

Taxation, Insurance and Labor Updates

March 2016

In this Newsletter, Grant Thornton Vietnam would like to convey the following updates:

1. Electronic signature of buyer on electronic invoice.
2. Instruction on collection procedure and issuance regulation of Social Insurance Book, Health Insurance Card from 2016 onwards.
3. Vietnam's Tax Authority is paying attention to service provision transactions among related parties.
4. Decree No. 11/2016/ND-CP dated February 3rd, 2016 detailing regulations on implementation of a number of articles of the Labour Code regarding foreign employees in Vietnam.

1. Electronic signature of buyer on electronic invoice

According to Official Letter No. 2402/BTC-TCT dated February 23, 2016 issued by the Ministry of Finance, whether the Buyer is an accounting unit or not, if they have legitimate files and documents evidencing the provision of goods and services between the Buyer and Seller such as: Business Contract, Delivery Note, Delivery Receipts, Payment Receipts,... upon the issuance of the electronic invoice by the Seller to the Buyer in accordance with the current regulations, it is not necessary to have the Buyer's electronic signature in the invoice.

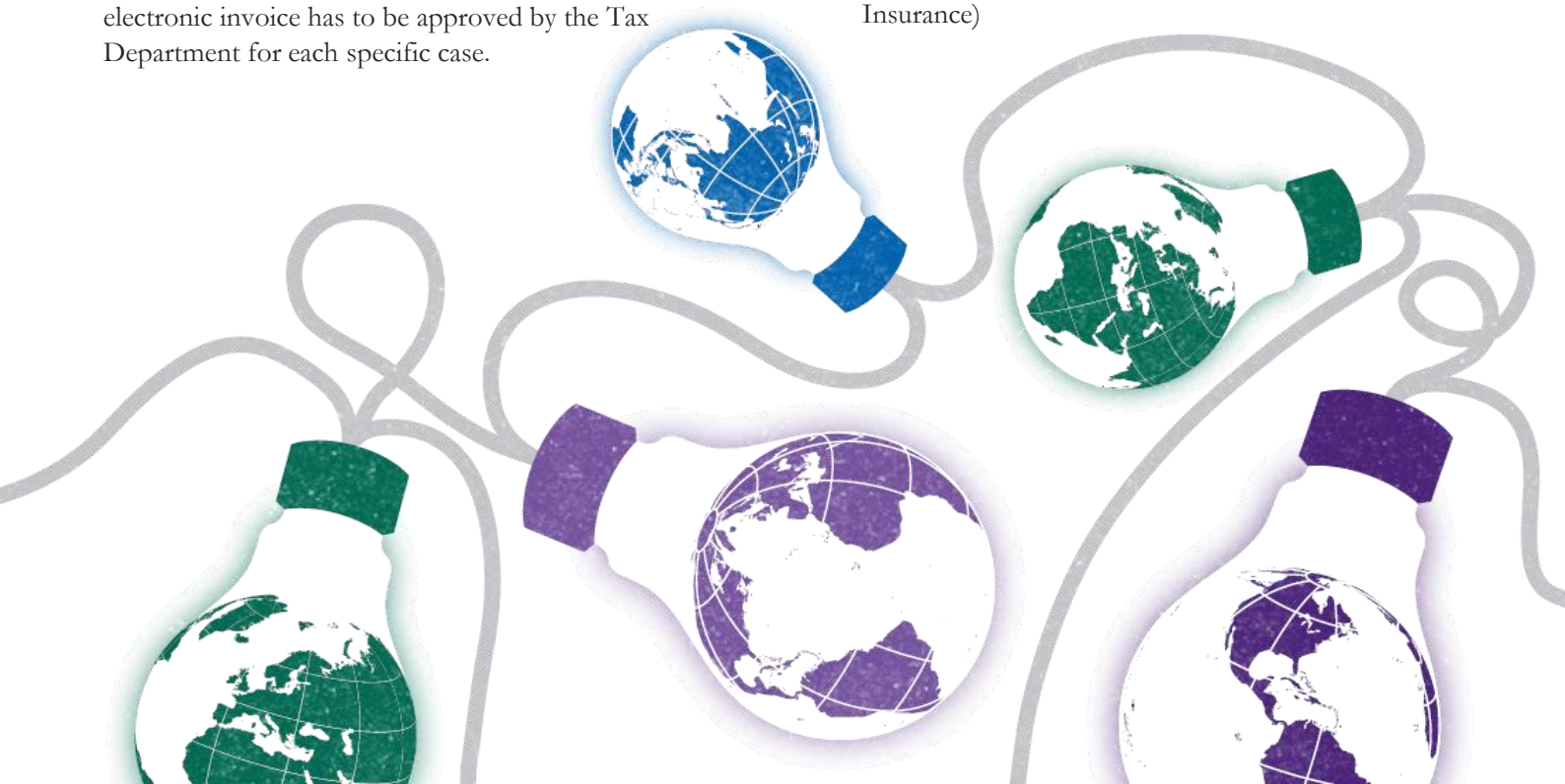
The omission of Buyer's electronic signature on the electronic invoice has to be approved by the Tax Department for each specific case.

2. Instruction on collection procedure and issuance regulation of Social Insurance Book, Health Insurance Card from 2016

According to Official Letter No. 212/BHXH-QLT dated January 19, 2016 of HCM City's Social Insurance Agency:

In 2016, the compulsory Social, Health, Unemployment Insurance (SHUI) contribution rate is 32.5%, in which:

- The Employer contributes 22% (including 18% for Social, 3% for Health, 1% for Unemployment Insurance)
- The Employee contributes 10.5% (including 8% for Social, 1.5% for Health, 1% for Unemployment Insurance)



However, since January 1st 2016 onwards, the Employer is not allowed to retain 2% of the total insurance contribution for the payments of social insurance entitlement cases (i.e. sickness, maternity, convalescence, ...) to the Employee as before. Instead, the Social Insurance Agency will pay directly to the Employee after the Employer submits all the required documents.

In the case that the Employee has more than one labour agreements with different Employers simultaneously, the contribution of the Social and Unemployment Insurance will be based on the first signed contract. Nevertheless, Health Insurance will be based on the contract with the highest salary.

During the leave period as regulated by Law, if the Employee continues receiving salary from the Employer then both parties must pay SHUI based on such payment that the Employee receives during the leave period.

Management responsibility of the Social Insurance Book:

From February 1st 2016, the issuance of Social Insurance Book includes the print of a cover page and a separate page complying with the new form of the Social Insurance Book regulated by Decision No. 1035/QĐ-BHXH dated October 1st 2015 issued by the Head of Vietnam's Social Insurance Agency. The Employee is responsible for keeping the Insurance Book pursuant to the 2014 Law on Social Insurance. After receiving the separate page confirming the insurance payment periods up to 2015 from the Social Insurance Agency, the Employer must handover the Social Insurance Book (including the cover page and the separate page, or the book and the separate page) to the Employee.

3. Vietnam's Tax Authority is paying attention to service provision transactions among related parties

In Grant Thornton Vietnam's point of view, Vietnam's Tax Authorities recognise that many Enterprises incur service fees (technical support, consultant services,...) paid to overseas related parties. In the service agreements, some specified a specific fee, some only mention fee

calculation basis plus additional mark-up percentage determined based on arm's length principals.

During inspection, the Tax Authority can re-assess the tax payable liabilities if the Enterprises fail to submit the required documents or if the documents fail to meet the Tax Authority's requirements:

- Service agreement
- Scopes of services and documents proving that the services were carried out to bring benefits to the Enterprise's operations in Vietnam. The Tax Authority will also identify if the services are duplicated with those being provided by third parties, and as such there is a risk that such service fees can be adjusted if no reasonable explanation is made.
- Explanation on the basis and method of fee calculation.
- Transfer Pricing Documentation proving that the service fees paid to related parties do not reduce the corporate income tax liabilities of the Enterprise in Vietnam.
- Non-cash payment evidences showing the payment dates being in accordance with the payment schedule stipulated in the Service Agreement.
- Foreign Contract Tax (FCT) returns and FCT payment vouchers.
- Disclosure form of the related-party transactions clearly specifying payment amounts made to the overseas parties (book value and the re-assessment value based on arm's length principals) and the transfer pricing method substantiating for the payments of service fees

Grant Thornton Vietnam suggests the Enterprises to review the documents to control the risk of being adjusted on the tax liabilities during tax inspection.



4. Decree No. 11/2016/ND-CP dated February 3, 2016 with detailed regulations on the implementation of a number of articles of the Labour Code regarding foreign employees in Vietnam.

This Decree takes effect from April 1st 2016 and provides detailed guidance on the registration process, certificate request on the demand of foreign employees; conditions, issuance and reissuance process of work permits; cases where foreign employees are exempted from work permits and expulsion of foreign employees.

This Decree supplements cases in which foreign employees are exempted from work permits. Accordingly, foreign employees holding positions being specialist, manager, executive director or technical consultant with a working period less than 30 days and a accumulated working period less than 90 days per year are exempted from work permits.

The Employer is not required to notify the need for foreign employees with the Provincial People's Committee in the following cases:

- Foreigners entering into Vietnam for a duration of less than 3 months to offer services
- Foreigners entering into Vietnam for a duration of less than 3 months to rectify technical, complex situations occurred that affect or threaten to affect to the operation and business activities that could not be resolved by Vietnamese specialists and the foreign specialist currently residing in Vietnam.
- Foreigners entering into Vietnam to work as specialists, managers, executive directors or technical consultants with a working period under 30 days and an accumulated period not exceed 90 days within a year.

- Foreigners being pupils, students studying in Vietnam and working in Vietnam, however the Employer is required to notify the Provincial Labour Agency 7 days in advance.
- Foreigners being students studying in schools or training institutions in foreign countries that execute their practicum at agencies, organizations or companies in Vietnam as per agreements.

Grant Thornton Vietnam would like to highlight the risks when employing foreigners as follows:

- Foreigners working in Vietnam without proper work permit or having an expired work permit shall be expelled from Vietnam.
- Employers of foreign employees shall be penalised from VND1 to 2 millions if they fail to notify the employment status of foreigners to the Labour Authority Agency.
- **Employers could be fined from VND 30 to 75 millions based on the violation level. In addition to that, additional fine being the operation suspension from 1 to 3 months can be imposed on the Employer involving in violation activities.**

Please contact Grant Thornton Vietnam if you need assistance in conforming with regulations on Work permits for foreign employees.





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