

TAX DISPUTE RESOLUTION MECHANISMS IN VIETNAM

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ABSTRACT

The article provides insights on the current tax dispute resolution mechanisms in Vietnam including administrative review procedure, court proceedings and the Mutual Agreement Procedure (MAP) under applicable tax treaties. It analyses the current regulations in Vietnam and practical implementation on these dispute resolution mechanisms and compares with relative provisions of other international instruments. The findings of this study suggest that the remedies under the administrative review and MAP currently do not offer effective and satisfactory means for resolution of tax disputes; whereas the court proceeding is the most effective mechanism for protecting taxpayers. The article recommends that apart from considering court proceedings as their first choice, taxpayers also need to apply other preventive measures to minimise potential tax disputes. On the other hand, Vietnamese government should improve the current legal mechanisms including: specialising judges in tax dispute settlement both in domestic and international tax disputes; providing a prescribed timeframe for steps to be taken by the General Department of Taxation to resolve disputes under MAP; adding compulsory arbitration procedure as a part of MAP; revising the inter-relation between domestic legal remedies and MAP and improving the Advanced Pricing Agreement (APA) review process to make it more effective and efficient for taxpayers.

Keywords: Tax Dispute Resolution, Transfer Pricing, Primary Adjustment, Corresponding Adjustment, Double Taxation, Administrative Review, Court Litigation, Tax Treaties, Mutual Agreement Procedure (MAP), Arbitration Procedure, Advance Pricing Agreement (APA), Base Erosion and Profit Shifting (BEPS).

INTRODUCTION

In today's world, tax has become a very important topic and is an everyday discussion point among not only tax teams, but also the legal, financial and business teams of a company. Given the far-reaching consequences in the tax world, tax risk management including effective tax dispute resolution mechanism will continue to remain a focus area for any company.

Going along with the growth of foreign investment and domestic investment, Vietnam tax administrators have continuously put significant efforts in reforming tax system, building tax administration capacity and increasingly conducting tax audits. As a result, tax disputes between taxpayers and tax authorities have gradually increased over time.

Under the current Vietnamese legal system, taxpayers are entitled to choose the following legal mechanisms for resolving their tax disputes:

1. Administrative review under domestic law;
2. Court litigation under domestic law;
3. Mechanism and administrative procedure under Vietnam's bilateral tax treaties.

Each of the above mechanisms is regulated by different regulations, has specific procedures and legal effect. There is also the interrelation between the application of these legal options. This interrelation leads to confusion among the foreign as well as domestic investors. When a tax dispute arises, from the taxpayers' perspective, in order to protect their rights and legitimate interests, it is very important for them to understand key features of available legal remedies in Vietnam and opt for a mechanism which is most appropriate and effective for resolving their particular tax disputes. On the other hand, from the government's perspective, there is also a need to adopt mechanisms that can effectively function in resolving tax disputes to give more confidence to taxpayers in the light of promoting business and attracting investment.

Objectives of this Study

The aim of this article is to explore and analyse regulatory and practical aspects of the tax dispute resolution mechanisms available under the Vietnamese domestic laws and bilateral tax treaties concluded by Vietnam. Based on the analysis and findings, the article explains the issues of effectiveness of the current legal mechanisms, the interrelation between the administrative review and court litigation and between the two domestic legal remedies and tax treaty's mechanism in Vietnam. The article then proposes certain recommendations for taxpayers' practical consideration as well as regulatory changes to improve the effectiveness of the current legal remedies for resolving tax disputes and better protecting taxpayers' rights and interests. On the other hand, since there are very few published papers both in English and Vietnamese explaining about tax dispute resolution mechanisms in Vietnam, this article provides valuable analysis and discussion on overall legal picture of the current Vietnam's tax dispute resolution mechanisms.

METHODOLOGY

The method adopted in the article is based on the analysis of relative regulations and practical aspects of the tax dispute resolution mechanisms under Vietnamese domestic laws and bilateral tax treaties to find out the issue of effectiveness of each legal remedy and legal interrelation between these mechanisms. It also applies the comparative legal method to compare relative provisions under international instruments and the relative provisions under Vietnamese laws to find out the gaps that Vietnam needs to fill into its regulations and enforcement to make the dispute resolution mechanisms more effective in protecting taxpayers' rights and legitimate interests.

REGULATORY AND LITERATURES REVIEWS

Administrative Review under Domestic Law

Under Vietnamese regulations, a taxpayer must pay taxes as indicated in the tax decision before logging an appeal to a competent authority (Article 54 of the 2019 Law on Tax Administration). This requirement is also applied in case the taxpayer opts for dispute resolution procedures under bilateral tax treaties (Article 7 of Circular 205/2013) or court litigation (Law and Regulations, 2019).

The procedures of administrative reviews of tax disputes are regulated by the 2011 Law on complaints, which is applied to all administrative decisions including tax decisions. According to the 2011 Law on Complaints, there are two administrative levels of review/settlement of complaints which are explained in the following paragraphs.

The taxpayer must first lodge the complaint with the tax authority who made the tax decision within 90 days from the receipt of the tax decision or the date the taxpayer becomes aware of the tax decision (Article 9 of the 2011 Law on Complaints). The time limit for settling the first-time complaint is 30 days (maybe extended to 45 days, 60 days in certain cases) after the complaint is accepted for settlement (Article 28 of the 2011 Law on Complaints).

If the taxpayer is not satisfied with the first-time settlement, or time limit is passed without any settlement, the taxpayer is entitled to appeal to a higher tax authority or initiate a lawsuit at a competent court (Article 33 of the 2011 Law on Complaints). The time limit for settling the second time complaint is 45 days (maybe extended to 60 days or 70 days in certain cases) after it is accepted (Articles 33, 37 of the 2011 Law on Complaints). After the expiration of the time limit for the second-time settlement but the complaint remains unsettled or if the taxpayer is not satisfied with the decision on second time settlement, the taxpayer is entitled to initiate the lawsuit at a competent court (Article 42 of the 2011 Law on Complaints).

While there are more papers on general issues of the 2011 Law on Complaints (Hong, 2019), administrative review on land disputes, there are very few papers on administrative review of tax disputes. In 2015, Huong T.L Nguyen wrote an article about administrative review of tax disputes in which explained the relative provisions under the 2011 Law on Complaints applied in tax disputes and came up with the conclusion that there should be a separate time-limit for settlement of tax disputes, liabilities of tax authorities in case of making wrong tax decisions and make the tax laws clear to minimise tax disputes. This article does not address the issue of tax dispute resolution under court litigation and the mechanism under Vietnam's tax treaties (Law and Regulations, 2011).

Court Litigation under Domestic Law

Court proceedings of tax appeals are regulated by the 2015 Law on Administrative Litigation, which is applied to all types of administrative litigation.

The taxpayer is entitled to initiate an administrative lawsuit at a competent court as its first choice without having to appeal through the administrative review procedure first (Article 115(1) of the 2015 Law on Administrative Litigation). The taxpayer is also entitled to proceed the law suit at court in case where the taxpayer after opting for complaint settlement through the administrative review procedure but is not satisfied with the settlement decision or if the complaint remains unsettled past the prescribed time limit as stipulated by laws (Article 115(1) of the 2015 Law on administrative litigation, Article 33(2), Article 42 of the Law on Complaints).

The statutory limitation to initiate a lawsuit is one year from the date of receipt of the tax decision, or the date it is known (Article 116(3)(a) of the 2015 Law on Administrative Litigation). According to the 2015 Law on Administrative Litigation, the taxpayer is entitled to follow 2-tier trial court proceedings which are the first instance proceedings and the appellate proceedings.

A first-instance trial panel consists of a judge and two jurors. In special cases, it may comprise two judges and three jurors (Article 154 of the 2015 Law on Administrative Litigation). A judgment will be discussed and decided by the trial panel based on the majority voting of the members (Article 164 of the 2015 Law on Administrative Litigation). The total time to have the case tried at the first instance court may be up to seven months since date of acceptance of the petition (Articles 130, 149 of the 2015 Law on Administrative Litigation).

The first-instance judgments, if not appealed or protested within 15 days (Article 206 of the 2015 Law on Administrative Litigation), it will become legally effective. For the first-instance judgments which are appealed or protested, the cases are settled according to appellate procedures (Article 204 of the 2015 Law on Administrative Litigation).

The appellate trial panel consists of three judges (Article 222 of the 2015 Law on Administrative Litigation). The total time to have the case tried at the appellate court may be up to four months since the date of acceptance of the appellate petition (Articles 221 of the 2015 Law on Administrative Litigation). The appellate judgment shall take legal effect on the date it is pronounced (Article 242 of the 2015 Law on Administrative Litigation) (Law and Regulations, 2015).

While there are papers on general issues of the 2015 Law on Administrative Litigation (Hop, 2019), land disputes cases, there are very few papers published about tax dispute settlement under court proceedings. In 2015, Dung Nguyen, deputy head of the department of Administrative court of Ho Chi Minh City Court wrote an article to share her experiences on resolving tax disputes in court proceedings. She explained on the application of the general provisions under the Law on Administrative Litigation for tax disputes cases and admitted that resolving tax disputes cases is very complicated and judges in charge should be well versed in law on administrative litigation but also has tax law knowledge. This article does not address the mechanisms under administrative review and under Vietnam's tax treaties.

Mechanism and Administrative Procedure under Vietnam's Bilateral Tax Treaties

Tax Dispute Resolution Mechanism in the International Context

The expansions of multinational enterprises are resulting in highly complex tax issues since the cross-border transactions undertaken between associated enterprises of the same multinational enterprise are subject to different tax rules of the respective countries. The OECD member countries have agreed to apply the arm's length principle to determine transfer prices of the transactions undertaken between associated enterprises for tax purposes (Organisation for Economic Co-operation and Development, 2017). Arm's length principle requires to set the price charged in a transaction between two associated enterprises as the price which would be charged in a comparable uncontrolled transaction between two independent enterprises operating in open markets. In order to apply this principle, individual associated enterprises must be taxed on the basis that they act at arm's length in their transactions with each other (Organisation for Economic Co-operation and Development, 2017).

The arm's length principle is incorporated in the OECD Model Tax Convention on Income and on Capital (OECD Model Tax Convention) and the United Nations Model Double Taxation Convention between Developed and Developing Nations (Law and Regulations, 2017)

which form the basis for the bilateral tax treaties between countries (Organisation for Economic Co-operation and Development, 2017).

For application, tax authority in one jurisdiction is entitled to make adjustment (primary adjustment) to the profits of an enterprise as a result of applying the arm's length principle to transactions involving associated enterprises in another jurisdiction (Rogers-Glabush, 2015; Organisation for Economic Co-operation and Development, 2017). If the second country concerned does not agree to make an equivalent adjustment (corresponding adjustment), the multinational enterprise group will be taxed twice on this part of its profits and hence results in double taxation.

To eliminate such double taxation, Article 9(2) of the OECD Model Tax Convention provides guidance for corresponding adjustments which in practice may be undertaken as a part of the mutual agreement procedure (MAP) under Article 25. Article 25 of the OECD Model Tax Convention provides for MAP for resolving difficulties and tax disputes that may arise out of the practical interpretation and application of the Tax Convention. Under this Article, if actions of one or both of the contracting states result or will result in taxation not in accordance with the provisions of the tax convention, the associated enterprise is entitled to present its case within three years from the first tax adjustment notification to the competent authority of the concerned country for resolution. This procedure is a well-established and a commonly used way through which tax administration of the two concerned countries consult to resolve double taxation under the taxpayer's request (Organisation for Economic Co-operation and Development, 2017; Rogers-Glabush, 2015).

Article 25 of the OECD Model Tax Convention also establishes a compulsory arbitration available to the concerned taxpayers as an expanded part of the MAP if the two countries are unable to reach an agreed solution for the issue within two years of the initiation of the case. This extension of the MAP ensures that where competent authorities cannot reach a common solution for the case, there is still a possibility for the taxpayer to submit the unsolved issue of the case to arbitration for resolution to eliminate double taxation (Organisation for Economic Co-operation and Development, 2017).

Convention 90/463/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (The EU Arbitration Convention) (Law and Regulations, 1995) also establishes a compulsory and binding arbitration of resolving tax disputes if the two countries under the MAP fail to reach a solution for the issue within two years (Article 7). This arbitration mechanism as part of the MAP aims to eliminate double taxation that arises from transfer pricing adjustments of the cross-border profits between associated entities operating within the EU's countries.

To achieve legal certainty on tax treatment of related party transactions and prevent disputes and double taxation, a taxpayer may initiate the request for application of Advance Pricing Agreement (APA) which requires the negotiations between the taxpayer, one or more associated enterprises, and tax administrations of one or more jurisdictions. APA is an agreement between taxpayer and tax authority(s) that determines in advance an appropriate set of criteria for the determination of the transfer prices for controlled transactions over a fixed period (Organisation for Economic Co-operation and Development, 2017). APAs are intended to supplement the traditional administrative review, judicial litigation, and treaty mechanisms for resolving transfer pricing disputes and is useful when the traditional mechanisms fail or difficult to apply (Organisation for Economic Co-operation and Development, 2017).

Tax Dispute Resolution Mechanism under Vietnam's Bilateral Tax Treaties

Vietnam so far has concluded 80 bilateral treaties on Double Taxation Avoidance with 80 countries/territories (The General Department of Taxation, 2019). All these treaties have a provision which empowers Vietnam or the other contracting state to make primary adjustment to the profits of an enterprise for tax purposes (e.g. the arm's length principle is incorporated in Article 9(1) of the Double Taxation Avoidance between the Netherlands and Vietnam).

To eliminate the risk of double taxation in the context of transfer pricing adjustment, Vietnam's bilateral tax treaties (42 of 80 treaties) has a provision which requires Vietnam or the other contracting state to make corresponding adjustment if it agrees to the primary adjustment (Organisation for Economic Co-operation and Development, 2020) (e.g. Article 9(2) of the Double Taxation Avoidance between the Netherlands and Vietnam; Law and Regulations, 1995).

In case the corresponding adjustment is not achieved through such mechanism or a tax treaty does not incorporate the provision on corresponding adjustment, associated enterprises are given the right to request Vietnam and the other country to resolve the dispute through MAP. All bilateral tax treaties concluded by Vietnam incorporate a provision on MAP (e.g. MAP is included in Article 25 of Double Tax Avoidance Agreement between Vietnam and Netherlands).

None of Vietnam's existing bilateral tax treaties incorporates arbitration procedure as a mechanism for resolving tax disputes (Organisation for Economic Co-operation and Development, 2020). Therefore, arbitration procedure is currently not available for taxpayers to use for resolving their tax disputes in Vietnam.

The Vietnamese domestic guidance on the implementation of double tax avoidance agreements concluded by Vietnam is governed by Circular 205/2013/TT-BTC. The General Department of Taxation (the GDT) is authorized by the Ministry of Finance to act as the competent authority of Vietnam for resolving the tax disputes arising from the application of tax treaties (Articles 51, 52 of Circular 205/2013/TT-BTC). However, the guidance substantially only reinforces content of articles on MAP incorporated in Vietnam's tax treaties but provides no timeframe for steps to be taken by the GDT to resolve the case (Article 7 of Circular 205/2013/TT-BTC). Vietnam has also issued detailed regulations on application of APA (Circular 201/2013/TT-BTC) (Law and Regulations, 2013).

There are also very few articles published in both English and Vietnamese on Vietnam's tax treaties' MAP. In 2009, Phat T. Nguyen wrote his book which analysed and compared important aspects of Vietnam transfer pricing system with the OECD Transfer Pricing Guidelines and the systems in certain major countries. This book addressed the MAP under Vietnam's tax treaties but did not exam domestic legal remedies. He also wrote a chapter on transfer pricing in Vietnam for International Bureau of Fiscal Documentation (IBFD) Global Transfer Pricing Explorer Plus with an overview of the domestic legal remedies and MAP in Vietnam. This chapter did not address practical aspects of domestic legal remedies, deep analysis on the interrelationship between the three mechanisms and did not raise relevant recommendations for taxpayers and Vietnamese government to improve the effectiveness of the current tax dispute resolution mechanisms.

FINDINGS AND DISCUSSION

Administrative Review under Domestic Law

The fact is that most of regulations on tax issues are drafted or proposed by the GDT and the Ministry of Finance; they have also issued many official dispatches to provide guidance or interpretation of specific tax issues which are not clear in the tax regulations to specific taxpayers and local tax authorities. As the tax department who settles the first-time complaint is also the one who made the tax decision, it is unlikely for the tax department to change its mind. Therefore, the result of the first-time settlement usually remains unchanged. In case the taxpayer decides to appeal to a higher tax authority, the taxpayer has very low chance of success as the lower tax departments are instructed to follow regular guidance and interpretation of tax laws by the higher tax authorities (Huong, 2015). Therefore, the decisions on tax dispute settlement through administrative reviews are not in favour of the taxpayers. This legal remedy, in substance, does not effectively protect taxpayers' rights and legitimate interests.

Besides, State Audit and State Inspection departments are legally entitled to review the tax treatment of a specific tax issue of a taxpayer concluded by the tax authority. In practice, there are cases of Sabeco and Unilever (TuoiTre Online, 2019) where the State Audit conducted the audits and concluded that the tax treatment finalised by the tax authority is not correct and proposed additional tax collection. In this regard, due to different views between two different competent authorities on the same tax issue, instead of initiating the lawsuit at a competent court, some taxpayers take forward the disputes to the Prime Minister for consideration whilst the Prime Minister is not specified by the 2011 Law on Complaints as a competent authority for settlement of the tax dispute. This practice indicates that due to the Vietnamese legal culture, court litigation has not been commonly opted for by taxpayers.

Court Litigation under Domestic Law

Court proceeding is an alternative dispute settlement method for tax dispute. Prior to 1 July 2011, if a taxpayer did not agree with the tax authority's tax decision, the taxpayer had to file a tax dispute with a tax authority for settlement under the administrative review procedure first. In case the taxpayer did not agree with the first-time settlement, the taxpayer was then entitled to initiate a lawsuit at a competent court. The 2010 Law on Administrative Litigation and after that, the 2015 Law on Administrative Litigation mark a positive judicial reform in resolving administrative complaints whereby a taxpayer can directly initiate a lawsuit at a competent court as its first choice at the beginning. This change provides taxpayers with more flexible appeal process.

It is admitted that the chance to win the case through court litigation in Vietnam is higher than the resolution through administrative reviews. Indeed, in recent years, there have been increasing cases where taxpayers have successfully won the disputes through court litigation (Phap Luat, 2015; VnEconomy, 2019).

This practice can be observed from the court cases which are published by the Supreme Court of Vietnam (2020) on its website. The Table 1 below presents the judgments on tax disputes relating to business. It is noted that not all judgments on tax cases are published on this website.

Table 1 TAXPAYERS' COURT CASES PUBLISHED						
Year	2017		2018		2019	
Court	won	lost	won	lost	won	lost
First instance courts	3	1	5	2	2	4
Appellate courts	6	2	6	5	12	8

The above data of court cases indicates that there are more chances for taxpayers to win cases under court litigation in Vietnam.

On the other hand, there is no specialized tax court at all levels and there is no judge specializing in taxation. This in fact may arise certain difficulties for judges to resolve tax disputes.

Dispute Resolution through MAP under Vietnam's Tax Treaties

Under MAP provided in all Vietnam's bilateral tax treaties, associated enterprises can present the case to the competent authority of the two countries requesting for resolution on the dispute. However, under the current Vietnam's tax treaties, the problem is that Vietnam and the other tax treaty countries concerned are only required to undertake their best "endeavours", "*consult together*" to resolve the dispute. This diplomatic dispute settlement method requires a cooperative approach of the concerned countries. In fact, when a country makes a corresponding adjustment it would result in a reduction of tax revenue of that country and therefore, naturally the tax authorities of that country would be reluctant to do that. The fact that all the Vietnam's bilateral tax treaties and Circular 205/2013 do not provide a prescribed timeframe for steps to be taken by the GDT from the date of the receipt of the MAP request would result in a lengthy process and delay in resolving disputes. In fact, there are some MAP requests in relation to transfer pricing which have been pending for several years with no progress of resolution (Phat, 2020).

The above practice can be observed from the OECD MAP Statistics (2017)-Vietnam presented in the Table 2 below. According the most recent released information of the OECD MAP Statistics (2018), the information on MAP cases in Vietnam is not publicly available.

Table 2 OECD MAP STATISTIC (2017)-VIETNAM				
	2017 start inventory	Cases started in 2017	Cases closed in 2017	2017 end inventory
Transfer pricing cases	3	3	1	5
Other cases	0	1	0	1

The above data of MAP cases in Vietnam indicates that there are only a few transfer pricing related disputes where the taxpayers used MAP for dispute resolution. Therefore, this procedure is also not commonly used by taxpayers in Vietnam. The current MAP in Vietnam is also not considered as an effective mechanism in protecting taxpayers.

Vietnam has joined the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) on 21 June 2017. Under the report on BEPS Action 14 (Making Dispute Resolution Mechanisms More Effective), the member countries have agreed to implement a minimum standard to ensure that they resolve treaty-related disputes in a timely, effective and efficient manner (Organisation for Economic Co-operation and Development, 2017). The above MAP practice in Vietnam needs to be improved to implement Vietnam's commitment to BEPS as a member country.

Since the introduction of APA mechanism in 2013, several taxpayers in Vietnam have requested for APAs. However, the current Vietnam's APA is considered not effective for taxpayers as the review process has been very slow, lengthy and conservative (Phat, 2020). There is no APA concluded between a taxpayer and tax authority(s) to date in Vietnam (Organisation for Economic Co-operation and Development, 2020).

Lack of Arbitration Procedure under Vietnam's Bilateral Tax Treaties

Vietnam's bilateral tax treaties do not contain an arbitration procedure as a part of MAP for resolving tax treaty disputes if the two contracting states do not reach on a common agreement for the case within the prescribed time limit under MAP. Therefore, there is no other legal mechanism available under the current Vietnam's bilateral tax treaties for the taxpayer to rely on to eliminate or mitigate double taxation if the MAP under the current Vietnam's tax treaties fails.

Interrelation between Domestic Legal Remedies and with Tax Treaties

Under the 2011 Law on Complaint and the 2015 Law on Administrative Litigation, a taxpayer cannot concurrently lodge a complaint to a competent tax authority and initiate a lawsuit at a competent court. Taxpayers may choose administrative review procedure and if this procedure fails or if the taxpayers are not satisfied with the first time or second time settlement, the taxpayers can initiate lawsuits at courts. However, if the taxpayers have chosen court proceedings at first, they cannot return to lodge complaints to tax authorities under the administrative review procedures.

Under Vietnam's tax bilateral tax treaties, taxpayers are entitled to request MAP, irrespective of the legal remedies available under Vietnamese domestic laws (e.g. Article 25 of the Double Tax Avoidance Agreement between the Netherlands and Vietnam). However, under domestic administrative rule, the GDT shall not accept to resolve MAP cases if the tax dispute has already been resolved or are being resolved through the administrative reviews or through the court litigation (Article 7(1)(3) of Circular 205/2013). This domestic rule is contradictory with the provisions of Vietnam's existing tax treaties. Therefore, it does not comply with the 2016 Vietnamese Law on International Treaties, which provides that the provisions of a treaty prevail domestic rules, except for the Constitution (Article 6 of the 2016 Law on International Treaties) (Law and Regulations, 2016).

In the relation between domestic administrative review and MAP, if taxpayer simultaneously initiates domestic administrative review and MAP, the administrative authority should postpone the domestic administrative review procedure. Or if after the domestic administrative review is exhausted, taxpayer may still proceed to MAP and if MAP results in a resolution, that resolution should prevail the result of the domestic administrative review since MAP is a higher level of administrative procedure. In the relation between the domestic court litigation and MAP, if taxpayer simultaneously initiates a tax dispute at a competent court and MAP, the competent court should postpone the juridical procedure. If the MAP does not result in a resolution or if the resolution does not satisfy the taxpayer, the taxpayer may return to proceed litigation at the competent court. If the taxpayer has first initiated a lawsuit at a domestic court and results in a legal binding judgment, it should end the dispute. This is because under Vietnamese Constitution, a legal binding judgment of a Vietnamese competent court shall be respected and implemented by state's bodies, organisations, individuals (Article 106 of the 2013 Constitution). In this respect, it may argue that the effect of a legal binding judgment of a competent court in Vietnam is not affected by the MAP under bilateral tax treaties.

RECOMMENDATION

Recommendations for Taxpayers

Selection of an Effective Legal Remedy to Appeal

As the administrative review and tax treaties in Vietnam currently do not provide taxpayers with effective tax dispute resolution mechanisms to protect taxpayer's rights, taxpayers should opt for court litigation as its first choice if they decide to appeal tax assessments.

Application of Measures to Prevent or Avoid Tax Disputes

If taxpayers do not opt for appealing tax assessments as their priority, they may need to go beyond mere legal appeals and adopt a broader framework of preventive measures to minimize potential tax disputes, including:

1. Assess their business operations to ensure the compliance with the Vietnamese tax regulations.
2. Resolve disputes through negotiation and agree on an acceptable tax adjustment proposed by s tax authorities during tax audits. Because, once the tax department has already issued a formal administrative decision on tax assessments, it will be very difficult or unlikely for the tax authorities to change their mind in administrative review procedures.
3. Apply for an APA. APAs are expected to be a potential alternative tool for taxpayers in managing tax risks in Vietnam.

Recommendations for Vietnamese Government

There is a need to have judges who specialise in tax matters so that they have adequate tax knowledge to ensure that the substance of tax laws in Vietnam are interpreted and enforced correctly and taxpayers' rights and interests are effectively protected. Thus, the courts should assign judges who specialise in taxation and are responsible for adjudicating tax lawsuits.

There is also a need to improve the practical effectiveness of the current MAP. In this regard, Vietnam should issue domestic administrative guidance specifying timeframe for steps to be taken by the GDT to resolve the disputes so that the MAP cases are processed and resolved timely and effectively. This is also to comply with the commitment of Vietnam as a member country of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Law and Regulations, 2016).

As there is no arbitration procedure under Vietnam's current tax treaties, the inclusion of this procedure is essential to provide greater legal protection for taxpayers. In this regard, Vietnam needs to negotiate and supplement a protocol on the compulsory arbitration procedure as an integral part of MAP to each of Vietnam's current tax treaties. This is in line with the arbitration procedure available under the OECD Model Tax Convention and the EU Arbitration Convention.

Vietnam's government should revise Circular 205/2013 regarding to the interrelation between the domestic legal remedies and MAP. When an appeal is simultaneously lodged under domestic legal remedies and MAP, domestic remedies should be postponed and yield to MAP; MAP's resolution should prevail domestic administrative review; Court proceedings may be resorted to if MAP failed or MAP's resolution did not satisfy the taxpayer. However, if court proceedings come up with a legal binding judgment, it should end the dispute.

Vietnam also needs to increase the workforce and streamline the APA review process for it to effectively function to offer taxpayers with legal certainty and prevent potential tax disputes.

CONCLUSION

Vietnam is emerging to be one of the most dynamic economy in the region with the growth of both foreign investment and domestic investment. Tax dispute resolution is a topic that concerns both taxpayers and Vietnamese government. In relation to taxpayers, the current domestic administrative review and MAP in Vietnam are not effective legal remedies in protecting rights and legitimate interests for taxpayers. Court litigation in Vietnam is currently the most effective legal remedy in protecting taxpayers. Taxpayers in Vietnam should also take more preventive measures by ensuring the compliance with the tax regulation, negotiating with the tax authorities on an acceptable tax adjustment during the tax audits, and when applicable, proposing for an APA.

In respect to Vietnamese government, judges need to be specialised in tax dispute settlement both in domestic and international tax disputes; MAP should be made more effective for resolving international tax disputes by providing compulsory arbitration procedure as a part of MAP; Domestic guidance should provide a prescribed timeframe for steps to be taken by the GDT to resolve MAP disputes; the interrelation between domestic legal remedies and MAP should be revised and made clear in the domestic guidance; there is also a need to improve the APA review process to make it more effective and efficient for taxpayers. These recommended improvements of the current tax dispute resolution mechanisms would increase the confidence for taxpayers in the light of attracting investments in Vietnam.

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