

Tax Newsletter

January 2017



In this newsletter, Grant Thornton Vietnam would like to update you with some of the latest guidance regarding Value Added Tax (“VAT”) refund, Business Registration and Invoices as below:

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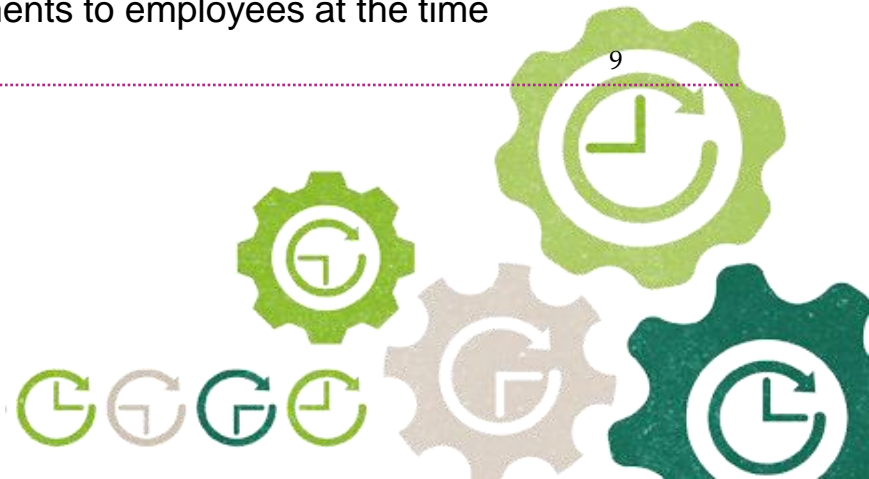
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1. The GDT has provided guidance on some articles related to VAT refund

The GDT held a Tax Coaching Session for local Tax Departments regarding Circular No. 99/2016/TT-BTC on the management of VAT refunds and Circular No. 130/2016/TT-BTC on VAT. We would like to summarize below some noticeable points from such coaching for your ease of reference:



According to the Circular, the input VAT amount on goods that are imported, then re-exported is non-refundable but creditable. Thus, the question is whether such input VAT amount can be offset against the VAT liability on domestic goods in the refund period?







In principle, the input VAT on imported goods (for re-export) will not be refunded but offset against the VAT liability on domestic goods provided that they meet the qualifying conditions on withholding declaration.

Enterprises' queries when implementing the circulars

GDT's Response at the Tax Coaching Session



1. The GDT has provided guidance on some articles related to VAT refund

	<p>The proportion of the revenue to determine the refundable VAT amount for exported goods/services will be calculated on a monthly/quarterly basis as stipulated in Circular 26/2015/TT-BTC or on a cumulative basis starting from the period following the last refunded period to the current period that the tax refund is requested according to this Circular 130/2016/TT-BTC?</p> <p>In case the export company has not been refunded before, since when will the tax refund period start?</p>		<p>The proportion for revenue to determine the refundable VAT for export goods/services will be accumulated starting from the period following the last refunded period to the current period that tax refund is requested.</p> <p>In case the export company has not been refunded before, the refund period will be counted from the latest period having a VAT refund due.</p>
	<p>According to Circular 130, companies that have not yet contributed fully their charter capital, conditional investment projects that have not yet satisfied or cannot maintain the regulated business conditions are not granted VAT refund. As such, the companies wish to seek more detailed guidance from GDT on how to identify these projects.</p>		<p>The companies can refer to regulations in the Investment Law, Enterprise Law and other relevant regulations for conditional business to determine whether the company fulfills the applicable conditions.</p>

Enterprises' queries when implementing the circulars

GDT's Response at the Tax Coaching Session



1. The GDT has provided guidance on some articles related to VAT refund



For the “VAT refund first –tax audit later” cases, how does the tax authority determine if the company has already fully contributed the charter capital, or has not met the required business conditions or not able to fully maintain the regulated conditions?



Upon receiving the refund dossier, the tax authority will refer to the Business Registration Certificate and the actual status of charter capital contribution. During the process of reviewing the refund dossier, the tax authority will coordinate with other competent state authorities on business registration to obtain detailed information about the company’s Business Registration dossiers. Where necessary, the tax authority will request the taxpayer to supplement information, supporting documents to prove that the Enterprise has fulfilled the regulated conditions, and /or capital contribution requirements

Enterprises’ queries when implementing the circulars

GDT’s Response at the Tax Coaching Session



2. An Enterprise is not allowed to carry out business activities in the residential apartments

Pursuant to the Notification of the Department of Planning and Investment (“the DPI”) of Ha Noi, from 1 July 2015 onwards, one of the prohibited actions is: *“using an apartment for purposes other than residence purpose”*.

In case the Business Registration Certificate (“BRC”) mentioned the usage of apartment as business premise obtained before the date Housing Law took effective (i.e. 01 July 2015), the organization, household, and individual being granted this BRC are required to relocate the business activities to other places which are not apartments within 6 months from the date Decree No. 99/2015/ND-CP took effective (i.e. 10 December 2015).

Accordingly, the DPI requests organizations, companies, and households in Ha Noi to implement some specific requirements as follows:

- Organizations, enterprises, and households in Ha Noi should not register the location of head office or branch office, representative office, business premises in apartments;
- In case organizations, enterprises, and households already registered the head office or branch office, representative office, business premise in apartments, they must relocate such offices to other places which are not apartments as stipulated.

The aforementioned request is not only applicable for business units in Ha Noi, but also for all other province, cities in Vietnam. Therefore, Grant Thornton recommends that the Enterprise and Investors should not use apartments as offices for business purposes.



3. An Enterprise has the obligation to make the public announcement on the Business Registration information (“BRI”)

Under current regulations, upon obtaining BRC, Certificate on the changes of BRI in relation to business lines, founding shareholders, foreign shareholders:

The company is required to send a Request Letter and pay a fee to the Business Registration Division for making public announcements on the National Business Registration Portal (“NBRP”) within 30 days from the public date.

The Business Registration Division will upload the BRI of companies that are governed under its management to the NBRP.

Administrative penalty for not making public announcements or late public announcements is VND2,000,000 and the Enterprise must still announce publically the BRI on NBRP.

Grant Thornton Vietnam recommends that the company should check whether it has completed the public announcement procedure in order to ensure compliance with current regulations.

Should you need our further advice regarding regulations related to Enterprise Law, and Investment Law, please contact our professional experts.



4. Timelines on using invoices for on-spot export activities

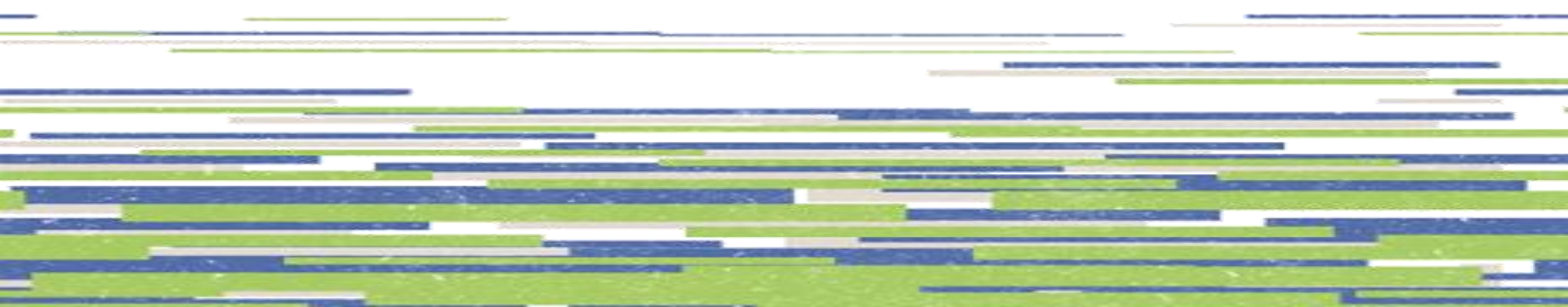
The Ministry of Finance has issued an Official Letter providing guidance on using Invoices for on-the-spot export activities to provincial Tax Departments, and Customs Department as follow:

From 1 January 2014 to before 1 October 2014: the on-spots export activities use VAT invoices;

From 1 October 2014 to before 1 April 2015: the on-spots export activities use Commercial invoices;

From 1 April 2015 (the effective date of Circular No. 38/2015/TT-BTC): the on-spots export activities use Commercial invoices.

Grant Thornton recommends that the Enterprise having on-spots export activities should review the usage of Invoices in each period mentioned above to ensure the compliance with current regulations.



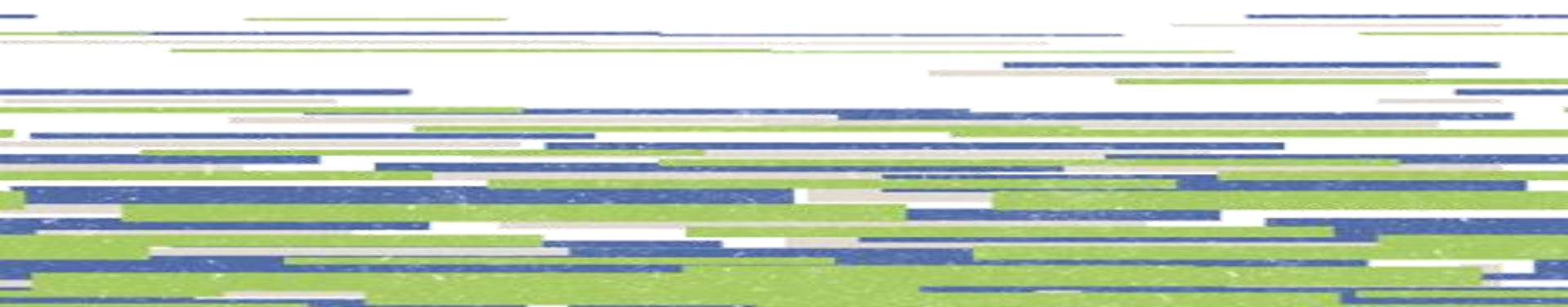
5. Guidance on determining the applicable PIT rates for payments to employees at the time of terminating Labor contracts

The General Department of Taxation has issued Official Letter No. 5918/TCT-TNCN providing guidance for the cases where companies signed indefinite-term Labor contracts with employees and are in negotiation on mutual termination of Labor contracts with employees pursuant to Article No. 36.3 of the Labor Code (Agreement on termination of labor contract), the applicable PIT rate for the salaries, wages and other payments the Company pays to employees at the time terminating Labor contract are determined as follow:

Salary paid to employees is subject to PIT with the progressive tax rate;

Severance allowance paid to employees in accordance with the regulations of Labor Code and Social Insurance Law is not subject to PIT;

Other additional payments from VND2,000,000 and above paid to employee (in addition to those stipulated in the regulations in the Labor Code and Law on Social Insurance) upon termination of the Labor Contract, the Company has to withhold the 10% PIT on the total of such payments.



Contact

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