

# Tax issues under the Law on Technology Transfer 2017

## Tax Alert - Tax and Legal

July 2017

On 19 June 2017, the National Assembly ratified the Law on Technology Transfer No. 07/2017/QH14 ("LTT 2017"). The LTT 2017 shall take effect on 1 July 2018 and supersedes the Law on Technology Transfer No. 80/2006/QH11 dated 29 November 2006 ("LTT 2006").

Of note, the LTT 2017 provides some important matters that will have the following impact on the determination of tax obligations:

### 1. Registration of technology transfer

According to LTT 2006, enterprises have the right but no statutory obligation to register technology transfer contracts.

However, the LTT 2017 provides that the following technology transfer contracts must be registered with the competent authorities of science and technology:

- Technology transfer from other countries to Vietnam;
- Technology transfer from Vietnam to other countries;
- Technology transfer domestically for which state capital or the state budget is used, except in cases where certificates of registration of results of performing scientific and technological tasks have been granted.

During tax audits and inspections, the tax authorities usually request enterprises to provide the technology transfer contract registration dossiers to evaluate deductibility of technology transfer fees, despite the fact that the LTT 2006 did not require registration of transfer contracts. With the new regulations of the LTT 2017, the tax authorities will have stronger legal grounds to exclude the cost of the technology transfer from deductible expenses if the technology transfer contract is not registered.

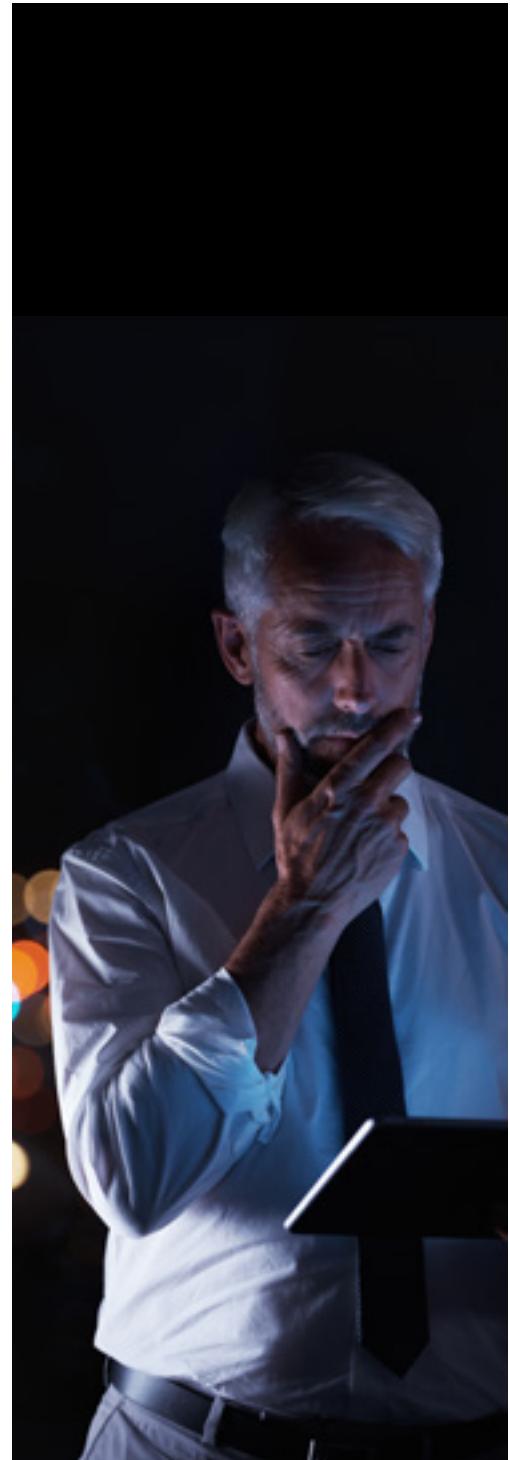
### 2. Payment method of technology transfer

The LTT 2006 stipulated that payment for the technology transfer could be carried out in one of the following manners:

- One-off payment or paying in instalments, in cash or in goods;
- Transfer the value of the technology into capital contributed to an investment project or to an enterprise's capital in accordance with the law; or
- Other payment methods agreed by the parties

The LTT 2017 specifies the three following payment calculation methods:

- Payment by percentage (%) of the net price.
- Payment by percentage (%) of net revenue.
- Payment by percentage (%) of the pre-tax profit of the receiver.



### 3. Audit of technology transfer price

The LTT 2017 stipulates that the technology transfer price in the following cases must be audited and implemented in accordance with the tax and price law:

- Technology transfer between parties where one or more parties have state capital;
- Technology transfer between related parties within a holding company;
- Technology transfer between related parties in accordance with tax laws.

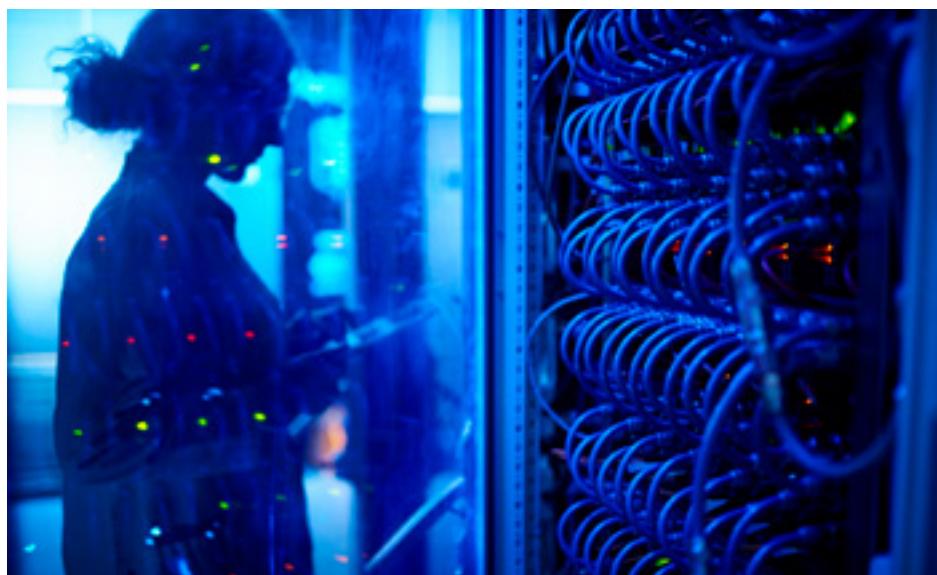
According to the above regulation, the tax authorities may request the enterprises receiving the technology to provide the audited technology transfer dossiers and the dossiers on the determination of market prices for the transferred technologies in order to determine the expenses deductible for CIT calculation purposes.

### 4. Tax incentive policies for technology application, transfer and renewal

The LTT 2017 specifies that the following subjects are entitled to tax incentives:

- Machines, equipment, spare parts, materials, samples and technologies not yet created in the country and imported for direct use in research and development, decoding, technological innovation and transfer; scientific documents and books for creative start-ups, development of science and technology enterprises;
- Technological incubators, science and technology enterprises incubators, organisations and individuals that invest in and support creative start-ups; intermediaries of the science and technology market which earn income from the provision of technology transfer services;
- Organisations and individuals transferring technology from Vietnam to foreign countries; organisations and individuals engaged in scientific research and technological development, technology transfer and technology decoding at enterprises; and
- Organisations and individuals transferring technologies that are encouraged to be transferred.

Enterprises should pay attention to the above issues if a technology transfer occurs. Please contact KPMG for further advice and assistance.



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