THE TAX POCKET GUIDE TO INVESTING IN VIETNAM
2015 EDITION

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The information provided in this booklet is based on current tax regulations publicly known Vietnam laws, regulations and official practices as of May 2015 which may be subject to subsequently changed or amended.

There may be instances where the unofficial practices applied by tax authorities are not in accordance or even contradictory to the Vietnam law. More importantly, as judicial interpretation of tax laws is at present not available, it can never be excluded that the tax authorities or the courts adopt an interpretation or application of tax laws which is not in accordance with this booklet. The purposes of this booklet are ultimately for providing general guidance on Vietnamese taxation. Exclusive and appropriate advice should be sought for particular transactions or circumstances.

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1 VIETNAM INVESTMENT REGULATORY OVERVIEW

The investment regulatory framework in Vietnam has been significantly improved since the launch of Doi Moi (Renovation) in 1986 which transformed the economic policy from a centrally planned economy to a socialist-oriented market economy. Vietnam is rapidly emerging as a new center of economic growth in Southeast Asia with an attractive foreign investment policy and commitment to a liberalized economy. Foreign investors seek business opportunities in both the domestic market of over 90 million potential consumers, and in low cost production sites. International integration, notably the membership in the ASEAN Free Trade Area (**"AFTA"**), and the membership in the World Trade Organization (**"WTO"**) facilitate access to this attractive market. The Vietnamese government is negotiating the Trans-Pacific Partnership (**"TPP**"), a trade agreement which would further facilitate trade liberalization and foreign investment.

To continuously attract foreign investment, the investment legal framework of Vietnam has been gradually developed to guarantee trade liberalization, international integration, governmental support to the private sector and foreign investment protection. Certain restrictions on domestic investment are still applicable to foreign investors.

The investment activities in Vietnam are mainly governed by the Law on Investment № 59/2005/QH11 and the Law on Enterprises № 60/2005/QH11, including their respective guiding regulations. However, a new Law on Investment ("**the new LOI**") and Law on Enterprise ("**the new LOE**") have recently been passed by the National Assembly on 26 November 201. Effective from 1 July 2015, the new laws are geared towards more favorable conditions for business entities.

DFDL LEGAL & TAX

2 Setting Up Business In Vietnam

Foreign investors are allowed to invest in most business sectors. Following Vietnam's accession to the WTO, restrictions on certain business sectors have been gradually removed. Various sectors which were previously restricted, including retail, banking, finance, education, among others, are now open to foreign investors in the form of 100% Foreign Invested Enterprises ("**FIEs**").

Foreign investors are permitted to carry out the following forms of direct investment:

- 100% foreign owned enterprise;
- Joint venture with domestic investors;
- Contractual forms, including Business Co-operation Contract ("**BCC**"); Build-Operate-Transfer ("**BOT**"), Build-Transfer ("**BT**"), and Build-Transfer-Operate ("**BTO**");
- Purchasing of shares or making additional capital contribution to an existing business;
- Merger and acquisition; and
- Expansion of an existing investment project.

Foreign investors can also have a commercial presence in Vietnam by establishing a representative office or a branch office. Setting up a representative office is relatively straightforward; while the establishment of a branch is limited only to certain industries. However, a branch can directly engage in income-generating activities; while a representative office is not allowed to do so.

Among all above forms of investment, establishing a new enterprise or acquiring shares/interest of existing enterprises are the most common. Typical legal corporate structures include:

- A limited liability company (with sole member or multiple members);
- A shareholding company (Joint stock company); and
- Partnerships.

Newly established enterprises need to obtain investment (business) licenses ("**Investment Certificate**") from authorized licensing bodies. Under the law, the regulatory timeline for the authorities to issue an Investment Certificate is from 15 to 45 business days. In practice, it may take longer than the regulatory timeline.

The licensing authority is normally the provincial People's Committee or the authority of special zones (e.g. Industrial Zones, Economic Zones or Export Processing Zones), where an investment project is planned to be located. With respect to major investment projects under contractual forms of BOT, BT, or BTO, the Ministry of Planning and Investment shall be the licensing authority. The duration of a foreign investment project depends on its operational requirements, but not exceeding 50 years. Where necessary, the Government may approve a longer duration, but the maximum duration is 70 years.

An FIE is not permitted to operate in such a manner that contravenes the Investment Certificate or which goes beyond its scope of licensed business activities.

There is no government fee charged on the issuance of an Investment Certificate for an FIE.

Pursuant to the new LOE, foreign enterprises shall not register the business lines in the Investment Certificate. Investors are theoretically entitled to conduct the business investment activities that are not banned by the new LOI.

Note: The new LOI does not mention BOT, BT and BTO as investment forms. Instead, these forms are collectively referred to as investment in the contractual forms of Public-Private Partnerships (**"PPP"**).

3 Accounting/Financial Reporting Regime

3.1 Vietnamese accounting system (“VAS”)

According to the Vietnamese accounting regulations, a duly incorporated company, including branches of a foreign company, is required to follow VAS which is based on International Financial Reporting Standards ("**IFRS**") and International Accounting Standards (“**IAS**”), with some modifications.

VAS is a highly prescriptive chart of accounts with the compulsory use of Vietnamese language and Vietnamese currency. This system is customized for the current taxation system of Vietnam and is subject to relevant regulations on accounting and taxation.

Foreign invested enterprises may adopt IFRS, in conjunction with VAS, for international and internal reporting purposes by internally converting its accounting data from VAS to IFRS.

3.2 Functional currency requirements

Generally, Vietnamese Accounting Law requires Vietnamese Dong (“**VND**”), as the accounting currency. Transactions in foreign currencies may be recorded in their original currency, but must be converted subsequently into VND. The conversion of foreign currency denominated transactions may be made directly or through a third foreign currency unit, where the exchange rate for direct conversion is not available.

According to the regulation effective from February 2010, the default currency is VND, which must be used for accounting purposes and for the preparation and presentation of financial reports. However, businesses that have revenues and expenditure mainly in foreign currency may elect a foreign currency as its accounting currency unit for the preparation and presentation of financial reports, subject to specific conditions.

In making an election of accounting currency, these businesses are required to adhere to the Accounting Law and be responsible for such election before the law. The relevant local tax authority must be notified by the taxpayer of such election to use foreign currency as the accounting currency.

3.3 Financial reports & audit requirements

Annual financial reports of enterprises, including foreign invested companies, are subject to independent audit by an independent audit company permitted to practice in Vietnam and must be submitted within 90 days from the end of the enterprise's fiscal year to the tax authorities, statistical organizations, business registration authorities, local financial authorities and others (if required) for reporting purposes.

The audited financial statements may be used as a basis for determining and finalizing the company's tax and other financial obligations.

4 Other Compliance Requirements

4.1 Banking requirements

A business may open and operate the following types of bank accounts:

- A domestic transaction account in VND;
- A domestic transaction account in foreign currency;
- A domestic capital accounts in foreign currency and in VND; and
- Overseas accounts.

Technically, every item of revenue or expenditure in the a foreign currency of an FIE must be conducted through one of the abovementioned accounts and must comply with the regulations on foreign exchange control.

For instance, in terms of a capital account in foreign currency, in addition to the transaction accounts for daily operations, the laws also require businesses to have a separate capital account in foreign currency and in VND. These capital accounts are not intended to serve the day-to-day transactions of businesses. Rather, the use of a capital account is restricted to capital transactions (such as capital contribution of investors, onshore and offshore loans, capital assignment, remittance of distributed dividends, etc.).

4.2 Foreign exchange controls

Transactions in a foreign currency in Vietnam are closely monitored and controlled by the State Bank of Vietnam ("**SBV**"). The official currency is the Vietnamese Dong, which is not freely convertible.

Since 2001, Vietnam has relaxed its foreign exchange regulations on foreign invested enterprises to allow them to buy foreign currency at any commercial bank to meet their legitimate demands. FIEs are now allowed to convert the Vietnamese Dong into foreign currency to cover payments for cross-border business transactions.

The inflow of foreign currency into Vietnam is generally welcome, with minimal restriction, although the transfer of foreign currency out of the country is still strictly regulated.

Under the current laws and regulations, it is permissible to remit foreign currencies overseas for capital repatriation, profit remittances, repayment of loans, and payments to overseas contractors or suppliers, provided the appropriate approval has been obtained and the relevant tax obligations have been fulfilled.

Generally, all domestic commercial transactions must be quoted, contracted and settled in VND, and the use of foreign currencies in any form for any transactions within the territory of Vietnam is now strictly prohibited.

4.3 Social, health & unemployment insurance contributions

Generally, social, health, and unemployment insurance contributions are compulsory for Vietnamese employees. These contributions entitle the employees to various benefits, such as retirement, maternity, healthcare, etc., funded by the statutory social insurance and healthcare systems.

Currently, expatriate employees are exempt from these contributions and are, therefore, not entitled to those benefits, except that locally hired expatriates who have a labor contract with a company in Vietnam are subject to compulsory health insurance contributions. The rates of the contributions are as follows:

	Employer	Employee
Social insurance	18%	8%
Health insurance	3%	1.5%
Unemployment insurance	1%	1%
Total	**22%**	**10.5%**

These contributions are based on gross salary, which is subject to a cap of the lower of 20 times the common minimum salary or regional minimum salary and the gross salary stated in the employment contract. Employers are required to withhold the employees' contributions and remit them together with their contributions, to the local Social Insurance Agency on a monthly basis by the last day of each month. A quarterly reconciliation of any changes regarding the contributions is also required.

In addition, employers are required to lodge claims for various social insurance and healthcare benefits (e.g. maternity, sick leave, medical leave benefits etc.) on behalf of their employees.

Employees’ contributions are allowable deductions for purposes of his/her PIT calculations. Employer’s contribution is allowable to be charged to the employment cost for purposes of CIT deduction.

5 Special Zones

To stimulate economic developments and achieve the target of transforming from an agriculture-based economy to an industrial economy, with the initial step to become a low-cost exporter of manufactured products, the central government of Vietnam has encouraged the development of special zones nationwide to serve these purposes. The special zones in this context include industrial parks ("**IPs**") which may cover Export Processing Zones ("**EPZs**"), Economic Zones ("**EZs**") and High Tech Zones ("**HTZs**").

The first IP (Tan Thuan EPZ) was established in early 1991. Since then, the number of IPs has grown to nearly 260, 18 EZs and 2 HTZs. Over 200 new IPs are planned to be set up within the next ten years.

Special zones are aimed to encourage foreign investments, to develop export-oriented production and services, and to boost high-technology products. Enterprises located in such zones have enjoyed investment incentives, including tax incentives. Unfortunately, from 2009, the tax incentives for IPs were significantly reduced under both domestic policies and Vietnam's commitments to WTO. Incentives based on export ratios or localization ratios were even removed for existing enterprises located in IPs/EPZ. During this period, HTZs and EZs continued to enjoy tax incentives. The tax incentives for certain IZs were re-introduced in late 2014.

6 OVERVIEW OF THE TAX SYSTEM OF VIETNAM

The tax system of Vietnam consists of:

- Direct tax;
- Indirect tax; and
- Property tax.

Direct taxes include:

- Corporate income tax;
- Personal income tax; and
- Natural resource tax.

Indirect taxes include:

- Value added tax;
- Import duty and export duty;
- Special sales tax (excise tax); and
- Environmental protection tax.

Other taxes and fees include:

- Registration fees (similar to stamp duty in other jurisdictions); and
- Business license tax.

The Vietnamese tax system is centralized. The tax regulations and tax rates are applied nationwide. There is generally no municipal tax system, except the different local rates for registration fees (stamp duty) and the land prices which are used as the basis for property tax calculation.

7 CORPORATE INCOME TAX

7.1 Tax rates

The statutory Corporate Income Tax ("**CIT**") rate applicable to both foreign-owned entities and domestic entities carrying on a business in Vietnam is 22% of taxable profits. The CIT will be reduced to 20% in 2016.

This rate will be applicable unless enterprises meet certain conditions for preferential tax rates granted as tax incentives or based on the type of business of the enterprise. The table below summarizes the tax rates:

Type of tax rate	Tax rate (%)	
	2014-2015	From 2016 onwards
Statutory tax rate	22	20
Tax rates applicable to companies having annual revenues of less than VND 20 billion (approximately USD 960,000)	20	
Preferential tax rates	20, 15 and 10	17, 15 and 10
Tax rates applicable to activities of prospecting and exploration of petroleum, gas	From 32 to 50	
Tax rates applicable to activities of prospecting and exploration of rare and precious natural resources	50 (preferential rate of 40% is available, subject to conditions)	

The CIT law explicitly differentiates the income generated from a licensed investment project and other income. An enterprise enjoys preferential rates only to income arising from the licensed activity. Other income is subject to the regular tax rate of 22%.

See Appendix 1 on conditions/sectors entitled to CIT incentives.

7.2 Residence

All legal entities that carry on a business in Vietnam are subject to CIT.

A foreign company shall be regarded as doing business through a permanent establishment ("**PE**") in Vietnam if it takes one of the following forms:

- A branch, an operating office, a factory, a workshop, a warehouse, means of transportation, a mine, an oil and gas well, any place relating to the exploration for or the exploitation of natural resources or equipment serving the exploration of natural resources;
- A building site, construction, installation or assembly project, and supervisory activities in connection therewith;
- An establishment providing services, including consultancy services provided through its employees or other persons;
- An agent for a foreign company.

A representative (including representative office) is a PE in Vietnam if the representative:

- Has authority to sign contracts under the name of the foreign company; and
- Does not have the authority to sign contracts under the name of the foreign company but regularly delivers goods or provides services in Vietnam.

In the event where a double tax agreement ("**DTA**") contains different provisions on PEs, then these provisions shall prevail. However, application of DTAs is not automatic in Vietnam. Rather, there are specific regulatory procedures for claiming tax benefits under relevant DTAs.

7.3 Taxable income

The assessable income of an enterprise is the difference between taxable income and the sum of exempt income and allowable losses carried-forward.

Assessable income = Taxable income – (exempt income + tax losses carried-forward)

The taxable income of an enterprise is the total *revenue* less allowable *deductions,* plus *other income* in a tax year.

Taxable income = (Revenue – Deductible expenses) + Other income

Revenue consists of income derived from sales, provision of services, and any price subsidies, charges and surpluses earned by the enterprise, regardless of whether or not such an income has been received (i.e. recognition of revenue is generally on accrual basis). In respect of enterprises which are registered for VAT under the ordinary deduction method, taxable revenue excludes the output VAT.

7.4 Deductible expenses

Generally, an expense is deductible for CIT purposes if it satisfies the following conditions:

- The expense was actually incurred;
- It is related to the business of the taxpayer;
- It is evidenced by valid tax invoices, documents and payment vouchers; and
- Non-cash payment is required for purchase of goods or service valued from VND 20 million.

The CIT regulations also prescribe a list of non-deductible expenses. Hence, if an expense is not included in this list and meets the four conditions above, it shall technically be deductible for CIT purposes. In practice, the onus of proof generally rests with the taxpayer to prove to the tax authorities the satisfaction of all claims for deductions.

In addition, the tax deductions of several types of expenses, such as certain employment benefits, are capped.

7.5 Tax losses

Tax losses of business establishments may be carried forward to the following year and offset against the profits of subsequent years for a maximum period of five years. Carry back of tax losses is not allowed.

In a tax year, losses from a transfer of real estate can be offset against profit from general business activities. The offset of operating losses against profit from a transfer of real estate is, however, disallowed.

7.6 Capital gains

Vietnam does not have a separate "capital gains tax" regime. Capital gains generated from a transfer of capital/shares of an enterprise incorporated in Vietnam will be taxed at the prevailing standard CIT rate (currently, 22%).

There are specific rules for CIT imposed on the transfer of capital in an enterprise or sale of securities. Generally, capital gain is defined as follow:

Capital gain = Transfer price – Cost of purchase –Transfer expenses

Transfer price is defined as the proceeds received by the transferor pursuant to the contract of transfer. Where the contract of transfer does not specify the transfer price and/or the tax authorities have a basis to conclude that the transaction was not conducted at market price, they may impose or deem a transfer price for taxation purposes.

Cost of purchase is generally the purchase price of the capital at the time of transfer/redemption (in case the transferred capital was previously redeemed by the transferor). Transfer expenses include legal expenses and other incidental expenses.

Where a DTA applies, exemption from capital gains tax and/or reduction of tax rate may be available.

8 WITHHOLDING TAXES

Withholding taxes are generally covered by a tax regime colloquially referred to as “Foreign Contractor Tax.”

Foreign contractor tax (“**FCT**”) is a mechanism to collect withholding tax on Vietnam-sourced income generated by offshore entities or individuals (without a legal presence in Vietnam – i.e., non-resident) from the sale of goods or furnishing of services to Vietnamese parties on a contractual basis. FCT consists of a CIT (and PIT in case the goods/service supplier is an individual, subject to certain conditions) component and a VAT component.

The offshore entities or individuals subject to FCT are technically referred to as *foreign contractors.*

8.1 FCT filing methods

There are three methods of FCT filing.

Deduction method

Under the deduction method, the foreign contractor shall register to adopt full VAS for purposes of filing VAT and CIT returns. From a tax compliance perspective, there is no difference between a foreign contractor applying VAS and a company incorporated in Vietnam.

The FCT under this method is assessed as follows:

- VAT payable equals output VAT less input VAT. The foreign contractor is able to claim input VAT credits.

- CIT payable is 22% of taxable income (i.e. revenue less deductible expenditure).

The foreign contractors must fulfill certain conditions for adoption of this method.

Withholding method

Under the withholding method, foreign contractors are not required to directly pay FCT to the tax office since the Vietnamese customer is required to withhold and file FCT (VAT and CIT or PIT components) from payment(s) made to the foreign contractor at the deemed percentage of taxable turn-over.

The deemed VAT and CIT (or PIT) rates vary depending on the nature of the goods and the services provided. Below is deemed FTC-VAT and FCT-CIT/PIT rates under the current regulations:

Type of business/ transaction	Effective VAT rate	Deemed CIT rate
Trading: distributing or providing goods, raw materials, machinery and equipment attached to services in Vietnam (including supply of on-spot export and import, except for processing goods for foreign organizations, individuals); supply of goods under Incoterms conditions in certain cases	n/a[1]	1%
Services, leasing equipment (including oil rigs) and insurance	5%	5%
Restaurant, hotel and casino management services	5%	10%
Construction and installation services (not including the value of construction materials or equipment)	5%	2%
Construction and installation (including the value of construction materials or equipment)	3%	2%
Transportation (including sea and air transportation) and other manufacturing and business activities	3%	2%
Leasing aircraft, aircraft engines, and spare parts of aircraft and vessels	Exempt	2%
Transfer of securities and international re-insurance	Exempt	0.1%
Interests	Exempt	5%
Financial derivatives	Exempt	2%
Royalties	Exempt	10%

Vietnam does not impose taxes on the payment of dividends to corporate entities.

[1] No FCT-VAT imposed in this case as the goods are subject to import VAT.

Hybrid method

The hybrid method is a combination of the withholding method and the deduction method whereby the foreign contractor can declare and pay VAT as a deduction method, but CIT payable equals the gross revenue multiplied by the applicable deemed rate, where the contractor's accounting records are insufficient for determination of the actual taxable income (i.e. in case the contractor adopts the "simplified VAS").

The foreign contractor will need to register for VAT, issue VAT invoices and file VAT returns.

8.2 Not Subject to FCT

FCT shall not apply to the following transactions between a foreign supplier and a Vietnamese customer:

- Pure trading of goods (whether with warranty terms or not): FCT shall not apply if all conditions below are met:
  - the goods are delivered at an offshore port or Vietnamese port; and
  - all obligations of the seller cleared at either port destination; and
  - sellers bear no inland cost/responsibilities/risks.

- Services performed AND consumed outside of Vietnam.

- Services performed outside of Vietnam, including:
  - Repair of means of transportation, machinery and equipment
  - Advertising and promotion
  - Commercial promotion
  - Sales brokerage
  - Training

9 PERSONAL INCOME TAX (“PIT”)

Expatriate and Vietnamese individuals working in Vietnam or having Vietnam-source income are subject to Vietnamese PIT. Vietnam imposes PIT based on the residence of the individual.

9.1 Residence

A tax resident is defined as an individual meeting one of the following conditions:

- Physically present in Vietnam for at least 183 days within a calendar year or 12 consecutive months from the first date of entry to Vietnam; or
- Having a permanent residence in Vietnam, including:
  - In the case of a Vietnamese citizen, residential location for this purpose is a specific place where the individual habitually resides, earns a living, on a regular and permanent basis for an indefinite term and is registered with the authorities pursuant to the Law on Domicile.
  - In the case of a foreigner, residential location for which permanent residence has been registered means the registered address on the residence card or temporary residence card issued by the Ministry of Public Security, or having a leased residence in Vietnam to stay in where the total number of leased days according to lease contracts is 183 days or more in a tax year. Having a leased residence includes hotels, boarding houses, rest houses, lodgings and working offices, irrespective of whether the individual concerned leases the residence or the employer leases it on behalf of employee.

An individual shall be considered a resident of Vietnam if he or she:

- has a permanent residence (or has concluded lease contracts of 183 days or more as mentioned above) in Vietnam;
- but is physically present in Vietnam less than 183 days in a tax year;
- and he/she fails to prove that he/she is a tax resident of another country.

A non-resident is an individual that does not meet the above thresholds.

9.2 Taxable income

Under the current PIT law and regulations, the scope of taxable income includes various types of income (please refer to the table of rates below for the categories).

Employment income

Employment income is income received by employees from employers in both monetary and non-monetary forms. Employment income includes (amongst others):

- Salary, wages, bonuses and other items in the nature of salary and wages;
- Allowances and subsidies that are not in the list of tax exempted allowances and subsidies;
- Commissions;
- Income from stock options or stock awards; and
- Other income items in cash or in kind.

Allowable deductions

Previously, resident taxpayers with either business or employment income are entitled to certain deductions before determination of assessable income for PIT calculation purposes. Under a new tax Decree issued in February 2015, due to the changes in PIT treatment of business income, it is unclear whether the tax deduction is still allowed for resident taxpayers earning a business income.

The tax deductions allowed for qualified resident taxpayers (i.e. employment income of tax residents) include:

- Personal deduction of VND 9 million per month;
- Dependent deduction of VND 3.6 million per month for each qualified dependent;
- Donations to charitable organizations or funds which are licensed by authorities;
- Contributions to statutory compulsory social insurance, health insurance, unemployment insurance (for expatriates, these include social security insurance premium that is compulsory under the laws of their home country); and

- Contributions to Voluntary Pension scheme up to VND 1 million a month (i.e. the maximum allowable deduction amount is VND 12 million a year).

9.3 PIT rates

- ***For residents*** - The unified progressive tax rates applicable to (worldwide) employment income are as follows:

Average monthly income in VND (after allowable deductions)	Tax rate (%)	Tax liabilities
Up to 5,000, 000	5	Income * 5%
Over 5,000,000 up to 10,000,000	10	Income * 10% - 250,000
Over 10,000,000 up to 18,000,000	15	Income * 15% - 750,000
Over 18,000,000 up to 32,000,000	20	Income * 20% - 1,650,000
Over 32,000,000 up to 52,000,000	25	Income * 25% - 3,250,000
Over 52,000,000 up to 80,000,000	30	Income * 30% - 5,850,000
Over 80,000,000	35	Income * 35% - 9,850,000

- ***For non-residents*** - A flat tax rate of 20% is applicable to Vietnam-sourced employment income. Vietnam-sourced business income is taxed at 1%, 2% or 5% depending on business activities.

- Tax rates for a resident's income compared to a non-resident's income

Taxable income	Tax rates	
	Resident	Non-resident
Employment income	Progressive tax rates as above	20%
Business income	Flat rate from 0.5% to 5% depending on particular business activities, if the annual business income is in excess of VND 100 million.	1% for trading; 2% manufacturing and others; 5% for services
Income from capital investment	5%	5%
Transfer of securities	0.1% on gross sale proceeds	0.1% on gross sale proceeds

Taxable income	Tax rates	
	Resident	Non-resident
Income from capital assignment	20% on net gains	0.1% on gross sale proceeds
Income from transfer of property	2% on gross sale proceeds	2% on gross sale proceeds
Income from royalty, technology transfer/ franchising exceeding VND 10 million per contract	5% on excessive amount	5% on excessive amount
Income from winnings or prizes, inheritance, gifts exceeding VND 10 million per receipt	10% on excessive amount	10% on excessive amount

10 INDIRECT AND OTHER TAXES

10.1 Value added tax

VAT is a tax levied on consumption, but it is collected at each stage in a production and distribution chain. VAT also applies on imports, and importers must pay VAT on imported goods at the import stage along with other customs duties.

VAT input credits are generally allowed to be deducted from output VAT.

10.1.1 Tax Rates

There are three VAT rates: 0% (for export), 5% (for essential goods/services) and 10% (the standard rate). The rate depends on the type of goods or services supplied and are applicable uniformly to all stages of the supply chain from importation/manufacture to distribution to end-consumers. The classification of rates is as follows:

Zero percent (0%) is applicable to export of goods or services. These include export of goods to foreign countries, non-tariff zones; services provided to non-resident customers on the condition that the services are consumed outside of Vietnam; transitional processing goods (with foreign trader); on-the –spot exports; construction and installation performed in non-tariff zones; international transportation and certain services in connection to international transport (including aviation and marine transports); and repairs of aircraft or sea-going vessels owned by a foreign entity.

Five percent (5%) is applicable to essential goods or services. These include clean water supply; fertilizer productions; agricultural activities/products; husbandry food and equipment; rubber latex; unprocessed foodstuff and forestry products; sugar by-products; medical/educational equipment; children toys; books; cultural and sportive activities; scientific and technological services; sale and lease of housing/accommodations to low-income people (as part of social welfare schemes).

Ten percent (10%) is applicable to all goods and services other than those specified as VAT exempted goods or services or those subject to 0% or 5%.

10.1.2 Input VAT credit

Generally, input VAT credits are only available to taxpayers who register for VAT under the deduction method (in order to file VAT under the deduction method, taxpayers must satisfy certain conditions on accounting system and annual revenue generation) and to the extent they are related to goods or services acquired to produce/supply taxable goods or services. To claim input VAT credit, a taxpayer must satisfy the following conditions:

- The goods or services were acquired to produce/supply VAT taxable goods or services; and
- The acquisition is supported by valid VAT invoices, which are reported for input VAT credit before a tax audit conducted by tax authorities at the taxpayer's office; and
- The payments of purchases valued at least VND 20 million (approximately USD 980) were made via non-cash settlement modes.

Where goods or services are acquired for both taxable and tax exempted supplies, only the input VAT attributable to taxable supplies is creditable. Taxpayers are required to segregate the creditable and non-creditable input VAT. Where segregation is unlikely, the creditable input VAT amount will be determined on a pro-rata basis, by proportioning the revenue of taxable supplies over the total revenue.

10.1.3 VAT refund

Generally, VAT refunds are available to businesses that file VAT under the deduction method, except for specified entities or projects that enjoy VAT exemption status or diplomatic immunity, such as projects funded by a non-refundable Official Development Aid.

A business establishment paying taxes under the deduction method shall be considered for a tax refund if it carries a surplus of input VAT and satisfies one of the following conditions:

- The surplus has been accumulated for at least 12 consecutive months; or
- The taxpayer is a newly established business, that has not generated operational income and is registered for VAT filing under the deduction method, has accumulated at least VND 300 million (approximately USD 9,600) of input VAT over a minimum period of one year; or

- The taxpayer has export transactions and has accumulated at least VND 300 million of input VAT attributable to export transactions in any particular month.

The amount of the refund is the surplus of input VAT credit, which can be claimed by an application to the local tax office.

10.2 Special Sales Tax ("SST")

SST is an indirect tax and similar to an excise tax (in other jurisdictions) that applies to the production or import of certain goods and the provision of services that are considered luxurious in comparison with the economic conditions of the country, and/or those which are discouraged for consumption in Vietnam. The following goods and services are subject to SST:

Goods

Cigarettes, cigars, spirits/wine, beers, automobiles of less than 24 seats, high-capacity motorcycles, airplanes, yachts, gasoline, air-conditioners up to 90,000 BTU, playing cards, and votive papers.

Services

Discotheques, massage parlors, karaoke clubs, casinos, jackpot, slot, betting entertainment, golf course businesses, and the lottery business.

The SST rates vary from 7% to 70% depending on the category of goods and services. In addition, the above goods and services are also subject to VAT at 10%. If they are imported, applicable import duty rates will also be imposed at the import stage.

10.3 Export Duties

Due to the 'export encouragement policy,' most exported goods and services are exempt from tax. Export duties are imposed on few items, mainly natural resources such as minerals, forestry products and scrap metal. Export duty rates range from 0% to 40%. The price for calculation of export duties is the Free-On-Board (FOB) price of the invoice.

An export processing enterprise is entitled to exemption from export duty on goods exported from an export processing zone to overseas or imported into a processing zone.

10.4 Import duties

Import duty is generally assessed on an *ad valorem* (on value) basis. Import duty tariffs fall into three categories: ordinary rates, preferential rates and special preferential rates.

Preferential rates are applicable to imported goods from countries that have the "Most Favored Nation" (**"MFN"**) status with Vietnam (which currently includes 164 countries). As Vietnam is a member of WTO, the MFN rates shall be in accordance with WTO rules and shall be applicable to goods imported from other WTO members. The preferential rates, generally ranging from 1% to 90% (there are many items of imported goods entitled to 0% import duty).

Special preferential tariffs apply to goods imported from countries that have a special preferential agreement with Vietnam, such as the ASEAN Trade in Goods Agreement ("**ATIGA**") which set up the free trade area ("**FTA**") among the State Members of the Association of the Southeast Asian Nations ("**AFTA**") or the agreements between AFTA and South Korea, Japan, Australia, New Zealand and China. The special preferential tariffs are lower than other rates.

The taxable price for computation of import duty is the CIF price.

10.5 Environmental protection tax ("EPT")

EPT is imposed on goods that the consumption or utilization of those goods is considered to negatively impact on the environment, consisting of:

- Petrol, oil, grease;
- Coal;
- Hydro chlorofluorocarbons (HCFCs);
- Nylon bags;
- Some limited usage chemicals (e.g. pesticides).

Taxpayers subject to EPT include organizations, sole proprietors or individuals producing and importing goods subject to EPT.

Tax Exemption

EPT exemption will be applied to goods in the following scenarios:

- Goods in transit, goods transported via border-gates or borders of Vietnam;

- Goods temporarily imported for being re-exported; and
- Exported goods.

EPT rate

The tax rates are summarized as follows:

Goods	Taxable unit	Tax range amount/taxable unit (VND)
Petrol, oil, grease	Liter	900-3,000
Coal	Ton	10,000-20,000
HCFCs	Kilogram	4,000
Nylon bags	Kilogram	40,000
Limited usage chemicals	Kilogram	500-1,000

11 TAX ADMINISTRATION

This chapter outlines the general tax administrative requirements and procedures for filing tax returns for major taxes.

11.1 General requirements

11.1.1 Tax registration

Generally, tax registration applies to all corporate entities; non-corporate entities that are subject to corporate taxes, entitled to VAT refund, or required to withhold taxes and/or collect taxes or government's fees; individuals subject to PIT; and foreign contractors who elect to file withholding tax under deduction or hybrid method. The tax registration must be completed within 10 working days following any of the following events (whichever occurs earlier):

- The issuance of the business license by the licensing authority;
- Commencement of business or incurrence of tax liabilities (where business license is not required);
- Incurrence of tax withholding or collection obligations;
- Receipt of taxable income (for individuals); and
- Entitlement to a VAT refund

Upon registration, the taxpayer will be issued a Certificate of Tax Registration with a tax code. The tax authorities are required to certify the taxpayer's registration within three working days, following receipt of all required tax registration documents.

Taxpayers are required to notify the tax office any changes in the details of their registration (such as name, business address etc.) within 10 days following the effective date of the change.

11.1.2 Tax year

For CIT, tax year is the calendar year or the taxpayer's financial year. For all other taxes, the tax year is the calendar year.

Generally, the tax year runs from January 1 to December 31 for both corporate entities and individuals. A corporate taxpayer may adopt a financial year other than the calendar year, following a notification on this adoption to relevant tax authorities. In such case, the financial year is the tax year for CIT purpose, which must end at the end of a quarter.

11.1.3 Tax assessment periods

For monthly and quarterly tax assessments, the first tax assessment period begins on the first date of earning taxable income and ends on the last date of that month or quarter, respectively. The last tax assessment period begins on the first day of the month or quarter and ends on the last day of earning taxable income.

11.2 Penalties

Penalties on tax offences can be severe in Vietnam. A taxpayer or tax withholding agent may be subject to one or a combination of penalties, which vary depending on the type and extent of tax offences:

- Statute of limitation on the recovery of tax liability that is under-paid by the taxpayer due to wrong self-assessment or tax evasion is 10 years.
- Total administrative penalties on offences in relation to tax administrative procedures (registration, filing, etc.) is up to VND 200 million in case offender is an organization; and is VND 100 million in case offender is an individual;
- Interest on overdue tax payment is 0.05% a day on the overdue amount;
- For imported/exported goods, adjustments (resulting in an increase in tax payable) which are self-declared by taxpayers (in 60 days after the date the tax filing is submitted) before any announcement on tax audit conducted at the taxpayers' office by tax authorities are subject to 10% penalty. A 20% penalty interest is applied on additional tax payable in case the adjustments made after 60 days from the due date of tax filing; and/or after the announcement of tax audit at the taxpayers' office announced by tax authorities.
- The 20% penalty interest will also apply on any additional tax reassessment amounts made by tax authorities.
- Up to 300% of the tax liability is applicable for tax fraud or tax evasion; and
- Criminal prosecution.

12 ANTI-AVOIDANCE RULES

12.1 Introduction

There are specific anti-avoidance provisions in the tax laws and regulations that prevent excessive claims of tax deductions (such as depreciation, management fees, interest payments, etc.), undervalued transactions, and other non-arm's length transactions. In addition, recently, in a Circular guiding the implementation of double tax treaties concluded with other countries, Vietnam introduced the General Anti-Avoidance Rules ("**GAAR**") for combating treaty abuse.

GAAR are statutory provisions designed to combat tax avoidance arrangements. GAAR can empower the tax authorities to disregard tax avoidance arrangements and subject the transactions to tax using a substance over form approach. Most countries have adopted similar anti-avoidance laws. Accordingly, tax treaty benefits can be denied by the Vietnamese tax authorities if:

- Tax incurred more than three years from the tax payment due date;
- The main purpose of an agreement or structure is to obtain treaty benefits; or
- It is determined that the person receiving treaty benefits is not the beneficial owner of the income.

12.2 Transfer pricing

Vietnam introduced the first "anti-transfer pricing" regulation in 1997, which was initially applicable to only FIEs. The regulation subsequently underwent several amendments and was largely left unimplemented until 2005. It was then revised substantially to extend its application to all enterprises and became the effective guidelines for "transfer pricing" (as opposed to "anti-transfer pricing") to date. The guidelines have also undergone a recent change in 2010 by the release of the latest regulation known as "Circular 66", which took effect on 6 June 2010.

This development of transfer pricing regulation demonstrates the Vietnamese tax authorities' focus on protecting tax revenue through the requirement of arm's length transfer prices between related parties. The tax authorities have been focusing their tax audits on transfer pricing issues, within the scope of general tax audits. Transfer pricing has become one of the tax authorities' priorities in relation to tax administration in the current years.

The latest regulation puts emphasis on the need for taxpayers to adhere to the transfer pricing guidelines and builds upon the early guidelines. It clearly defines, among others, related party transactions ("**RPTs**") which are subject to the transfer pricing rules, transfer pricing methods, and compliance requirements.

The tax authorities are extensively empowered to make transfer price adjustments with respect to non-arm's length RPTs and taxpayers' failure to comply with the transfer pricing requirements.

The regulation provides for five transfer pricing methods, which largely resemble the OECD model:

- Comparable Uncontrolled Price Method;
- Resale Price Method;
- Cost Plus Method;
- Comparable Profits Method; and
- Profit Split Method.

Taxpayers are required to disclose their RPT in a prescribed form (Form GCN-01/QLT) to be attached with a taxpayer's annual CIT finalization returns. In addition, the regulation places the burden of proof on taxpayers to demonstrate that RPTs are carried out on arm's length terms. In particular, taxpayers are required to prepare and maintain contemporaneous transfer pricing documentation (i.e. documentation in existence and updated at the time RPTs take place).

The regulation also prescribes the specific information to be included in the transfer pricing documentation (which must be available in Vietnamese). Extensive disclosures are required in relation to related party(ies) involved, description of transactions and the rationale for the selection and application of transfer pricing methodologies. Transfer pricing documentation must be provided to the tax authority within 30 working days upon a written request by the tax authority, although an extension on the submission would be allowed subject to the tax authority's discretion.

Effective from 5 February 2014, Advance Pricing Agreements allow taxpayers that have related transactions to negotiate with the tax authority on an appropriate transfer pricing methodology for some set of transactions at issue over a fixed period of time.

An APA may be concluded (and applied) unilaterally, bilaterally or multilaterally upon the request of taxpayers on applying an APA.

12.3 Thin capitalization

There is no specific tax-driven thin capitalisation rule. However, certain restrictions to that effect can be found in the regulations regarding company loans and CIT:

Under the business registration regulations, the equity-to-debt ratio is specified in the business registration certificate by virtue of specifying the charter capital (equity) and investment capital (total project size – total of equity and debt). In the past, this was restricted to 30:70. There is now no such specific restriction.

The CIT regulations provide for the following rules:

- Where an onshore loan is borrowed at an excessive interest rate, the excess amount of interest paid to a non-credit institution or non-economic organizations at a rate exceeding 150% of the prime interest set by the State Bank of Vietnam (**"SBV"**) at the date of borrowing will not be tax deductible. While, this restriction is not applied to offshore loans, the interest rate must still be at arm's length. Further, the SBV may limit the funding cost of offshore loans, from time to time.
- To the extent an interest expense relates to loans obtained for the contribution of charter capital or part of the charter capital which has not been contributed in accordance with the capital contribution schedule stated in the company's charter, such interest expense will not be tax deductible.

APPENDIX 1

CIT incentives

Enterprises that satisfy certain conditions may qualify for preferential CIT rate; CIT exemption and reduction as follows:

Conditions	Preferential tax rate	Tax exemption	50% reduction of CIT payables
▪ Income from new investment projects located in localities deemed to face extreme difficulties in socio-economic conditions and those are located in economic zones and high-technology zones ▪ Income from new investment projects engaging in the following sectors: - High technology; scientific research and technological development; - Application of high technologies in the list of prioritized high technologies according to the Law on High Technologies; creation of high technologies; high-risk investment in the development of high technologies in the list of prioritized high technologies according to the Law on High Technologies;	10% for 15 years from the year of operating income generation	4 years from the first profitable year	9 subsequent years following the tax exemption period

Conditions	Preferential tax rate	Tax exemption	50% reduction of CIT payables
- Investment in infrastructures deemed special important by the government; - Software production; - Production of composite materials, light building materials, rare materials, renewable energy, clean energy, energy from waste destruction; development of biological technology, and environment protection; - Income generated by high-tech enterprises and by agricultural enterprises applying high-technologies; - Income from new manufacturing investment projects that satisfy one of the following conditions: (i) The minimum investment capital of the project is of VND 6,000 billion (approximately USD 286 million) which is disbursed within three years from the date of licensing and the annual revenues from the fourth year are at least VND 10,000 billion; or (ii) The minimum investment capital of the			

Conditions	Preferential tax rate	Tax exemption	50% reduction of CIT payables
project is at least VND 6,000 billion (approximately USD 286 million) which is disbursed within three years from the date of licensing and employ at least 3,000 employees. ▪ Income from new investment projects engaging in the following sectors: – Manufacturing industrial supporting products for high technology; – Manufacturing industrial supporting products for textiles, garment, footwear, electronic/information technology, automobile assembly, mechanics sectors provided that such products are not produced domestically by 1 January 2015, or if produced domestically, the products' quality must qualify EU standards. ▪ Income from new manufacturing investment projects (except manufacturing products subject to special sale tax and mining projects) that satisfy the following conditions: (i) the minimum investment			

Conditions	Preferential tax rate	Tax exemption	50% reduction of CIT payables
capital of the project is of VND 12,000 billion which is disbursed within five years from the date of licensing; and (ii) using high-technology.			
▪ Income from new investment projects located in localities deemed to face extreme difficulties or difficulties in socio-economic condition and engaging in socialization sectors including: education, vocational training, health care, culture, sport and environment.	10% for entire life of projects	4 years from the first profitable year	9 subsequent years following the tax exemption period
▪ Income from new investment projects engaging in socialization sectors including: education, vocational training, health care, culture, sport and environment.	10% for entire life of projects	4 years from the first profitable year	5 subsequent years following the tax exemption period
▪ Income from projects on housing/accommodation for sale/lease to low-income people (as part of social welfare schemes). ▪ Income from publishing and printing newspapers. ▪ Incomes of enterprises from planting, cultivating, and protecting forests; agriculture, forestry, and aquaculture in localities facing socio-economic difficulties; from the production,	10% for entire life of the projects	NA	NA

Conditions	Preferential tax rate	Tax exemption	50% reduction of CIT payables
multiplication, and cross-breeding plants and animals; from the production, extraction, and refinement of salt; from post-harvest preservation of agriculture products, aquaculture products, and food. ▪ Incomes of cooperatives engaging in agriculture, forestry, fisheries, and salt production not in localities facing socio-economic difficulties or localities facing extreme socio-economic difficulties.			
▪ Incomes of enterprises engaging in cultivating, breeding animals; processing agricultural and aquacultureproducts.	15%	2 years from the first profitable year	4 subsequent years following the tax exemption period
▪ Income from new investment projects located in localities deemed to face difficulties in socio-economic conditions. ▪ Income from new investment projects engaging in manufacturing high-quality steel, power- saving products, machinery and equipment for utilization in agriculture, forestry, aquaculture, production of irrigation equipment; production and refinement of feed for	20% (which is reduced to 17% from 2016) for 10 years from the year of operating income generation	2 years from the first profitable year	4 subsequent years following the tax exemption period

Conditions	Preferential tax rate	Tax exemption	50% reduction of CIT payables
livestock, poultry, and aquatic organism; development of traditional trades.			
▪ Incomes of people's credit funds and microfinance institutions.	20% (which is reduced to 17% from 2016) for entire life of the projects	NA	NA
▪ Income from activities of prospecting and exploration of rare and precious natural resources having 70% of the minefields located in localities deemed to face extremely difficulties.	40% for entire operation of business	NA	NA
▪ Income from new investment projects located in industrial parks, except for industrial parks located in localities deemed to have favourable socio-economic conditions.	NA	2 years from the first profitable year	4 subsequent years following the tax exemption period

Note, after the expiry of the period of preferential rates (i.e. 10%, 15% or 20%), the standard rate of 22% (or 20% from 2016) shall apply for the residual period of the business license.

If investment projects eligible for CIT incentives are not profitable in the first three years of operating, the period of tax exemption commences from the fourth year.

APPENDIX 2

Tax filing and payment schedule

Generally, the due date for both filing and payment of tax are the same date under the self-assessment scheme. Where a tax assessment is made or imposed by the tax authorities, the due date for tax payment is notified in the tax assessment. The due dates for various types of filings are in the table below.

Tax	Type of filing	Due date
Value Added Tax	▪ Monthly return; or ▪ Quarterly return	▪ 20th day of the following month ▪ 30th day of the first month of the following quarter
Corporate Income Tax	▪ Annual return	▪ The 90th day following the end of the calendar year or fiscal year
	▪ Ad hoc (transaction based) return	▪ The 10th day following the date of incurrence of tax liability
	▪ Return for cessation of business, completion of contract, change of ownership or re-organization	▪ The 45th day following the event or completion of the transaction.
Transfer Pricing	▪ Annual disclosure of related party transactions	▪ Together with the CIT annual return
Personal Income Tax	▪ Tax code registration	▪ The 10th day following the first incurrence of taxable income
	▪ Monthly return; or ▪ Quarterly return	▪ The 20th day of the following month ▪ 30th of the first month of the following quarter
	▪ Annual return	▪ The 90th day of the following year
	▪ DTA claims (through employer)	▪ 15 days prior to commencement of assignment to Vietnam
	▪ Submission of certificate of tax resident of foreign country (to employer in	▪ 15 days prior to the end of assignment in Vietnam or prior to the end of tax year (whichever is earlier) but not

Tax	Type of filing	Due date
	Vietnam)	later than the end of the 1st quarter of the following year
Foreign Contractor Tax	▪ Registration	▪ Within 20 days following signing of contract
	▪ Withholding tax return	▪ Within 10 days following the date of remittance of the payment
	▪ Finalization	▪ Within 45 days following completion date
	▪ DTA claims	▪ 15 days before the due date for tax filing
	▪ Submission of certificate of tax resident of foreign country	▪ 15 days prior to the last day of contract or prior to the end of tax year (whichever is earlier); but not later than the end of the 1st quarter of the following tax year
Stamp duty	▪ Payment	▪ The date indicated in tax notice
Business License Tax	▪ Annual return for first year of operation	▪ Within 30 days following the date of incorporation or the beginning of each calendar year (per tax office's notice)
Special Sale Tax	▪ Monthly return	▪ 20th day of the following month
	▪ Export products but consumed in Vietnam	▪ Within 10 days from the date of selling
Invoices	▪ Invoice issuance notice	▪ Prior to the date of invoice usage
	▪ Quarterly report of invoice usage	▪ 30th day of the first month of the following quarter
	▪ Report of lost, damaged invoices	▪ Within 5 days following the incident

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DFDL Tax Services

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Partner; Head of Regional Tax Practice

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