Tax Updates, August 2020
Vietnam Accounting & Taxation Changes

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This August 2020 publication of our Tax and Accounting Updates looks at the European Union Vietnam Free Trade Agreement ("EVFTA") that has recently come into effect, the draft EVFTA tariff implementation process, the new Vietnam Tax Administration Law which is now in force, guidelines for the adjusting prior year taxation finalisations as a result of the increase in allowable interest deductions under the Transfer Pricing regulations, along with our regular review of recent Official Letters released by Authorities.

EVFTA ENTERED INTO EFFECT FROM 1 AUGUST 2020

After many years of negotiations, the European Union Vietnam Free Trade Agreement ("EVFTA") took effect on 1 August 2020, paving the way for increased trade between the EU and Vietnam. The EVFTA aims to liberalise tariff and non-tariff barriers for key imports on both sides over a period of 10 years.

EVFTA will eliminate almost 99% of customs duties between the EU and Vietnam. Accordingly, 65% of duties on EU exports to Vietnam are to be eliminated on implementation, with the balance gradually phased out over a period of 10 years. 71% of duties are to be eliminated on implementation on Vietnamese exports to the EU, with the balance to be eliminated over a period of 7 years. From Vietnam's perspective, the EVFTA will provide direct benefit for key export industries such as smartphones and electronic products, textiles, footwear and agricultural products).

DRAFT DECREE ON EVFTA TARIFF IMPLEMENTATION

On 11 June 2020, the Vietnamese Government released a Draft Decree on Vietnam Preferential Export Tariffs and Special Preferential Import Tariff for the implementation of the Free Trade Agreement between Vietnam and European Union (EVFTA) covering the initial 2020 - 2022 period.

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We assist foreign invested and locally owned companies maintain the highest level of professional standards in Vietnam through proactive compliance, reporting assistance and advice.

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This tariff includes export duties and import duties. Items not covered by the Decree will be subject to the tax rates per the MFN Tariff issued at Decree 125/2017/ND-CP.

For imported goods, the conditions for applying the EVFTA preferential tariffs are specified in Article 5, and indicate the goods:

- Must be listed in the EVFTA Import Tariff
- Directly imported to Vietnam from
  - EU member countries (except Ceuta and Melilla territories);
  - The Principality of Andorra;
  - The Republic of San Marino;
  - The United Kingdom of Great Britain and Northern Ireland; and
  - Vietnam (for goods imported from non-tariff zones into the domestic market).
- Meet the requirements on product origin and associated with product origin certificates as required by the EVFTA.

Full implementation of the tariffs are expected shortly, and should be backdated to the effective date of the EVFTA.

VIETNAM TAX ADMINISTRATION LAW TOOK EFFECT FROM 1 JULY 2020

On 13 June 2019, the National Assembly issued Law No. 38/2019/QH14 covering Tax Administration, and which took effect from 1 July 2020.

Significant changes from the new Tax Administration Law include:

- Increased enforcement and enhanced controls on related-party transactions, with Tax Authorities having additional power to collect taxes, particularly in instances where individuals or companies attempt to evade tax. To ensure compliance, Vietnamese tax authorities will increase cooperation with international jurisdictions through information exchanges under the Law.
- The use of E-invoices is compulsory per the Law, with transitional periods for certain Enterprises.
- The Deadline for Personal Income Tax ("PIT") finalisation is extended to 120 days from the current 90 days from the calendar year-end. This extension only applies to individuals who finalise their annual PIT returns directly with the tax authorities.
- The deadline for lodging Quarterly and Annual tax declarations with the Tax Authorities is extended to:
  - Last day of the month after the quarter ends; and
  - Last day of the third month after the calendar end date or financial year-end date (for annual finalisations/declarations).
- Taxpayers are entitled to the right to be informed about the timeline for processing tax refunds, non-refundable amounts, and the legal basis for such non-refundable tax amounts. Further, taxpayers are not subject to penalties if they declare and pay taxes following the official guidance from Tax Authorities.
- Foreign enterprises, not having a permanent address in Vietnam, carry out e-commerce business are obligated to directly or authorised others to register taxes, declare and pay for taxes arising from their business activities.
- Legal representatives of an entity in Vietnam will need to ensure their companies are tax compliant. Authorities could prohibit the legal representatives from leaving the country if their company has not paid due taxes.
- Deadlines for tax refunds are:
  - For a refund before examination – 6 working days upon the date of the acceptance notification for tax refund application; and
  - For a refund after examination – 40 days upon the date of the acceptance notification for tax refund application.
- Taxpayers who seek to appeal a decision are required to pay the full tax amount as well as any penalties and late payment interest. However, if the taxpayer wins the appeal, they are entitled to additional interest of 0.03% per day on the refunded amount.

Additional implementing Decrees are expected to assist with certain aspects of the Law

GUIDELINES FOR ADJUSTING PRIOR YEAR TAX FINALISATIONS ARISING DUE TO INCREASED INTEREST EXPENSE DEDUCTIONS UNDER TRANSFER PRICING LAWS

On 14 July 2020, the General Department of Taxation issued Official Letter 2835/TCT-TTKT guiding the implementation of Decree 68/2020/ND-CP (which increased allowable deductions for interest expenses from 20% to 30%, as part of the Transfer Pricing Laws) for Corporate Income Tax ("CIT") finalisations for 2019, as well as for the 2017 and 2018 tax years.

Accordingly, for 2019 CIT finalisations:
- Companies that finalised their CIT by 31 March 2020 are permitted to revise and re-lodge their CIT declaration to apply the increased interest expense deductibility under Decree 68.
- Companies that are not yet due to finalise their CIT yet are required to lodge their CIT declaration following Decree 68.

For retrospective CIT finalisations for 2017 and 2018:
- Companies are permitted to apply the 30% interest deductibility cap on the net interest calculation (total loan interest expenses - interest income from deposits and lending).
- For reductions in CIT payable arising fromapplying Decree 68:
  - If the 2017 and 2018 tax years have not been inspected yet, the reduced amount will be offset against the CIT payable in 2020 with any further outstanding credits available for future offsets for up to 5 years.
  - If the 2017 and 2018 tax years have already been inspected by the Tax Authority, companies must apply for a re-determination of the CIT payable, then any overpaid amounts can be against the CIT payable in 2020 with any further outstanding credits available for future offsets for up to 5 years.

OFFICIAL LETTERS RELEASED

Official Letters are releases showing the Tax and other Authorities' interpretation and application of Vietnam's Taxation and associated Laws, providing guidance to taxpayers in Vietnam

Conditions for Foreign Experts to enter Vietnam after 5 August 2020

On 24 July 2020, the National Steering Committee for prevention and control of COVID-19 epidemic issued Official Letter 3949/CV-BCD on strengthening COVID-19 epidemic prevention assurance for experts entering Vietnam.

After 5 August 2020, enterprises inviting (or guaranteeing) foreign experts to work in Vietnam are required to meet following conditions:

- Foreign experts are tested for SARS-CoV-2 using Real time-PCR technique from 3 to 7 days before entering Vietnam. The test for SARS-CoV-2 must be done at an approved laboratory by the Government or in the laboratory system of the World Health Organization.
- Foreign experts to have international health insurance, or the inviting organization commits to pay treatment costs in case of being diagnosed of COVID-19.
- The company inviting the experts is responsible for ensuring the safety of COVID-19 epidemic prevention when inviting experts to work.

Where foreign experts already held tickets for entry into Vietnam before 5 August 2020, they were specifically exempt from the above conditions.

Profits Distributed to the People's Credit Fund Investors is Taxable Income

On 16 July 2020, the Hanoi Department of Taxation ("HDT") issued Official Letter 66288/CT-TTHT on guiding PIT obligation on profits from capital investments.

As stipulated in Clause 6, Article 11 of Circular 92/2015/TT-BTC (amending point c, Clause 3, Article 2 Circular 111/2013/TT-BTC), taxable income includes profits from capital contributions in establishing credit institutions according to the Law on Credit institutions, capital contributions to securities investment funds and other investment funds that are established and operated within the Law. Profits from capital investments of private companies and single-member limited liability companies under the ownership of individuals are not to be included in taxable income.

Accordingly, the People's Credit Fund operates under the Law on Credit Institutions, so the profits distributed to its capital investors is taxable income from capital investment.

Requirements for Seller's Stamps on Converted E-invoices

On 23 July 2020, the HDT issued Official Letter 68698/CT-TTHT guiding the requirement for a selling party to stamp converted E-invoices.

Under Clause 1, Article 12 Circular 32/2011/TT-BTC, e-invoices can be converted into paper invoices as proof of origin for tangible goods during transportation. Such converted invoices must meet the requirements specified in Clauses 2, 3 and 4 of the Article and have the signature of the Legal Representative and stamp of the selling party. Buyers and sellers may convert e-invoices into paper invoices for filling of accounting documents under the Accounting Law which must meet the requirements specified in Clauses 2, 3 and 4 of the Article.

Accordingly, if a company converts an e-invoice as proof of origin for goods during transportation, the converted invoice must have the signature of the Legal Representative and the stamp of the selling party. If a company converts an e-invoice for accounting filing purposes, the converted invoice must meet the requirements under Clause 2, 3 and 4, Article 12 Circular 32/2011/TT-BTC.

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