

PwC Vietnam Newsletter

Quarter 4, 2019

At a glance...

This is a periodic summary of new rulings and other legal documents, including some in draft form, relating to tax, customs and legal developments in Vietnam. Please read on for an overview of some trending issues in Vietnam and how they may impact your business.

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1. New laws and regulations coming into effect

Welcome to our first Newsletter of 2020!

As ever, the new calendar year was welcomed in with a plethora of new laws and regulations coming into effect. We take a brief look at some of these below:

Laws passed in late 2019

The 8th session of the XIVth National Assembly took place in October and November, during which 11 laws were passed, including:

- Labour Code No. 45/2019/QH14;
- Law No. 51/2019/QH14 on Entry, Exit, Transit, and Residence of Foreigners in Vietnam;
- Law No. 54/2019/QH14 on Securities;
- Law No. 55/2019/QH14 on State Audit.

These new/amended laws all come into effect in 2020, except for the Labour Code and the Law on Securities which will come into effect in a year later.

In addition, the NA also passed Resolution No. 94/2019/QH14 on handling tax debts for taxpayers who are unable to pay their taxes.

Amendments to the Investment Law, Enterprise Law, Law on Medical Examination and Treatment and Land Law, which were expected to be passed in this 8th session, were delayed for consideration until the next NA session in 2020.

The New Labour Code

The NA ratified the new Labour Code.

Please refer to the link below for some highlights of the new Labour Code.

<https://www.pwc.com/vn/en/publications/2020/200114-pwc-vietnam-legal-newsbrief-labour-code.pdf>

New regional minimum salaries in January 2020

The government issued Decree 90 in November on new minimum salaries which come into effect from 1 January 2020.

Accordingly, from January 2020, minimum monthly salaries are increased as follows:

- Region I: VND 4,420,000 (increase of 5.7% from VND 4,180,000)
- Region II: VND 3,920,000 (increase of 5.7% from VND 3,710,000)
- Region III: VND 3,430,000 (increase of 5.5% from VND 3,250,000)
- Region IV: VND 3,070,000 (increase of 5.1% from VND 2,920,000)

Please refer to the link below for further details.

<https://www.pwc.com/vn/en/publications/2019/pwc-vietnam-legal-newsbrief-decree-90.pdf>

1. New laws and regulations coming into effect

Rules of origin under the AHKFTA are now effective in Vietnam

The Ministry of Industry and Trade legalized the rules of origin set out in the ASEAN-Hong Kong Free Trade Agreement under Circular No. 21/2019/TT-BTC.

Key origin criteria under the AHKFTA include WO, PE, RVC, CTC (CC, CTH, CTS), and SP, which are very similar to those under other FTAs.

Circular 21 is effective from 23 December 2019.

New rules for enterprises rating in terms of customs compliance

On 15 November 2019, the MOF issued Circular No. 81/2019/TT-BTC regulating its new risk management regime.

Under Circular 81, enterprises which have export-import activities, customs brokers, international post service providers, and warehouse-port-airport operators, are risk rated 9 out of 10.

The customs risk rating will affect the post-clearance audit selection and the channelization (i.e. allocation into green-yellow-red lane) of customs declarations made by such exporters and importers.

Circular 81 came into effect on 1 January.

New rules regarding imported cosmetics

The Ministry of Health issued Circular No. 32/2019/TT-BYT making amendments to management of cosmetics. Under Circular 32, the CFS (i.e. Certificate of Free Sale) will not be required for cosmetics originating from CPTPP member countries when the importer of cosmetics submits the cosmetic product quality notification dossiers to the MOH.

A new template for notifying cosmetic product quality is also introduced.

Circular 32 came into effect on 1 February.

Second Protocol amending the double taxation agreement between South Korea and Vietnam

A second protocol amending the DTA between Vietnam and South Korea was signed late November. We will update on the proposed changes once the protocol is available in public.

2. Draft regulations were issued in the last quarter of 2019

As well as finalizing the above, various draft regulations were issued in the last quarter of 2019.

Draft law amending the 2014 Law on Enterprises

This draft law was submitted to the NA in October 2019 for discussion and is expected to be passed at the next session of the NA in 2020. Key proposed amendments to LOE 2014 include:

- Abolition of the requirements for reporting changes in managers' information [e.g. personal details of the (General) Director] and of the requirements for registering company's seal specimens before usage;
- Encouraging (solely) on-line submission of application forms for enterprise registration.
- Some proposed amendments to provisions relating to limited liability companies, as follows:
 - ✓ Abolition of the requirement that GD must have professional qualifications and experience in business administration;
 - ✓ Controller(s) are no longer required for LLDs with one corporate owner (except for State-run companies).
 - ✓ "Attending members who have majority voting" can also pass a Members' Council's resolution, in addition to "more than half of the attending members" as currently.
 - ✓ For LLC's with one corporate owner, at least one legal representative must be either the Chairman/Members' Council Chairman or the GD.
 - ✓ The owner of an LLC with one individual owner is the Chairman of the company.
- Some proposed amendments to provisions relating to joint stock companies, as follows:
 - ✓ No need for ordinary shareholders to own shares for a period of at least six months to nominate individual(s) to Board of Management ("BOM").
 - ✓ More rights for General Meeting of Shareholders ("GMS"), e.g.-
 - deciding the remuneration for BOM members and Controllers, the budget of the BOM/Board of Controllers;
 - approving internal management regulations, and operating regulations of the BOM/Board of Controllers;
 - approving appointment of the auditor.

2. Draft regulations were issued in the last quarter of 2019

- ✓ Allowing shareholders to authorise one or more representative(s) to attend GMS. The authorisation letter must be prepared in accordance with the Civil Code (rather than in the form/template issued by the company) and must specify the number of authorised shares held.
- ✓ Abolition of requirements for period of share ownership (e.g. six months or one year) and reducing the minimum shareholding requirement (from 10% to 1%) when exercising certain shareholders' rights, such as requesting the court to suspend/cancel a BOM's resolution or initiate lawsuits against BOM or GD.
- With respect to mergers and acquisitions, the draft allows enterprises more flexibility in dividing and separating enterprises and allows private enterprises to be converted directly into JSCs (currently, private enterprises must first be converted into LLCs, and then converted again into JSCs).

Draft Decree on customs administrative penalties

The MoF has posted on its website a draft decree regarding administrative penalties for customs violations for comments.

One key notable point under the draft is that breaches relating to the notification of manufacturing facilities and year-end finalization reports are introduced.

Draft Transfer Pricing regulations on interest

In December 2019, the MoF released a draft decree proposing changes to the cap on the tax deductibility of interest as currently stipulated in transfer pricing Decree 20.

PwC has issued a Newsbrief on this matter. Please refer to this link for your reference

<https://www.pwc.com/vn/en/publications/news-brief/191220-decree-20.html>

Draft Circular on CIT

In November, the MoF released a draft Circular on CIT. The new Circular will replace the existing CIT Circulars and other implementing regulations and is proposed to be effective in 2020. Some notable proposed changes are set out below:

- Deductibility of reassessed taxes

Reassessed taxes (which would presumably relate to non-CIT taxes) and other state budget collections which are related to business activities will be deductible in the year where such taxes/collections are paid. We note that under the current regulations, the treatment of such reassessed taxes is not entirely clear. Thus, this is a positive change for taxpayers.

- Timing of M&A transactions

This is now defined as the time when the sales and purchase agreement takes effect. This will affect the deadline for submission of capital gains tax returns.

2. Draft regulations were issued in the last quarter of 2019

- Proposed changes with respect to CIT incentives
 - ✓ A positive change is proposed for automobile manufactures, particularly the manufacturing of automobiles with less than 24 seats will now be entitled to CIT incentives
 - ✓ In case enterprises engage in new business activities but without an increase in capital or assets, then profits from such additional activities will not be entitled to CIT incentives. This addresses companies' common concerns when conducting additional business activities, which cannot be clearly resolved under the current CIT regulations and formalises some previous guidance issued by the MoF & GDT in recent official letters.
 - ✓ Regarding companies which have incentivised and non-incentivised activities, the allocation methods based on revenue and expenses ratios are removed. This will impose an additional compliance burden in terms of maintaining separate records.
 - ✓ The surviving enterprises after certain restructurings can inherit incentives for the remaining period if the relevant conditions for incentive entitlement are still met. However, such enterprises cannot be entitled to incentives as a "new investment project". This principle will also apply to enterprises acquiring investment projects from other enterprises.
 - ✓ There are some amendments relating to business expansion (again) so taxpayers need to review carefully the tax incentives available before making decision to invest or expand the business.

The MoF has sought public comments on the above.

3. Some key tax and customs rulings issued in Quarter 4, 2019

A branch of a company is not eligible for the Customs AEO program

A branch is a dependent unit and does not independently engage in transactions on its own account. Therefore in GDC's view, the branch is not allowed to apply the Customs' priority enterprise program (or the AEO program) in Vietnam.

(OL 7963/TCHQ-KTSTQ dated 25 December 2019 issued by the GDC)

Tax refund claims cannot be rejected solely because bank accounts have not been notified to the tax department

The GDT refers to previous rulings and states that the fact that a buyer or seller has not yet notified the bank account information to the tax authority is not a basis to reject a tax refund claim.

Provided the company promptly notifies the bank account information (even after a tax inspection decision is announced), the claim would still be considered.

(OL 3216/TCT-CS dated 13 August 2019 issued by the GDT)

Use of e-invoices is only mandatory when requested by the tax authority

During the transition period up to October, if no notification is issued requesting the use of e-invoice, companies may continue using their existing invoices.

(OL 4707/TCT-CS dated 18 November 2019 issued by the GDT)

Compensation for land is only exempt from PIT when there is an approval decision

According to Circular 92/2015 /TT-BTC, land compensation is exempt from PIT, but it must be approved by a state agency. In case a company has

negotiated land compensation under a contract which is not approved by the authorities, then the income of the recipient is not exempt from PIT.

(OL 4741/TCT-DNNCN dated 19 November 2019 issued by the GDT)

Tax finalization is not required when converting from normal enterprise to export processing enterprise

In case an enterprise converts into an EPE, if the form of enterprise, ownership and tax code remain the same, the enterprise is not required to conduct tax finalization up to the time of conversion.

(OL 4885/TCT-KK dated 27 November 2019 issued by the GDT)

Determination of immovable property for tax treaty application purposes

The GDT provided guidance to the Hanoi TD regarding the application of the tax treaty between Vietnam and Singapore for claiming CGT exemption in relation to a direct transfer of a Vietnamese company.

The GDT referred to the second amending protocol of the DTA and stated that Vietnam has taxing rights if more than 50% of the value of the Vietnam company is derived directly or indirectly from immovable property in Vietnam.

In this letter, GDT opines that in case the Vietnam company has machinery and equipment attached to the factory and operates on a regular and stable basis for the long term, then the machinery and equipment together with the factory form a complete plant for production purposes. Thus, they are considered as "immovable properties" when determining the immovable property ratio for tax treaty application purposes.

3. Some key tax and customs rulings issued in Quarter 4, 2019

This OL shows again the tax authorities taking a tough view on DTA benefit claims.

(OL 3402/TCT-HTQT dated 27 August 2019 issued by the GDT)

Guidance on the issuance of software production certificates

The Ministry of Information and Communications issued OL 3977 on 7 November providing that in relation to a request for confirmation of software production for tax incentives application purposes, neither Circular 16/2014 issued by the MIC nor Decree 218/2013 stipulate that the authorities must issue such software production certificate. Hence the MIC rejected the enterprise's request for a certification of software production.

The MIC instead asserts that the tax authorities need to refer to Circular 16 to assess the enterprise's entitlement to tax incentives and the responsibilities regarding explanation of software production would rest with the enterprise.

There is also a draft proposal amending Circular 16 which requires taxpayers to obtain a confirmation from the MIC and the tax authorities.

(OL 3977/BTTTT-CNTT dated 7 November 2019 issued by the MIC)

4. PwC NewsBriefs issued in Quarter 4, 2019

Please refer to the following links to download our NewsBriefs issued in the fourth quarter.

- Draft decree on customs management of cross-border e-commerce activities - 11 October, 2019
<https://www.pwc.com/vn/en/publications/news-brief/191011-customs-management.html>
- New Circular on e-invoicing - 21 October, 2019
<https://www.pwc.com/vn/en/publications/news-brief/191021-e-invoices.html>
- Proposed amendment on the cap ratio ruling of interest expenses under Decree 20 - 4 December, 2019
<https://www.pwc.com/vn/en/publications/news-brief/191204-decree20.html>
- Draft decree on transfer pricing – changes to the cap on interest deductibility - 20 December, 2019
<https://www.pwc.com/vn/en/publications/news-brief/191220-decree-20.html>
- The New Labour Code
<https://www.pwc.com/vn/en/publications/2020/200114-pwc-vietnam-legal-newsbrief-labour-code.pdf>
- New regional minimum salaries in January 2020
<https://www.pwc.com/vn/en/publications/2019/pwc-vietnam-legal-newsbrief-decree-90.pdf>

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