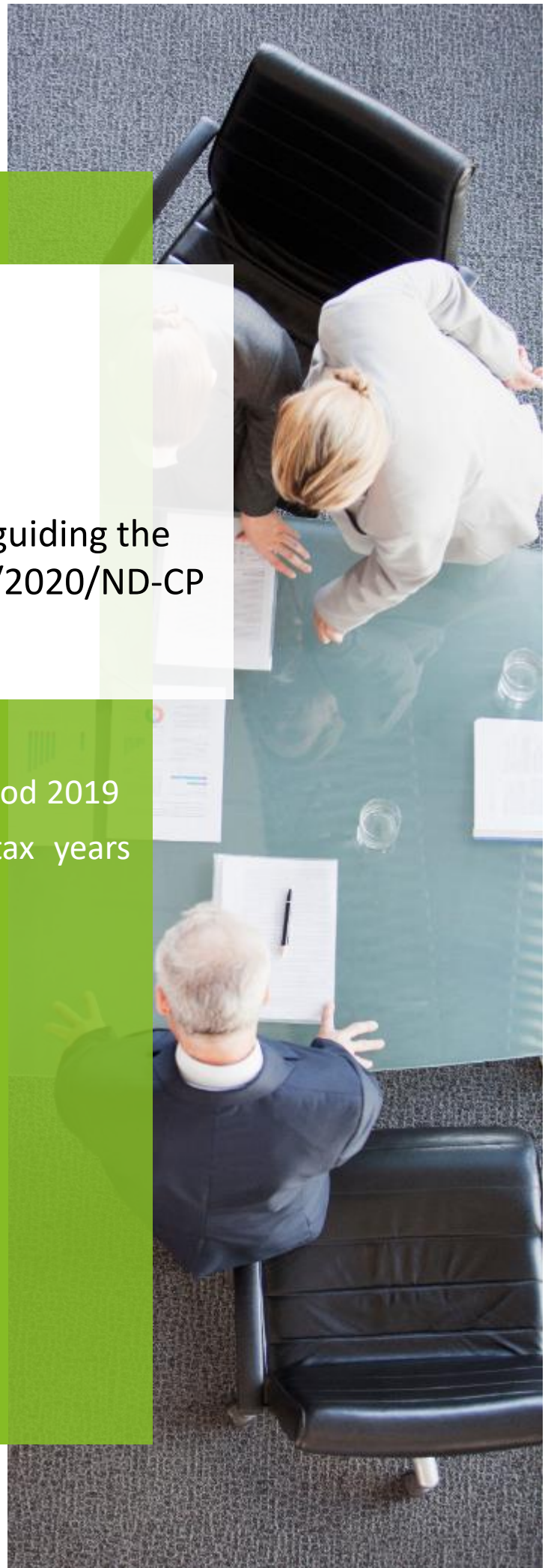


TAX ALERT

Official Letter No.2835/TCT-TTKT guiding the implementation of Decree No. 68/2020/ND-CP

21 July 2020

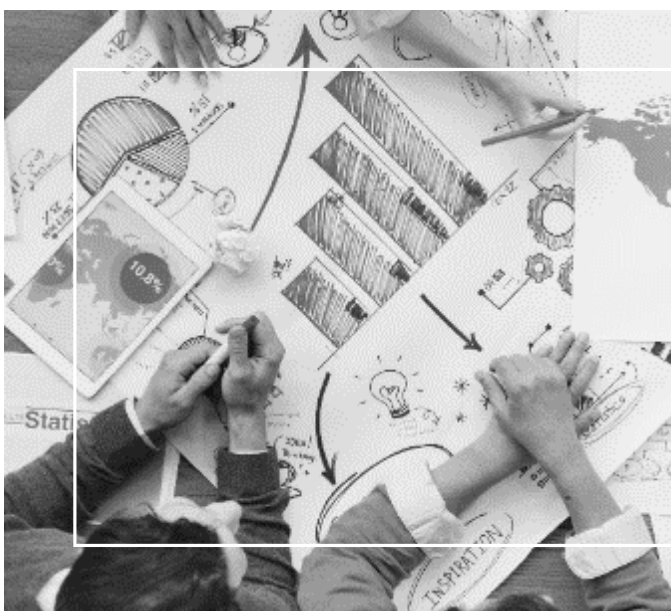
1. Application for CIT finalization period 2019
2. Retroactive application for the tax years 2017 and 2018
3. Quick analysis



WHAT'S NEW?

Application for the CIT finalization period 2019

On 14 July 2020, the General Department of Taxation issued Official Letter No. 2835/TCT-TTKT (“OL 2835”) providing guidance to local Tax departments on implementation of Decree No.68/2020/NĐ-CP (“Decree 68”) amending Clause 3, Article 8 of Decree 20/2017/ND-CP (“Decree 20”) on deductible interest expenses for determination of Corporate Income Tax (“CIT”) liability. Deloitte summarizes the key points guided in OL 2835, specifically:



Likely there would be no Circular issued providing guidance for Decree 68

Application for fiscal year 2019 CIT finalization

- For fiscal year 2019 CIT finalization with submission deadline due before March 31, 2020: taxpayer submits supplement CIT finalization return for 2019;
- For fiscal year 2019 CIT finalization with deadline not yet due: provisions of Decree 68 shall apply.

WHAT'S NEW?

Retroactive application for the tax years 2017 and 2018

Application Scope

OL 2835 confirms that only Point a, Clause 3, Article 8 amended at Clause 1, Decree 68 can be retrospectively applied to tax years 2017 and 2018. In particular, the threshold for deductible interest expenses of 30% EBITDA and net interest expenses (i.e. interest income is offset against interest expense) are applicable. Retrospective application is not available for other points of Decree 68 (e.g. carry forward interest expenses and taxpayers who are not subject to the cap)

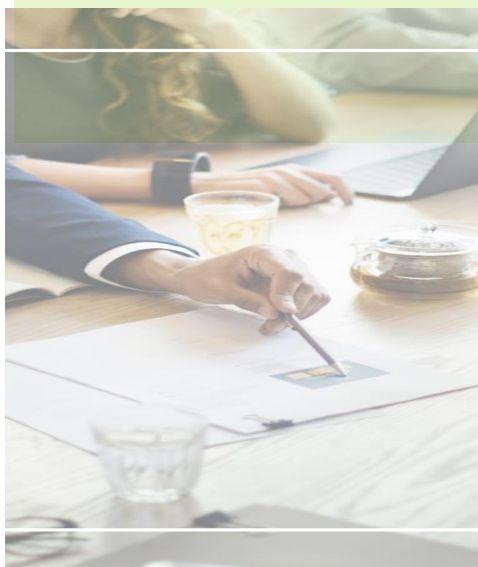
Offsetting of CIT paid amount in 2017 and 2018

In case tax audit/inspection has not yet been conducted: the difference (includes the amount of CIT payable and corresponding late payment interest) shall be offset against the CIT amount payable up to 5 years from 2020 as stipulated in Decree 68.

In case tax audit/inspection has been conducted and tax audit/inspection conclusions/decisions have been issued: the taxpayers shall request and tax authority to assess the amount of CIT payable (and the corresponding late payment interest if any) to offset against the CIT amount payable up to 05 years from 2020.

Location and implementation method

OL 2835 only confirms the principles of Decree 68 that the reassessment of the CIT payable shall be carried out at the office of the Tax authority without carrying out a field-audit/inspection at the taxpayer's premises or amending inspection conclusions/decisions issued in 2017 and 2018, and no administrative penalties for tax violations shall be adjusted in case the administrative penalty was imposed or the case is being settled under tax appeal procedures.





OL 2835 clarifies two points implied in Decree 68:

- i. If the fiscal year 2019 of the taxpayer ended on or before 31 December 2019, the taxpayer should file supplement CIT finalization return for 2019. Otherwise CIT finalization return would apply in accordance with Decree 68.
- ii. Points (b) and (c) in the Decree 68 (e.g. concerning carryforward of non-deductible interest expenses in excess of cap, and taxpayers who are exempt from the cap) shall not be retrospectively applied for the tax years 2017 and 2018.

While OL 2835 clarifies some points in Decree 68, there will still be some grey areas or open questions when Decree 68 is implemented in practice (e.g. no further details about carryforward of expenses over cap). Deloitte Vietnam would be pleased to assist you in working further with the competent authorities for more detailed guidance for the Company's specific case, where applicable.

In the meantime, from tax compliance and planning perspectives, as the over-paid CIT amount of 2017, 2018 shall be offset within 5 years starting from 2020 – this requires enterprises to have appropriate tracking and planning to obtain the maximum benefits out of this provision. Deloitte Vietnam is also pleased to assist the Company in recalculating the CIT liabilities and refiling CIT finalization returns for years 2017, 2018 and 2019 as well as professional planning in subsequent years in accordance with Decree 68.

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