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Newsletter on Transfer Pricing, Enterprise Registration and notable points for Enterprises when setting up financial plan for 2016

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Establishment of the Transfer Pricing Inspection Department

On 1 September 2015, the General Department of Taxation (“GDT”) has issued decisions on the official establishment of Transfer Pricing Inspection Department at both the GDT and 4 provincial tax departments level, including: Ha Noi; Ho Chi Minh; Binh Duong and Dong Nai.

The main functions and tasks of the Transfer Pricing Inspection Department at the GDT are as follows:

- Planning and implementing the annual Transfer Pricing inspection plans.
- Setting up the procedure of Transfer Pricing inspection; developing training materials and training courses; lecturing, training, cultivating knowledge on Transfer Pricing inspection.
- Gathering, processing and collecting the information from the Enterprises having related party transactions under their management areas, tax authorities and from third parties; Gathering, studying the tell tale signs of Transfer Pricing which are being exercised by the Enterprises in Vietnam.
- Presiding to build and improve the set of risk assessment criteria in Transfer Pricing inspection. Organizing to analyze and assess the level of compliance with the tax laws of the Enterprises e having related party transactions, identifying fields of risk as the basis for planning the annual inspections on the Enterprises having related party transactions.
- Directing, guiding and supporting tax departments in implementation of legal documents, tax knowledge procedures for the Transfer Pricing activities consistence with the entire system.

- Attending the settlement process of tax bilateral agreements regarding the Transfer Pricing in accordance to the Double Taxation Avoidance Agreement (the "Agreement"); joining the settlement process of advance agreements on taxable pricing determination method (APA) and inspection on the compliance of implementation of advance agreements on taxable pricing determination method after the prior agreements on APA were signed.

The main functions and tasks of the Transfer Pricing Inspection Department at 4 provincial tax department: Ha Noi; Ho Chi Minh; Binh Duong; Dong Nai are as follows:

- Setting up the Transfer Pricing inspection programs and plans on annual basis; Receiving the requests and dossiers requiring the inspection on Transfer Pricing forwarded by the Tax Inspection Departments, Tax Examination Departments and District Tax Departments.
- Organizing to collect information relating to the determination of tax obligation of the Enterprises having related party transactions.
- Organizing to implement the Transfer Pricing inspection and propose the treatment in accordance with the laws for the cases of detection of tax laws violation of organizations, individuals during Transfer Pricing inspection.
- Inspection to verify and resolve the allegations on tax laws violation of tax payers relating to Transfer Pricing.
- Attending the settlement process of tax bilateral agreements regarding Transfer Pricing under the Agreement and inspecting the compliance of implementation of advance agreements on taxable pricing determination method after the prior agreements (APA) were signed.

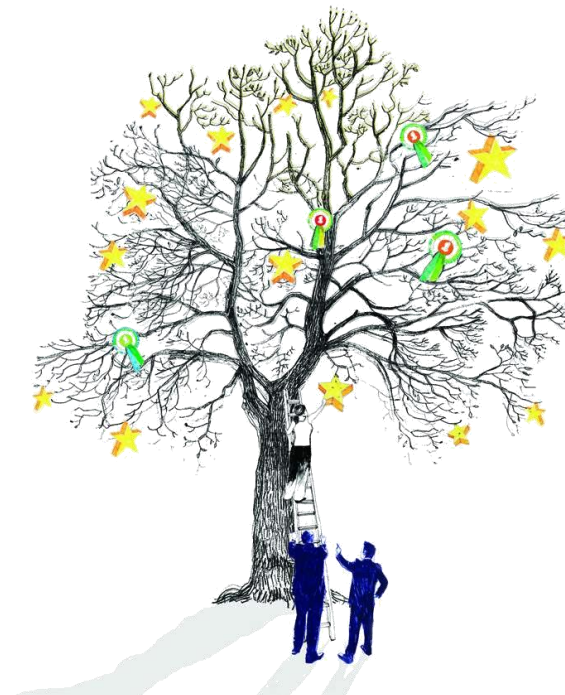
Establishment of the Transfer Pricing Inspection Department

Grant Thornton (Vietnam) believes that this official issuance of the Decision on establishment of the Transfer Pricing Inspection Department at the GDT and 4 provincial tax departments: Ha Noi; Ho Chi Minh; Binh Duong; Dong Nai has showed the determination of Vietnam Tax Authorities in requesting the Enterprises, especially the foreign investment Enterprises to comply with Transfer Pricing regulations in Vietnam.

Accordingly, the Enterprises will need to pay attention to the below points:

1. Whether the Enterprise has fully and correctly declared the information on Transfer Pricing Form?
2. Besides the Contracts, invoices and payment vouchers with related parties, whether the Enterprise has any independent documents to prove that the pricing is in compliance with Transfer Pricing regulations of Vietnam Tax authorities or not?

Please feel free to contact with Grant Thornton (Vietnam) for further discussion.



The Government issued Decree on Enterprise Registration

On 14 September 2015, the Government has issued Decree No. 78/2015/ND-CP on Enterprise Registration. This Decree shall come into effect from 1 November 2015 and replace Decree No. 43/2010/ND-CP, Decree No. 05/2013/ND-CP.

Grant Thornton (Vietnam) would like to provide a brief summary on some notable points of this Decree and share our practical experiences in transforming, registering Enterprises for your reference as follows:

- **Business activities:**

- When registering for a business establishment, notifying the supplementation/change of business lines or proposing for the conversion of Business Registration Certificate, the founders of Enterprise or Enterprises shall choose business line at level 4 as classified in the national economic system of Vietnam for their registered business activities written in the Enterprise Registration form, Notification on the changing content of the Enterprise Registration or Request form for the conversion of Business Registration Certificate.

- **Enterprise code, code of Enterprise's branch, code of business location:**

- Each enterprise shall only be granted one code which is called the Enterprise code. This code is also the tax code of Enterprise. This code is automatically generated, sent and received by the National Information System on Enterprise registration, Tax Registration System and recorded in Business Registration Certificate.

- For Branches and Representative Offices that were established before the effective date of this Decree but have yet to be issued the associated unit code, the Enterprises can contact the tax authorities directly to request for the tax code with 13 numbers, then carry out the procedures of changing the contents on registered activities at Business Registration Department (“BRD”) as prescribed.
- For the Enterprises established and operated under the Investment License or Investment Certificate (concurrently the Business Registration Certificate), the Enterprise code is the tax code issued by the tax authorities for Enterprise.

- **Providing information on the contents of Enterprise Registration:**

- The BRD sends the information on Enterprise Registration and changes on the contents of Enterprise Registration to the tax authorities, statistical offices, labor authorities, social insurance authorities. These authorities use the information on Enterprise Registration provided by the BRD and are not allowable to request the Enterprises to provide information that were already notified by the BRD.
- Organizations and individuals may request and must pay a fee to obtain the information on the contents of Enterprise Registration, legal status and financial statements of the Enterprise through the National Enterprise Registration Portal or directly at the BRD or through the Ministry of Planning and Investment.



The Government issued Decree on Enterprise Registration

<Decree on Enterprise Registration, cont.>

• The Enterprise's seal:

- The enterprises have the right to decide the format, content and the number of the seals of the Enterprises, branches or Representative Office. The enterprises may have many seals with the same format and content.
- Before using, changing, disposing the seal, changing the number of the seals of the Enterprise, branches or Representative Office, the enterprises have to send a Notice to the BRD where the Enterprise, branches, Representative Office are located at to publish the Notification of the sample of Enterprise's seal on the National Enterprise Registration Portal.

• Notification on changes to the registered tax information

- In cases the Enterprises change their registered tax information without changing the contents of Business Registration, the Enterprises have to send the Notifications to the BRD where the Enterprises are located.
- The BRD receives such Notifications, and inputs the data into the National Information System on Enterprise registration for transferring information to the database of the GDT.

• Convert the current License into the new Business Registration Certificate:

- The Enterprises have been granted the Enterprise Registration Certificate, Business Registration Certificate or Business and Tax Registration Certificate or Investment License or Investment Certificate (concurrently the Business Registration Certificate) before the effective date of this Decree, shall continue to operate according to the content of the Certificates mentioned above and **are not required** to carry out the procedures of converting into Enterprise Registration Certificate. The Enterprises shall be granted the new form of Enterprise Registration Certificate when changing the content of Enterprise Registration.
- In cases where the Enterprises would like to switch the Business Registration Certificate or Business and Tax Registration Certificate into the Enterprise Registration Certificate without changing the content of Business and Tax registration, the Enterprises have to submit the Request form together with the original Business Registration Certificate and the original Tax Registration Certificate or the original Business and Tax Registration Certificate to the BRD which will grant the Enterprise Registration Certificate.



Experiences sharing of Grant Thornton (Vietnam) in relation to a number of regulation of the new Law on Enterprise and Law on Investment

- **Changing the Business Registration information, the contents of Investment projects registration:**
 - Enterprises granted with Investment License/ Investment Certificate and if having changes on Enterprise registration information (i.e. information of Legal representative upon having new passport, ...) need to carry out the procedure to convert this License into the Enterprise Registration Certificate and update the new contents. If the change is information relating to the content of investment projects registration in Investment License/Investment Certificate (i.e. capital increase, ...), the Enterprises/Investor will be granted the new Investment Certificate.
 - In cases where the amendments are related to the content of Enterprise registration and content of Investment projects registration of the granted Investment License/ Investment Certificate, the Enterprises/ Investors need to carry out the procedure to obtain the Enterprise Registration Certificate first before proceeding with the investment registration procedure.
- **Requirements on the resident status in Vietnam of the Legal representative**
 - The Enterprises must ensure that there is always at least one Legal representative residing in Vietnam.
 - In cases where the Enterprises have only one Legal representative, this person must reside in Vietnam and authorize another person in writing to exercise the Legal representative's rights and obligations when leaving Vietnam.
 - In cases where the Enterprises have only one Legal representative and this person is absent from Vietnam for more than 30 days without authorization to another person to exercise the Legal representative's rights and obligations, the Companies' owner, the

Board members, the Board of Directors must appoint another person to be the Legal representative of the Enterprise.

- **The structure in implementing the investment procedures, Enterprise registration:**

- Currently, the Ministry of Planning and Investment is drafting a Circular to enhance the coordination mechanisms between Investment Department and the BRD internally to resolve the registration of foreign investment Enterprises. Accordingly, when performing procedures related to foreign investment Enterprises, the Investors/Enterprises only need to submit the records to the Investment Department. Investment Department will be responsible to coordinate with the BRD to settle and return the result (Investment Registration Certificate and Enterprise Registration Certificate) to the Investors/Enterprises. This Circular is expected to be issued after the issuance of the Decree guiding the Law on Investment.

Throughout many discussions with numerous foreign investors, entrepreneurs with different investment scales and business sectors, Grant Thornton (Vietnam) understands that the Investors, and Entrepreneurs always put into their top priority of being in the compliance with the provisions of Law on Enterprises, Law on Investment and other specialized laws and take into consideration on the impact of the changing laws to business activities, investment of the Enterprises. Please discuss with Grant Thornton (Vietnam)'s professional advisors if the Enterprises require further assistance regarding the compliance with the new provisions of Law on Enterprises, Law on Investment when amending the content of Enterprise registration, Investment project registration.



Notes for Enterprise when setting up financial plan for 2016

Increasing the regional minimum wage from 2016 onwards

The Government is currently drafting a Decree which will replace the Decree No. 103/2014/ND-CP dated 11 November 2014 on the increment of regional minimum wage from 2016 onwards. According to this draft, the estimated minimum wage would be:

- Region I: VND 3.500.000
- Region II: VND 3.100.000
- Region III: VND 2.700.000
- Region IV: VND 2.400.000

Thus, the range of regional minimum wage will be expected to be applied from 2016 and this will increase about 12.4% in average in comparison with the current wage stipulating in the Decree No. 103/2014/ND-CP.



Change on the basis of social insurance obligation calculation

- According to some remarkable contents of the amended Law on Social Insurance which will come into effect from 1 January 2016, the social insurance contribution rate shall not change but the base salary for social insurance contribution will be changed.

In particular:

- From 1 January 2016 until the end of 2017, the monthly salary to calculate the social insurance contribution is the contractual salary and allowances indicated in the labor contract.
- From 1 January 2018 onwards, the monthly salary to calculate the social insurance contribution is the contractual salary, allowances and other additional amount indicated in the labor contract.
- For the foreign employees who have work permits or service certificate/service license granted by Vietnam authorities will **be allowed** to participate in compulsory social insurance as stipulated by the Government.
- Of which, it's currently unclear whether the foreign employees must participate in the compulsory social insurance scheme or it will depend on their decision.

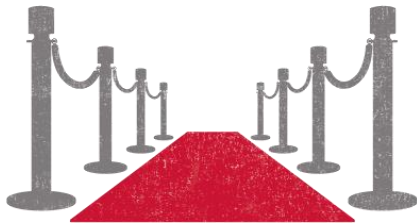
Contact

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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

