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Newsletter

19 January 2015



Updates on tax guidance

Grant Thornton Vietnam would like to summarize for your reference some newly issued guidance on taxes as follows:

Foreign contractor tax obligation of foreign organizations, individuals in Vietnam associated with goods trading activities via bonded warehouses

On 19 December 2014, the General Department of Customs issued Official Letter No. 15075/TCHQ – GSQL. Accordingly, **bonded warehouses are non-tariff zones, the relationship of these zones with the outside area is an export-import relationship. However, a bonded warehouse is a place within the territory of Vietnam. The carrying out of purchasing, selling, transferring goods ownership activities by the goods owners in bonded warehouses also means that the benefits gained from those activities are derived within Vietnam's territory.** Therefore, the foreign contractors shall be considered to have **income derived from Vietnam and would be required to fulfill their tax obligations in Vietnam as per relevant regulations.**

Corporate Income Tax ("CIT") policies for the income gained from discounted prices offered by suppliers upon reaching a required sales volume

On 19 December 2014, the General Department of Taxation ("GDT") issued Official Letter No. 5711/TCT-CS. Accordingly, the income gained from discounted prices offered by suppliers upon reaching a required sales volume would be considered as other income of the Company. If for the year 2014, the Company is entitled to CIT incentives due to meeting criteria

on geographical areas as regulated in legal documents issued before 2014, then the Company is also entitled to apply CIT incentives on the above mentioned other income.

Labor contracts and work permits (except for exempted cases) are required for assessing tax deductibility of the salaries paid to foreign employees or foreign executive directors

This is the guidance from Ho Chi Minh City Tax Department in Official Letter No. 9408/CT-TTHT dated 5 November 2014. According to which, in case the Company pays salary to foreign employees or foreign executive directors directly managing the Company's business activities, if the labor contracts are available (in case work permits are needed, such permits must be obtained from relevant authorities), then their salary expenses would be considered deductible for CIT purposes.

Registration fee payment shall be required for the Company's assets upon re-registration of the ownership /using rights with the government authorities

On 24 December 2014, the GDT issued Official Letter No. 5803/TCT-CS providing guidance on the registration and payment of registration fee. Accordingly, if the Company receives asset transfers being capital in another company in Vietnam and changes the name of the transferred Company, then **the assets of the transferred Company are subject to payment of registration fee upon re-registration of ownership/using rights with the government competent authorities.**

Updates on tax guidance

The use of non-cash payment vouchers in Value Added Tax (VAT) creditability

Requirements on non-cash payment vouchers (payments via bank) in Value Added Tax creditability and refund:

- On 24 December 2014, the GDT issued Official Letter No. 5806/TCT-KK guiding Tax Departments of provinces and cities under the central government's management as follows:
 - Payment vouchers via bank for the purchases of goods, services: vouchers issued by credit institutions licensed to operate in Vietnam (where the payer opens their bank account) sent to the payer in order to inform the Debited amount which has been transferred to the beneficiary's account opened at the relevant credit institution.
 - Payment vouchers via bank for exported goods and services: vouchers issued by credit institutions licensed to operate in Vietnam (where the recipient opens their bank account) sent to the recipient in order to inform the Credited amount which has been transferred from the account of the payer at the relevant credit institution.
 - Payment vouchers via bank which are considered for VAT creditability and refund purposes are those in compliance with provisions of Article 5 of the Regime on banking accounting vouchers issued together with Decision No. 1789/2005/QĐ-NHNN dated 12 December 2005 by the State Bank's Governor. In particular, they must include: name, code, information of the sender and the beneficiary, quantity, price, or description of the business transactions.

Grant Thornton Vietnam recommends enterprises to review carefully the contents mentioned above to ensure the validity of payment vouchers used for VAT creditability and refund.



Updates on tax guidance

The use of non-cash payment vouchers in Value Added Tax (VAT) creditability

- Official Letter No. 5806/TCT-KK also provides guidance on bank payment vouchers for exported goods and services in which the source of payment is from the foreign customers' account opened at banks in Vietnam, accordingly:
 - The source of money transferred into the foreign customers' accounts must comply with the prevailing regulations on foreign currency controls.
 - The Tax Authority must examine, co-operate with credit institutions and the related Custom Authority to verify the source of money transferred into the foreign customers' account opened at banks in Vietnam to obtain legitimate basis for VAT creditability and refund purposes in accordance with the guidance provided in Official Letter No. 12485/BTC-TCT dated 18 September 2013 and Official Letter No. 10024/BTC-TCT dated 22 July 2014 issued by the Ministry of Finance on measures for enhancing tax and customs management over goods exported through land borders.
- During the course of tax management, if the tax authorities identify suspicious transactions (such as: repeated payments of the same amount during the day, transfers via multiple accounts,...), they should request the State Bank in writing for more information in order to have the basis for assessing VAT creditability and refund.
- Any violation relating to payments via bank which does not conform with prevailing legal regulations on banking, credit, foreign currency controls, would result in the taxpayer not being entitled to VAT creditability, refund, or being subject to re-collection of the refunded VAT amount. In addition, the tax payer will be subject to administrative penalties in accordance with Circular No. 166/2013/TT-BTC dated 15 January 2013 of the Ministry of Finance.



Updated guidance on CIT

Incomes from capital transfer

CIT treatment for income from capital transfer:

- The GDT issued Official Letter No. 5803/TCT-CS dated 24 December 2014 providing guidance on income from capital transfer for the case of capital transfer to a Japanese enterprise. Notable points include:
 - In case the foreign party transfers capital of enterprises being residents of Vietnam and the immovable properties' value accounts for a major portion of the total assets, then the income is subject to Vietnamese taxation (as per Clause 3, Article 13 of the Double Tax Treaty between the Government of the Socialist Republic of Vietnam and the Government of Japan).
 - **The payment amount of the transfer shall be determined in line with market pricing principle.** If the transfer price is not in accordance with market pricing, the managing Tax Department shall have the right to examine and impose transfer prices as prescribed by laws.
- Grant Thornton Vietnam would also like to remind you that pursuant to current regulations:
 - In case the transfer contract does not specify the transfer price or if the Tax Authorities have the basis to determine that such price is not in line

with market pricing principle, the Tax Authority shall have the right to examine and impose the transferring price. Where an enterprise transfers part of its capital, for which the transferring price is not in accordance with market pricing principle, then the tax authority is entitled to re-assess the whole value of the business at the time of transferring in order to determine the transferring price corresponding to the capital transfer portion.

- **Basis for determining** the transferring price is per investigation documents of the tax authority or as per the price of capital transfer of similar cases at the same time, of the same or similar business entity or price of similar transfer contracts at the time of transferring. **In case the transferring price imposed by the tax authority is inappropriate, the value determined by the authorised professional valuation companies assessed at the time of transfer shall be used, as per current regulations.**

At present, Grant Thornton Vietnam is an international firm allowed to provide the valuation services of state-owned enterprises in Vietnam.

Notice about the submission of the Annual operation Report

For the Representative Offices of foreign companies in Vietnam

According to Article 19, Decree No. 72/2006/ND-CP, on an annual basis, before the last working day of January of the next year, the RO is required to submit the written report on its operating activities during the year to the authorities granting the RO's establishment licenses.

- **The deadline for submitting the operation report for 2014 is 30 January 2015.**
- The reporting templates is as per Circular No. 11/2006/TT-BTM: the annual operation report of the RO shall be prepared in accordance with template BC-1 of Annex IV.
- The Report is required to be prepared completely, accurately, honestly and must be submitted within the deadline stipulated at Clause 1, Article 19, Decree No. 72/2006/ND-CP.
- In addition, during the operating period in Vietnam, if there are any changes in personnel working at the RO within 10 days from such changes, the RO shall have to submit the report attached with copies of relevant documents to the licensing authority.

Please contact our professional advisors at Grant Thornton Vietnam should you need our assistance in preparing your operation report to submit to the competent licensing authority.



Contacts

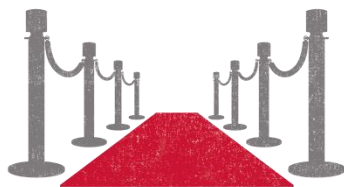
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If you have any question or require further information relating to this tax alert, please contact our professional tax advisors.

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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

Tran Hong My

Tax Director
D +84 8 3910 9275
E HMy.Tran@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

