


Webinar: Getting ready to invest in Vietnam through Mergers and Acquisitions

No.	Questions	Answers
1	Difficult points and ways to overcome those when approaching an M&A project? What should be noted in conducting M&A?	<p>Hong Bui:</p> <p>No M&A transactions are the same, and neither the difficulties of each transaction.</p> <p>Generally, to help overcome difficulties, it is all about understanding and preparation:</p> <p>a) The parties should have clear understanding about the rules of M&A deal – i.e. how the deal would be conducted;</p> <p>b) The parties should have clear understanding of each party's expectations, which should be reflected mainly in the business plan for the M&A deal and the proposed exit plan.</p> <p>c) The parties should be well-prepared for the deal: once it is decided to pursue the deal, the conduct of the deal should be assisted/ managed by professional advisors. For M&A deals which are special, it requires special professional advisors, e.g. for cross-border deals, multicultural knowledge is needed; for special industry which is highly regulated, advisors with experience in the relevant industries should be preferred.</p>
2	What are the most critical legal issues for SME to take care about for getting your good M&A?	<p>Hong Bui:</p> <p>SME in Vietnam generally rely on borrowing. From sell-side, this could affect valuation of the company, and it may requires complicated structuring to help manage the deal. From buy-side, this may trigger concern about cross-default, lender's consent, or financing for the target company post-Closing.</p> <p>Many SMEs are weak regarding corporate governance and compliance. This increases risks, reducing opportunities for SME to receive investors who would be minority shareholder.</p>
3	We would like to open an accounting-outsourcing back office in Vietnam. Should we set up a Rep Office, a new company or purchase an already-exist company?	<p>Hong Bui:</p> <p>A Rep Office is not suitable as it is not allowed to involve directly in profit making activities. The other two choices are acceptable. If you need quicker access to Vietnam market and to the existing professional of an existing company, M&A is a better choice.</p>
4	Please comment on Inheritance of tax incentives and obligation in a M&A case in Vietnam.	<p>Tho Lac:</p> <p>In an assets deal, the seller retains possession of the legal entity; therefore, all remaining tax incentives and obligation is also retained with the seller. Thus, there is no inheritance of tax incentives and obligations in an assets deal.</p>

		Whereas, in an equity deal, the buyer will be the new investor/ shareholder of the Target; therefore, upon buying over, the buyer will then be responsible for all obligations and liabilities of the Target; as well as, continuously enjoyed the available tax incentives and tax losses of the Target.
5	If company A transfer the share in the Singaporean subsidiary, how VN government could find out and impose tax?", I have a follow up question with the case if VN government find out and want to tax the transaction, who would bear the taxes as at this time I understand the seller has finish the sale and take the money, who is going to bear the capital gain tax in this case? Is there any affect to the VN subsidiary? lue of the transferee. How do they re-assess and determine the transfer price? And on what basis?	<p>Tho Lac:</p> <p>In principle, the seller is responsible for paying Capital Assignment Tax liabilities imposed on the capital transfer; however, there is some special case that the buyer and the seller agree differently. We well understood your concern that in practice the tax authority only review and deem additional tax exposure on the M&A transaction (if any) during the tax audit, which may be incurred several years later. In this case, in the event if the seller is foreign entity and the tax authority may not be able to collect additional tax from the seller , in practice, we have seen many cases that the tax authority go after the Target for tax collection purpose. Thus, it is very important for the buyer to consider this point for negotiation of the Shares Purchase Agreement's terms and pricing to protect itself.</p> <p>With respect to your concern on determination of the transfer price for indirect capital transfer, unfortunately the current Vietnam regulation is silent on this point, even the official letter issued by the local tax authority. We have seen in practice that the local tax authority base on its internal database/ approach to determine tax on indirect capital transfer on case by case basis.</p> <p>Should you come across with the indirect capital transfer, please contact us for further assistance in analyzing the case and providing comment on tax implications as well as approach to determine the Vietnam portion for tax declaration purpose.</p>
6	Do you cover fintech investment? Is it a good time for fintech in Vietnam?	<p>Hong Bui:</p> <p>We do. Actually, we are pioneering by advising for many fintech investments in Vietnam.</p> <p>Depending on the specific fintech sectors, the timing for entering Vietnam market could vary. Generally, with young population and impressive economic growth, and with the influences from the pandemic, many fintech services become preferred. So, now is the best time ever for many fintech sectors in Vietnam. It is just that fintech remains relatively new, and regulations relating to fintech could be in grey area, which in turn requires sophisticated advice.</p> <p>For your reference, our recent assistance to one of our fintech clients has brought us to the finalist of FT Innovative Lawyers 2022.</p> <p>https://www.lntpartners.com/firm-news/en-lnt-partners-has-been-shortlisted-for-the-ft-innovative-lawyers-asia-pacific-2022-awards-vi-lnt-partners-duoc-de-cu-trong</p>

		danh-sach-giai-thuong-luat-su-chau-a-thai-binh-duong-sang-tao-nam-2022).
7	Is there any guideline in Vietnam on voting right % to conclude the M&A or just depending on the Charter of the company's voting regulations?	<p>Hong Bui:</p> <p>The voting ratios are provided in the laws, but those are only “standard” ones. Those standard rules can and should be negotiated for change, to help achieve the purpose of the parties to an M&A transaction, especially in M&A deals where one party needs to apply customized voting rules. Such customizations can be in (amended) charter, shareholders’ agreement, or other contractual documents.</p>
8	In case the Tax Authority has yet noticed the M&A transaction at Offshore Group Level (including a VN entity) at the time the transaction happened. Can they deem tax retrospectively later on, and how long they can do so?	<p>Tho Lac:</p> <p>Please find the statute of limitations under the current Vietnam regulations for your information:</p> <ul style="list-style-type: none"> • The Law on Tax Administration provides that the statute of limitations for tax penalties is as follows: <ul style="list-style-type: none"> ✓ For violation of tax procedures - two (02) years from the date occurring the violation. ✓ For tax evasion or tax fraud not forming a criminal act, acts of late tax payment and declaration of inadequate amount - five (05) years from the date occurring the violation to the date of decision. • Past the statute of limitations, the taxpayer will be no longer subject to administrative penalties but still liable for the unpaid taxes, detailed as below: <p><u>For the registered taxpayer</u></p> <ul style="list-style-type: none"> ➢ From 6th year to 10th year from the date occurring the liability: the taxpayer shall additionally pay: (i) additional tax, and (ii) late payment interest, without any administration penalty. ➢ From 11th year onwards: it is exempted from tax liabilities and penalty <p><u>For the unregistered taxpayer</u></p> <ul style="list-style-type: none"> ➢ No limitation for tax additional collection.
9	Can you share such official letter?	<p>Tho Lac:</p> <p>Please find the attached Official Letter 866/TCT-CS issued by General Department of Taxation dated 2 March 2020 for your information.</p> <div style="text-align: center;">  437097.pdf </div>