Draft of amended law on tax administration

The Ministry of Finance released the draft of the Amended Law on Tax Administration for public comments on 30 July 2018 (the “Draft Law”). Below are some highlighted issues from the Draft Law:

Tax on E-Commerce

The Draft law introduces a taxation principle which mainly targets E-Commerce businesses, supplied by offshore entities and individuals who derive income from Vietnam.

Particularly, E-commerce businesses supplied by offshore entities and individuals will be subject to a tax withholding regime. Commercial banks conducting the remittance are obliged to conduct the tax withholding and pay the tax amount on behalf of the offshore entities and individuals in compliance with the guidelines of the Ministry of Finance (MOF) and State Bank of Vietnam (SBV) (Article 27.3).

The Draft Law also sets forth responsibilities for governmental agencies to collaborate with the taxation of E-Commerce businesses (Article 19), such as:

- The Ministry of Industry and Trade (MOIT) is in charge of collaborating with the MOF in administering tax issues of E-Commerce businesses; liaising and providing information of entities/individuals operating E-Commerce businesses for tax administration purposes.

- The SBV is in charge of developing a national E-Commerce payment system, and other applications embedded with e-payments to support E-Commerce businesses; establishing a surveillance mechanism of cross-border E-Commerce service supplies.

Reinstate E-tax payment and assign Taxation Role to Commercial Banks

The Draft Law maintains the current requirement that taxpayers conduct e-tax payments if the infrastructure is allowed. Also, the Draft Law sets forth an exclusive article regulating the rights and obligations of commercial banks in collaboration with tax authorities in taxation. Particularly, commercial banks are obliged to collaborate with tax authorities in e-tax payment and refund mechanisms; periodically provide taxpayer’s bank account information to tax authorities; conduct withholding tax; and collaborate in freezing bank accounts for tax enforcement.

Adopt BEPS Action Plans

As Vietnam is a member of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), the Draft Law has incorporated the BEPS standards for tax administration. Particularly, the Draft Law has incorporated the following provisions:
The "substance over form" principle is applied in determining taxpayers’ obligations (Article 5.4).

Where applicable, Country by Country Report is part of the tax declaration dossier (Article 43.7).

The Draft Law also grants tax authorities the right to impose "deemed" tax amounts when taxpayers conduct inappropriate transactions with economic substance or fail to declare related party transactions and required information (Article 50.1.g).

**Enforcement of E-invoice**

The Draft Law aims to legislate e-invoice regulations into a law document and escalates the application of e-invoices in all transactions regardless of types of sellers and transaction values.

Accordingly, taxpayers must use e-invoices for their transactions regardless of transaction values (Article 90.1, Article 91.1). E-invoices include e-invoices with reference codes issued by tax authorities and e-invoices without reference codes issued by tax authorities.

E-invoices used in most of transactions are those with reference codes issued by tax authorities. Only enterprises operating in certain business lines (namely power, gasoline, telecommunication, transportation, water supply, finance, banking, insurance, e-commerce, etc.) with proper IT infrastructure are allowed to use e-invoices without reference codes issued by tax authorities. Households and individual businesses are also subject to e-invoices.