



Grant Thornton

An instinct for growth™

Updates on the Law on Investment and Law on Housing with effect from July 2015 and on transfer pricing guidance

30 December 2014

Law No. 67 on Investment

with effect from 1 July 2015

On 26 November 2014, the National Assembly issued Law No. 67 /2014/QH13 on investment ("Law on Investment No. 67") replacing the Law on Investment No. 59/2005/QH11 and Resolution No 49/2010/QH13. The new Law on Investment takes effect from 1 July 2015 with some notable changes as follows:

Definition of Foreign Investors

The Law on Investment 2014 defines Foreign Investors as individuals having foreign nationality or organizations established under the laws of foreign countries carrying out business investment activities in Vietnam.

Current regulations: Foreign organizations or individuals injecting capital to perform investment activities in Vietnam.

Prohibited and conditioned business sectors

The Law on Investment 2014 supplements in details 6 prohibited business sectors: drugs; some types of chemicals, minerals; trading specimens of wild plants and animals; prostitution; trafficking of human, human tissues, organs; and human asexual reproduction-related business activities

In addition, the Law on Investment 2014 supplements regulations on conditioned business sectors: those subject to criteria on national security and defense, social order and safety, social ethics, public health.

Guarantee of business investment in case of regulatory changes

Where the newly issued regulations change the provisions on investment incentives, investors are entitled to enjoy investment incentives as prescribed in the new regulations **for the remaining incentive period of the project.**

Current regulations: Investors are entitled to enjoy rights, incentives under the new regulations **from the effective date of such regulations, policies**, unless the changes are due to the purposes of national defense and security, social order and safety, social ethics, public health, environment protection. Measures for investment guarantee for the settlement, compensation for properties shall be taken only when the investors **submit the request in writing within 3 years** from the effective date of the new regulations.

Amendments on investment incentives and tax incentives

The Law on Investment 2014 sets out provisions on investment and tax incentives for projects with capital of VND6,000 billion or more, and supplements new business lines subject to investment incentives: products of hi-tech supporting industries, manufacturing of products with value added from 30% or more; energy-saving products, etc. Investment incentives are applicable to both new and expanded investment projects.

Law No. 67 on Investment

with effect from 1 July 2015

Regulations on foreign investors under business co-operation contracts ("BCCs")

Foreign investors under BCCs are allowed to establish Operation Offices in Vietnam to perform the contract. The Operation Office has its own legal seal, and is allowed to open bank accounts, recruit employees, sign contracts and carry out business activities under its rights and obligations stimulated under the BCC and pursuant to the establishment registration certificate of the Operation Office.

Investment activities reporting mechanism

The Law on Investment 2014 supplements provisions on entities conducting reporting policies: Ministries, Ministry-level authorities, Provincial People's Committees; Investment Registration Authorities, Investors, business entities conducting investment projects.

Implementation of overseas investment activities

The Law on Investment 2014 supplements provisions, in which money transfer relating to the overseas investment activities must be conducted via a separate capital account opened at a credit institution licensed in Vietnam, and must be registered with the State Bank of Vietnam under the regulations on foreign currency management. Within 06 months from the date of tax finalization return or of the legally equivalent documents in accordance with regulations of the country receiving the investment, investors **must transfer all the profit and other incomes from overseas investment back to Vietnam** (except the case of using profit to invest overseas).

In addition, the Law on Investment No. 67 simplifies the dossiers, procedures and shortens the timeframe for of issuing investment certificates for foreign investors, **from 45 days down to 15 days**. Grant Thornton (Vietnam) understands that the duration shall depend on locations, business sectors, investment capital and the specific characteristics of each project of the Foreign Investors.

In the coming period, the Government would issue guidance on some provisions of the Law on Investment 2014, we will keep you updated upon the issuance of these document.



Law on Housing with effect from 1 July 2015

Law No. 65/2014/QH13 dated 25 November 2014 of the National Assembly on Housing (Law No. 65) takes effect from 1 July 2015.

Accordingly, foreign organizations or individuals, who are permitted to possess housing ownership in Vietnam, shall include:

- foreign organizations, individuals investing in housing construction projects
- FDI enterprises, branches, representative offices of foreign enterprises, foreign investment funds and branches of foreign banks operating in Vietnam
- foreign individuals who are allowed to enter into Vietnam

Under current regulations, only foreign organizations, individuals having investment projects on housing construction for lease are allowed possess housing ownership in Vietnam

Apart from housing construction investment, foreign organizations, individuals can also own residential houses via the following forms: purchasing, hiring – purchasing, receiving as present, inheriting commercial housing including apartments, stand-alone houses in housing construction investment projects.

However, foreign organizations, individuals are allowed to own only 30% of the quantity of apartments in an apartment building at the maximum; or up to 250 stand-alone houses where they are in a residential areas with the population equivalent to a ward-level administrative unit.



Transfer pricing

Recently, the General Department of Taxation (“GDT”) has issued guidance on the determination of net profit before Corporation Income Tax (“CIT”) for the application of comparable profits method and on the identification of related parties in loan and loan guarantee relationship. Grant Thornton (Vietnam) would like to summarise below for your reference:

- **Determination of net profit before CIT for application of comparable profits method**
 - According to the GDT, such determination needs to comply with regulations of accounting and financial reporting regime. Depending on the business characteristics of the Enterprise, when comparing between selected independent transactions and related party transactions, the Enterprise must analyze and assess influence criteria and adjust for material differences (if any) to obtain the comparability. In specific cases, the adjustments can add (+) or subtract (-) these different elements which can affect on profit.

The GDT also admits that it is very difficult to find independent companies comparable to the related parties in view of the equity and debt structure, and it is also difficult to find independent companies comparable to the related parties with regards to impact of financial and other activities on business results. Therefore, **impact of financial and other activities must be taken into account during the elimination of material differences influencing the profitability ratio of the Enterprise, in order to ensure high comparability in profitability ratio comparison**

- The GDT confirms that the above elimination is in line with Circular No. 66/2010/TT-BTC and international practices.
- **Identification of related parties in loan and loan guarantee relationship**
 - The GDT provides guidance that the loans used for the determination of the related party relationship according to Point e, Clause 4, Article 3 of Circular No. 66/2010/TT-BTC shall be determined by the actual loans taken (rather than the highest credit limit).

Recently, the GDT has collaborated with local Tax Departments to perform inspection, examination focusing on transfer pricing issues, thereby emphasizing the requirements of Enterprises to comply with transfer pricing regulations, including:

- the complete and correct declaration of all information presented in the related party transaction disclosure form
- the timely provision of transfer pricing documentation for the related transactions.

In case the Company provides inaccurate information or not in a timely manner, it might be exposed to the tax authorities’ imposing of deemed profit, accordingly increasing tax obligations and penalties.

Please contact the transfer pricing professional consultants of Grant Thornton (Vietnam) should the Company require support in this area.

Contacts

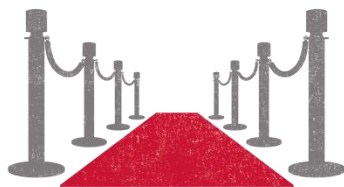
This newsletter has been prepared for reference purposes only. No responsibility can be accepted by Grant Thornton (Vietnam) for errors or omissions in this publication or for loss occasioned to any person acting or refraining from acting as a result of any material in this tax alert.

If you have any question or require further information relating to this tax alert, please contact our professional tax advisors.

For downloads

Please visit our website:

www.gt.com.vn



Hanoi Office

18th Floor, Hoa Binh International Office Building
106 Hoang Quoc Viet
Cau Giay District, Hanoi
Vietnam
T + 84 4 3850 1686
F + 84 4 3850 1688

Hoang Khoi

Tax Partner
D +84 4 3850 1618
E Khoi.Hoang@vn.gt.com

Nguyen Dinh Du

Tax Partner
D +84 4 3850 1620
E Du.Nguyen@vn.gt.com

Kaoru Okata

Director – Japanese Desk
D +84 4 3850 1680
E Kaoru.Okata@vn.gt.com

Pham Ngoc Long

Tax Director
D +84 4 3850 1684
E Long.Pham@vn.gt.com

Kieu Hoai Nam

Tax Senior Manager
D +84 4 3850 1681
E Nam.Kieu@vn.gt.com

Ho Chi Minh Office

28th Floor, Saigon Trade Center
37 Ton Duc Thang Street
District 1, Ho Chi Minh City
Vietnam
T + 84 8 3910 9100
F + 84 8 3914 3748

Nguyen Hung Du

Tax Partner
D +84 8 3910 9231
E HungDu.Nguyen@vn.gt.com

Valerie – Teo Liang Tuan

Tax Director
D +84 8 3910 9235
E Valerie.Teo@vn.gt.com

Tomohiro Norioka

Director – Japanese Desk
D +84 8 3910 9205
E Tomohiro.Norioka@vn.gt.com

Tran Nguyen Mong Van

Tax Senior Manager
M +84 8 3910 9233
E MongVan.Tran@vn.gt.com

Nguyen Bao Thai

Tax Senior Manager
M +84 8 3910 9236
E Thai.Nguyen@vn.gt.com

Questions & feedback

