

Client Alert

March 2011

Requirements for Filing Annual Audited Financial Statements to Finance Departments

On 9 March 2011 the Ministry of Finance issued Official Letter No. 3078/BTC-TCDN regarding the requirements for filing annual audited financial statements to the finance authority ("**Official Letter No. 3078**").

Under Official Letter No. 3078, all foreign invested enterprises ("**FIEs**") are required to file annual audited financial statements to finance departments of provinces or cities under the central government, or directly to the Ministry of Finance (in case the enterprise's investment license was issued by government agencies/bodies under the central government) before 31 March of the subsequent year.

This is a repetition of an earlier rule provided under Decision No. 15/2006/QD-BTC promulgating enterprise accounting regime ("**Decision No. 15**") which provides that the audited annual financial statements of any FIEs must be submitted to (1) tax authority, (2) statistics authority, (3) finance authority, (4) business registration authority, and (5) the upper-level accounting company (if any). The deadline for submission under Decision No. 15 is 90 days after the end of the yearly accounting term.

This rule, however, seems to conflict with another regulation under Decision No. 48/2006/QD-BTC promulgating accounting regime for small and medium enterprises ("**SMEs**") ("**Decision No. 48**"). While Official No. 3078 seems to require all FIEs, regardless of their scale, to submit the annual audited financial statements to the finance authority, Decision No. 48 provides that SMEs only have to submit their financial statements to the (1) tax authority, (2) statistics authority, and (3) business registration authority.

As a matter of practice, most enterprises only submit the annual audited financial statements to the tax authority and business registration authority. This practice is also reflected in the text of Official Letter No. 3078, where the Ministry of Finance has indicated that a large number of FIEs have not fully complied with the regulations under Decision No. 15 to file their annual audited financial statements to the finance authority. With this new Official Letter, however, it seems that the Ministry of Finance is strengthening its policy to urge all FIEs to submit audited financial statements to finance authorities in accordance with the law.

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