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TAX & LEGAL NEWSLETTER

For Enterprises in the Data Center and
Cloud Computing industries

November 2024



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INTRODUCTION

Dear Valued Clients and Business Partners,

In Vietnam's digital landscape of constantly evolving laws and policies, both domestic companies and foreign investors operating in technology and/or telecommunication fields require timely updates on regulatory changes and detailed guidance from industry experts on how these changes impact their operations and investment opportunities.

Deloitte Vietnam understands businesses needs and is proud to introduce our **Tax & Legal Newsletter for Enterprises in the Data Center and Cloud Computing industries**. This Newsletter captures the publication of regulations and the development process of the tailored legislative landscape, that impact the data center and cloud computing industries.

Through this publication, our Valued Clients and Business Partners will be better equipped to look for potential opportunities to enter Vietnam's data center and/or cloud computing market, enhance compliance, manage tax liabilities and improve operational efficiency, all of which are crucial for sustainable business growth.

Deloitte Vietnam is the leading Tax & Legal advisor, especially in the investment for the data center and cloud computing services in Vietnam. We are offering comprehensive tax and legal consulting services, promoting compliance and sustainable development, while supporting clients in effective legal/regulatory compliance and tax management to achieve their business goals.

Deloitte Vietnam is always honored to accompany our esteemed clients and partners!



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I. Overview on new regulations guiding data center and cloud computing services

The National Assembly promulgated the Law No. 24/2023/QH15 on Telecommunications (the “**New Telecoms Law**”) dated 24 November 2023 to replace the Law on Telecommunications 2009. The New Telecoms Law took effect from **01 July 2024**, however with an exception on management of internet-based telecom services, data center services and cloud computing services which will be effective from 01 January 2025.

Notably, the New Telecoms Law has firstly defined the data center and cloud computing in the Vietnam’s legal framework. This legislation marks a pivotal shift in the regulatory landscape, aiming to modernize the framework governing digital infrastructure and data management within the country. Particularly:

- **Data center** service means a telecommunications service that provides information processing, storage and retrieval features to users via **telecommunications networks by leasing part or the whole of the data center.**
- **Cloud computing** service means a telecommunications service that provides the information processing, storage and retrieval features to users **via telecommunications networks through cloud computing.**

In terms of **data protection**, the service providers are not responsible for the information of service users during the processing, storing, and retrieving information process. Nonetheless, the service providers are (i) prohibited to track or monitor service users’ information, unless obtaining the official request from a competent authority to do so and (ii) required to adhere to the regulations under the Law on Cyber-security 2019 and Decree No. 13/2023/ND-CP on personal data protection. This newly introduced provision has clearly set out the boundary on responsibility of the service providers with respect to the information/data collected, stored and processed.

Considering the aforesaid change, this Tax and Legal Newsletter aims to provide a comprehensive overview of the new regulations pertinent to data centers and cloud computing. **It details the investment opportunity, potential approach, new licensing requirements, compliance requirement for operation, and the legal/regulatory and tax implications for both domestic and international service providers. Understanding these developments is crucial for businesses operating in or entering the Vietnamese market, as compliance with these regulations will be essential for continued operation and competitiveness.** This update will guide you through the key aspects of the law and its impact on the telecommunications sector, helping ensure a smooth transition to the new regulatory environment.

II. Preliminary classification between data center and cloud computing

Aspects	Data Center	Cloud Computing
Definition	A telecommunication facility, including a building, station, cable system, computer system, electrical system, and auxiliary equipment installed therein to process, store and manage data of one or more organizations and individuals	A model that allows the flexible use, adjustment and management according to the needs of shared computing resources including network, server, storage device and application
Infrastructure	Leasing part or the whole of the data center	Cloud computing

In summary, while traditional data centers involve physical infrastructure investment, cloud computing offers a more flexible, scalable, and cost-efficient alternative by providing virtualized resources over the internet. The difference between data centers and cloud computing depends on factors such as business needs, budget, and the level of control desired, which will be more specifically analyzed in Section III of this Newsletter.

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III. Investment at a glance

A. Feasibility of foreign investment in the data center and cloud computing in Vietnam:

- Generally, there are no specific restriction for foreign ownership applied for market access of foreign investors in data center and cloud computing service sectors. While the data center service is one of conditional business line in accordance with the Law on Investment 2020, the New Telecoms Law determines that investment in data center services is **not** subject to any restriction on foreign ownership. That means it would be possible to establish a wholly foreign-invested entity in Vietnam to provide data center services.
- Additionally, on 02 August 2023, the Ministry of Information and Communications issued Official Letter No. 3115/BTTTT-CVT, outlining the development plan for local digital infrastructure from 2023 to 2025. This plan highlights data centers and cloud computing infrastructures as key objectives. Local authorities are tasked with supporting enterprises within their jurisdictions to invest in, construct, and develop data center facilities.

B. Potential investment model:

1. Greenfield investment:



a. For data center:

- Although there is no limitation on the foreign ownership for the foreign investors in data center, the establishment of data center through greenfield development would stumble over various challenges. Specifically, the foreign investors must comply with various laws and regulations in Vietnam and obtain requisite approvals from the investment project set up, land acquisition toward commercial operations of data center service. Although there has been dramatic development in making Vietnam an attractive market for foreign investors, it cannot be denied that there are still lengthy and bureaucratic administrative procedures for foreign investment in Vietnam.
- To adapt with the above challenges, from a comprehensive point of view, the foreign investors can consider alternative strategies, such as acquiring existing potential data center or forming joint ventures with experienced local partners, which are common practices in Vietnam to overcome the above challenges.



b. For cloud computing:

Unlike data center services, cloud computing services do not require a physical facility built in accordance with technical specifications. Alternatively, the service provided will be carried out on a cloud computing platform, which can lead to some advantages in terms of foreign direct investment when restrictions on land, construction, environment, etc. are not triggered. Therefore, in a light-touching approach, it is feasible to invest for set up a 100% foreign owned company to provide cloud computing services in Vietnam.

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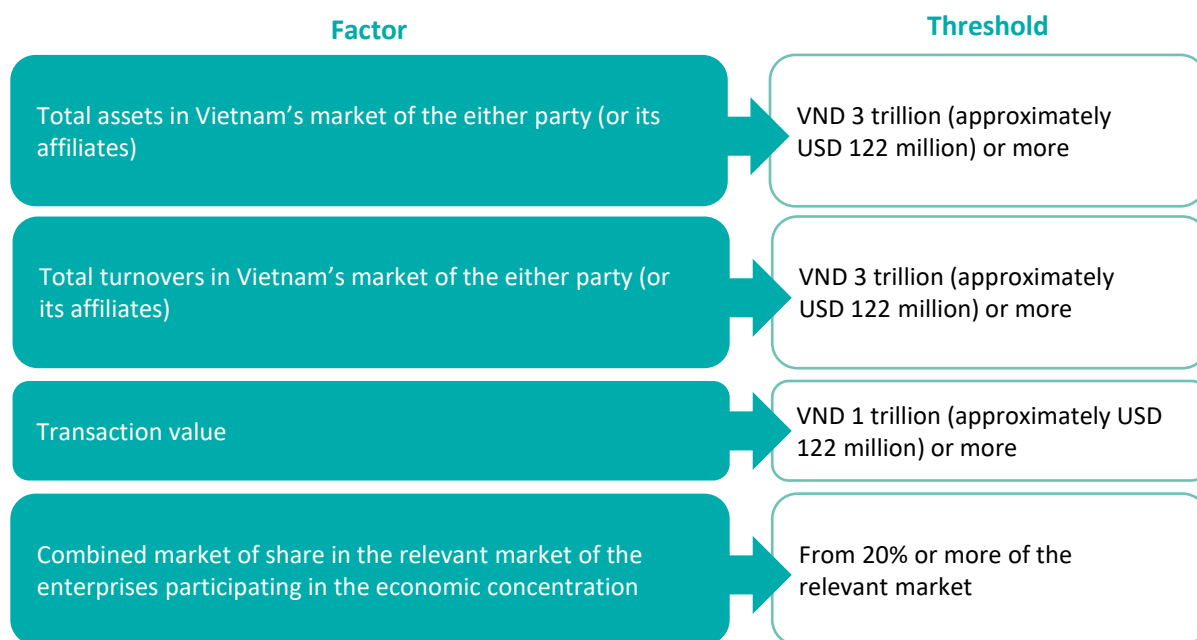
III. Investment at a glance (cont'd)

2. Acquisition:

At a glance, acquisition method may be implemented through the transfer of (i) capital; (ii) assets and/or (iii) investment project. Nonetheless, there will be several notable points that the foreign investors shall consider such as:

(i) An acquisition of entirety or majority of the equity of the legal entity having secured **land use right** and/or **facilities** (the “Target”). For this approach, the following matters should be taken into consideration:

Anti-trust clearance: In accordance with the competition regulations of Vietnam, acquisition transaction (which results in dominance position in the Target) is classified as a form of economic concentration (or anti-trust) and therefore must comply with relevant competition rules. Accordingly, clearance of anti-trust would be triggered before the transaction can be made, if any of the following thresholds is met:



M&A approval: Additionally, given that data center/cloud computing service is a conditional business activity for the foreign investors, the buyer/Target must also obtain an M&A approval for the transaction.

(ii) An acquisition of assets and/or investment project associated with land use right will be complex and may require the consent from other parties in circumstances where (i) the assets are mortgaged to a credit institution or (ii) the land is situated in military or national defense areas.

3. Joint venture

Similar to the acquisition, the joint venture is also classified as a form of anti-trust and therefore must comply with the competition rules. In this arrangement, the foreign investors can cooperate with the experienced local partner with qualified infrastructure and facilities to implement the data center and cloud computing services. As per our observation, this option is quite common for this business sector, given that support from an experienced local investor is necessary for handling administrative procedures in Vietnam, including obtaining various sub-licenses required for data center/cloud computing services (to be discussed further in Section IV below).

III. Investment at a glance (cont'd)

C. Statutory licensing step plan for potential investment model

Below is a quick snapshot on the key licensing requirements for each option discussed above for your information.

Step	Greenfield investment	Acquisition	Joint venture
1	Application of In-principal Approval, if applicable	Anti-trust clearance, if applicable	Anti-trust clearance, if applicable
2	Application of Investment Registration Certificate	M&A approval	Application of In-principal Approval, if applicable
3	Application of Enterprise Registration Certificate	Amendment of Investment Registration Certificate, if applicable	Application of Investment Registration Certificate
4	N/A	Amendment of Enterprise Registration Certificate	Application of Enterprise Registration Certificate

Application for relevant sub-licenses (*)

(*) Please see point 1 of Part IV below for requirements of sub-licenses for data centre and cloud computing services.

IV. Key operation and compliance requirement

1. Key operation and compliance requirement

According to the Decision No. 278/QĐ-TTĐ on promulgating the implementation plan of the New Telecoms Law of the Prime Minister dated 04 April 2024, to facilitate the enforcement and application of the New Telecoms Law, there will be certain detailed guidance to be promulgated by the Ministry of Information and Communications. Particularly including:

- a. Decree details a number of articles and measures to implement the New Telecoms Law (the “**Draft Decree**”);
- b. Decree details a number of articles of the New Telecoms Law on management of telecommunications number stores and Internet resources; compensation when the State revokes telecommunications codes, numbers, and internet resources; auction of the right to use telecommunications codes, number, and national domain name of Vietnam “.vn”;
- c. Decree details the New Telecoms Law on public-utility telecommunications activities;
- d. Circular details wholesale activities in telecommunications; and
- e. Circular details the mechanism and principles of price control, the method of determining the lease price for the use of cable networks in buildings, the rental price of passive telecommunications technical infrastructure among telecommunications enterprises, organizations and individuals owning telecommunications works.

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IV. Key operation and compliance requirement *(cont'd)*

Remarkably, the Draft Decree (*) clearly sets out the detailed legal framework and guidance for the operation and compliance requirement for both data center and cloud computing activities. Below are the key conditions statutory obligations applied for both service providers in Vietnam and foreign service provider in abroad under the Draft Decree:

Key Requirements	Data Center	Cloud Computing
Registration for provision of telecommunication services with Vietnam Telecommunications Authority (“VNNTA”)	✓	
Notification on provision of telecommunication services to VNNTA	✓ <i>cross-border</i>	✓ <i>both domestic and cross-border</i>
Publication of the quality of provided services	✓	✓
Publication of the conformity with national standards and technical regulations	✓	
Periodical and ad-hoc report regarding the telecom’s activity	✓	✓
Storage of users provided information	✓	✓
Prevent and remove violated contents, services and applications within 24 hours from the receipt of the request of the authority	✓	✓
Ensuring information system security before putting it into operation when providing services for state authorities	✓	✓

(*) It is worth noting that the information provided is based on the Draft Decree of Vietnam’s New Telecoms Law. As this is a preliminary version, there may be subject to change before the official enactment.

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IV. Key operation and compliance requirement *(cont'd)*

2. Other key notable points

a. Electricity supplement and stabilization

Continuous and reliable electricity sources is one of significant factors to ensure the stable operation of data center and cloud computing. Accordingly, the service provider can consider (i) purchasing electricity from Vietnam Electricity (“EVN”); and/or (ii) developing itself rooftop solar photovoltaic systems (“**Self-Generation and Self-Consumption Model**”); and/or (iii) entering into direct power purchase agreement with renewable generation companies. In these circumstances, please be aware that:

i) Directly purchasing electricity from EVN:

This is the most common and reliable approach in Vietnam since EVN, as a state-owned utility, delivers a well-organized and regulated electricity supply system, ensuring reliability through its extensive nationwide grid. The Government oversees EVN’s tariffs and pricing models, providing a level of cost predictability and stability. However, there is still a risk of exposing instability in supplying electricity during the operation as per our observation, especially in peak season.

(ii) Self-Generation and Self-Consumption Model:

This mechanism is governed by a Draft Decree from the Vietnamese Government, which entitles the private companies to install rooftop solar photovoltaic systems mainly for their own use, with the possibility of exporting any excess electricity to the national grid. Note that if the solar system is connected to the national grid, an application dossier must be submitted to the provincial or municipal Department of Industry and Trade (DOIT) to assess and approve.

(iii) Directly purchasing from renewable energy companies:

On 03 July 2024, the Government promulgated the Decree No. 80/2024/ND-CP providing the mechanisms for direct electricity trading between renewable energy generation suppliers and large electricity consumers, whether through a private wire system or a grid-connected system. For the private wire model, both supplier and buyer may directly enter into a power purchase agreement. In contrast, the grid-connected model will require the registration with the National Load Dispatch Center.

The operation and maintenance of data center facilities will likely require a significant electricity supply, making this a critical consideration for ensuring the project's stability. In this context, option (ii) should be regarded as a backup/supplementary plan for electricity supply, as it is uncommon for the project to function solely on its own electricity generation. Regarding option (iii), since this mechanism is still under draft regulation and will require additional time for implementation after it is finalized, it is advisable to conduct further study on this option before moving forward with its execution.

b. Import of necessary equipment and machinery

Depending on the demand of using the equipment and machinery to operate the data center and cloud computing, the service providers may be required to obtain the import license for used equipment and machinery, equipment and machinery that are subject to the specific management of relevant authorities in Vietnam (e.g., civil cryptographic items under the management of the Ministry of National Defense).

c. Due diligence considerations in case of acquisition and joint ventures

Due diligence including regulatory, operation, financial, tax and other perspectives should be considered in case of acquisition and/or joint ventures to allow all stakeholders to consider the benefits and risks of the transaction.

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V. Tax implications

1. Corporate Income Tax (“CIT”) incentives

While cloud services and data center services are not categorized as incentivized sectors eligible for CIT incentives, there may be available incentives for incentivized locations for further consideration.

Locations	CIT incentives	
	Preferential tax rate	Tax holiday
<ul style="list-style-type: none"> Extremely difficult socio-economic conditions Economic zones High-tech zones, including concentrated information technology parks established under the Prime Minister's decision. 	10% for 15 years	<ul style="list-style-type: none"> 4 years of tax exemption; and 50% reduction for the next 9 years
<ul style="list-style-type: none"> Difficult socio-economic conditions¹ 	17% for 10 years	<ul style="list-style-type: none"> 2 years of tax exemption; and 50% reduction for the next 4 years
<ul style="list-style-type: none"> Industrial parks (which are not located in the favorable socio-economic locations) 	Not applicable	<ul style="list-style-type: none"> 2 years of tax exemption; and 50% reduction for the next 4 years

2. Value Added Tax (“VAT”) implications

Prior to the enactment of the Law on Telecommunications (2023) and the absence of classification of cloud computing services and data center services, there has been controversial viewpoints on the VAT treatments towards these services between VAT exemption as software and software services or subjecting to VAT rates as general services.

Under the current Law on Telecommunications (2023) defining cloud computing services and data center services as telecommunication services, since 01 July 2024, the VAT treatment for cloud services and data center services shall be 10% for local service providers (or 5% under withholding tax mechanism for foreign service providers earning income from Vietnam), rather than VAT exemption.

VI. Recommendation for businesses

Stay informed of policy developments

1

- ✓ Domestic enterprises and foreign investors should regularly review updates from the Vietnamese Government and regulatory authorities to stay informed of any changes or clarifications; and
- ✓ Staying informed enables companies to quickly adapt their strategies and engage with the Government on relevant investment opportunities.

Re-assess business cases and investment

2

- ✓ Domestic enterprises and foreign investors should revisit current business strategies, including plans for expansion or new investments, to explore the optimal opportunities to maximize benefits in Vietnam's telecoms market in general as well as data center and cloud computing in particular;
- ✓ Domestic enterprises and foreign investors should review the VAT declaration and invoice issuance for data center services and cloud computing services, especially VAT rate, since 01 July 2024;
- ✓ Domestic enterprises should develop a plan to align your operations with the new regulations well before the effective date to avoid disruptions; and
- ✓ This proactive approach will help optimize returns from Government policies.

Amplify perspectives in policy contributions

3

- ✓ Domestic enterprises could consider actively communicating with the Government, voicing practical needs and concerns to contribute the policies that address industry challenges and align with business objectives; and
- ✓ This is vital for creating favorable environment for the data center and cloud computing sectors.

Consult with experts

4

- ✓ Domestic enterprises and foreign investors should consult with experts, especially Tax and Legal advisory team at Deloitte Vietnam, to fully understand the implications of new telecoms policies and how to best leverage available incentives; and
- ✓ Expert advice can help companies make informed decisions and align strategies with evolving regulatory frameworks.

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Contact us

We are always ready to serve our partners and clients with a team of experts in Data Center and Cloud Computing industries. Our experienced professionals provide comprehensive and practical insights tailored to your needs.

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