

TAX DUE DILIGENCE CRITICAL FOR BUYERS AND VENDORS



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As dealmaking in Vietnam continues to evolve in complexity, effective tax due diligence has emerged as a critical factor in shaping successful transactions.

Recent data indicates that, despite a slight slowdown in merger and acquisition (M&A) activity in 2023 due to global uncertainties, Vietnam's M&A market remains vibrant, with a total deal value of approximately \$5 billion across 220 transactions, according to Fiin-Group's research.

The first half of 2024 has shown signs of recovery, particularly in green energy, logistics, healthcare, and real estate sectors. In this evolving M&A environment, both buyers and vendors must prioritise tax due diligence strategies to safeguard their interests.

With complex regulatory requirements and evolving tax laws, Vietnam's M&A market poses unique challenges. Conducting thorough tax due diligence is vital for identifying the target company's potential tax exposure, which helps buyers avoid unexpected costs after acquisition.

For sellers, it enables a more effective review of its tax compliance status, allowing them to identify potential risks and implement

measures to mitigate or eliminate any tax related issues before buyers uncover them.

This need for tax due diligence is particularly relevant in Vietnam, where regulations can differ significantly across sectors, as well as depending on the Vietnam tax authorities' viewpoint. Navigating the complexities of corporate income tax (CIT) to VAT, foreign contractor tax and personal income tax requires careful preparation and insights.

For buyers, tax due diligence is essential for assessing compliance status and identifying potential tax exposures that could impact the deal's profitability. Buyers may encounter unexpected tax liabilities post-acquisition due to the target company's prior non-compliance.

For instance, an M&A transaction may uncover unreported tax obligations or outstanding audits that could lead to penalties. Identifying these issues early through a tax due diligence allows buyers to either negotiate adjustments to the purchase price or seek indemnifications to offset risks.

Meanwhile, transfer pricing compliance has gained significant attention from the Vietnam tax authorities, making it a key focus in tax due diligence. Ensuring the target company's transfer pricing policies are compliant with Vietnamese regulations can avoid costly adjustments and potential penalties in the future.

Buyers can leverage on tax due diligence findings to structure transactions in a way that minimises their tax exposure, such as by opting for an asset deal instead of a share deal or by utilising existing tax incentives within the target company's sector.

For vendors, conducting vendor tax due diligence before entering an M&A transaction can significantly enhance the value and attractive-

ness of the business, offering advantages that lead to better terms and smoother negotiations.

Firstly, by performing internal tax reviews or engaging in vendor tax due diligence, vendors can address any compliance gaps prior to the sale. This proactive approach presents a more transparent and organised financial profile to potential buyers, alleviating buyers' concerns and increasing the likelihood of a successful transaction.

Secondly, vendors who have a clear understanding of their tax position can develop more effective exit strategies. For example, understanding the CIT implications of an asset sale versus a share sale can allow sellers to choose the option that offers the most favourable tax outcomes for them. In certain circumstances, vendors may even carry out internal restructuring prior to M&A transaction to minimise their tax exposures.

In addition, by conducting tax due diligence in advance, vendors can streamline the negotiation process and avoid delays that may arise from unresolved tax issues. This can be particularly advantageous in sectors like real estate, where strict tax regulations can complicate transactions.

In Vietnam's M&A market, both buyers and vendors should prioritise tax due diligence to safeguard their interest. A proactive approach ensures that both parties enter the negotiation with a clear understanding of tax obligations and potential risks, which ultimately contribute to a smoother, more valuable transaction.

As Vietnam's M&A landscape continues to evolve, particularly in sectors such as healthcare, financial services, and green energy, tax due diligence will remain an essential component of successful deals.