



Capital Assignment Tax ("CAT") - Offshore assignment of capital & interest deriving from Vietnam is subject to Vietnamese CAT

Tax Alert - Tax and Legal

September 2016



Assume Company A incorporated in the United Kingdom invests in Company B in Hong Kong, and then the Hong Kong Company establishes Company C in Vietnam. If Company A assigns its capital in Company B to Company D in the United Kingdom, will Company A be subject to CAT in Vietnam?

Nowadays, it is a common practice for a foreign investor to enter the Vietnamese market via a holding company or another affiliated company of the group located overseas. We recently notice a number of capital assignment transactions which are carried out overseas, and therefore would draw your attention on the Vietnamese tax obligations arisen from those transactions. Assume Company A incorporated in the United Kingdom invests in Company B in Hong Kong, and then the Hong Kong Company establishes Company C in Vietnam. If Company A assigns its capital in Company B to Company D in the United Kingdom, will Company A be subject to CAT in Vietnam?

In accordance with the provision of Decree 12/2015/ND-CP ("Decree 12") taking effect from 2015, the taxable income deriving from Vietnam of foreign companies has been broadened to include *income from capital assignment, regardless of where the transactions take place.*

On 26 February 2016, the Ministry of Finance issued Circular 36/2016/TT-BTC ("Circular 36") providing guidance on the tax policies for oil and gas exploration and exploitation activities. Accordingly, where a company incorporated overseas assigns its capital or shares, or other similar interest in another foreign-based company who directly or indirectly holds the assets or the rights to participate in oil and gas projects in Vietnam, such company is considered as deriving income from the transfer of the right to participate in oil and gas agreements in Vietnam. Therefore, the company is subject to Vietnamese CAT.

With the exception of Circular 36, the Ministry of Finance has not provided any specific guidance on the tax collection regime for offshore assignment of capital. However, according to several private rulings and recent typical offshore assignment transactions, the General Department of Taxation has affirmed its treatment and concluded to collect CAT for such transfers. Accordingly, for the offshore capital assignment transaction between Company A and Company D as illustrated above, the assigner (i.e. Company A) is considered as deriving taxable income in Vietnam. Subsequently, the offshore capital assignment is subject to the Vietnamese CAT declaration and payment.

In practice, there are a number of indirect capital transactions that took place both prior and after the issuance of Decree 12. However, under the recent private rulings, the General Department of Taxation has ruled based on the general principles of Corporate Income Tax legislations, not based on the provision of Decree 12.

The above is seen as a new development in tax collection of Vietnamese tax authorities toward offshore capital transfer. Foreign investors therefore should carefully take note of this issue to ensure effective tax planning and proper compliance with the current regulations in order to avoid any unnecessary disputes.

As being one of the most professional and experienced tax advisors, KPMG is open to discuss further about the Company's concern.



Contact us

KPMG Tax and Advisory Limited

Warrick Cleine
Chairman & CEO
Vietnam and Cambodia
Tax Managing Partner

Hanoi

Do Thi Thu Ha, Senior Partner
Hoang Thuy Duong, Partner
Le Thi Kieu Nga, Partner
Nguyen Thu Huong, Partner
Nguyen Ngoc Thai, Director
Nguyen Hai Ha, Director
Pham Thi Quynh Ngoc, Director
Ho Dang Thanh Huyen, Director
Taninaka Yasuhisa, Japanese Desk

46th Floor, Keangnam Landmark 72
E6 Pham Hung Road, Me Tri Ward
South Tu Liem District, Hanoi

T: +84 4 3946 1600
F: +84 4 3946 1601
E: kpmghanoi@kpmg.com.vn

Ho Chi Minh City

Nguyen Cong Ai, Partner
Richard Stapley-Oh, Partner
Ninh Van Hien, Partner
Ta Hong Thai, Partner
Ho Thi Bich Hanh, Partner
Nguyen Thanh Hoa, Director
Huynh Ngoc Nhan, Director
Nguyen Thanh Tam, Director
Joost van Vliet, Director
Tran Duy Binh, Director
Bui Thi Thanh Ngoc, Director
Michal Jacob, Director
Watari Takashi, Japanese Desk

10th Floor, Sun Wah Tower
115 Nguyen Hue Street, Ben Nghe Ward
District 1, Ho Chi Minh City, Vietnam

T: +84 8 3821 9266
F: +84 8 3821 9267
E: kpmghcmc@kpmg.com.vn

kpmg.com.vn

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2016 KPMG Tax and Advisory Limited, a Vietnamese limited liability company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.