

7 February 2020

To: Mr. Dinh Tien Dzung

Minister of Finance, Ministry of Finance
28 Tran Hung Dao Str., Hoan Kiem Dist., Hanoi

Cc: Mr. Cao Anh Tuan

Director General of General Taxation Department
Ministry of Finance,
123 Lo Duc Str., Hai Ba Trung Dist., Hanoi

Subject: Comments on Draft Decree on guiding the implementation of Law on Tax Administration (“LTA”)

Dear Mr. Dinh Tien Dzung

The Asia Internet Coalition (“AIC”) and its members express our sincere gratitude to the Ministry of Finance (“MoF”) and the Government of Vietnam for the opportunity to submit comments on the **Draft Decree on guiding the implementation of Law on Tax Administration (“Draft Decree”)**.

As an introduction, the AIC is an industry association comprised of leading Internet and technology companies in the Asia Pacific region with an objective to promote the understanding and resolution of Internet and ICT policy issues. Our current members are Airbnb, Amazon, Apple, Booking.com, Expedia Group, Facebook, Google, Grab, LinkedIn, LINE, Rakuten, Twitter and Yahoo (Oath).

Although we appreciate the Government of Vietnam’s efforts to establish an effective tax regime by setting fundamental and far reaching principles of tax risk management, we believe that there are concerns regarding some of the provisions in the draft decree. To further its mission of fostering innovation, promoting economic growth, and empowering people through the free and open internet, AIC would like to present our comments on the draft decree. As such, please find appended to this letter detailed comments and recommendations, which we would like the Government of Vietnam to consider.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact me directly at Secretariat@aicasia.org or +65 8739 1490 or +84 35 839 0988. Thank you for your time and consideration.

Sincerely,



Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

Detailed Comments and Recommendations

General Comments

The Law on Tax Administration (or Management) ("*LTA*" or "*LTM*") is not analogous with international best practice, instead the LTA has created a complex interaction of Corporate Income Tax (CIT), Value Added Tax (VAT), Permanent Establishment (PE) and With Holding Tax (WHT) obligations, whilst being silent on the overlap with tax treaties. This is likely to result in undue and adverse burden through the value chain:

- **Supplier impact:** High risk of double taxation, both from a technical perspective and practical application of the LTA
- **Intermediary impact:** Increased administrative burden now being the point of collection and determining whether certain tax rules apply
- **Consumer impact:** Increased economic burden with VAT now being imposed on offshore purchases

With the above said, if the Vietnam LTA is administered as intended under the 2019 amendment, then we have recommendations on how best to clarify its operation to minimize double taxation, confusion, and inefficiencies. It is unclear under the LTA what tax obligations Vietnam is seeking to impose, whether it is CIT, VAT or both. We respectfully advise that Vietnam should follow already established international best practices, including:

- implementing only a simplified non-resident VAT regime that provides for group registration
- eliminating the need to consider how to administer the claiming of treaty benefits if the tax is intended to be a CIT
- a simplified collections approach with clear guidance on obligations of the participants in the transaction
- clear guidelines for offshore e-commerce entities with a PE in Vietnam

Below we provide a set of detailed observations highlighting the impact across supplier, intermediary and consumer.

A. Scope of “e-commerce activities”

Issue: Unclear definition of the scope of “e-commerce activities”

Comments: In the first draft of the Decree, the definition of e-commerce activities was ambiguous. We expect such a definition to appear in the implementing MOF Circular. If the same definition is used, then it is unclear as to what transactions are in scope.

From the first draft of Decree – “E-commerce, is defined in Art. 3.1, Decree 52/2014/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 internal guidance only.”

Recommendation: The law does not specify what constitutes “e-commerce activities”, leaving the scope of the law unclear. We therefore recommend that the scope be clarified.

B. Supplier, Intermediary and Consumer

Issue: Unclear tax obligations (CIT, VAT, or both)

Comments: If the LTA is intended to act as a mechanism to assist enforcement of current rules, then it may be that the tax at issue would be the “foreign contractor withholding tax” FCWT.

Recommendation: The most efficient system would be one that requires collection of VAT only, as this is intended to be a tax on the final consumer only, and eliminates the need to consider how to administer the claiming of treaty benefits if the tax is intended to be a CIT. We recommend that Vietnam defers implementing any decrees or circulars on the collection of CIT, waiting to assess how best to align its current tax system with the upcoming international tax rules agreed by the OECD and the 137 members of the Inclusive Framework so as to minimize adverse impacts to the Vietnam economy.

C. Supplier and Intermediary

1. Issue: The Challenge of applying bilateral income tax treaty relief which may otherwise result in double taxation

Comments: If a component of the tax is CIT, then the law should clarify how domestic parties (payors, commercial banks, credit institutions and payment intermediary service providers) and offshore e-commerce supplier can administer the application of withholding tax rates defined in bilateral income tax treaties (Tax Treaties).

Tax Treaties override domestic law with regards to CIT. For remittances of fees for services, unless the service provider has a PE in Vietnam, then these remittances are typically exempt from CIT WHT under the applicable Tax Treaties.

Recommendations:

- MoF should confirm either by way of Decree or Circular the interaction with Tax Treaties and also the practical application of tax treaty benefits through clear guidance.
- For example, will withholding agents, e.g., commercial banks, credit institutions or payment intermediary service providers (collectively referred to as “financial intermediaries”) and Vietnam customers be tasked with verifying tax treaty benefits claims?
- For example, would they be responsible for
 - Verification of certificate of residence
 - Verification of local form for treaty benefits claims
 - Verification of consularized contracts that are subject to tax treaty benefits
- A suggestion would be to have an advance ruling process whereby certain clearly defined types of transactions (e.g., Play sales) and the list of treaty countries would be determined in advance to be transactions and treaty countries that qualify for tax treaty benefits for CIT withholding requirements. In this regard the Vietnam tax office should issue clear guidance and instructions on the types of transactions and list of treaty countries that will qualify for tax treaty benefits.

- A suggestion would be to have an advance ruling process whereby a type of transaction (e.g., Play sales) would be determined in advance to be transactions that qualify for Treaty benefits for CIT withholding requirements.

2. Issue: Unclear obligations on offshore e-commerce entities with PE in Vietnam

Comments: The LTA is silent as to whether offshore e-commerce entities with PE in Vietnam and has Vietnam sourced profits is required to register for tax, file an income tax return in Vietnam and pay tax. Note that where the offshore e-commerce supplier with or without PE has filed and pay tax in Vietnam and financial intermediaries or the Vietnam customers also withhold CIT on payments made to the offshore e-commerce supplier, this results in multiple taxation for the offshore e-commerce supplier.

Recommendation: The LTA should clarify what obligations exist, if any, where a foreign service provider has a PE in Vietnam. Vietnam should also provide clear rules to ensure that foreign e-commerce suppliers do not pay tax more than once on the same transaction. We discussed this in greater details under Section E below.

D. Supplier and Consumer

Issue: Administrative procedures are overly complex

Comments: If a component of what non-resident entities are required to collect is VAT, then it is unclear whether the non-resident entity needs to issue statutory VAT invoices. Under the existing VAT law, non-residents are not able to register to become VAT taxpayers, nor are they able to issue VAT invoices.

Recommendations:

- International best practices would entail a simplified non-resident VAT regime, where statutory invoicing is not required.
- If the intention is to collect VAT on B2C (Business to Consumer) transactions, then international best practices would entail a simplified non-resident VAT regime where foreign service providers collect VAT from B2C customers (not B2B customers as they would get an input credit anyway), and would not be subject to statutory invoicing requirements. South Korea and Japan follow this model.

E. Intermediary

Issue: Unclear responsibilities for collection mechanism

Comments: The LTA envisions that various parties might be involved in payment of tax, i.e., financial intermediaries, the non-resident suppliers of goods and services and the Vietnam customers.

The LTA does not specify an order hierarchy, nor do other coordinating rules provide certainty on which party is responsible. Lack of these rules will result in double or triple collection of tax. For example, business customers are subject to the FCWT rules and may be required to withhold. If financial intermediaries are also required to withhold, this is a double

taxation. If the foreign suppliers are also required to register for tax, file a Vietnam income tax return and pay tax, this is a triple taxation.

The LTA also does not specify the rates of the applicable taxes.

Recommendations:

- Clear guidance on the rate of the taxes applicable.
- Rules to establish and allocate responsibilities amongst parties, and provide administrative guidance on how to prevent tax being collected more than once.
- There needs to be a robust process in place for financial intermediaries to obtain accurate information that taxes have already been filed and paid or otherwise deducted / withheld on the payments to the overseas suppliers such that the financial intermediaries are not required to deduct and pay taxes on the same payment transactions again.
- Financial intermediaries are not tax enforcement/ tax collection agencies; clarity is needed on how Vietnam intends to guide and direct these institutions in performing the deduction and payment of tax liabilities for overseas suppliers. Further Vietnam should provide transparency on the measures in place to ensure that the same taxes were not already filed and paid or deducted by both the financial intermediaries and by Vietnamese buyers of goods and services.
- In the instance where the foreign service provider directly registers for tax, file tax return and remits tax, where an affiliate group has multiple entities that provide goods and services to customers in Vietnam, simplicity is achieved if group registration is allowed. The law should clarify that in this instance, a multinational enterprise (MNE) may designate a single affiliate as responsible for any registration, declaration, and collection of tax. This is consistent with other non-resident tax collection regimes.

F. Consumer

Issue: Economic cost of 5% to end consumer for B2C not assigned

Comments: Today, the Government is practically not able to collect foreign contractor tax on B2C supplies of services rendered by non-resident service providers as the compliance rate amongst consumers is low. We understand that the LTA aims to plug this gap..[TC1] The LTA provides that the financial intermediaries may withhold 5% VAT from outbound payment to non-resident service providers and this consequently creates a business cost to non-resident service providers serving Vietnamese customers. We further understand that it is not the intention of the Government to make the service providers bear the VAT cost and also, this is not in line with international best practices

Recommendations:

- VAT is intended to be borne by the end consumer. The law should clarify that the service provider is permitted to contractually assign the obligation to bear this VAT cost on the consumer.
- This follows international best practices, and is also fundamental on how the VAT system assigns the economic liability for the tax.