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Dissolving a Company in Vietnam—Tax Issues



BY VALERIE TEO AND NGUYEN TAN TAI

As part of business restructuring plans caused by the negative impact of factors such as the downturn in the global economy as a result of the Covid-19 outbreak, foreign investors may decide to cease operations and close down their invested entity in Vietnam. The liquidation process for a Vietnamese company can be time-consuming and costly, and involves significant tax and regulatory exposures. On deciding to cease doing business, it is therefore important for foreign investors to be fully aware of the procedures and responsibilities required by Vietnamese law.

Winding up a Company

Foreign investors may decide to dissolve their invested Vietnamese company for many reasons. Whatever the reasons, once the management board has decided to liquidate the company, the investors or the board first of all need to take the necessary measures to wind it up—ensuring that it is *clean* from the business and regulatory perspectives.

This may include ensuring that all debts have been settled and relevant documents are in order; dissolution documents need to be properly prepared and in place to be filed with the competent licensing authority, normally the Department of Planning and Investment, to commence the liquidation procedure. The tax finalization and tax code closure process, upon which the final wind-up approval depends, presents the last opportu-

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nity for the tax authorities to collect any hidden outstanding tax shortfall, relevant penalties and interest.

As a result, the process can be time-consuming and costly, particularly where planning has not been careful or where companies have been less than compliant throughout their operating history. Dissolving a company should typically take around four to six months, but in practice, the timeline for completing an entire dissolution depends significantly on the complexity of the company structure, as well as the level of legal and tax compliance and transparency during the competent authorities' final audits.

Dissolution Procedure

The voluntary dissolution procedure includes the following steps for the relevant parties and regulatory authorities.

Resolution on Dissolution The company's legal board of management will need to issue a decision of dissolution statement that fully addresses the following details:

- company name;
- registered operating address;
- business registration number;
- reasons for dissolution;
- deadlines and procedures for liquidating the company's contracts and loans (which should be within six months of the company's dissolution date);
- solutions for any obligations arising from labor contracts.

This document will need to be signed and sent to all of the company's business partners (i.e., the business/investment registration agencies, creditors, individuals who have any related rights, benefits and obligations, and all employees).

Debt Clearance

The company will need to ensure it discharges any and all debts and property obligations in the following order:

- unpaid wages, severance allowance/retrenchment allowances and social insurance in accordance with the law and other employee benefits pursuant to the signed collective labor agreement and labor contracts;
- tax liabilities; and
- other debts.

After deducting the payment of all debts and costs of the dissolution, the enterprise's owner shall be entitled to the remaining amount (if any).

Termination of Labor Contracts

A company is allowed to unilaterally terminate current labor contracts with its employees due to the dissolution. Technically, termination of labor contracts can be considered in accordance with the law if the company can prove a force majeure impact (e.g. Covid-19), and has carried out every remedial measure but has still been forced to close its business; otherwise, this may be considered as illegal unilateral termination of a labor contract, which would result in compensation payments.

Following the termination of labor contracts, the company will need to settle all pending obligations to its current employees and relevant authorities in the following order:

- employment income payment;
- severance payment;
- compensation;
- compulsory insurance compliance;
- other reporting requirements.

Liquidation of Assets

In accordance with legal requirements, the shareholders or the management board will be directly in charge of the liquidation of the company's assets. The board shall establish an asset liquidation committee to dispose of the company's assets, at its own discretion.

The committee responsible for the liquidation process is required to issue a report on the liquidation of assets upon the process having been completed. The decision on establishment of the liquidation committee will constitute part of the application dossiers for the company's dissolution.

The tax implications of the asset liquidation should be applied as stipulated under the relevant tax regulations.

Tax Filing Obligations for Liquidation Purposes

A company which is being dissolved is required, no later than 45 days from the date of resolution on dissolution, to submit final tax declaration returns and clear all tax liabilities, including corporate income tax, value-added tax, personal income tax and other tax liabilities (if any) with the local tax authority.

If the company operates in import-export activities and registered an import-export tax code, that code will need to be canceled when it is dissolved. In order to do this, the company needs to send a letter to the General Department of Customs to certify that it does not owe any pending import-export taxes and to request the cancellation of its import-export tax code.

The tax authority will carry out the tax audit at the company's office after 15 working days, counting from the date it received the tax finalization dossier for dissolution purposes. However, in practice, the actual time for the tax audit may be prolonged as it is subject to the internal processes and working schedule of the tax authority.

During the course of a tax audit, the tax authority will scrutinize and re-assess the company's tax compliance status and the tax returns declared. In practice, the tax audit will generally result in tax re-collections and penalties due to under-declaration of tax and interest on late payments in relation to such under-declared tax.

The tax audit is considered to be one of the most complicated and time-consuming phases in the process of dissolution. The complete process (from the tax audit fieldwork of tax officers until the final decision is released) may stretch for months. Therefore, pre-tax audit assessment of current tax compliance status—carried out by tax experts prior to dissolution—is advisable, to ensure that all tax filings and payments are compliant and also to reduce the significant time involved in providing documents and explanations to the tax auditors during tax audit.

With regard to the obligation of maintaining accounting books and tax documents after dissolution, according to accounting laws and regulations the required time to maintain the accounting documents relating to the dissolution may differ subject to the type of document and the type of business, but generally they must be archived for a duration of at least 10 years, at the place decided by the company's legal representatives.

Bank Account Closure

Any operating bank accounts must be closed in line with the requirements of the local commercial banks, after which the investors must request that the bank issue a document to certify the closure of the accounts. If the company has never opened any bank accounts, a letter of commitment from the company confirming that they have no debts with any banks is required.

Deregistration of Business

As the final step, after all debts and dissolution costs are paid, the company will file an application dossier for dissolution to the licensing authority (normally the Department of Planning and Investment). If no opinions or objections from relevant parties are received as a result, the licensing authority will update the legal status of the company in the National Enterprise Registration Database.

Action Plan to Facilitate the Dissolution Process

Firstly, the management board is highly recommended to have an efficient exit plan. This means the

company should select employees who will be accountable for the winding-up process, before and after a physical closure, including managing documents and records, finalizing payments with vendors, staff benefits, etc., as well as cooperating with the competent authorities to implement the dissolution process.

Investors should also perform an extensive review of the company's tax, labor and other regulatory compliance position, or hire an independent professional to do so if the business structure is complicated or considered highly exposed to risks, prior to commencing any winding-up process. The purpose of this is to review the documentation status, compliance and general historical tax liabilities. Upon identification of issues, investors should look at supplementing/correcting the documentation or rectifying matters in a timely manner.

In practice, some companies invite the tax authority to conduct a specific tax audit at the company prior to carrying out a dissolution plan. This will often allow a negotiation process to clear potential tax issues, given that closing down a company will create particular pressures and issues on both the company's management and tax officials during the course of performing the tax audit.

Foreign investors may not be well-versed in the procedures for winding down an entity in Vietnam, and many engage a professional consulting firm to assist

them in the process, from pre-tax audit review to providing human resources and assistance in completing all the labor, tax and relevant regulatory obligations and procedures for dissolution purposes.

Finally, foreign investors should expect and plan for a pragmatic timeline necessary for the winding-up and dissolution process in Vietnam, and also forecast a budget for the penalties, interest and additional taxes that are likely to arise during the dissolution process.

Disclaimer

This article provides general comments and recommendations in accordance with current Vietnamese laws and regulations in effect as of the publication date. For specific circumstance, readers should seek proper advice with respect to the topic discussed herein.

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