

Tax Alert

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Vietnamese employees are allowed to participate in overseas share award scheme

Circular No. 10/2016/TT-NHNN (“Circular 10”) dated 29 June 2016 effective from 13 August 2016 of the State Bank of Vietnam (“SBV”) provides guidance on certain contents of Decree 135/2015/ND-CP dated 31 December 2015 which regulates offshore indirect investment. According to this circular, Vietnamese employees working in foreign organizations in Vietnam are allowed to make offshore indirect investments by participating in overseas share award scheme, subject to the satisfaction of certain conditions as prescribed under the circular.

- ▶ Decree 58/2012/ND-CP dated 20 July 2012 guiding the implementation of the Security Law regulates that Vietnamese employees are allowed to participate in overseas share award schemes provided that the implementation of the rights associated with the awarded share comply with the Vietnamese regulations on foreign exchange control.

The foreign exchange control regulations, however, limit the ability of Vietnamese individuals to remit funds outside of Vietnam to purchase shares. It was therefore understood that Vietnamese individuals could only participate in overseas share schemes for which no outward remittance of funds was required.

- ▶ With the issuance of Circular 10, Vietnamese employees working in foreign organizations are now allowed to participate in overseas share schemes with outward remittance of funds, subject to the following:
 - The Vietnam entity must register with, and obtain approval, from the SBV prior to implementation of the share award scheme.
 - All inward remittance of funds (i.e. earnings from sale of shares and/or share options, dividends and other lawful income) or outward remittance (i.e. for purchase of share, etc.) must be performed through a bank account opened at a bank in Vietnam by the Vietnam entity.
- ▶ On a quarterly basis, the Vietnam entity is required to report to the SBV the implementation status of the overseas share award scheme. The report must contain key contents including the number of Vietnamese nationals participating in the program, the status of sales of awarded shares and options, the status of exercising options, etc. The report is required to be submitted no later than the 20th day of the month following the end of the relevant quarter.

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