

25 September 2014

# Tax Alert



In this tax alert, Grant Thornton (Vietnam) would like to update a number of policy changes, including:

- (1) **Circular No.128/2014/TT-BTC** dated 5 September 2014 of the Ministry of Finance (“MoF”) providing guidance on Personal Income Tax (“PIT”) reduction for individuals working in Economic Zones (“EZs”) and Border-Gate EZs;
- (2) **Circular No. 19/2014/TT-NHNN** dated 11 August 2014 of the State Bank of Vietnam (“SBV”) providing guidance on foreign currency controls applicable to foreign direct investments into Vietnam;
- (3) **Official Letter No. 12495/BTC-TCT** dated 6 September 2014 of the MoF guiding the PIT treatment of Hypothetical Tax, Hypothetical Housing Allowance;
- (4) **Official Letter No. 3819/TCT-CS** dated 6 September 2014 of the General Department of Taxation (“GDT”) providing guidance on expense deductibility for payments amounting to VND20 million or more made via credit cards of individuals dispatched for overseas business trips;

- (5) **Official Letter No. 3430/TCT-KK** dated 21 August 2014 of the GDT, providing guidance on the declaration of sales invoices and decremental-adjusting invoices;
- (6) **Official Letter No. 5732/CT-TTHT** dated 21 July 2014 of Ho Chi Minh Tax Department (“HCMTD”) providing guidance on the tax treatment for payments of health insurance and accident insurance for employees.

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## 1. **Circular No.128/2014/TT-BTC dated 5 September 2014 of the MoF providing guidance on PIT reduction for individuals working in Economic Zones and Border Gate Economic Zones.**

Taxpayers eligible for PIT reduction in accordance with this Circular are residents and non-residents determined pursuant to the applicable PIT regulations, working in EZs and border-gate EZs (collectively referred to as “EZs”), such as:

- Individuals signing labor contracts with organizations, individuals which have business location in the EZs, and actually work in the EZs.
- Individuals signing labor contracts with organizations, individuals outside the EZs, but are sent to work in the EZs to perform the economic contracts which are signed between organizations, individuals outside the EZs with the Management Boards, State Management of the EZs, or with organizations, individuals engaged in the investment and carrying out of business activities in the EZs.

Assessable incomes for determining the **50% PIT reduction** include:

- Incomes being salaries and wages received by the individuals for working in the EZs;
- Incomes from business activities carried out in the EZs of individuals, groups of individuals who are granted business registration certificates in the EZs.

**Circular No.128/2014/TT-BTC took effect from 20 October 2014** and replaces Circular No.176/2009/TT-BTC dated 9 September 2009 of the MoF.

**2. Circular No. 19/2014/TT-NHNN dated 11 August 2014 of the SBV providing guidance on foreign exchange controls applicable to foreign direct investments into Vietnam.**

This Circular provides guidance on foreign exchange controls applicable to foreign direct investments into Vietnam, including: investment capital contribution; opening and use of direct investment accounts in foreign currencies and Vietnamese Dong; capital assignment, transfer of capital, legitimate profits and incomes to overseas, transfer of investment capital for the pre-investment period.

Circular No. 19/2014/TT-NHNN provides a number of important principles:

- Capital contribution of foreign investors and Vietnamese investors in foreign-invested companies must be made via bank transfers to the direct investment capital accounts.
- The assignment of investment capital of foreign-invested companies and of foreign investors' investment projects must comply with the Investment Law, Enterprise Law, Personal Income Tax Law, Corporate Income Tax Law and the implementing regulations, current foreign exchange control regulations and other relevant regulations.

The Circular also regulates that:

- In case the foreign-invested companies must close the direct investment capital account due to liquidation, cease of

business operations or change of legal status due to capital assignment, the foreign investors can use their own settlement accounts in foreign currencies, Vietnamese Dong opened at authorised banks for buying foreign currencies, transferring the direct investment capital and legitimate incomes to overseas.

- The foreign investors are allowed to use the legitimate incomes in Vietnamese Dong generated from direct investment activities in Vietnam to buy foreign currencies at authorized credit institution and remit to overseas within 30 working days from the date of receiving the foreign currencies bought.

**This Circular takes effect from 25 September 2014**, abolishing Article 9 of Circular No. 05/2014/TT-NHNN dated 12 March 2014 of the SBV providing guidance on the opening and use of indirect investment capital accounts to carry out indirect foreign investment activities in Vietnam.

**3. Official Letter No.12495/BTC-TCT dated 6 September 2014 of the MoF guiding the PIT treatment of hypothetical tax and hypothetical housing allowance.**

According to this Official Letter, when an employer (enterprise) performs **tax equalization**, deducts the hypothetical tax before paying wages to the employees and pays the actual PIT on behalf of the employees, then the income to be grossed up into taxable income **does not include the deducted hypothetical tax**.

This treatment is applied similar to the case of hypothetical housing allowance, according to which, the income to be grossed up into taxable income **does not include the deducted hypothetical housing rent**.

The Official Letter provides specific examples for each of the cases mentioned above.

This Official Letter has been sent to Tax Departments of provinces and cities, with reference to Circular No. 111/2013/TT-BTC dated 15 August 2013, which took effect from 1 October 2013.

*Noted that, the Official Letter does not mention the possibility of retroactive application.*

**4. Official Letter No. 3819/TCT-CS dated 6 September 2014 of the GDT providing guidance on expense deductibility of payments amounting to VND20 million or more, which are made via credit cards of individuals dispatched for overseas business trips.**

The GDT provides that payments made via **credit cards of individuals who are dispatched for overseas business trips** would be **accepted as non-cash payments** and the payments will be considered as **deductible expenses for assessment of taxable income** if the following requirements are met:

- There are appropriate supporting invoices, documents provided by the goods seller/service provider;
- There is a decision for dispatching the individuals for overseas business trips.

The Company would need to establish, implements financial policies, internal policies regulating/permitting employees to settle business expenses via their own credit cards and such payments would be reimbursed to the individuals by the Company.

In addition, for the purpose that such payments shall be considered as deductible expenses, the Company should ensure they are actually incurred and related to the business activities of the Company.

**5. Official Letter No. 3430/TCT-KK dated 21 August 2014 of the GDT, providing guidance on the declaration of sales invoices and decremental-adjusting invoices.**

**Regarding the declaration of sales invoices:**

- Taxpayers applying the VAT credit method would **not declare** sales invoices (excluding VAT invoices) as part of the

List of invoices of input goods, services (Form 01-2/GTGT).

**Regarding the declaration of invoices decrementally adjusting sales revenue and corresponding tax:**

- **The seller** declares the adjusting invoice in Form 01-1/GTGT and records **as a negative figure**.
- **The buyer** declares in Form 01-2/GTGT and records **as a negative figure**.

*The GDT has already make it possible to input negative data to Form 01-1/GTGT, 01-2/GTGT via HTKK, iHTKK software.*

**6. Official Letter No. 5732/CT-TTHT dated 21 July 2014 of HCMTD providing guidance on the tax treatment of health insurance and accident insurance for employees.**

**In case the Company purchases health and accident insurances for employees:**

For PIT purposes:

- This amount **shall be included in the assessable income** of the employee.

For CIT purposes:

- If the **conditions for entitlement and entitlement levels** of this benefit are **regulated in the Company's financial policies** and the Company has **fulfilled relevant obligations related to compulsory insurances for employees** in accordance with applicable regulations, **such expenses would be considered deductible for CIT calculation purposes but not exceeding VND1 million/employee/month**, pursuant to Circular No. 78/2014/TT-BTC.

**Should wish to explore the above changes further, and assess their impact on your specific business circumstances, please contact the professional tax advisors of Grant Thornton (Vietnam) for detailed consultation.**

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