



Tax Alert

Grant Thornton Vietnam

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UPDATES ON TAX FINALIZATION YEAR 2019



In this newsletter, Grant Thornton Vietnam would like to update some important guidelines applied for 2019 tax finalization and related policies supporting enterprises during the period of epidemic caused by SARS-CoV-2 virus (COVID-19). COVID-19 outbreak started in late December 2019, and has been spread to many countries around the world with negative effects. On March 11th, 2020, the World Health Organization (WHO) officially upgraded the status of the COVID-19 outbreak from epidemic to pandemic. Grant Thornton Vietnam share the updates on tax compliance procedure and policy on tax extension, tax deferral, tax reduction applicable for this period in Vietnam.

Complicated situation of COVID-19 is now a worldwide phenomenon, Vietnam is not outside the outbreak affected. In this context, the enterprises should pay attention to the following points:

A. Tax finalization deadline

According to Point dd, Clause 3, Article 10, Circular 156/2013/TT-BTC: “The deadline for submission of annual tax finalization dossiers is the 90th (ninety) day from the last day of the calendar year or financial year.”

Although there have been a lot of recommendations on tax extension, tax deferral, tax reduction for year 2019, according to the latest proposal of the Ministry of Finance, the deadline of annual tax filling has not changed. Accordingly, in Vietnam, taxpayers, enterprises are required to submit the annual tax finalization dossiers (i.e. corporate income tax, personal income tax, etc.) within 90 days counting from the last day of the calendar year or fiscal year.

B. Deductible expenses for Corporate Income Tax (“CIT”) calculation

In case the company incurs expenses related to loss/damage caused by COVID-19 epidemic, the value of loss/damage are equal to total loss/damage minus (-) loss/damage be compensated by insurers, other entities per regulated by law. As prescribed under Section 2.1, Clause 2, Article 4, Circular 96/2015/TT-BTC, to determine the CIT deductible expenses, the company is required to file dossiers of loss/damage and present to the tax authorities when required, in particular:

- A statement of value of damaged assets/goods made by the enterprise.

- A statement of value of damaged assets/goods must specify value of damaged assets/goods; causes of the damage; responsibilities for such damage; categories, quantity, value of recoverable assets/goods (if any); inventory records of damaged goods certified by the legal representative of the enterprise.

- Compensation claims upheld by the insurer (if any).
- Responsibilities of organizations/individuals for provision of compensation (if any).

The above dossiers are documented at the company and be presented to the tax authorities, if required.

C. Update tax payment deadline deferral

COVID-19 epidemic is currently very complicated in Vietnam, the production and business activities of many enterprises and taxpayers have been seriously affected. Accordingly, the Vietnam Government has been taking immediate, significant and decisive actions to support the individual/entity be affected. On March 4th, 2020, Prime Minister Nguyen Xuan Phuc signed-off Direction No.11/CT-TTg on urgent actions and solutions to remove business difficulties, ensure social security under ongoing COVID-19 epidemic. Accordingly, the most notable points are the Prime Minister guided the State Bank launching the credit support package amounting to VND250 trillion for businesses and instructed the Ministry of Finance to offer the support package of VND30 trillion solving business difficulties and ensuring social security in March 2020.

In light with the above, on March 11th, 2020, the Ministry of Finance released a draft decree to defer the deadline for tax payments and land rental fee with key points following:

Tax deferral eligibility

i. Enterprises, organizations engaging in the following business activities: agriculture, forestry and fishery; food production and processing; weaving; producing clothes; producing footwear; producing products from rubber; producing electronic products, computers; manufacturing and assembling automobiles (except for manufacturing and assembling cars with 09 seats or less); rail transportation; land transportation; water transportation; air transportation; warehousing and support activities for transportation; accommodation services, catering services; activities of travel agents, tour operators and support ser-

vices, related to advertising and organizing tours;

ii. Individuals, business households engaging in the above business activities;

iii. Small and micro enterprises as regulated.

Tax and land rental fee eligible to deferral

MOF proposes 5 months deferring value-added tax ("VAT") payment applied for VAT payable arising in March, April, May, June 2020 or Quarter I, II of 2020 for groups (i) and (iii).

MOF proposes to extend the payment deadline to December 15th, 2020, applied for VAT and Personal Income Tax ("PIT") liabilities arising in 2020 for group (ii).

Accordingly, the taxpayer still has to submit the tax returns in line with current regulations while apply deferral for tax payment only.

With respect to the annual land rental fee, in case the taxpayer runs the business be affected by the outbreak listed above, using the land leased by the State, the Ministry of Finance proposes to defer the payment deadline for 5 months but no later than October 31th, applied for groups (i) and (ii).

Tax deferral procedure

Issued together with the draft decree is the written Request form for Deferring Payment of tax and land rent fee ("RDP"). The tax payer has to send RDP to the direct-managing tax department no later than May 31st, 2020. If RDP is submitted later than the date regulated, the taxpayer will be not subject to tax deferral. During the deferral period, the interest of late payment will be waived.

The draft decree has been released for public comment. Please visit the official website of the Ministry of Finance at www.mof.gov.vn for proper commentary.



As the draft decree is being consulted and has not yet taken effect, the General Department of Taxation issued Official Letter No. 897/TCT-QLN dated March 3rd, 2020 providing guidelines on tax payment deferral, exemption of late payment interest due to COVID-19 epidemic. The General Department of Taxation instructs local tax departments to implement the procedures of tax payment deferral and exemption of late tax payment in compliance with the current regulations, specifically as follows:

Tax-deferred amount, deferment period, late payment exemption

Clause 2, Article 31, Circular 156/2013/TT-BTC stipulates that the tax-deferred amount shall not exceed the value of damage and be deferred up to 02 years counting from the deadline.

Article 35, Circular 156/2013/TT-BTC and Point c, Clause 11, Article 2, Circular 26/2015/TT-BTC prescribes the late payment exemption in case of epidemic. The late payment amount shall be waived based on the tax amount payable at the time the epidemic incurred and the exemption amount shall not exceed the value of damage.

Application for tax payment deferral, exemption of late payment interest

The enterprise is required to submit the following documents to the direct-managing tax department:

- A written request for tax deferral, tax exemption made by the taxpayer;



- Tax payment deferral, an assessment of property damage made by the taxpayer or the legal representative of the taxpayer;
- Exemption of late payment interest, a damage assessment report issued by a competent authority such as Valuation Council established by the Department of Finance or a valuation organization that provide valuation services under contracts, or Valuation Center of the Department of Finance;
- A written certification that the taxpayer suffers from damage caused by an epidemic and the occurrence time made by the police station of the commune, the People's Committee of the commune, the management board of the industrial zone, export-processing zone, or economic zone where the epidemic occurs.

- Compensation claims upheld by the insurer (if any).

D. Tax inspection and customs inspection schedule in year 2020

With Direction No.11/CT-TTg, the Prime Minister instructs ministries, departments and agencies to urgently review, reduce administrative burden and relevant costs bore by the enterprises. To implement the instruction, the Ministry of Finance has requested tax departments and customs authorities to consider not organizing regular inspections in year 2020 applied for enterprises with no signs of violation to create favorable conditions for them on solving difficulties, maintaining the business activities; such policy will be managed to make sure that no enterprises will take advantage of their positions to

violate rules.

Accordingly, the General Department of Customs has announced the adjustment of inspection schedule, in considering the proposal of the affected enterprises, the General Department of Customs will temporary suspend the inspection as scheduled in Quarter I/2020 and will conduct such inspection in Quarter II, III/2020.

The General Department of Taxation has also issued an official letter instructs the tax authorities focus on inspecting the enterprises with high tax risks and not conduct the inspection if the enterprise has no signs of violation.



TRANSFER PRICING ALERT

A. Transfer Pricing Compliances

Corporate taxpayers in Vietnam are required to submit CIT finalization dossier within 90 days from the end of each financial year. Companies with a 31 December year-end and subject to preparation of transfer pricing (“TP”) disclosure forms need to complete that submission requirement together with CIT finalization return by 30 March 2020 as the deadline. The TP forms includes:

- a. TP Form 01;
- b. Information checklist on Local File – Form 02 (“Form 02”), if applicable;
- c. Information checklist on Master File – Form 03 (“Form 03”), if applicable; and
- d. Country-by-country reporting (CbCR) – Form 04 (“Form 04”), if applicable

In addition to these TP forms, the taxpayers are also required to prepare and maintain their Local File – being the company’s TP Documentation report to test the arm’s length principle of company’s related party transactions, and Master File – being its Group’s TP Documentation. The documentation packages should be submitted

to the tax authorities later on, upon specific request.

Failure to comply with the arm’s length principle and TP documentation requirement implies an exposure to the adjustment of transfer prices or profits for tax purpose that can be accompanied by penalties and late interest charge.

The Covid-19 has disrupted the global supply chain of MNEs in a big way. MNEs are expecting huge negative impact on overall business operation. Due to disruption of global supply chain, the revenue of MNEs is expected to plunge significantly and so will the profitability. The loss making MNE is at a high risk of being picked up for TP audit in Vietnam. Therefore, any low profitability and loss situation should be analyzed and the reason should be recorded in Local file. Appropriate economic adjustment should be carried out taking into account any non-recurring line items in the books of tested party vis-à-vis comparable.

B. Update from OECD on financial transactions

On 11 February 2020, OECD has issued a guidance on Actions 4 and 8-10 of Base Erosion and Prof-

it Shifting (BEPS) regarding the transfer pricing aspects of different types of financial transactions. In the guidance, OECD has proposed the possible methods to test the arm’s length price of the intercompany loans, cash pooling, hedging, financial guarantees and captive insurance, as well as the elements to take into account when evaluating these transactions.

The guidance is follow up from earlier discussion draft on financial transactions issued in July 2018. This report is significant because it is first time that the Guidelines include guidance on the transfer pricing aspects of financial transactions that should contribute to consistency in the application of transfer pricing and help avoid transfer pricing disputes and double taxation. The report explains as to how the analysis for the accurate delineation of the actual transactions and control over risks applies for financial transactions arrangements. Provides guidance through several illustrations to determine whether the conditions of certain financial transactions between associated enterprises are consistent with arm’s length principle.

Contact

Please contact our professional advisors at Grant Thornton Vietnam for assistance with taxation, accounting, transfer pricing, labour, investment and customs as well as other legal issues you may have during your business operation.

Please visit our website to view more information grantthornton.com.vn

Head Office in Hanoi

18thFloor, HoaBinhInternational Office Building
106 Hoang QuocViet Street, CauGiayDistrict, Hanoi, Vietnam
T+ 84 24 3850 1686
F+ 84 24 3850 1688

Hoang Khoi

National Head of Tax Services
D +84 24 3850 1618
E khoi.hoang@vn.gt.com

Nguyen Dinh Du

Tax Partner
D +84 24 3850 1620
E du.nguyen@vn.gt.com

Kaoru Okata

Director –Japanese Desk
D +84 24 3850 1680
E kaoru.okata@vn.gt.com

Vishwa Sharan

Director –Transfer Pricing
D +84 327 345 053
E Vishwa.Sharan@vn.gt.com

Bui Kim Ngan

Tax Director
D +84 24 3850 1716
E ngan.bui@vn.gt.com

Ho Chi Minh City Office

14thFloor, Pearl Plaza, 561A DienBien PhuStreet
BinhThanhDistrict, Ho Chi Minh City, Vietnam
T+ 84 28 3910 9100
F+ 84 28 3910 9101

Nguyen Hung Du

Tax Partner
D +84 28 3910 9231
E hungdu.nguyen@vn.gt.com

Valerie –TeoLiang Tuan

Tax Partner
D +84 28 3910 9235
E valerie.teo@vn.gt.com

Tran Nguyen MongVan

Tax Director
D +84 28 3910 9233
E mongvan.tran@vn.gt.com

Nguyen Thu Phuong

Tax Director
D +84 28 3910 9237
E thuphuong.nguyen@vn.gt.com

Masato Karoji

Director –Japanese Desk
D +84 28 3910 9135
E masato.karoji@vn.gt.com

Lac Boi Tho

Tax Director
D +84 28 3910 9240
E tho.lac@vn.gt.com

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