



TAX COMMITTEE NETWORKING NIGHT

Ho Chi Minh City, June 13th, 2018

Tax Committee Networking Night

June 13th, 2018



Agenda

- ❖ 5:00pm - Registration
- ❖ 5:30pm - Welcome remarks by AmCham
- ❖ 5:35pm - Introduction about the Tax Committee
- ❖ 5:40pm - Presentation on tax environment, trends and some key issues
- ❖ 6:00pm - Panel discussion and Q&A
- ❖ 6:45pm - Networking
- ❖ 8:00pm - Event ends

Tax Committee Networking Night

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Mark Gillin

Board of Governor – AmCham Vietnam

Founder, Chairman and Managing Director

AIM – American Indochina Management

Amcham Tax Committee Introduction

June 13th, 2018



The AmCham Tax Committee represents the views and voice of AmCham member companies on tax-related issues. It strives to contribute regularly to the tax-related topics with its members' expertise, mainly by commenting on new legislation, analyzing tax issues and providing recommendations through position papers. It's a new Committee and consists of tax practitioners from businesses, large professional services firms, tax lawyers and tax specialists from industry

Core team members:

- Chair: Mr. Doan Dieu Minh – Tax Manager of Intel Products Vietnam Co., Ltd
- Secretary: Mr. Kent Pham – Associate Director of KPMG Vietnam
- Member: Mr. Nguyen Thanh Vinh – Partner of Baker & McKenzie
- Member: Mr. Nguyen Thanh Trung – Partner of PwC Vietnam
- Member: Mr. Dong Hoang Nam – Legal Counsel of Unilever Vietnam
- Member: Ms. Tran Ngoc Han – Attorney from Russin & Vecchi



TAX ENVIRONMENT AND TREND

Presenter: Mr. Nguyen Thanh Vinh



Tax collection target and tax audit plan

- TAX COLLECTION TARGET

- The overall tax collection target in 2018 increases **8.8%** in comparison to 2017.
- Tax collection (including fees) in 2018 accounts for 88.6% of the total state budget collection in 2018.

- TAX AUDIT PLAN

- GDT assigns local tax authorities to audit **18.5%** at the minimum of taxpayers of each provinces, cities. Tax audits focus on taxpayers in big cities (Ho Chi Minh City, Hanoi).
- Targeted audit in 2018:

Businesses with large revenue (oil & gas, aviation, credit institutions, pharma, hotel and tourism, casino, etc.)	Capital transfer, trademark transfer, project transfer activities	Related party transactions, companies having loss position or low comparable profit margin
E-commerce business, ride-hailing business	Entities applying for VAT refund or having high risk on invoicing	Large scale businesses in specific industries (real estate, construction, auto manufacturing, FMCG, etc.)



Paying Taxes ranking by World Bank

PAYING TAX INDICATOR IN WORLD BANK'S REPORT	2017	2018
Paying taxes (rank)	167	86
Distance to Frontier (DTF) score for paying taxes (0–100)	49.39	72.77
Payments (number per year)	31	14
Time to comply (hours per year)	540 (**)	498 (**)
Total tax and contribution rate (% of profit)	39.4	38.1
Post-filing index (distance to frontier) (0–100) (*)	38.94	95.71

(*) **Post-filing index** is based on time to comply with VAT refund and time to comply with corporate income tax.

(**) Longest time among Asia Pacific countries



BASE EROSION AND PROFIT SHIFTING (BEPS)

- Vietnam joined the Inclusive Framework on BEPS in June 2017.
- Being part of the Framework, Vietnam commits to implementing the 4 minimum standards under the BEPS project.



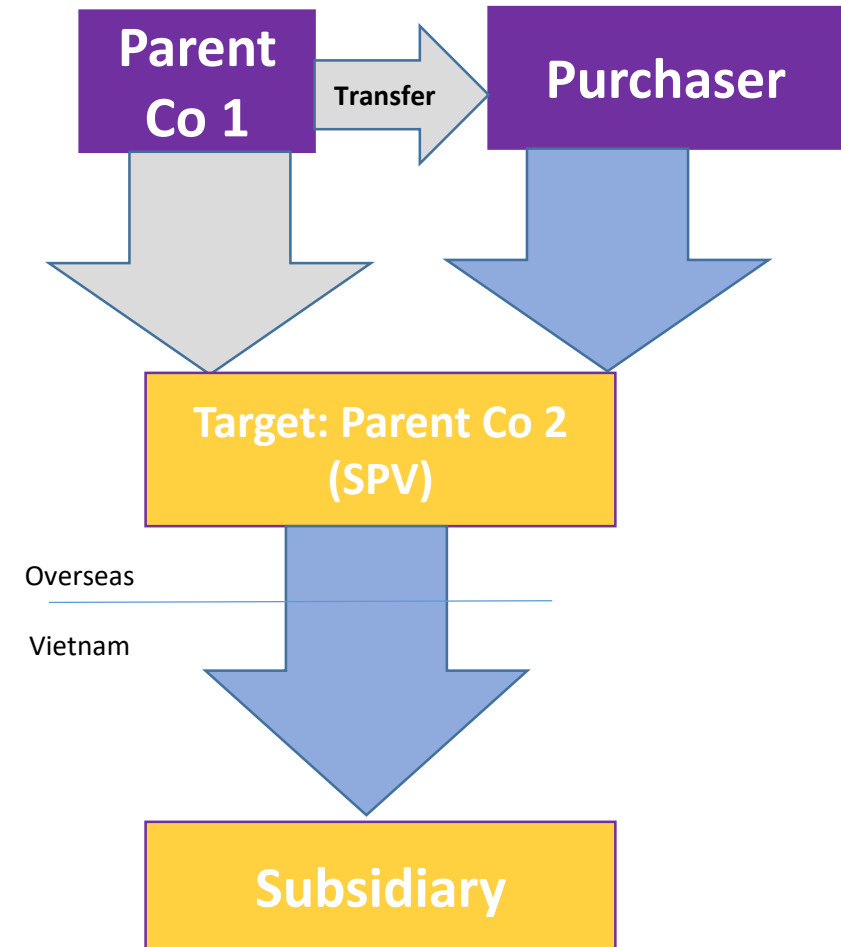
Action 5: Countering harmful tax practices more effectively, taking into account transparency and substance	Action 6: Preventing the granting of treaty benefits in inappropriate circumstances
Action 13: Transfer pricing documentation and country-by-country reporting	Action 14: Making dispute resolution mechanisms more effective



CURRENT AND POTENTIAL TAX ISSUES

Capital gains tax on offshore indirect share transfer

- Decree No. 12/2015/ND-CP serves as the basis for imposing capital gains tax on offshore indirect share transfer.
- Lack of implementing guidelines



Transfer pricing compliance requirements under Decree 20



- Three-tiered standardised approach to transfer pricing documentation under BEPS action 13 including Master File, Local File, and Country-by-Country Reporting (CbCR).
- Availability of information of MNE group members and disclosure issues for reporting purpose.
- Deduction of interest expense capped at 20% EBITDA. Does it apply to loans from unrelated parties?



Uncertain application of 0% VAT on exported services

No definition on consumption of services abroad leading to discretionary interpretation.



Export services?? 0% VAT?

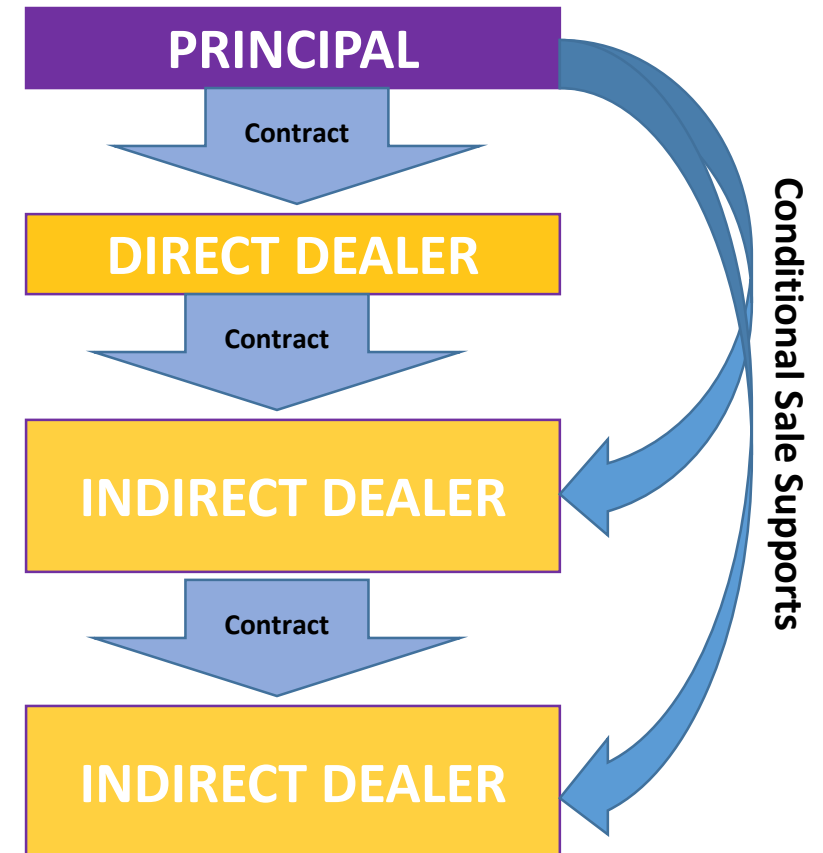
Employee benefits vs. business expense

- Thin line between expenses for employee benefits and expenses for business benefits in a variety of cases.
- Reimbursement of business related expenses for which supporting documents are under employees' names are generally challenged by tax auditors as personal benefits subject to PIT and non-deductible for CIT if they are not well documented on relevant companies policies.



Supports to indirect business dealers - VATable, deductible?

- Principal generally wants to influence and support sale activities of indirect dealers to push sales to end customers and provides various supports to indirect dealers on a conditional basis.
- These supports are generally challenged and disallowed for CIT deduction on the presumption that the supports are not necessary for the business of the Principal.
- The VAT position of the supports are also subject to different confirmations from tax authorities.



CIT incentives for new projects and business expansions

Different and complicated (sometimes conflicting and overlapping) tax rules over different periods of time on CIT incentives leading to potential disputes with licensing authorities and tax authorities and unexpected retroactive tax assessments for taxpayers.



Withholding tax for IP licensing fee and risk of trademark licensing agreement being considered franchise agreement



- IP licensing fee is treated as royalties for CIT withholding purpose but as service fee for VAT withholding purpose.
- Tax authorities tend to interpret a trademark licensing agreement as a franchise agreement subject to the MOIT registration and would disallow trademark licensing fee due to no registration with MOIT.



E-commerce tax – MOF's Draft Proposal of amended Tax Administration Law



The Draft Proposal proposes:

- To shift the requirement to file and pay value added tax and corporate income tax from Vietnamese businesses to offshore suppliers of online services.
- To require offshore entities supplying services to Vietnamese customers to appoint a representative office in Vietnam for purposes of tax declaration and payment.





Thank you!