Tax & Custom Alert

Highlighting recent tax and custom developments in Vietnam.

Global Minimum Tax (GMT) Introduction & Potential Tax Reforms

Vietnam's National Assembly has officially passed Resolution 107/2023/QH15 dated 29 November 2023 ("**Resolution**") to pave a way for the future implementing tax regulations to impose a top-up tax in line with Global Anti-Base Erosion ("**GloBE**") model rules. Companies currently paying less than 15% tax would potentially be subject to a top-up tax from 1 January 2024.

The GloBE rules are designed to ensure large multinational enterprise groups ("**MNE Groups**") pay a minimum level of tax on their income in respect of every jurisdiction where they operate. These rules require in-scope MNE Groups to calculate their income, and the taxes on that income, on a jurisdictional basis. Where this calculation results in an effective tax rate ("**ETR**") that is below 15%, the rules require the MNE Group to pay a top-up tax that will bring the total amount of tax on the MNE Group's excess profits in that low-tax jurisdiction up to the 15% rate.

This top-up tax is either collected under a so-called Qualified Domestic Minimum Top-up Tax ("**QDMTT**"), or, where no QDMTT applies, by another implementing jurisdiction through the imposition of either:

a. an Income Inclusion Rule ("**IIR**") which imposes top-up tax on a parent entity in respect of the low-taxed income of a constituent entity; or
b. an Undertaxed Profit Rule ("**UTPR**") which denies deductions or requires an equivalent adjustment in a subsidiary jurisdiction in order to produce an equivalent incremental increase on the taxes paid by the MNE Group.

The Resolution provides guidance on the implementation of QDMTT, IIR and UTPR to collect the top-up tax. General matters of tax administration, declaration and payment are also mentioned in this Resolution. As a next step, the Vietnam Government plans to issue implementing tax regulations to enhance the collection of such tax.

Double Tax Agreement between Vietnam and Singapore ("DTA") - Application to Capital Share Transfer in Vietnam Entity

The General Department of Taxation ("**GDT**") has recently provided guidance on the application of the DTA between Vietnam and Singapore on capital share transfers in Vietnam entities via ruling No. 5865/TCT-HTQT, dated 22 December 2023 ("**Ruling**").

Article 13.4 of the DTA had provided that gains from the alienation of property (other than certain prescribed gains) would be taxable only in the State where the alienator is resident. Pursuant to the Ruling, Article 13.4 has been amended to provide that, for income derived from capital share transfers in Vietnam entities, whereby more than 50% of the value arises (directly or indirectly) from real estate situated in Vietnam, the right of taxation lies with Vietnam.

Notably, such a guidance by GDT is applied for specific cases upon request by local tax authorities. The capital gain directly or indirectly arising from above 50% of real estate value of Vietnam entities is to be determined by local tax authorities.

Supplements to Vietnam's Customs Regulations for Period 2022 - 2027 under Regional Comprehensive Economic Partnership ("RCEP")

Vietnam Government issued Decree 84/2023/ND-CP dated 1 December 2023 providing supplements to Vietnam's preferential tariff for the period from 2022- 2027 under the RCEP. Myanmar and the Philippines have been added to the list of enabling countries for the preferential tariff from 4 March 2022 and 2 June 2023, respectively. This preferential tariff is issued for every calendar year.

Further Information

Please feel free to reach out to our contact partner/s should you have queries on the above developments.

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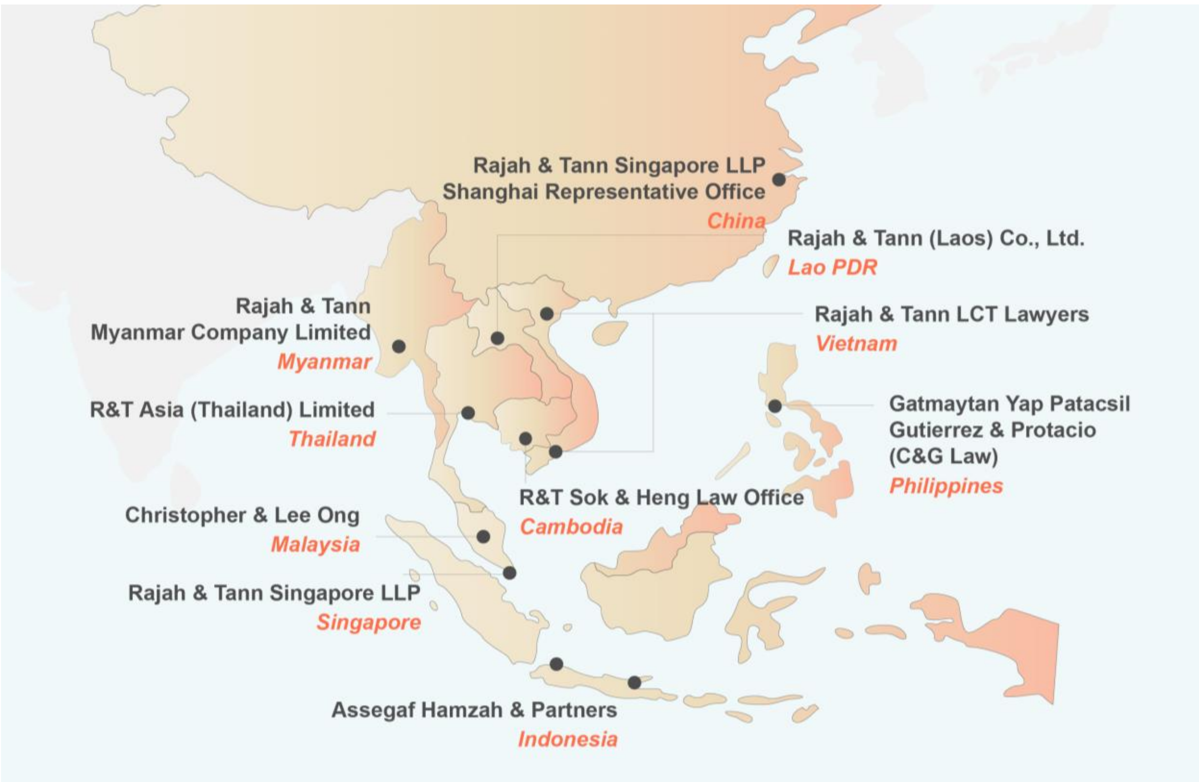

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