



# Enterprises should be well-prepared for Transfer Pricing Inspection by Vietnam Tax Authorities

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Recently, Vietnam Tax Authorities have been intensifying on transfer pricing inspection on enterprises that have incurred related party transactions .

As observed by Grant Thornton Vietnam, new inspections are mainly focused on enterprises with foreign investment and are conducted by 04 big tax departments : Hanoi , Ho Chi Minh City, Dong Nai and Binh Duong . To date, the organizational and staffing structure of experts on transfer pricing inspection in General Department of Taxation and 04 big tax departments has been formed and they have started to issue inspection decisions on transfer pricing issues.

We also notice that other tax departments are also stepping up inspection activities and a separate unit of transfer pricing inspection might be formed at local tax departments if authorities discover more enterprises with signs of transfer pricing and big tax adjustments after these inspections.

In this newsletter, Grant Thornton Vietnam would like to share with enterprises on:

1. Information and documentation that enterprises should prepare for Transfer Pricing Inspection.
2. Recommendation of measures for enterprises to improve their compliance in accordance with the tax law when conducting transactions with related parties and to better control the transfer pricing risk.

## 1. Information and documents that enterprises should prepare for Transfer Pricing Inspection

Drawing from our experience of Grant Thornton Vietnam, we suggest that the enterprises should prepare the following information and documents:

- a. Investment Certificate (Investment Registration Certificate) and Charter of Enterprise
- b. Information on related parties, including:
  - Name, nationality, percentage of ownership and diagram describing the relationship among related parties.
  - Corporate Income Tax rate that is being applicable in these nations.
  - Capital transfer transactions among related parties, if any.
  - Total revenue, expenses and profits/losses in inspection years.
- c. Information on related party transactions of enterprises:
  - Detailed list of related party transactions incurred with each related party and applied method for determining the market price .
  - This information has been provided in details on the declaration form of related party transactions submitted by enterprises , but enterprises are often asked to fill in a separate form for the purpose of inspection of transfer prices.
- d. Audited financial statements
- e. Diagram describing business and production processes and the involvement of independent and related parties in each phase of the process.
- f. A table listing the following (i) raw materials and goods purchased from independent and related parties in each financial year , (ii) details of products, goods sold to customers (including independent customers and related party customers) in each year .
- g. Information on members of the Executive Board, the Board of Directors in fiscal years of inspection period (name, year of birth, nationality, passport number and position). Besides, Tax Authorities also require enterprises to provide similar information on members of the Executive Board , the Board of Directors of the parent enterprise.
- h. The material consumption norms of products manufactured by enterprises .
- i. Contracts, orders, customs declaration, detailed packing list,...for transactions related to raw materials, products and goods with related parties and independent parties .
- j. Pricing policy for purchasing materials and selling products; Procedures for control and approval of prices.
- k. Transfer Pricing documentation to substantiate the information declared on annual Transfer Pricing forms for inspected period.
- l. Other documents might be required to verify transfer prices of enterprises depending on nature of business of each type of enterprise.



## 2. Recommendations by Grant Thornton Vietnam for Enterprises

Grant Thornton Vietnam recommends Enterprises to fully declare related party transactions on prescribed form and submit it together with annual CIT return within regulated deadline. Enterprises have to ensure that the information declared on Transfer Pricing form is accurate and there are proper documents to substantiate the applicable pricing method and the arm's length range at the time of declaration.

Depending on the size of the enterprise and of the related party transaction, Grant Thornton Vietnam recommends that enterprises should have documentation to substantiate the market price and have regular discussions with enterprises in the same Group or related parties in order to determine the prices being applied and supporting documents to verify independent transaction price for future inspection or to prove that the related party has also complies with the provisions on transfer pricing in their country to be used as supplementary materials for explanation to the inspection team.

In cases where enterprises which have had the transfer prices adjusted as a result of the inspection, Grant Thornton Vietnam notices that profit margins deemed in these cases are very high and Tax Authorities have no obligation to provide data used to calculate comparable prices when determining transfer pricing behavior (because these data are listed in the "data that inspectors are not allowed to reveal" according to Circular 56/2013/TT-BCA-A81 issued by Ministry of Public Security)(1). Consequently, it is highly likely that these enterprises will be deemed with the profit margin in the following years unless enterprises have detailed guidelines on transfer pricing from General Department of Taxation or 04 big tax departments as mentioned above.

For enterprises in other areas (except Hanoi , Ho Chi Minh City, Dong Nai , Binh Duong ), but subject to a deemed tax amount payable related to transfer pricing by the local tax department, should obtain a written confirmation of detailed guidelines on how to apply transfer price for the years that have not been inspected by the General Department of Taxation to avoid being deemed with unexpected profit margins, which may lead to additional tax liabilities and fines for late payment.

According to information made public by the end of 2014 , the Korean Business Community faced many difficulties in supplying documents and answering questions on transfer pricing from tax authorities<sup>(1)</sup>. We think this is a common concern of many foreign investment enterprises operating in Vietnam .

According to a global survey by Grant Thornton International regarding International Business Report (IBR) made on 2580 enterprises operating in 35 nations, enterprises are willing to pay more taxes in exchange for better clarity and certainty from Tax Authorities in tax planning<sup>(2)</sup>.

**Grant Thornton Vietnam recommends that enterprises which have incurred related party transactions should enhance their compliance with the provisions of Vietnam transfer pricing regulations and need to prepare documentation in advance for transfer pricing inspections when requested by Tax Authorities. This will help facilitate business operations, save time, increase the certainty and transparency of its tax obligations under Vietnam transfer pricing regulations. Please contact Grant Thornton Vietnam if enterprises need further assistance.**

1. 21 December 2014, Vietnam Customs Newspaper: Korean Enterprises need transparent guidance on preventing transfer pricing , <http://www.baohaiquan.vn/Pages/Doanh-nghiep-Han-Quoc-can-minh-bach-thong-tin-chong-chuyen-gia.aspx>
2. 5 August 2015, Grant Thornton International: Business leaders renew appeal for clarity on 'acceptable' tax planning, <http://www.grantthornton.global/en/insights/articles/tax-planning-2015/>



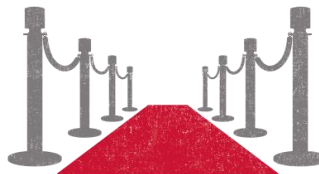
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If you have any question or required further information relating to this tax alert, please contact our professional tax advisors.

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