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Tax Alert

Vietnam's Tax Authorities' inspection, audit trends in 2014 and immediate actions need to be taken by enterprises

Results of Vietnam's Tax Authorities' inspections and audits during the first 6 months of 2014

According to information published by the General Department of Taxation ("GDT"), Tax Authorities at all levels have inspected and audited 20,893 enterprises, reaching 28% of the annual plan and showing an increase of 64.3% in comparison with the corresponding figure of 2013. The additional tax amount collected through inspections and audits is VND4,119.2 billion, which is 80.8% higher than 2013's corresponding figure. Tax Authorities reduced the reported loss amounts by VND6,479 billion, which is 250% greater than 2013's corresponding figure.

On the topic of transfer pricing audits, since the beginning of this year, Tax Authorities have conducted audits and inspections at 557 enterprises making losses and pointing to signs of transfer pricing issues. This resulted in VND579.3 billion additional taxes and associated penalties, VND25.6 billion having been denied for deductibility, and VND1,517.2 billion reduction in losses.

Notable points regarding tax audit inspection plan for the last 6 months of 2014

The GDT has instructed local Tax Departments to utilise all resources, focusing on speeding up the implementation of the plan for tax audits and inspections of 2014 (conducting tax inspections of at least 1.65%, tax audit fieldwork of 13% of the managed enterprises at a minimum). In addition, Tax Authorities have also prioritized tax audits and inspections in specific areas such as: transfer pricing, e-commerce, online trading, enterprises making suspicious bank payment transactions, and tax inspections of large foreign-invested enterprises.

Moreover, tax inspection procedures have been finalised and standardised pursuant to **Decision No. 74/QĐ-TCT dated 27 January 2014 of the GDT on issuance of tax inspection procedures** with a number of changes in the planning and approval of annual tax inspection plans, carrying out tax inspections at enterprises' premises, importing inspection data and reporting regimes, etc. Notable points include:

- Tax Authorities shall conduct ranking of taxpayers by descending order of risk levels for annual tax inspection planning.

- Cases subject to unplanned tax inspections shall include: (i) taxpayers revealing signs of committing tax regulation violations, (ii) taxpayers being subject of tax complaints and denunciations, (iii) those of merger, consolidation, separation, dissolution, bankruptcy or equitization as required by laws and regulations, and (iv) inspections upon requests of the head of tax departments at all levels or of the Minister of Finance.

On 13 March 2014, the GDT issued **Official Letter No. 815/TCT-KK on public disclosure of general and tax risk information of individuals, organisations revealing signs of tax risks**. Pursuant to this Official Letter, information concerning the following individuals and organizations shall be subject to public disclosure:

- Taxpayers committing the following violations of tax laws and regulations:

    - Tax evasion, appropriation of tax amounts, illegal purchases and sales of invoices, causing loss of invoices, committing tax violations then escaping, not paying tax due within the stipulated deadline even after having imposed tax sanctions and/or force for tax payments;

    - Tax violations affecting tax payment rights and obligations of other individuals and organizations;

    - Failure to comply with requirements of tax authority, such as denial of request for providing information, documents, disobeying tax audit, inspection decisions.

- Taxpayers showing signs of tax violations:

    - Buyers and sellers having close relationship such as spouses, brothers, sisters, or abnormal related-party relationship;

    - Being reported to the Tax Authorities of tax violations by other relevant authorities;

    - Already making tax declarations, but no longer operating at the registered address and unable to be located;

    - Already being granted business license, investment certificate but not declaring tax obligations.

All information of the aforementioned cases shall be publicly disclosed on the website of the GDT.

In addition, in recent correspondence providing guidance on strengthening tax management of high-tax risk enterprises, Vietnam's Tax Authority shows a particular focus on controls over Value Added Tax ("VAT") refunds. Specifically, high-tax risk enterprises are particularly identified in **Official Letter No. 1752/BTC-TCT dated 10 February 2014** which was circulated by the Ministry of Finance ("MoF") to local Tax Departments.

It's also worth to recall that, during recent tax audits and inspections, the GDT and local Tax Departments have been specifically implementing **the Action plan for transfer pricing management during the period 2012-2015, which was approved under Decision No. 1250/QĐ-BTC dated 21 May 2012 of the MoF**. Pursuant to this action plan, the MoF required tax authorities to strengthen transfer pricing inspections of enterprises to ensure that transfer pricing inspections and audits will account for at least 20% of the total tax inspections and audits in a year.

Upon transfer pricing inspections performed from 2013 to date, the GDT and local Tax Departments have imposed certain profitability for a number of taxpayers, who conducted related-party transactions but did not declare or incorrectly declared information on related parties disclosure form or did not provide sufficient transfer pricing documentation for the period from 2006 to 2013 within the stipulated deadlines. Per our observation, profit ratios are often fixed, by the tax authorities, within a high range for certain sectors, which could be as high as 25%.

Recommendations of Grant Thornton (Vietnam) to management of enterprises

For better risk management, particularly at this stage, enterprises should establish measures to effectively and timely control potential tax and transfer pricing risks in order to mitigate unnecessary mistakes. **Grant Thornton (Vietnam) would like to propose the below 8 recommendations for the enterprise management's consideration**:

1. Enterprises should frequently and periodically research invoice information published on the website developed by the GDT (www.Tracuuhoadon.gdt.gov.vn) in order to obtain information on suppliers, who have ceased business operations, escaped, or engaged in illegal purchase and sale of invoices, to mitigate risks of penalties for use of illegal invoice usage, and subsequently being disqualified for Corporate Income Tax deductibility and VAT creditability.

2. Apart from self-reviews of revenues, expenses and business results in accordance with accounting principles, enterprises should obtain independent reviews of tax declarations and documents relating to determination of tax liabilities in view of current tax regulations.

3. Updating the enterprise's personnel with changes in tax and transfer pricing regulations via training courses should be done on a regular basis. Such training should be better associated with specific features of enterprises' business operations rather than a generic training.

4. Accounting and human resource departments should arrange a schedule to discuss with professional tax advisors upon receiving notification of tax audits and inspections from local Tax Authorities. Making sure accounting books, invoices and supporting documents are well prepared , and understanding that the rights and obligations of both enterprises and the tax authorities play an important role in achieving a good result for tax audits and inspections.

5. If the enterprise considers itself eligible for VAT refund, an independent review on the expected refundable amount and application dossier should be conducted before the official submission of the VAT refund dossier to the local Tax Department. This might help to (i) control legitimacy, adequacy, sufficiency, and correctness of documents and invoices filed by the enterprises, (ii) minimize difference between proposed refundable amounts and the actually refunded figure, (iii) avoid surprise tax penalties, if any. Moreover, we also recommend that enterprises should form periodic plans for VAT refund (if conditions are met) so as to enhance the enterprise's cash flow.

6. The enterprise should frequently review the related party transaction disclosure forms in order to ensure the accuracy and completeness of the declared information, and maintain transfer pricing documentation concerning related party transactions taking place during the fiscal year in accordance with regulations in order to avoid Tax Authorities' imposing specific transfer pricing in related party transactions due to non-disclosure, or incorrect declaration of information on the related party transaction disclosure forms, or due to lack of documents or documents not being prepared in line with Vietnamese transfer pricing regulations.

7. Prior to entering any important contracts with clients, suppliers, contractors or labor contracts with your high-level employees, enterprises should seek independent advice from professional advisors to ensure legal rights and also to manage potential obligations arising from the contracts.

8. The enterprises should consider Foreign Contractor Tax implications on any payments made to foreign suppliers. If necessary, the enterprise might apply provisions set out under relevant Double Tax Agreements, which Vietnam has signed with countries or territories of the foreign suppliers.

Please contact Grant Thornton Vietnam should you require support from our professional tax advisors.

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