Vietnam Tax Updates August 2020

Vietnam Accounting & Taxation Changes

This August 2020 publication of our Tax and Accounting Updates looks at The European Union Vietnam Free Trade Agreement (EVFTA) comes into effect; Draft EVFTA Tariff; Vietnam Tax Administration Law take effect; Guidelines for the Re-settlement of Intertest Expenses according to the new limit and our regular review of recent Official Letters released by the Tax Authorities.

EVFTA COMES INTO EFFECT IN 1 AUGUST 2020

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 liberalize both tariff and non-tariff barriers for key imports on both sides over a period of 10 years.

EVFTA eliminates almost 99% of custom duties between the EU and Vietnam. Accordingly, 65% of duties on EU exports to Vietnam will be eliminated while the remaining will be gradually phased out over a period of 10 years. 71% of duties will be eliminated on Vietnam exports to the EU, with the remaining being eliminated over a period of 7 years, which would benefit key export industries of Vietnam (such as smartphones and electronic products, textiles, footwear and agricultural products, coffee, etc.).

DRAFT EVFTA TARIFF

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 the Socialist Republic of Vietnam and European Union for the period 2020 - 2022.

This tariff includes export duties and import duties. Items not found in this tariff will be subject to the tax rates of the MFN Tariff issued at 125/2017/ND-CP.

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

- Must be listed in the EVFTA Import Tariff

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- Directly imported to Vietnam from
  - EU member countries (except Ceuta and Melilla territories);
  - Principality of Andorra;
  - Republic of Sant Marino;
  - United Kingdom of Great Britain and Northern Ireland; and
  - Social Republic of Vietnam (for goods imported from the non-tariff zone into domestic market).
- Meet the requirements on product origin and associated with product origin certificate as required by EVFTA.

VIETNAM TAX ADMINISTRATION LAW TAKES EFFECT ON 1 JULY 2020

On 13 June 2019, the National Assembly issued Law No. 38/2019/QH14 on tax administration which took effect on 1 July 2020.

Significant changes are as follows:

- Increased enforcement and enhanced controls on related-party transactions: tax authorities will have 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.
- The use of E-invoices is compulsory from 1 July 2020. Enterprises and individuals are encouraged to use E-invoices following related regulations before 1 July 2020.

- Deadline for Personal Income Tax ("PIT") finalisation is extended to 120 days from the current 90 days of the calendar year-end. This extension only applies to individuals who finalize their annual PIT returns directly with the tax authorities.
- Deadline for lodging quarterly and annual tax declarations is extended to:
  - Last day of the first month after the quarter ended
  - Last day of the third month after the calendar end date or fiscal year-end date.
- 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 of tax authorities.
- Foreign enterprises, not having a permanent address in Vietnam, carry out e-commerce business are obligated to directly or authorized 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 as below:
  - 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 want 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 can request the tax authorities to pay an interest of 0.03% per day on the refunded amount.

GUIDELINES FOR THE RE-SETTLEMENT OF INTEREST

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EXPENSES ACCORDING TO THE NEW LIMIT

On 14 July 2020, the General Department of Taxation issued Official Letter 2835/TCT-TTKT guiding the implementation of Decree 68/2020/ND-CP for Corporate Income Tax ("CIT") finalisation purpose for 2019 as well as 2017 – 2018 years.

Accordingly, for CIT finalisation of 2019:

- Companies that have finalised their CIT on 31 March 2020 are allowed to revise and re-lodge their CIT declaration to apply the terms under Decree 68.
- Companies that are not due to finalise their CIT yet are required to lodge their CIT declaration following Decree 68.

For retrospective CIT finalisation of 2017 – 2018:

- Companies are allowed to apply the 30% interest deductibility cap on the net interest calculation (total loan interest expenses - interest income from deposits and lending).
- Not apply for carryforward non-deductible interest expenses and subjects that are exempt from the control of interest expenses specified at point c, Article 1 of Decree 68/2020/ND-CP.
- For any reduction in payable CIT amount resulted from applying Decree 68:
  - If the 2017 and 2018 tax years have not been inspected yet, the reduction amount will be offset against the CIT payable in 2020 and any outstanding amount will be offset further within 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 payable CIT amount, then the overpaid amount can be offset against the CIT payable in 2020 and any outstanding amount will be offset further within 5 years.

> "EVFTA eliminates almost 99% of custom duties between the EU and Vietnam"

OFFICIAL LETTERS RELEASED

Official Letters are releases showing the Tax and other Authorities' interpretation and application of Vietnam's Taxation 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 have international health insurance, or the inviting organization commits to pay treatment costs in case of being diagnosed of COVID-19.
- The expert inviting experts is responsible for ensuring the safety of COVID-19 epidemic prevention when inviting experts to work.

In case of foreign experts that already have tickets and going to enter Vietnam before 5 August 2020, they are 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 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 (amended and supplement for point c, Clause

3, Article 2 Circular 111/2013/TT-BTC), taxable income includes profit from capital contribution in establishment of credit institutions according to the Law on Credit institutions, capital contributions to securities investment fund and other investment funds that are established and operated within the law. Profits from capital investment of private companies and single-member limited liability companies under the ownership of individuals shall not 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 stamp on converted E-invoices

On 23 July 2020, the Hanoi Department of Taxation issued Official Letter 68698/CT-TTHT guiding the requirement of the seller's stamp on the converted E-invoices.

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

Accordingly, if the Company converts 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 seller. If the Company converts 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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