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Update on Unemployment Insurance, Transfer Pricing, Tax and Settlement Mechanism before signing Tax inspection/examination minutes

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Unemployment Insurance

On 31 July 2015, the Ministry of Labour – Invalids and Social Affairs issued Circular No. 28/2015/TT-BLĐTBXH providing guidance on the implementation of a number of articles of the Law on Employment in relation to Unemployment Insurance (“UI”).

Circular No. 28/2015/TT-BLĐTBXH has come into effect from 15 September 2015 and its contents are applied retrospectively from 1 January 2015.

A number of notable points of this Circular:

Participation of UI

- Application dossier for participating UI for the employees must be submitted to the Social Insurance authority within thirty (30) days from the effective date of the labour contracts.
- For cases before 1 January 2015 where the employer has signed the labour contracts for seasonal work or for work with the term from 3 months to less than 12 months and they are being in progress, up to 1 January 2015 if the legitimate duration of such labour contracts remains for at least 3 months then the employer is required to register the UI for their employees from 1 January 2015 onwards.

Contribution rate

- Employee contributes UI based on the salary scheme decided by the employer whose monthly salary is higher than 20 times of the minimum salary of region, then both the employer and employee must contribute the UI up to the cap of 20 times of the region minimum salary from 1 January 2015 onwards.

UI allowance level

Monthly UI allowance = average salary of six (06) consecutive months that have been paid UI before unemployment x 60%.

Circular 28/2015/TT-NLĐTBXH guiding the preservation of contribution period for certain cases:

- Employee does not take the decision of unemployment allowance.
- Employee is not present in person at the authority to receive the unemployment allowance.
- Employee has odd months of employment that have not been counted for unemployment allowance.
- In all cases where employee receiving unemployment allowance are terminated pursuant to the decision of the Social Insurance authority.

Grant Thornton Vietnam would like to note that employee eligible for the preservation of the contribution period as regulated is responsible for taking procedure to preserve the contribution period of the UI.

Forms, procedures on periodic notification

- This Circular provides details of the applicable forms for employers and employees when performing the procedures of UI.
- The employer to notify the local employment service center where the working office is located, on the number of their employees working as at 1 October 2015 using Form 28 attached with this Circular within thirty (30) days from the above mentioned date.
- Before the 3rd of each month, the employer is required to notify by using Form 29 attached with this Circular to the local employment service center on the labour changes if any (for the calendar month prior to the notification).
- In the case of decreasing 50 employees or more, the employer must notify immediately to the local employment service center for timely consultant and assistance.

Transfer Pricing and Corporate Income Tax

TAX RISKS ON TRANSACTIONS WITH RELATED PARTIES

General Department of Taxation issued Official Letter No. 3185/TCT-CS dated 10 August 2015 guiding VAT on transactions among related parties applicable for cases where Vietnamese Companies reduce the selling price for its customers due to defects of the goods. Accordingly:

- Enterprise exporting goods to overseas that have exporting contract, customs declaration, invoices, via bank payment evidence is entitled to VAT rate of 0%.
- If exporting enterprise and foreign contracting partners are related parties and goods were delivered to third party clients; If List of the defects of the exported goods, and Minutes of sales discount were made by such third party clients in overseas, then the Vietnamese exporting enterprise is entitled to claim the input VAT in proportion of the actual money collection over the total payable amount as per the selling contract (before discount).
- Besides, this exporting enterprise will be in the request list of a comprehensive tax investigation to determine the CIT obligations and pricing as per Circular 66/2010/TT-BTC of Ministry of Finance stipulating on the determination of market price.

Grant Thornton Vietnam recommends enterprises having transactions with related parties to fully declare on the disclosure form of the related party transactions on an annually basis with sufficient supporting documents for substantiating the arm-length price of such transactions when the tax authorities conduct a tax inspection on CIT and determination of the price as per Circular 66/2010/TT-BTC.

Grant Thornton Vietnam is willing to assist the enterprises in reviewing the information declared in the submitted disclosure form of the related party transactions and the supporting documents for proving the market price in compliance the Circular 66/2010/TT-BTC.

ADJUSTMENTS OF ACCRUED EXPENSES ON CIT FINALIZATION DECLARATION

Tax Department of Hung Yen Province issued Official Letter No. 2184/CT-TTHT dated 31 July 2015 guiding the tax treatment of accrued expenses recording on the accounting account no. 335. Accordingly:

- Enterprises making incremental/decremental adjustment on profit before CIT for accrued expenses recording on the accounting account no. 335 as per the current accounting regime.

Official Letter No. 2184/CT-TTHT issued by the Tax Department of Hung Yen Province, and other local tax authorities may have similar guidance or refer to this official letter to provide guidance for specific cases with regards to accrued expenses. Therefore, Grant Thornton Vietnam recommends enterprises to review its annual CIT return to ensure the CIT declaration was made correctly and fully in compliance with the tax regulations on CIT.

Grant Thornton Vietnam is pleased to assist enterprises to conduct tax review for the purposes of mitigating the tax risks when requested.

Personal Income Tax (“PIT”)

FORMULA OF TAXABLE INCOME CALCULATION IN THE CASE THAT THE HOUSING RENT IS PAID BY THE COMPANY ON BEHALF OF INDIVIDUAL

Official Letter No. 3171/TCT-TNCN issued by the General Department of Taxation dated 7 August 2015 providing guidance on PIT policy regarding housing rent for foreigner. This Official Letter confirmed the contents previously guided in Official Letter No. 1348/TCT-TNCN dated 13 April 2015.

The General Department of Taxation has provided the detailed guidance as follow:

- In the case where Japanese individual is a resident in Vietnam and was assigned to work in Vietnam by the parent company in Japan, **(this individual only worked in Vietnam and received income from the parent company and the subsidiary company in Vietnam)**.
- If the subsidiary company in Vietnam pays the housing rent on behalf of the employee, then this housing rent paid by the subsidiary in Vietnam shall be included in the taxable income of the actual amount paid on behalf but shall not exceed 15% of the total taxable income paid by the parent company in Japan and the subsidiary company in Vietnam (excluding the housing rent).

Grant Thornton (Vietnam) recommends that the Enterprises should conduct a review on PIT calculation of the foreign employees.

PIT OBLIGATION OF THE FOREIGN CONTRACTOR’S EMPLOYEES ASSIGNED TO WORK IN VIETNAM

According to Official Letter No. 1105/CT-TT&HT of Hai Phong Tax Department dated 5 August 2015:

Notification obligation of the Company hiring the foreign contractor

- The Company shall be responsible for requesting the foreign contractor to provide information of their foreign employees for submission to the local tax department at least seven (07) days prior to the starting working date in Vietnam of such expatriates.

Obligation of information provision of the foreign contractor

- Foreign contractor shall have responsibility to provide information of foreign employees (i.e. name, nationality, passport number, working duration, undertaken job and income) to the Company.

Obligation of employees of the foreign contractor

- Foreign individuals appointed by foreign contractor to come to Vietnam for carrying out the contractor contract and earning income in Vietnam (regardless of receiving income in Vietnam or in overseas) shall be responsible for registration, declaration and payment of PIT on his own, and are not allowable to authorize the Company if not signing labour contract and receiving salary from the Company.

Grant Thornton (Vietnam) would like to note that although the Official Letter No. 1105/CT-TT&HT was issued by the Tax Department of Hai Phong province, currently other local Tax departments also have similar requests and guidance on tax declaration obligation of the employees of the foreign contractor and the notification obligation of the Company hiring the foreign contractor.

Also, there was a local Tax department that required the Company hiring the foreign contractor to be responsible for the PIT liabilities of the employees of the foreign contractor not declared in Vietnam because this Company did not fully perform the notification obligation as required.

Value Added Tax (“VAT”)

VAT RATE APPLICABLE FOR TRANSFERRING OF THE GOODS’ OWNERSHIP PERFORMED IN BONDED WAREHOUSES

Ha Noi Tax Department provided the guidance in Official Letter No. 45107/CT-HTr dated 10 July 2015 for a specific case of the taxpayer as follow:

For the case where the Company imported goods, materials from overseas (Japan) and performed the procedure to import to the bonded warehouse (ICD Tien Son, Bac Ninh Province), after which transferred the ownership of goods in the bonded warehouse to buyer in Vietnam:

- If the buyer is Vietnamese enterprise (not the Vietnamese enterprise located in non-tariff zones) and enterprise located in non-tariff zones, they are both not subject to VAT when transferring the ownership of goods in the bonded warehouse.
- When issuing VAT invoice, the seller shall only indicate the selling price which is the payment price, the line of VAT rate and VAT amount are to be left in blank and crossed-out.

Grant Thornton Vietnam recommend that the Enterprises should take notice when purchasing and selling goods in bonded warehouse. In addition, Grant Thornton Vietnam would like to note that the payment for purchasing goods in bonded warehouse might trigger- Foreign Contract Tax (“FCT”) obligations.

RISK WHEN USING BANK ACCOUNT OF THE REPRESENTATIVE OFFICE TO MAKE PAYMENT ON BEHALF OF PARENTS COMPANY IN OVERSEAS

Official Letter No. 3184/TCT-CS issued by General Department of Taxation dated 7 August 2015 providing guidance on the operation and opening of the bank account of the Representative Office.

- The Representative Office is allowed to open bank accounts for payment of expenditures in Vietnam Dong and foreign currency at banks authorized to operate in Vietnam and to only use these accounts for activities of the Representative Office.
- According to the General Department of Taxation, there is no regulation that the Representative Office is allowable to use its bank accounts for making payments on behalf of its parents company in overseas.

Grant Thornton Vietnam recommend that the Enterprises should pay attention to the payment via bank transfer/non-cash payment method in order to closely control the tax risks.



Tax Inspection, Tax Audit

Settlement mechanism before signing Tax inspection/examination minutes at taxpayer's office in the case of potential appeal

The General Department of Taxation issued Decision No. 1276/QĐ-TCT on Settlement Mechanism before signing Tax inspection/ examination minutes at taxpayer's office in case of potential appeal ("Mechanism"). This Mechanism came into effective from 16 July 2015.

Grant Thornton (Vietnam) would like to provide a brief summary of some notable points in this Mechanism for your information and application in the context that the tax authorities are stepping up on the number of tax inspection/ tax audit activities at taxpayer's office as follows:

Points of view of the GDT when promulgating this Mechanism

- To mitigate the improper application of tax regulations of tax inspection/ tax audit teams that may cause inconvenience and difficulties for taxpayers.
- This mechanism does not affect on the legal rights of taxpayers when lodging the appeal against the tax administrative decision.
- The difference in understanding between the taxpayer and tax authority has been discussed and agreed by the tax authorities at all levels before the taxpayer lodges their complaints, this -therefore limits the complaints of taxpayers after signing inspection/ examination minutes, inspection/ examination result and the Decision on tax penalization.

Some cases which might result in complaints:

1. There are no regulations in legal documents but the inspection/ audit team still makes their judgments.
2. The taxpayers have inappropriate understanding of the regulations of the legal documents
3. There are legal documents being in equal legal force but regulating differently on a same matter.
4. The tax authorities have sent letters seeking for the expertise opinion but not yet receiving answer from competent authorities.
5. The tax inspection/ examination is conducted in accordance to the request of competent authorities (i.e. the State Inspector, State Audit office of Vietnam,...) but the taxpayers did not agree with the legal basis applied by such competent authorities.
6. The taxpayers preserve their opinions.
7. The taxpayers do not sign the inspection/ examination minutes; do not comply with the decision of tax administrative penalties imposed by the tax authorities.
8. Impose the tax reassessment despite outstanding issue of different opinions between the tax authorities and taxpayer.
9. The taxpayer has submitted the documents to the competent authorities seeking for ruling (before the time of the decision on tax inspection/ tax audit) but has yet to receive written responses for implementation.
10. Other cases as per the judgments of the Head of the inspection team. For example: with the same issue, two inspection teams, inspection for two different periods having different treatments.

Tax Inspection, Tax Audit (continued)

Settlement mechanism before signing Tax inspection/examination minutes at taxpayer's office in the case of potential appeal

A number of notable points regarding the handling principles, order and procedure of settlement

1. For the inspected/audited cases but with the possibility of complaints being lodged shall be handled in accordance with the following principles:
 - In compliance with the procedures prescribed in legal documents and this Mechanism.
 - Handling the cases from the lower to the higher level of the tax authorities.
 - The case being directly escalated to higher level will not be considered.
 - Conducting tax inspection/examination at the taxpayers' office in compliance with the Law on Inspection; Law on tax administration; inspection/examination procedures and relevant implementing documents.
2. For the case when signing the minutes to confirm the figures, the taxpayer has not agreed with the tax treatment of the tax authority, they must write on the minutes the dissenting opinions which are in the midst of seeking for the ruling (specifying the issues agreed, the disputing issues, the legal basis for settlement and the taxpayers' opinion) and collect sufficient dossiers, documents related to the remaining disputing issues.
3. While waiting for the response of the competent levels of Tax Department regarding the unsolved contents during the inspection/examination:

For the case that does not require to issue the decision of extension of inspection/examination, when the period of the inspection/examination is ended, the leader of the inspector team must sign the minutes within the time limit prescribed in Inspection/examination procedure and **write in a separate section of the minutes for the issues being in dispute and split from the inspection/examination result**. After receiving response from the higher superior level, within five (05) working days, the inspection/examination team shall have the responsibility to make an appendix to the minutes with the taxpayer to continuously resolve the issue as prescribed.

4. If the taxpayers DO NOT sign the Inspection/Examination minutes within five (05) working days since the issuance of the Inspection/examination minutes, they shall be sanctioned on the tax administrative violation.

Please contact our professional tax advisors should you require our further assistance in reviewing contracts, invoices, documents, tax returns and other related supporting documents proving the Enterprises' tax obligations before the tax authorities issue official Decision on tax inspection/examination at the Enterprises' offices.

Grant Thornton (Vietnam) is willing to assist the Enterprises in explaining your tax obligations with the tax authorities during the tax inspection period.

Contact

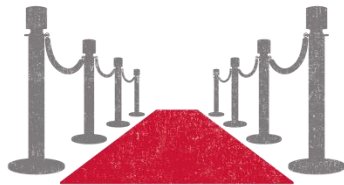
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If you have any question or required further information relating to this tax alert, please contact our professional tax advisors.

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Questions & feedback

