

# Update on the latest regulations and important tax policies

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In this newsletter, Grant Thornton Vietnam would like to update the latest important regulations and tax policies as follows:

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After Merger and Acquisition transaction, the acquiring company will take on the remaining outstanding tax obligation of the target company

## 1. Decree No. 119/2018/ND-CP providing guidance on e-invoices for goods sale and service provision

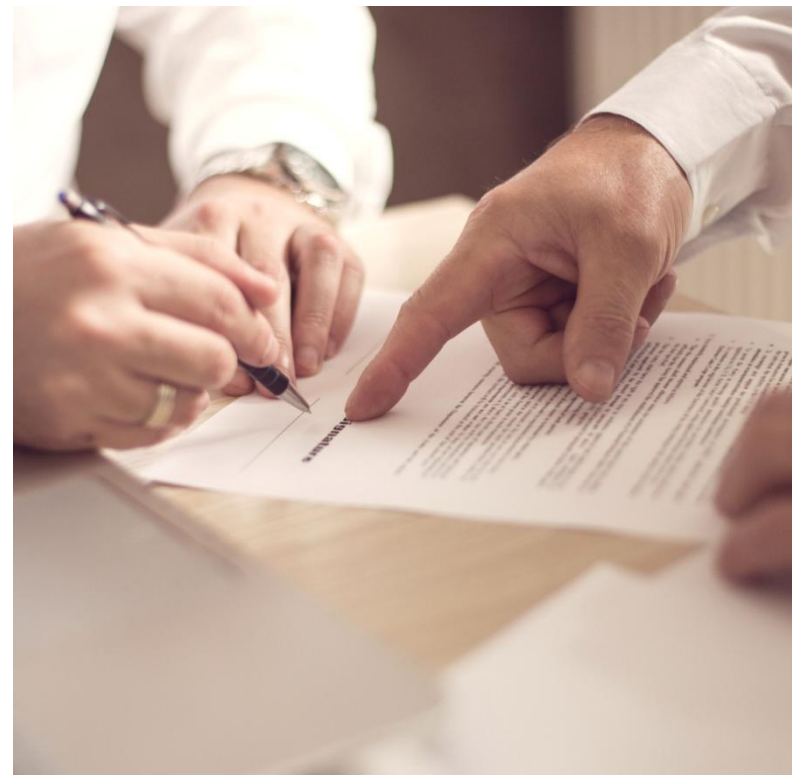
On 12 September 2018, the Government issued Decree No. 119/2018/ND-CP (“Decree 119”) providing guidance on new regulations on e-invoice for selling goods and rendering services. Accordingly, the noticeable points are as follows:



### Use of e-invoices:

In this Decree, the Government requires that the use of e-invoices in enterprises, business organizations, households and individuals doing business must be done by 01 November 2020.

Decree 51/2010/ND-CP and Decree 04/2014/ND-CP issued by the Government are still valid during the period from 01 November 2018 to 31 October 2020. The enterprises, business organizations, households and individuals doing business who already submitted Application dossier for issuing pre-printed paper invoices, self-printed paper invoices or purchased the pre-printed paper invoices from the tax authority according to the aforesaid Decrees are continuously allowed to use their paper invoices until 31 October 2020.



During the above-mentioned period (from 01 November 2018 to 31 October 2020), in case the tax authority issues Notification requesting the enterprises to use e-invoices with verification code of the tax authority, but the enterprises' Information Technology infrastructure are not qualified to use e-invoices and the enterprises wish to continue to use invoices in paper forms as mentioned above, the enterprises are required to submit (i) *Form 03* issued and attached with Decree 119 together with (ii) their VAT returns to the tax authority.



### Destroying paper invoices when starting to use e-invoices

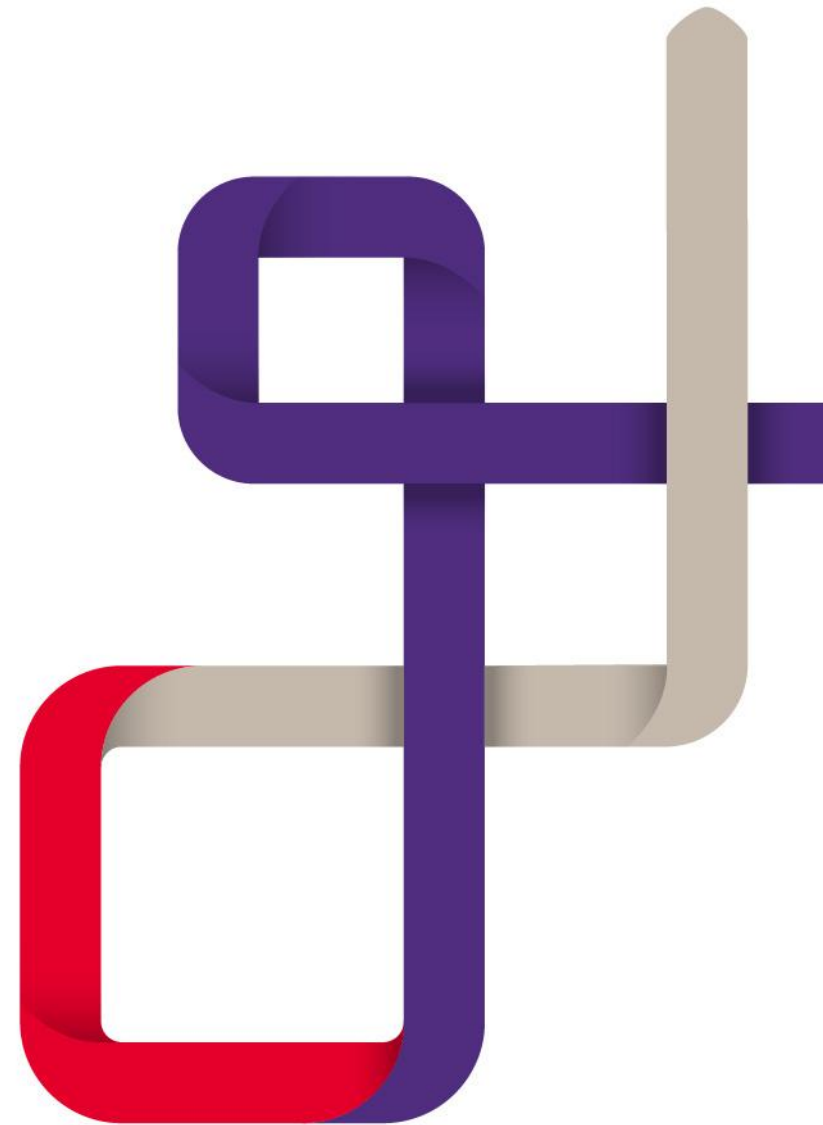
From the moment of using e-invoices (with or without verification code of the tax authority), the enterprises, business organizations, other organizations, households and individuals doing business must destroy the remaining paper invoices which have not been used.



### Conversion from e-invoices into paper invoices

According to Decree 119, legitimate e-invoices can be converted into paper invoices. The conversion must ensure that the contents on both invoices are the same.

The paper invoices are for recording and filing purpose only under the regulations, not valid for executing transactions and payment except for the invoices issued from computer system with e-data base linked to the tax authority.

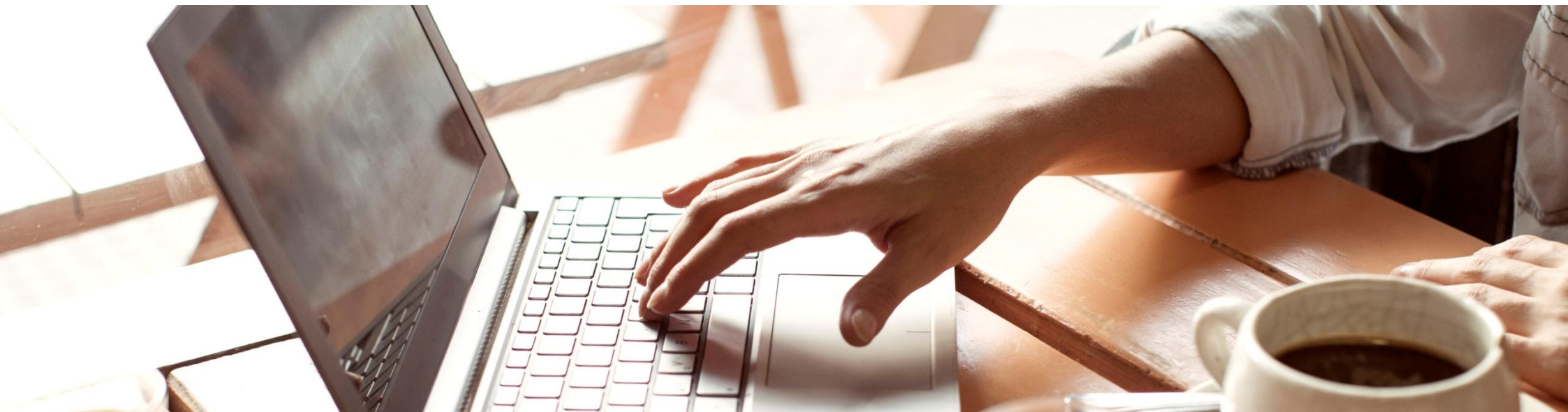




### Types of enterprise are allowed to issue e-invoices without verification code of the tax authority

The enterprises operating in the sectors including electricity, fuel, telecommunication, transportation, water, financial services, insurance, e-commerce, supermarket, trading and the enterprises which already had or will have transactions with the tax authority via electronic means with qualified accounting software system can use e-invoices without verification code of the tax authority when selling goods, providing services regardless of the value of each transaction of goods sale and service provision. E-invoices without verification code of the tax authority are the ones sent to clients by the enterprises selling goods, or providing service without verification of the tax authority.

However, if the above-mentioned enterprises are determined as enterprises with high tax risks, they are obligated to use e-invoices with verification code of the tax authority, regardless of value of each transaction of goods sale and service provision.







## 2. Circular No. 82/2018/TT-BTC amending certain regulations on Value Added Tax (“VAT”)

The Ministry of Finance (“MOF”) issued Circular 82/2018/TT-BTC on 30 August 2018 to abolish certain parts of regulations in Circular No. 219/2013/TT-BTC. In particular, this Circular 82 abolishes the example No. 37 mentioned at Point a.4, Clause 10, Article 7, Circular No. 219/2013/TT-BTC dated 31 December 2013 issued by the MOF. This example is eliminated to be consistent with the regulation in which the transfer of land use right is not subject to VAT promulgated at Clause 6, Article 4, Circular 219/2013/TT-BTC.



### 3. Decree No. 108/2018/ND-CP supplementing, amending some legislations relating to business registration

On 23 August 2018, the Government issued Decree 108/2018/ND-CP (“Decree 108”) to amend and supplement certain articles of Decree 78/2015/ND-CP dated 14 September 2015 on business registration.

One of the significant points is that Decree 108 supplemented the regulation in which the company is not obligated to stamp its seal on the Application Form for business registration, Notification on change(s) in content of business registration, Resolution, Decision, Meeting minutes in the dossier of business registration.

Additionally, in case an individual is authorized to carry out the procedure of business registration, such authorized person needs to have Authorization Form and this Form is not required to be notarized.

For business location, Decree 108 abolishes regulation in which an enterprise is only allowed to have business locations in central province/city where its head office or branch is located. Accordingly, based on this Circular, the enterprise can have its business location in provinces, cities different from location of its headquarter or branch.

Decree 108 also supplements the regulation relating to the procedure of notifying seal sample of enterprise. Accordingly, this procedure can be implemented online and submission of paper dossier to Business Registration Division is unnecessary.

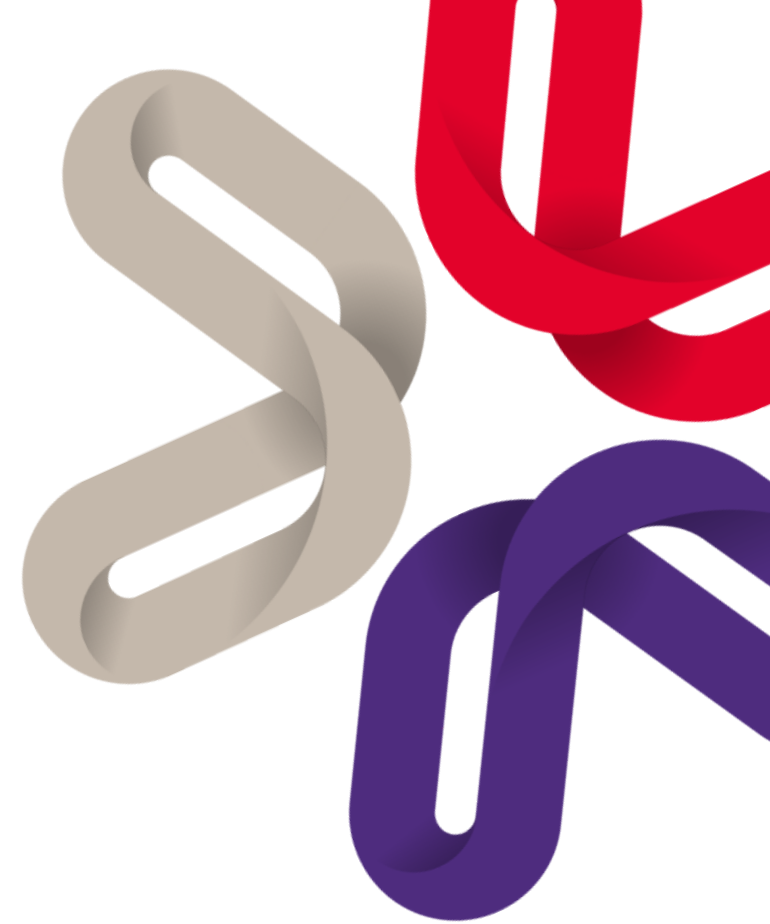
Other important procedures are also amended in this Decree such as online business registration via internet, registering for change in charter capital and contribution rates, change of information of founders, public announcement of business registration information, etc.

#### 4. The enterprises operating in certain specific sectors are exempt from preparing Transfer Pricing (“TP”) documentation

The General Department of Taxation (“GDT”) issued Official Letter No. 3260/TCT-TTr dated 23 August 2018 indicating the conditions for exemption from preparing TP documentation. To be specific, the company mentioned in this Official Letter is **not** operating with simple functions, its business activities are **not** one of three (3) sectors including distribution or manufacturing or processing, thus this company does **not** meet the conditions to be exempt from preparation of TP documentation according to Point c, Clause 2, Article 11, Decree No. 20/2017/ND-CP dated 24 February 2017 on related-party transactions. Correspondingly, based on this Official Letter, it is interpreted that the enterprises operating in other sectors apart from distribution, manufacturing and processing are not exempt from preparation of TP documentation.

#### 5. Interest expense of the enterprise in a loss position is not deductible for tax purpose

On 15 June 2018, Ho Chi Minh City Tax Department issued Official Letter No. 5772/CT-TTHT providing guidelines on Corporation Income Tax (“CIT”) treatment. To be specific, according to this Official Letter, in case the enterprise has related-party borrowing transactions and negative EBITDA (as it is in a loss position), its all interest expenses in the period are non-deductible for CIT calculation purpose.







## 6. How to withhold Personal Income Tax (“PIT”) on income paid for members of Board of Management

Ho Chi Minh City Tax Department issued Official letter No. 5635/CT-TTHT dated 14 June 2018 on PIT treatment.

Accordingly, in case the company pays remuneration to member of Board of Management who is not directly involved in managing the company, but representing shareholders of the company (which is not a state-owned one), the company is required to withhold 10% PIT on each payment with value of VND2 million or above before making payment to this member. In other words, the remuneration paid to members of BoM not involved in managing the company is considered as remuneration paid to individuals without labour contracts and subject to PIT imposed on each payment.



## 7. Monthly fixed allowances for business trip paid to an individual regardless of whether he/she takes business trip is not exempt from PIT

On 30 May 2018, Ho Chi Minh City Tax Department issued Official Letter No. 4888/CT-TTHT to provide guidelines on PIT liability. To be specific, in case the company pays business travelling expenses to the employee who takes business trip (including transportation, accommodation and per-diem), if the amounts and payment condition are mentioned in the company's policy or labour contracts and these expenses are related to the company's business activities, the expenses are **not** subject to PIT. However, in case the company pays the business travelling expenses on a monthly basis regardless of whether the employee takes business trip or not, given that these expenses are stated in the company's policy or labour contract, the expenses/payment must be included in the respective employee's taxable income for PIT purpose.

## 8. Charity contribution for natural disaster prevention fund is not exempt from PIT

Ho Chi Minh City Tax Department issued Official Letter No. 6730/CT-TTHT on 10 July 2018 to provide guidance on PIT implication on charity contribution for natural disaster prevention fund. Accordingly, the charity contribution for natural disaster prevention fund in line with Law on natural disaster prevention and other regulations (Decree of Government, Decision of People's Committee in all levels, etc.) is not treated as tax deduction for PIT purpose even though such contribution is compulsory and deducted from the employees' salary.



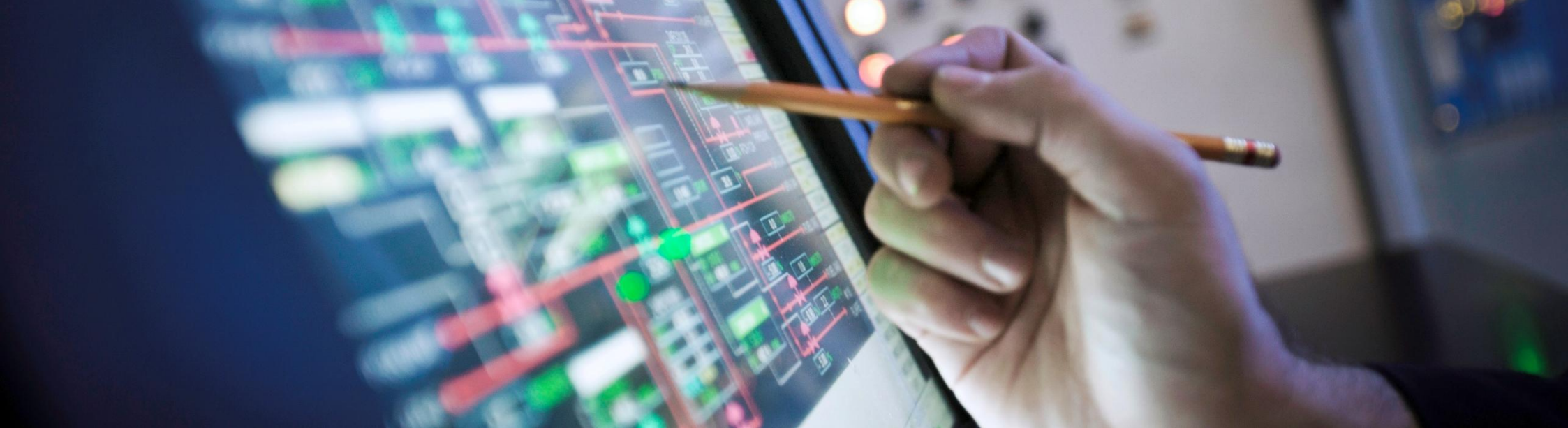


## 9. Tax declaration for dependent branch

On 14 June 2018, Ho Chi Minh City Tax Department issued Official Letter No. 5665/CT-TTHT to provide guidance on tax declaration. Accordingly, if the Company establishes its Branch with dependent accounting system in another province, and the Branch has its own revenues and expenses, this Branch is required to submit VAT return to its direct managing tax authority. If the Branch directly pays salaries to its employees, the Branch is also required to submit PIT return to the direct managing tax authority. For CIT, the Company take responsibility for CIT declaration of the Branch.

However, if the Branch is in the period of CIT incentive, the Company has to separately determine income derived from the Branch's activity in order to declare and pay CIT liability separately and cannot allocate tax payable to the provincial tax authority based on the ratio of expense. The tax payable amount in another province in the period of tax incentive is determined based on income derived in each province.





## 10. Payment discount paid to an offshore entity is subject to withholding Foreign Contractor Tax

On 14 June 2018, Ho Chi Minh City Tax Department issued Official letter No. 5658/CT-TTHT to provide guidelines on Foreign Contractor Tax (“FCT”) liability. According to this Official Letter, a Vietnamese company provides services for its overseas parent company under a service agreement including a term in which the overseas parent company will make an advance payment of employment cost to the Vietnamese company so the Vietnamese company can hire employees to implement the services. Accordingly, the Vietnamese company will offer its parent company a discount/commission. Based on the guidance in this official letter, upon making payment for the discounted amount or commission to the overseas parent company (or even the discount/commission is offset against the service fee which the parent company has to pay to the Vietnamese company), the Vietnamese company is required to withhold FCT imposed on such discount/commission. In particular, FCT includes 5% CIT and VAT exemption.



**11. After Merger and Acquisition transaction, the acquiring company will have to take on the remaining outstanding tax obligation of the target company**

Ho Chi Minh City Tax Department issued Official Letter No. 6323/CT-TTHT on 29 June 2018 to provide tax guidance relating to Merger and Acquisition (“M&A”) transaction. To be specific, when implementing M&A transaction, the Target company has to finalize its tax liability with the direct managing tax authority, and take responsibility for fulfilling its tax obligation before the merger.

In case the Target company has not yet fulfilled its tax obligation, the Acquiring company will take on all the rights and obligations relating to taxation of the Target company after the Target company is inspected and audited by the tax authority up to the moment of terminating its operation (outstanding tax payables, creditable tax amount to be carried forward, overpaid tax amount). Based on the tax authority’s tax audit result at the Target company, the two parties (e.g. Acquiring company and Target company) will prepare the documents to transfer all the rights and obligation in terms of taxation to the Acquiring company so that the Acquiring company can continue to fulfil tax obligation with the State in line with the regulations.



# Contacts

Please contact professional advisors at Grant Thornton Vietnam for assistance with taxation, work permits for expatriate and legal issues you may have during the course of your business.

For more detailed information, please visit our website

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