



Grant Thornton

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Newsletter updating on Tax, Investment and Labor Regulations

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Request on the submission of audited Financial Statements upon submission of 2015 CIT Finalisation return

GDT issued Official Letter No. 5236/TCT-KK dated 8 December 2015 guiding Local tax authorities of centrally run provinces and cities as follows:

- If a taxpayer subjecting to mandatory audit requirement of the financial statements, submits the CIT finalisation return to the tax authority with an un-audited financial statements, **the tax Authority will reject the documents and notify to competent authorities to check, and document the records of administrative violations in the field of accounting and independent auditing and sanction as prescribed by laws.**
- If taxpayers submit the tax returns after the deadline as prescribed by the regulations, they shall be sanctioned under the provisions of Circular No. 166/2013/TT-BTC of the Ministry of Finance on late submission of tax returns.
- Tax Authority is responsible for identifying taxpayers who are subject to mandatory audit of the financial statements in accordance with the law on accounting and independent auditing to urge taxpayers to submit tax returns on time with full regulated documents.

Grant Thornton Vietnam advises Enterprises to take note of the timely submission of the Audited financial statement.

Fees and tuition fees for Vietnamese employees' children

GDT issued Official Letter No. 5452/TCT-CS dated 18 December 2015 regulating that if an Enterprise directly pays the fees and tuition fees for Vietnamese employees' children and these payments are indicated in Enterprises' policies and fully supported by legitimate invoices and documents, they shall be considered as welfare expenses and regarded as deductible expenses when computing taxable income for CIT purpose.

Total expenditures for welfare spent directly on workers shall not be exceeding one month's average salary in a taxable year of the Enterprise.

According to Point 3, Article 30 of Circular No. 59/2015/TT-BLĐTBXH dated 29 December 2015 issued by the Prime Minister of Ministry of Labour - Invalids and Social Affairs providing detailed regulations and guidance on the implementation of some articles in the Social Insurance Law on compulsory social insurance, **the monthly wage used for compulsory social insurance contribution is exclusive of other welfares.**

Replacement of Chief Accountant and appointment of Chief Accountant being a foreigner

Pursuant to Official Letter No. 79037/CT-HTr dated 10 December 2015 of Hanoi Tax Department, if a Company wants to replace Chief Accountant which is not being stated in the business registration license, in order to simplify the process, the Company can submit Form 08-MST at one-stop-shop at the document receiving department of the tax authority.

Grant Thornton Vietnam further notes that that Foreign-Invested Enterprises in Vietnam which appoint a foreigner to be a Chief Accountant that this foreigner must satisfy the following conditions:

1. Possess Certified Accounting Certificate or Accounting/Auditing Certificate issued by foreign organisations that are accepted by the Ministry of Finance of Vietnam; **or** possess Accounting Practicing Certificate or Auditor Certificate issued by the Ministry of Finance of Vietnam; or Chief Account Certificate as prescribed by the Ministry of Finance;
2. Having an actual working period in accounting field for at least two years including 1 year of performing accounting job in Vietnam;
3. Not in the list that is prohibited from performance of accounting job as prescribed in Article 51, Accounting Law and is permitted to reside in Vietnam for one year and above.

Replacement of Identification Card (ID), Citizenship Card

In accordance to the Official Letter No. 66129/CT-HTr dated 9 October 2015 of Hanoi Tax Department if taxpayers, individuals that are under the scope of the implementation of tax regulations, upon their replacement of the ID cards, they must notify the tax authorities by submitting Form 08-MST as attached in Circular No. 156/2013/TT-BTC. Failure to comply with this requirement shall be sanctioned as regulated by Article 7, Circular No. 166/2013/TT-BTC.

Grant Thornton Vietnam recommends Enterprises to inform all its employees promptly and update the tax registration information (ID cards) accordingly.

Invoice issuance for loan interest

According to Official Letter No. 4503/TCT-DNL dated 30 October 2015 of the GDT, if the interest expenses paid to organisations and individuals for the loans that are not prohibited by the laws and supported by legitimate invoices and documents, will be allowable for CIT deductions.

Grant Thornton Vietnam recommends that Enterprises to review loan transactions and to obtain legitimate invoices and documents as regulated.



Personal Income Tax (PIT) Finalisation in 2015

The organizations, individuals paying PIT taxable incomes are responsible for filling the finalisation return and settling the tax finalisation liabilities on behalf of the individuals giving authorisation, regardless of the incurred of the withholding obligations. In the case that the organisations and individuals did not pay income during 2015, they are not required to lodge the PIT finalisation.

Grant Thornton Vietnam would like to notify Organization and Individuals that the deadline for submission of the PIT finalisation return and settlement of additional payable PIT liabilities (if any) for the calendar year 2015 is **30 March 2016**.

For residents who subject to direct declaration of PIT finalisation, please be noted that:

- Foreigners who reside in Vietnam and have 02 sources of incomes or above (i.e. from Vietnam and overseas) must directly declare and submit PIT finalisation return.

Based on Grant Thornton Vietnam's observation, recently Vietnamese tax authorities have enhanced the information exchange with other foreign tax authorities (i.e. Japanese, Korean, etc.) to identify the actual incomes that foreigners being Vietnam tax residents received in overseas. Consequently, many differences have been identified and Vietnamese Tax Authority has requested these individuals to provide explanations or additionally declare their tax obligations with associated penalties.

- Residents being foreigners upon their termination of the labour contract in Vietnam are required to complete the PIT finalisation with the tax authority before repatriation.

Please contact Grant Thornton Vietnam's professional advisors if you need our assistance in preparing and reviewing the 2015 PIT finalisation return.

Draft Decision of the PM on denying and holding back the repatriation of individuals who have not fulfilled tax obligations

The Ministry of Finance has proposed to the Prime Minister a Draft Decision relating to the immigration, accordingly, Vietnamese citizens are not permitted to go abroad and foreigners to be held back from repatriation if these individuals have not fulfilled their tax obligations (from VND1 billion and above for Enterprise or VND50 million and above for individual, including outstanding liability over 90 days). These individuals include:

- **Legal representatives of manufacturing, goods and service trading organisations which have not fulfilled tax obligations, including:** Chairman of the Board Members, General Director, Chairman of the Management Board, Owner of the Private business entity or individuals that are being appointed to be the legal representatives of the Company by the charter or the decision of business establishment which have not completely fulfilled the tax obligations.
- Other individuals not completely fulfilled tax obligations

The deferment of the repatriation towards a foreigner shall not exceed 3 years counting from issuance date of the official letter holding back the repatriation and shall be extended until the fulfillment of the tax obligations by the taxpayers.

Until now, the exact time for that Decision to be issued is still unknown, however, Grant Thornton Vietnam recommends that the Legal Representatives and foreigners to regularly review their tax obligations to ensure that they are fully paid so as to manage potential tax exposures to mitigate the risks.

Decree 118/2015/ND-CP dated 12 November 2015 issued by Government providing detailed regulations and guidance on the implementation of some Articles of the Law on Investment

Highlight points:

1. Replacing Investment Certificate (IC), Enterprise Registration Certificate:

- Enterprises operating under Investment License, IC or any other equivalent legal documents issued before the day from which the Law on Investment came into effective are allowable to replace their current licenses with the new Enterprise Registration Certificate (“ERC”).
- Enterprises with the newly issued ERC shall inherit all rights, and obligations indicated in the Investment License, IC and ERC.
- Branches and Representative Offices operating under IC, Investment License issued before the day from which the Law on Investment came into effective are allowed to operate under the Certificate of Registration of Branch and Representative Office in compliance with the Law on Enterprises. Dossiers and procedures for those replacements are instructed in Decree No.118/2015/ND-CP.
- Enterprise are responsible for updating, supplementing information on corporate registration and not required to perform the registration procedures for issuance and replacement of the Investment License, IC (also known as ERC) or equivalent legal documents to new ERC upon the performance the procedures of liquidation, suspension of business, notification of seal; establishment, amendment of the registered operation activities, dissolution of branch representative offices.

Please contact Grant Thornton Vietnam’s professional advisors if you need our assistance in changing the Investment Certificate, Enterprise Registration Certificate or any other amendments on capital, operation activities of the Enterprises.

2. Implementation:

This Decree takes effect on 27 December 2015 and replaces Decree No.108/2006/ND-CP dated 22 September 2006 issued by the Government providing detailed regulations and guidance on the implementation of some Articles of the Law on Investment.

3. Contents superseded by this Decree:

- List of areas that are entitled to the Corporate Income Tax (CIT) incentives as per Decree No.218/2013/ND-CP dated 26 December 2013 of the Government providing detailed regulations and guidance on the implementation of the Law on CIT;
- List of operating fields that are entitled to Import Tax incentives as per Decree No.87/2010/ND-CP dated 13 August 2010 of Government providing detailed regulations and guidance on implementation of the Law on Export and Import Taxes;
- Point 4, Article 19 and the regulation that “List of areas that are entitled to land rental incentives is only applied for areas with specific boundaries” as per Point 3, Article 19, Decree No. 46/2014/ND-CP dated 15 May 2014 of Government guiding on land and water surface rental.

Schedule of the removal of restrictions on market entry for foreign service providers on logistics services

Grant Thornton Vietnam summarises the guidance of the Ministry of Industry and Trade on the schedule of the removal of restrictions on market entry for foreign service providers on logistic services as follows:

1. **Warehouse services (CPC 742), conveyance services (CPC 748):** Restriction on access of foreign investors to those services is eliminated after 7 years counting from the day that Vietnam participated in WTO. At present, Enterprises with 100% foreign capital are permitted to be established in these areas.
2. **Other auxiliary services (as parts of CPC 749):** Restriction on equity proportion of foreign investors in the joint-venture companies of these services is eliminated after 7 years counting from the day that Vietnam participated in WTO, however, establishment conditions of a joint-venture are still applicable.

Notes: The content of other auxiliary services in the detailed Commitments on services of Vietnam in WTO and those in Decree No.140/2007/ND-CP are different.

3. **The following services are still caught under the restrictions on market entry for foreign investors i.e. requirement to establish a joint-venture company, including:**
 - Maritime conveyance services: including maritime conveyance services for passengers but exclusive of domestic ones (CPC 7211), maritime conveyance services for commodities but exclusive of domestic ones (CPC 7212).
 - Customs clearance services.
 - Domestic waterways conveyance services : including domestic waterways conveyance services for passengers (CPC 7221), and for commodities (CPC 7222).

- Railway conveyance services : including railway conveyance services for passengers (CPC 7111) and for commodities (CPC 7112).
- Conveyance services on road: including conveyance services on road for passengers (CPC 7121 and 7122); and for commodities (CPC 7123).
- Other services (some parts of CPC 749).

Restrictions on entry to other conveyance services (Section 11, Part II of detailed Commitment on Vietnam services in WTO) is completely eliminated. According to Vietnamese Laws, foreign service providers are permitted to establish enterprises with 100% foreign invested capital to engage in logistics fields provided that these providers comply with Vietnamese Laws on logistics.

Grant Thornton Vietnam will be pleased to support foreign investors in establishing the enterprises with 100% foreign invested capital and ventures engaging in logistics fields.

Importing used machines, equipments and production lines applicable from 01 July 2016 onwards

Ministry of Science and Technology issued Circular No.23/2015/TT-BKHCN on 13 November 2015 to provide guidance on the import of used machines, equipments and production lines applicable from 1 July 2016:

1. Requirements for used equipments to be imported to Vietnam:

- The equipment must not be in use for more than 10 years;
- It was manufactured under National Technical Regulations (NTR), National Standards (NS) of Vietnam or under the Safety Standards, Energy-saving and Environmental Conservation of G7 countries.

2. Used equipments in initial investment projects and expansion investment projects:

- The used equipments listed in the application dossiers of the investment project that were already approved by competent authorities deciding the investment of the project, and the Licensing Authority has granted the Investment Certificate in compliance with the Investment Law are not required to follow the aforementioned regulations.
- However, in some necessary situations, the competent authorities, the Licensing authority can obtain the technological evaluation assessments on these used equipments from professional authorities before accepting the investment project or issuing the Investment Certificate.

3. Notes:

- Enterprises are only allowable to import the used facilities, devices and spare parts when there is a demand to repair or replace the existing equipments being in operation in the enterprises.
- Dossiers for importing the used facilities, devices, accessories and spare parts are attached in Circular No.23/2015/TT-BKHCN.

4. Implementation:

Circular 23/2015/TT-BKHCN:

- Effective from 01 July 2016.
- Supersedes the Circular No. 20/2014/TT-BKHCN dated 15 July 2014 of the Ministry of Science and Technology guiding on the importation of used machines, equipment and production lines. Notice No. 2527/TB-BKHCN dated 06 September 2012 of the Ministry of Science and Technology on suspending the import of the used machines, equipment and production lines.

Regulations on working hours and time break of employees in the manufacturing /processing industry working on a seasonal/ordering basis

The Ministry of Labour-Invalids and Social Affairs issued Circular No. 54/2015/TT-BLDTBXH dated 16 December 2015 guiding on working hours and time break of manufacturing employees working on a seasonal basis and processing orders:

1. Applicable Objects:

Employees working under a definite term of labour contract from 12 months to 36 months and under indefinite term of labour contracts in the following area:

- Seasonally farming, forestry, fishery and salt manufacture, where products are required to be harvested in a short time or put into processing right after harvesting;
- Orders where the working periods are depending on the requirements by the owners of the goods. This section consists of textile, garment, leather, footwear and technological assembly industries.

2. Principles in using standard working hours:

- Employers do not need to pay wages for employees in the case of suspension of the work: If the standard working hours are less than 8 hours or less than 6 hours for employees who work under ponderous, toxic or dangerous conditions, and working schedules have been planned in accordance to the guidance of this Circular.
- Employers need to pay wages for employees in cases of work suspension: If the standard working hours have been scheduled, but employees are not assigned to work in practice.

- If standard working hours are more than 8 hours or more than 6 hours for employees who work under ponderous, toxic or dangerous conditions, and the working schedules have been planned in compliance with this Circular 's guidelines, the additional working hours arising are not considered as overtime.
- If daily working hours exceed the standard working hours that were already scheduled, the additional amount of time is allowed to be considered as overtime and shall be added to the total overtime amount during the year. Meanwhile, employers must pay overtime salary and other allowances for employees, following the Law on Labour.

3. What actions the Employers need to take?

- Prepare and adjust the schedules of annual working time and time break by using forms in Appendix 1 attached in this Circular. The labour union will be involved in these actions.
- Notify the schedules of working time and break time and any amendment to employees at least 30 days before applying the schedules. Having agreement with employees on overtime work, following regulations in the Law of Labour.
- Agreement with employees on method of payment being whether seasonal or monthly payment.
- Report to the local Department of Labor - Invalids and Social Affairs on the application of this Circular when reporting on the labor safety and hygiene on an annual basis.

4. Implementation

- Effective from 10 February 2016.
- Replacing the Circular No. 33/2011/TT-BLDTBXH dated 18 November 2011.

Notice of calculation basis on overtime payment for employees during Lunar New Year 2016

Grant Thornton Vietnam would like to note the calculation basis on overtime payment for employees during Lunar New Year 2016 to Enterprises as follows

Pursuant to Article 104, the Labour Law, employees receiving salary based on their working time are paid overtime salary for their working hours in addition to the standard ones set by the Employer. Calculation formula for overtime salary is as follows:

$$\boxed{\text{Overtime Salary}} = \boxed{\text{Actual salary per hour of weekday}} \times \boxed{\text{Minimum rate of 150\%, 200\% or 300\%}} \times \boxed{\text{Additional working hours}}$$

- Minimum rate of 150% of actual salary per hour of weekday is applicable for overtime work on the weekday;
- Minimum rate of 200% of actual salary per hour of weekday is applicable for overtime work on the weekend;
- Minimum rate of 300% of actual salary per hour of weekday is applicable for overtime work on public holidays or salary-paid days off, **exclusive of the original salary for those days of employees who are receiving daily salary.**
- Minimum rate of 30% of the salary unit or daily salary is applicable for overtime work at night.

- The daily-paid employees are employees who receive salary on a daily basis as agreed in their labour contracts, the daily salary is exclusive of extra salary for work on public holidays and salary-paid days off, pursuant to Law on Labour.

If employers have their employees worked overtime at night on the 2016 Lunar New Year holidays, calculation for overtime salary is as follows:

- Assuming that the employees' salary unit on normal working day is **A**, then:
- For monthly-paid employees, the minimum amount of overtime salary is:

$$300\%A + 30\%A + 20\% \times (300\%A) = 390\%A$$

- For daily-paid employees, they will receive a salary of **490%A**, which consists of the aforementioned minimum amount of 390%A and the salary for public holidays and salary-paid days off.

Contact

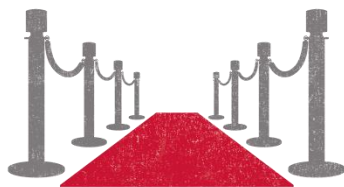
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For downloads

Please visit our website:

www.grantthornton.com.vn



Ha Noi Office

18th Floor, Hoa Binh International Office Building
106 Hoang Quoc Viet Street
Cau Giay District, Ha Noi
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

Ho Chi Minh Office

14th Floor, Pearl Plaza
561A Dien Bien Phu Street
Binh Thanh District, Ho Chi Minh City
Vietnam

T +84 8 3910 9100

F +84 8 3910 9101

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 Director

D +84 8 3910 9233

E MongVan.Tran@vn.gt.com

Questions & feedback

