes", they are also using measures method of "collecting value added tax at source". Accordingly, when there is a transaction through an e-commerce platform, taxes will be included with the price of the product. The floors then collect and pay taxes on behalf of buyers. Although this solution is going against a number of provisions under the Laws on Taxation, specifically the Law on Personal Income Tax (2007), because under this Law, e-commerce platforms are not the entity pay money to buyers and sellers, so it is not possible to pay taxes or collect taxes on their behalf. But in fact, this will be a measure to help reduce the burden on trading floors as well as collect taxes quickly and accurately, especially with cross-border e-commerce transactions and e-transactions cross-border where products are not goods but services. Besides the legal problem in collecting value-added tax at source, Vietnam's tax regulations also need to be changed and supplemented to suit the general development

situation. Therefore, it is necessary to legalize the issue of value-added tax collection at source in e-commerce transactions in the Law and to create a consensus on this solution with the provisions of the Law.

Recommendation 3: Adjust the taxable threshold.

One of the measures to better manage tax payment is to propagate and mobilize the spirit and consciousness of people in general and sellers on trading floors in particular. However, it must also be understood that people need to have a sufficient source of income to cover their living cost before they can be ready to pay taxes. Otherwise, tax evasion, false declarations or tricks to circumvent the law will not be reduced. Currently, according to the personal income tax law, business individuals with incomes of 100 million/year or more must pay Value Added Tax and Personal Income Tax. That is, each individual only needs to collect 277,000 VND to pay tax. This number is no longer relevant due to price slippage and inflation. We know that today's online business is the choice of many people to start a business, even those who have been choosing this business form also have to bear many non-tax costs to be able to maintain their jobs. me. These expenses are not small compared to the revenue from the business. So if the taxable threshold is still kept at 100 million/year, it is making it difficult for people and going against the current policy of encouraging startups in our country.

Recommendation 4: Require delivery and logistics service providers to declare the amount collected on their behalf.

In the transaction through the e-commerce platform, besides the seller, the buyer and the e-commerce platform, the shipping will also be the party to know the details of the e-purchase invoice for the case of goods purchase and sale select the form of payment is cash. Because the delivery is responsible for collecting money and delivering the goods to the buyer, it will be clearer about the actual status of the order. For example, in cases where the goods cannot be delivered or the goods are delivered late because the buyer cannot be contacted, the buyer moves the date of receipt of the goods, the buyer and the seller agree to change the price of the goods different from the goods. In these cases, other than the consignee, only the shipping unit knows the exact status of the order and the actual payment amount received, so the declaration of revenue of this party is also will be more accurate. In addition, for situations where buyer choose to pay for goods in cash, but after the buyer receives the goods, he requires a return or partial payment of the goods. At this time, it is necessary to indicate the reason for the buyer's return to see if it is eligible for a return and refund, if so, how much is the refund. In this case, the e-commerce floor will have more difficulty than the shipping companies in checking the return request, because if there is a return request, the delivery party is the one who directly comes and receives it and check the order is eligible to implement the return policy - refund or not,... The delivery party will also know exactly how much the actual refund amount to the buyer , how much is the actual number of goods returned to the seller, when is the time to receive the goods returned and refunded... Moreover, at present, most e-commerce platforms, if customer want to return the goods, the customer need to carry out some complicated procedures, and the exchanges also do not support returns if the buyer confirms receipt of the goods, the buyer requests to return the goods after the specified time, change the purchase decision. In fact, if the buyer and seller can agree on a return - a refund or in the event that, despite the expiration of the time to request a return on the e-commerce platform, according to the e-invoice, if the purchase agreement of the seller and the buyer has not expired, the full return will still take place, just in terms of form, the electronic invoice on the trading floor of this transaction not cancelled. Thus, the e-commerce floor can understand the cash flow relatively accurately if the form of payment is electronic payment, but for the form of payment in cash, the shipping unit will be more clear. In addition, the fact that the shipping unit is likely to know the exact location of receipt of goods is also a remarkable thing if a tax arrears occurs. If at the same time, the delivery units are requested to, logistics

services declare the amount collected and "authorize tax collection" for e-commerce platforms, it will reduce the burden on these exchanges as well as better manage cash flow, helping to improve management. more tax while Vietnam is taking time to develop the habit of electronic payment.

Recommendation 5: Strengthening content censorship on e-commerce platforms.

The problem of managing income from e-commerce, especially the advertising activities of famous Tiktokers were very difficult. In practice, to control and collect taxes in this case, the solution to managing the cash flow of those who do advertising is not feasible. Instead, it should control the "products" that are put on the market, provide more disciplinary terms and rules for the issue of the content of the post, let the subjects perform the behavior earning money through product advertising realizes that the option to declare and pay taxes will bring more benefits and limit risks than making money by creating advertising content but not declaring taxes. For product promotion activities, before each post, each video needs a category selection mode. Particularly for activities of product advertising, sales, etc., the category is "product advertising". If the recipient of the product advertisement chooses this category, they need to provide proof of cooperation with the brand that the product they are promoting. Based on the evidence, it is possible to determine the amount of money agreed by the parties for this work, if there is no content about wages, it is possible to rely on the content of the contract and determine the market price. Determine the income and tax the recipients of product advertising. If, after selecting the "product advertisement" category, but the recipient of the product advertisement does not select the item to provide the above information, there should be provisions to limit this object's ability to post such as limited this person's channel interaction, limit the size of the post, have to wait to approve the post content, the name or product logo appearing in the post must be covered and muted, if there is a notice of violation, the post will be removed and the person who made the post will be penalized.... Sequential and thorough content moderation not only helps in controlling personal income tax for those who advertise products but also helps protect consumers from buying poor quality products, counterfeit goods, imitation goods..., protect intellectual property rights, copyright-related issues for individuals and organizations. The censorship of content needs to prioritize the processing of requests from accounts with a large number of followers, in addition, it is also necessary to perform the above procedures for posts that have already been posted, quickly. take action if these posts are infringing or implement tax collection for posts promoting non-infringing products. Re-inspecting posts advertising products and having to start from accounts with a large number of followers will help many people's sense of compliance with regulations, tax declaration and payment of many people are made better and more complete.

5. Conclusion

Personal income tax management by doing business through e-commerce platforms is a very complicated state management activity. With the rapid progress of information technology in the context of digital transformation, it has helped expand business forms and also caused many difficulties for tax administration activities of state agencies. This study points out the inadequacies in tax administration activities and contribute recommendations for this activity to ensure revenue for the state budget.

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978-604 79-3782-0

ISBN: 978-604-79-3782-0

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