Legal Alert: Tax laws reform of Mongolia

The Government of Mongolia submitted a tax reform to the Parliament in 2018 including revisions to the General Taxation Law (GTL), the Corporate Income Tax (CIT) Law, the Value Added Tax (VAT) Law and Personal Income Tax (PIT) Laws. During the irregular session held on 22 March 2019, the Parliament passed the package of the revised tax laws which will be effective from 01 January, 2020.

The followings were the main revisions introduced to the tax laws:

1. Comprehensive Transfer pricing rules are introduced to align with OECD TP requirements;
2. Tax loss carry forward may be utilized for 4 years regardless of an industry;
3. Statutory limitation period for a tax inspection (including reassessed taxes, fines and penalties) is reduced to 4 years;
4. Tax inspection will be performed based on risk assessment criteria – “no risky” taxpayers might not be inspected.

Reasonable facts to reform Mongolian tax laws as follows:

1. Since 2006, the economic and business relations have grown and rapidly changed and at the same time, technological complexity has taken place.
2. Transnational Corporations are operating in our country. These are at the risk of tax evasion and tax disputes and misunderstandings increases through changing prices across the countries.
3. Our legal environment of the tax law is not transparent, it does not exchange information, and the European Union is listed our country in blacklist as Mongolia is at risk of becoming a "bridge" taxable evasion country.

The following changes approved within framework of Taxation lawsreform:

1. To support the economic and business environment:
   - 1.1 To give chance to taxpayer who is not a VAT payer with a sales income of up to 50 million MNT per year with apply tax report once a year and use a simplified procedure to pay income tax at 1% of total sales revenue.
   - 1.2 Economic entities which a sales income of up to 300 million MNT per year with apply tax report twice a year pay 1% of taxable income.
   - 1.3 Economic entities which earned a sales income of up from 300 million to 1.5 billion MNT per year with apply tax report twice a year pay 10% of taxable income.
   - 1.4 The threshold for the 25 percent tax was increased from MNT 3 billion to MNT 6 billion.
   - 1.5 The tax loss shown in tax report calculates to transfer for regardless of sector within 4 years.
2. To simplify Mongolian taxation system.
3. To increase responsibility of tax administration and tax inspectors.
4. To avoid tax evasion and to protect the tax base:
   - 4.1 By the using bylaw of “BEPS”, to decrease the risk of tax evasion against to decrease tax base and to tax evasion.
   - 4.2 By implementing rules and regulations that is conform to International standards against changing prices across the countries, to protect the tax base.
   - 4.3 To exchange the information with 190 countries for purpose of tax.

5. To make amendment for clause of transfer of tax debt to heirs:

5.1 According to Article 10.2 of GTL (2008), the duty of the individual to pay taxes and the rights related to his death shall be transferred to his/her heir.

5.2 According to Article 16.6 of GTL (2020), the duty to pay the tax on the deceased person and his / her inherited rights shall be transferred to the inherited property and shall not be subject to tax penalties.

6. To make amendment for clause of border bans: According to Article 73.2 GTL, if the following conditions are simultaneously established, the tax administration shall have the right to access with authority which has authority to perform border ban until the tax has paid by foreign person and non-resident person.
    - If tax debt person who has no asset to pay own tax debt
    - If rate of tax debt is 20 million or more.

We have prepared a summary of key changes introduced to GTL, VAT and PIT as comparing with current legislations. The legal alert on the corporate income taxation will be prepared separately.

Key changes of General Taxation Law (GTL)

Description	Current General Taxation Law	New General Taxation Law
Pre-court dispute resolution mechanism	Currently, there are two levels of Tax Dispute Settlement Council (Councils) in Mongolia being Capital City [Ulaanbaatar] Council (or Municipal Council) and the Council under Mongolian Tax Authority (MTA) which is the highest level of Council whose decision is final decision at all taxing authority level. Following is the appeal procedures: 1. Taxpayers firstly submit complaints to its corresponding Municipal or Capital City Council if the corresponding tax authority (of the taxpayer who submits complaints) is district tax office or municipal tax office. 2. If the taxpayer disagrees the decision made by Capital City Council (or Municipal Council), taxpayer has the rights to appeal to Council under MTA whose decision shall be final at pre-court level.	The two-level appeal procedures have been eased and there will be only one level of Council under MTA for tax dispute cases as pre-court dispute resolution requirements. Under the new law, the Council may decide to suspend the case and instruct MTA to re-audit the case if certain conditions are met. Such re-audit shall be conducted by higher level of tax authority and shall not last more than 3 months. In case new assessment act is released, the original assessment act shall be cancelled. A 10% cash deposit is required by taxpayer to proceed with a dispute case and such deposit shall be capped at MNT100 million.

Description	Current General Taxation Law	New General Taxation Law
Tax payment extension	Tax payers may request extension for the payment of taxes up to 60 days under current rules.	Taxpayers may request extension for the payment of taxes and MTA may allow extension up to two years period. In case of extensions, a security or guarantee arrangement may be required.
Tax collection and enforcement	Current law has poor regulations on procedure of tax collection such as procedure to confiscate property and there is no protection of property right of third party.	A tax debt shall be collected immediately from a taxpayer if it is considered that such tax debt is at risk. MTA shall be entitled to start operations to collect these taxes from the taxpayer via special procedures. MTA shall be permitted to collect tax debts by expropriating the properties of the taxpayers and disposing them via auctions for cash. MTA can freeze bank accounts and instruct banks to transfer funds for the tax debt collection. MTA may instruct third party a tax payment on behalf of the taxpayer in the event the taxpayer has outstanding tax due and receivable from the third party. Various legal procedures are available for MTA to enforce tax collection.
Sanction on tax non-compliance	The law imposes a 30% automatic base penalty for non-reported taxes as a general rule. In addition to that, a daily interest is charged.	A 30%-50% penalty shall be imposed on tax non-compliances for failure of tax obligations or tax withholding obligations in addition to due taxes.
General Anti-Avoidance Rule (GAAR)	No formal GAAR in the tax laws.	New GTL has introduced a general anti-avoidance rule (GAAR) which is a set of broad principles-based rules within a country's tax code designed to counteract the perceived avoidance of tax. GAAR is a concept within law that provides the taxing authority a mechanism to deny the tax benefits of transactions or arrangements believed not to have any commercial substance or purpose other than to generate the tax benefit(s) obtained.
Transfer Pricing	There is no single, all-encompassing transfer pricing legislation in Mongolia. Instead, transfer pricing rules are contained in various	The new transfer pricing rules include stringent transfer pricing documentation be prepared including: 1. Transactional transfer pricing

	individual tax laws.	documents 2. Local File 3. Master File 4. Country-by-country report.
Base Erosion and Profit Shifting (BEPS) related changes	Mongolia has not yet addressed BEPS related changes.	New tax laws have introduced various changes related to OECD's BEPS project reflecting recent global tax developments.

Key changes of Value Added Tax Law (VAT)

Description	Current Value Added Tax Law	New Value Added Tax Law
Recovery of input VAT on capital goods	Under current VAT law, an input credit or tax refund of VAT incurred on a business's capital expenditure is disallowed. Purchasing, procuring or developing 'fixed assets' is unrecoverable irrespective of whether the company is registered for VAT agent.	An new VAT was made to the input VAT incurred on capital expenditure can be recovered as follows: 1. Buildings and constructions: Input VAT shall be recovered over 10 years with equal amount; 2. Equipment/Exploration activity: Input VAT shall be recovered over 5 years with equal amount; and 3. Other capital assets: Input VAT shall be recovered in the same year of the company purchase the asset.
VAT on loan interest	In the current VAT law, Article 13 of VAT Law provides a list of tax exempt supplies and article 13.5.5 says that "service of granting of a loan" is exempt from VAT while article 13.5.7 says that an interest of bank, non-banking financial institution (NBFIs) and savings and loan entities is exempt VAT.	Under the new rules, the article 13.5.7 has been amended to capture corporate loan interest for exemptions.

Key changes of Personal Income Tax Law (PIT)

Description	Current Personal Income Tax Law	New Personal Income Tax Law
Tax Residency	Under the current law, individuals are liable to pay PIT on their income.	The new law has re-defined the tax residency as follows:

	The individual taxpayers are divided into two groups, a resident and non-resident taxpayer. A resident taxpayer of Mongolia is taxable on his/her worldwide income. The legislation defines a permanent resident taxpayer as: 1. an individual who possesses a residential home in Mongolia; or 2. an individual who resides in Mongolia for 183 or more days in a given calendar year. A nonresident taxpayer of Mongolia is subject to tax on the income earned in the territory of Mongolia in a tax year and is defined as: 1. An individual who has no residential home in Mongolia and has resided in Mongolia for less than 183 days in a tax year.	An individual shall be Mongolian resident taxpayer if any of the following two criteria are met: 1. An individual who resides in Mongolia for 183 or more days in a given consecutive 12-months period. 2. If income earned in Mongolia and/or Mongolian sourced income is more than 50% of an individual's worldwide income A resident taxpayer of Mongolia is taxable on his/her worldwide income while non-residents shall be taxed on Mongolian sourced income only.
Taxes paid in foreign country	Current PIT discounts on tax paid by a foreign country are exempt from the double taxation on income and property and the prevention of tax avoidance.	New law introduced to more ease system for the taxes paid in foreign countries in order to reduce the tax burden of taxpayers. The tax paid in foreign countries is included in the principle of deductible tax. Exemptions from taxes paid in foreign countries are common in international.
Permanent resident taxpayer	Because of the current law does not specify certain types of terms and types of income, difficulty situations on enforcing the law commonly arises in practice. As a result, procedures for determining individual taxpayers increase the timing and cost on implication of law for whole process.	Description of a permanent resident taxpayer refined. The Personal Income Tax Law specifies a taxpayer identification and a taxpayer's tax liability.
Taxable income	Current PIT provides taxable income such as salaries, bonuses, incentives and similar employment income, indirect income but there are no definitions and categories of taxable income. As a result, many disputes arise on taxable income in practice.	Categories and definitions of taxable income have been improved. With the adopting of international standards for the salaries, bonuses, incentives and similar employment income, indirect income and Mongolian-sourced income, implication of law shall be ensured by the provision of the law without any gape.
Mongolia –	Current PIT law largely employs a	The new law introduced a "Mongolian-

Source rule	language that says non-resident is taxed for income earned in or within the territory of Mongolia.	source" rule that intends to cover broader income source by non-resident, similar to CIT laws. It almost serves as a catch-all provision in the laws. The definition for "Mongolian-sourced income" covers all income types set out in the PIT law and refer to Mongolian source rule in the CIT Law.
Foreign tax credit	Foreign tax credits are limited to countries with which Mongolia has tax treaties.	Foreign tax credits are now available under domestic PIT laws irrespective of tax treaties in place.
Tax credits and exemptions	Credits and exemptions provided under current law are sometimes inefficient and inaccessible to the target group.	As tax credits and exemptions have been introduced by new law, the taxpayer can take tax returns and reimbursement after being paid. In doing so, taxpayers will be more responsible and tax benefits will be increased.

If you need more information or have any inquiry, please feel free to contact V. Bolormaa, Partner and Advocate of Absolute Advocates Law Firm, an associate office of GRATA International in Mongolia by bvolodya@gratanet.com or 976 99085031.