



Industry Alert

Vietnam — Technology Transfer regulations and practice

Context of Technology Transfer regulations

With the objectives of managing technology transfer activities in Vietnam, the Law on Technology Transfer 2017 was issued and took effect from 01 July 2018. Under this Law, registration with competent science & technology authorities has been required for technology transfer of following notable cases (except for technology restricted from transferring which requires additional processes):

- Technology transfer from other countries to Vietnam;
- Technology transfer from Vietnam to other countries; and
- Technology transferred domestically with financing from State capital or the State budget.

Which Technology Transfer Agreement is subject to mandatory registration?

Under the prevailing technology transfer regulations, the below Technology Transfer Agreements ("TTAs") are subject to mandatory registration:

- (i) TTAs which were newly signed from 01 July 2018;
- (ii) TTAs which were signed before 01 July 2018 and contains extension terms on or after 01 July 2018.

For (i), the deadline for registration is 90 days from signing date. For (ii), the deadline for registration is not clearly regulated and in practice, is subject to different interpretations of the authorities.

What are non-compliance acts in technology transfer activities?

The Government has recently issued the Decree No. 51/2019/ND-CP, dated 13 June 2019, to prescribe administrative penalties for violations arising from scientific and technological and technology transfer activities, which will take effect from 01 August 2019.

We would like to highlight some notable non-compliance acts and forms of penalties as follows:

- Notable non-compliance acts:
 - Transfer of technologies without registration certificate;
 - Non-registration of extended TTAs;
 - Deceitful act for the purposes of being granted the Technology Transfer Registration Certification;
 - Conducting technology transfer which is not in line with contents of the granted registration certificates;
 - Not conducting the pricing audit via the form of transferred technology price appraisal upon request of tax authorities in case of technology transferring between parent company or group companies with the subsidiary in Vietnam.
- Forms of penalties:

Besides administrative penalties of maximum VND 100 million per non-compliance act by organization, the below notable treatment may be applied on case-by-case basis:

 - Depriving of rights to use the registration certificates within the period from 01 to 03 months;
 - Compulsory disgorgement of illegal gains from commission of violations;
 - Compulsory return of illegally appropriated money;

- Compulsory re-export of goods, objects, equipment and means related to the violation act.

In addition, as royalty expenses are often subject to strict scrutiny of tax authorities, violations of technology transfer regulations may affect the tax assessment of deductibility and/or transfer pricing compliance.

Practice of technology transfer registration

According to our observations, after almost 01 year of the Law's effectiveness, in practice the technology transfer registration has not been straightforward. Notably, there have been cases where the registrations are rejected by local science and technology authorities, for example:

- TTAs with insufficient compulsory contents under regulations;
- New TTAs and extended TTAs with registration dossiers filed after registration deadline;
- No evidence of technology ownership of the transferor.

On tax perspectives, there are cases where tax authorities challenge the compliance of technology transfer registration and/or technology ownership evidence when assessing deductibility of royalty fees under TTAs.

Deloitte's view

Technology transfer is a common practice especially of FDI companies in Vietnam. Therefore, high attention to the aforementioned regulations and practical challenges is crucial to mitigate the risks in technology transfer activities, as well as tax deductibility.

Given the current trend of strict regulations and challenging practice of technology transfer registration, it is recommended that FDI companies should comprehensively revisit the Company's technology transfer activities and agreements to ensure they are in line with, including but not limited to, the requirements of statutory registration, supporting documents, and arm's length basis.

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Keeping updated with the latest industrial and tax policy developments could be a challenging undertaking, but generate significant benefits. Please liaise with our contacts below or your regular Deloitte tax specialists if you have any questions and concerns.

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