Tax Alert

July 2019

Taxation of e-commerce in Vietnam

On 13 June 2019, the National Assembly of Vietnam passed a new tax administration law ("LTA") which will impact many non-resident enterprises selling goods and services into Vietnam via digital and e-commerce business models.

These new rules take effect on **1 July 2020**.

What's changed?

Recognizing that the supply of goods and services directly to individuals located in Vietnam by non-resident enterprises (so called B2C transactions) has historically fallen outside the Vietnamese tax system, new provisions have been introduced to regulate and tax such arrangements and appear to be an attempt to close some gaps in the legislative framework. The method of taxing these arrangements is via the introduction of new rules applicable to cross boarder payment transactions. Specifically payments by individuals (and other entities in Vietnam) to non-resident entities and enterprises who are not registered for tax or who do not declare and pay tax in Vietnam.

Who's the target?

E-commerce transactions are the target of these new rules. Leaving aside the meaning of foreign enterprises, E-commerce is defined in Article 3.1, Decree 52/2013/ND-CP to mean: *"…conducting part or the whole of the process of commercial activity by electronic means connected to the Internet, mobile telecommunications network or other open networks". But Decree 52 only regulates domestic e-commerce transactions, so this definition should be treated as initial guidance only.*

While this new tax administration law may have much broader application than originally intended, these changes appear to be targeted at the digital economy due to a perception that foreign enterprises operating via e-commerce platforms are not paying their fair share of tax in Vietnam.

However the tax collection burden has been imposed on the financial sector, who are now required to report and collect taxes from certain transactions. Critically it is the financial sector who will be required to identify which transactions are subject to these new rules and act accordingly.

Implications

The LTA imposes new statutory obligations as follows:

1. **State agencies** (e.g. the State Bank) will now become responsible for coordinating with tax authorities to facilitate the collection of taxes on e-commerce activities;
2. **Commercial banks** will now become responsible for the collection of tax on behalf of foreign enterprises who conduct e-commerce activities in Vietnam; and
3. Non-resident enterprises who supply goods and services and who do not have a permanent establishment in Vietnam, are obliged to ***register, declare and pay tax in Vietnam*** or authorize other parties to do so on their behalf.

However it is unclear how this 'coordination' requirement between the State agencies and the tax authorities will work in practice. Additional legislative guidance, Decrees or Circulars will be required to outline how this will to occur in practice.

Impact on the financial services sector

The LTA imposes some potentially onerous burdens on local financial institutions and may adversely impact commercial banks in particular.

*"**Commercial banks** are now responsible for the collection of tax from e-commerce activities in Vietnam."*

This is an extraordinary requirement that will have a significant impact on the cost structure of commercial banks and it remains unclear what is actually required. Guiding Decrees and Circulars will be required but needless to say, commercial banks will need to be able to distinguish between e-commence payments and non-ecommerce payments. How this will be achieved in practice is likely to cause significant challenges.

It is also unclear what, if any, consequences will arise for non-compliance. Penalties could include fines or the payment of unremitted taxes.

The impact on e-commerce

These provisions also impose a new reporting and payment obligation on foreign enterprises who have no taxation presence in Vietnam. We have assumed this means a tax registration for the group as a whole, but it is not clear if this is an entity by entity requirement. Specifically the law now requires:

*"Inbound e-commerce activities (i.e. provided by non-resident suppliers) who do not have a permanent establishment in Vietnam, are obliged to register, **declare and pay tax in Vietnam or authorize other parties to do so**, under the guidance of the Ministry of Finance."*

How this is to be achieved in practice is not specified but these new rules are only intended to operate where no "permanent establishment" exists in Vietnam. Remarkably this registration requirement seems to overlook the potential application of double tax treaties.

At a minimum, this registration requirement may remain applicable to VAT.

Leaving aside this new registration requirement, it seems clear that taxes will be withheld via the payment process and the linking of payments to any local registration (which should not be subject to a withholding) is likely to be burdensome and problematic. Accordingly it is conceivable that a withholding tax of some form will be levied on all target payments, thus resulting in a tax refund process where taxes are not actually due and payable in Vietnam. How this will be applied and operate in practice is unknown at this time.

Next steps

These new rules will apply within 12 months and taxpayers or non-resident enterprises (with Vietnamese B2C transactions) are advised to review current commercial arrangements and anticipate likely changes. KPMG can provide further insights on a range of potential other issues and considerations. Please contact your local KPMG Vietnam tax team or Dean Rolfe (drolfe@kpmg.com.vn) to discuss this matter further.

Contact us

KPMG Tax and Advisory Limited

Warrick Cleine
Chairman & CEO
Vietnam and Cambodia
Managing Partner of Deals, Tax and Legal

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
Nguyen Huong Giang, Director
Nguyen Manh Cuong, Director
Le Minh Thu, Director
Tran Thi Thuy Ha, Director
Tran Van Trung, Director
Pham Quynh Oanh, Director
Tran Thi Thanh Minh, Director
Ryosuke Okado, Japanese Desk

46th Floor, Keangnam Hanoi Landmark Tower,
72 Building, Plot E6, Pham Hung Street,
Cau Giay New Urban Area, Me Tri Ward,
South Tu Liem District, Hanoi, Vietnam

T: +84 (24) 3946 1600
F: +84 (24) 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
Huynh Ngoc Nhan, Partner
Dean Rolfe, Partner
Joseph Vu, Partner
Nguyen Thanh Hoa, Director
Nguyen Thanh Tam, Director
Tran Duy Binh, Director
Bui Thi Thanh Ngoc, Director
Pham Thi Thuy Hong, Director
Godfrey Andrea, Director
Nguyen Quang Phuc, Director
Yasuhisa Taninaka, Japanese Desk

10th Floor, Sunwah Tower,
No. 115, Nguyen Hue Street,
Ben Nghe Ward, District 1,
Ho Chi Minh City, Vietnam

T: +84 (28) 3821 9266
F: +84 (28) 3821 9267
E: kpmghcmc@kpmg.com.vn

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kpmg.com.vn