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# *Vietnam Pocket Tax Book 2016*



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## *A summary of Vietnam taxation*

The information in this booklet is based on current taxation regulations and practice including certain legislative proposals as at 1 March 2016.

This booklet is intended as a general guide. Where specific transactions are being contemplated, definitive advice should be sought.

# *Taxation*

## **General Overview**

Most business activities and investments in Vietnam will be affected by the following taxes:

- Corporate income tax;
- Various withholding taxes;
- Capital assignment profits tax;
- Value added tax;
- Import duties;
- Personal income tax of Vietnamese and expatriate employees;
- Social insurance, unemployment insurance and health insurance contributions.

There are various other taxes that may affect certain specific activities, including:

- Special sales tax;
- Natural resources tax;
- Property taxes;
- Export duties;
- Environment protection tax.

All these taxes are imposed at the national level. There are no local, state or provincial taxes.

## Corporate Income Tax (“CIT”)

### Tax Rates

Enterprises (generally companies) are subject to the tax rates imposed under the CIT Law. The standard CIT rate was reduced from 25% to 22% from 2014 and 20% from 2016. Projects previously entitled to a 20% CIT rate will enjoy a 17% CIT rate for their remaining period. Companies operating in the oil and gas industry are subject to CIT rates ranging from 32% to 50% depending on the location and specific project conditions. Companies engaging in prospecting, exploration and exploitation of mineral resources (e.g. silver, gold, gemstones) are subject to CIT rates of 40% or 50%, depending on the project’s location.

### Tax Incentives

Tax incentives are granted to new investment projects based on regulated encouraged sectors, encouraged locations and the size of the project. Business expansion projects (including expansion projects licensed or implemented during the period from 2009 to 2013 which were not entitled to any CIT incentives previously) which meet certain conditions are also entitled to CIT incentives. New investment projects and business expansion projects do not include projects established as a result of certain acquisitions or reorganisations.

- The sectors which are encouraged by the Vietnamese Government include education, health care, sport/culture, high technology, environmental protection, scientific research, infrastructural development, processing of agricultural and aquatic products, software production and renewable energy.
- Locations which are encouraged include qualifying economic and high-tech zones, certain industrial zones and difficult socio-economic areas.
- Large manufacturing projects (excluding those related to the manufacture of products subject to special sales tax or those exploiting mineral resources) with total capital of VND6,000 billion or more, disbursed within 3 years of being licensed can also qualify for CIT incentives if the projects meet either of the following criteria:
  - i. minimum revenue of VND10,000 billion/annum by the 4<sup>th</sup> year of operation at the latest; or
  - ii. head count of more than 3,000 by the 4<sup>th</sup> year of operation at the latest.

From 2015, large manufacturing projects are defined to also include projects with total capital of VND12,000 billion or more, disbursed within 5 years of being licensed (excluding those related to the manufacture of products subject to special sales tax or those exploiting mineral resources) and using technologies appraised in accordance with relevant laws.

Further, new investment projects engaged in manufacturing industrial products prioritized for development will be entitled to CIT incentives if they meet one of the following conditions:

- i. the products support the high technology sector; or
- ii. the products support the garment, textile, footwear, IT, automobile assembly, mechanical sectors are not produced domestically as at 1 January 2015, or if produced domestically, they meet the quality standards of the EU or equivalent.

The two common preferential rates of 10% and 20% are available for 15 years and 10 years respectively, starting from the commencement of operating activities. From 1 January 2015, a preferential rate of 15% will apply in certain cases. The duration of application of the preferential tax rate can be extended in certain cases. From 1 January 2016, enterprises having projects entitled to the preferential CIT rate of 20% will enjoy a rate of 17% instead. When the preferential rate expires, the CIT rate reverts to the standard rate. Certain socialised sectors (e.g. education, health) enjoy the 10% rate for the life of the project.

Taxpayers may be eligible for tax holidays and reductions. The holidays take the form of a complete exemption from CIT for a certain period beginning immediately after the enterprise first makes profits, followed by a period where tax is charged at 50% of the applicable rate. However, where the enterprise has not derived

taxable profits within 3 years of the commencement of operations, the tax holiday/tax reduction will start from the fourth year of operation. Criteria for eligibility for these holidays and reductions are set out in the CIT regulations.

Additional tax reductions may be available for companies engaging in manufacturing, construction and transportation activities which employ many female staff or employ ethnic minorities.

Tax incentives which are available for investment in encouraged sectors do not apply to other income (except for income which directly relates to the incentivised activities such as disposal of scrap), which is broadly defined.

### Calculation of Taxable Profits

Taxable profit is the difference between total revenue, whether domestic or foreign sourced, and deductible expenses, plus other assessable income.

Taxpayers are required to prepare an annual CIT return which includes a section for making adjustments to accounting profit to arrive at taxable profit.

### Non-deductible Expenses

Expenses are tax deductible if they relate to the generation of revenue, are properly supported by suitable documentation (including bank transfer vouchers where the invoice value is VND20 million or above) and are not specifically identified as being non-deductible. Examples of non-deductible expenses include:

- Depreciation of fixed assets which is not in accordance with the prevailing regulations;
- Employee remuneration expenses which are not actually paid, or are not stated in a labour contract or collective labour agreement;
- Staff welfare (including certain benefits provided to family members of staff) exceeding a cap of one month's average salary. Non-compulsory medical and accident insurance is considered a form of staff welfare;
- Reserves for research and development not made in accordance with the prevailing regulations;
- Provisions for severance allowance and payments of severance allowance in excess of the prescribed amount per the Labour Code;
- Overhead expenses allocated to a permanent establishment ("PE") in Vietnam by the foreign company's head office exceeding the amount under a prescribed revenue-based allocation formula;
- Interest on loans corresponding to the portion of charter capital not yet contributed;
- Interest on loans from non-economic and non-credit organisations exceeding 1.5 times the interest rate set by the State Bank of Vietnam;
- Provisions for stock devaluation, bad debts, financial investment losses, product warranties or construction work which are not made in accordance with the prevailing regulations;
- Unrealised foreign exchange losses due to the year-end revaluation of foreign currency items other than account payables;
- Donations except certain donations for education, health care, natural disaster or building charitable homes for the poor;
- Administrative penalties, fines, late payment interest;
- Contributions to voluntary pension funds exceeding VND 1 million per month per person;
- Certain expenses directly related to the issuance, purchase or sale of shares;
- Creditable input value added tax, corporate income tax and personal income tax.

From 2015, the cap on the tax deductibility of advertising and promotion expenses was abolished.

For certain businesses such as insurance companies, securities trading and lotteries, the Ministry of Finance provides specific guidance on deductible expenses for CIT purposes.

Business entities in Vietnam are allowed to set up a tax deductible research and development fund to which they can appropriate up to 10% of annual profits before tax. Various conditions apply.

## Losses

Taxpayers may carry forward tax losses fully and consecutively for a maximum of five years.

Losses arising from incentivised activities can be offset against profits from non-incentivised activities, and vice versa. Losses from the transfer of real estate and the transfer of investment projects can be offset against profits from other business activities. Carry-back of losses is not permitted. There is no provision for any form of consolidated filing or group loss relief.

## Administration

Provisional quarterly CIT returns are no longer required. Enterprises are instead required to make quarterly provisional CIT payments based on estimates. If the provisional quarterly CIT payments account for less than 80% of the final CIT liability, any shortfall in excess of 20% is subject to late payment interest (currently as high as 18% per annum), applying from the deadline for payment of the Quarter 4 CIT liability.

Final CIT returns are filed annually. The annual CIT return must be filed and submitted not later than 90 days from the fiscal year end. The outstanding tax payable must be paid at the same time.

Where a taxpayer has a dependent accounting unit (e.g. branch) in a different province, a single CIT return is required. However, manufacturing companies are required to allocate tax payments to the various provincial tax authorities in the locations where they have dependent manufacturing establishments. The basis for allocation is the proportion of expenditure incurred by each manufacturing establishment over the total expenditure of the company.

The standard tax year is the calendar year. Companies are required to notify the tax authorities in cases where they use a tax year (i.e. fiscal year) other than the calendar year.

## Profit Remittance

Foreign investors are permitted to remit their profits annually at the end of the financial year or upon termination of the investment in Vietnam. Foreign investors are not permitted to remit profits if the investee company has accumulated losses.

The foreign investor or the investee company are required to notify the tax authorities of the plan to remit profits at least 7 working days prior to the scheduled remittance.

## *Transfer Pricing*

Vietnam's transfer pricing regulations are mostly contained in Circular 66/2010/TT-BTC dated 22 April 2010. Circular 66 provides a definition of related party transactions as well as methods to establish market prices.

The control threshold required to be a "related party" in Circular 66 is lower than that in many other countries. Furthermore, certain significant supplier, customer and funding relationships between otherwise unrelated parties may also be considered related parties according to this definition. Vietnam's transfer pricing rules also extend to domestic related party transactions.

The acceptable methodologies for determining arm's length pricing are analogous to those espoused by the Organisation for Economic Cooperation and Development (OECD) in the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, i.e. comparable uncontrolled price, resale price, cost plus, profit split and comparable profits methods.

Compliance requirements include an annual declaration of related party transactions and transfer pricing methodologies used, which is required to be filed together with the annual CIT return. For tax years commencing on or after 1 January 2014, a revised declaration form is required to be completed, which contains enhanced declaration requirements, specifically requiring companies to declare and self-assess the arm's length value of their transactions (or otherwise make voluntary adjustments).

Companies which have related party transactions must also prepare and maintain contemporaneous transfer pricing documentation, which is required to be submitted in Vietnamese to the tax authorities within 30 working days of a request. There are no de-minimis rules for documentation.

Regulations on advance pricing agreements ("APA") were introduced in 2014. As of 2016, the General Department of Taxation ("GDT") is in negotiation with several taxpayers for the first APAs.

The latter half of 2015 saw significant development of transfer pricing audit initiatives by the tax authorities. Specifically, in July, a Transfer Pricing Audit Department was established within the GDT. Soon afterwards, in November, local Transfer Pricing Audit departments were also established in the Hanoi, Binh Duong, Dong Nai, and Ho Chi Minh City tax authorities.

## **Foreign Contractor Tax (“FCT”)**

FCT applies to certain payments to foreign parties including interest, royalties, service fees, lease, insurance, transportation, transfers of securities and goods supplied within Vietnam or associated with services rendered in Vietnam, and certain distribution arrangements. It normally comprises a combination of CIT and VAT at varying rates, but can also include PIT for payments to foreign individuals.

### **Dividends**

No withholding or remittance tax is imposed on profits paid to foreign corporate shareholders.

### **Interest**

A withholding tax of 5% applies to interest paid on loans from foreign entities. Offshore loans provided by certain government or semi-government institutions may obtain an exemption from interest withholding tax where a relevant double taxation agreement or inter-governmental agreement applies.

Interest paid on bonds (except for tax exempt bonds) and certificates of deposit issued to foreign entities is subject to 5% withholding tax. Sales of bonds and certificates of deposits are subject to a deemed tax of 0.1% of the gross sales proceeds.

### **Royalties and Licence Fees**

FCT applies to payments to a foreign entity for the right to use or for the transfer of intellectual property, technology or software.

### **Payments to Foreign Contractors**

A withholding tax on payments to foreign contractors applies where a Vietnamese party (including foreign owned companies) contracts with a foreign entity that does not have a licensed presence in Vietnam.

This FCT generally applies to payments derived from Vietnam, except for the pure supply of goods (i.e. where the responsibility, cost and risk relating to the goods passes at or before the border gate of Vietnam and there are no associated services performed in Vietnam), services performed and consumed outside Vietnam and various other services performed wholly outside Vietnam (e.g. certain repairs, training, advertising, promotion, etc.).

In addition, certain distribution arrangements where foreign entities are directly or indirectly involved in the distribution of goods or provision of services in Vietnam are subject to FCT – e.g., where the foreign entity retains ownership of the goods, bears distribution, advertising or marketing costs, is responsible for the quality of goods or services, making pricing decisions, or authorises/hires Vietnamese entities to carry out part of the distribution of goods/provision of services in Vietnam.

Foreign contractors can choose between three methods for tax payment - the deduction method, the direct method and the hybrid method.

#### **Method One – Deduction Method**

This entails the foreign contractor registering for VAT purposes and filing CIT and VAT returns in the same way as a local entity. Foreign contractors can apply the deduction method if they meet all of the requirements below:

- They have a PE or are tax resident in Vietnam;
- The duration of the project in Vietnam is more than 182 days; and
- They adopt the full Vietnam Accounting System (“VAS”), complete a tax registration and are granted a tax code.

The Vietnamese customer is required to notify the tax office that the foreign contractor will pay tax under the deduction method within 20 working days from the date of signing the contract.

If the foreign contractor carries out multiple projects in Vietnam and qualifies for application of the deduction method for one project, the contractor is required to apply the deduction method for its other projects as well. The foreign contractor will pay CIT at 20% on its net profits.

#### *Method Two – Direct Method*

Foreign contractors adopting the direct (or withholding) method do not register for VAT purposes or file CIT or VAT returns. Instead CIT and VAT are withheld by the Vietnamese customer at prescribed rates from the payments made to the foreign contractor. Various rates are specified according to the nature of the activities performed. The VAT withheld by the Vietnamese customer is generally an allowable input credit in its VAT return.

Separate requirements for FCT declarations under this method are provided for foreign contractors providing goods and services for exploration, development and production of oil and gas.

#### *Method Three – Hybrid Method*

The hybrid method allows foreign contractors to register for VAT and accordingly pay VAT based on the deduction method (i.e. output VAT less input VAT), but with CIT being paid under the direct method rates on gross turnover.

Foreign contractors wishing to adopt the hybrid method must:

- Have a PE in Vietnam or be tax resident in Vietnam;
- Operate in Vietnam under a contract with a term of more than 182 days; and
- Maintain accounting records in accordance with the accounting regulations and guidance of the Ministry of Finance.

The FCT rates are summarised below:

Industry	Deemed VAT rate (3)	Deemed CIT rate
Supply of goods in Vietnam or associated with services rendered in Vietnam (including in-country export-import and imports, distribution of goods in Vietnam or delivery of goods under Incoterms where the seller bears risk relating to the goods in Vietnam)	Exempt (1)	1%
<b>Services</b>	5%	5%
Services together with supply of machinery and equipment (2)	3%	2%
Restaurant, hotel and casino management services	5%	10%
Construction, installation without supply of materials, machinery or equipment.	5%	2%
Construction, installation with supply of materials, machinery or equipment.	3%	2%
Leasing of machinery and equipment	5%	5%
Leasing of aircraft and vessels	Exempt (4)	2%
Transportation	3% (5)	2%
Interest	Exempt	5%
Royalties	Exempt (6)	10%
Insurance	Exempt/5% (7)	5%
Re-insurance, commission for re-insurance	Exempt	0.1%
Transfer of securities	Exempt	0.1%
Financial derivatives	Exempt	2%
Other activities	2%	Not mentioned

- (1) VAT will not be payable where goods are exempt from VAT or where import VAT is paid
- (2) Where the contract does not separate the value of goods and services
- (3) The supply of goods and/or services to the oil and gas industry are subject to the standard 10% VAT rate. Certain goods or services may be VAT exempt or subject to 5% VAT.
- (4) Where aircraft and vessels cannot be manufactured in Vietnam
- (5) International transportation is subject to 0% VAT
- (6) Software licenses, transfers of technology and intellectual property rights are VAT exempt
- (7) Certain types of insurance are exempt from VAT (see “Exempt Goods and Services” in VAT section).

### Double Taxation Agreements (“DTAs”)

The CIT withholding taxes may be affected by a relevant DTA. For example, the 5% CIT withholding on services supplied by a foreign contractor may be eliminated under a DTA if the foreign contractor does not have a PE in Vietnam.

Vietnam has signed more than 70 DTAs and there are a number of others at various stages of negotiation. Please see the summary at Appendix I. Notable is a newly signed DTA with the United States of America, although this is not yet in force.

There are various guidelines on the application of DTAs. These include regulations relating to beneficial ownership and general anti-avoidance provisions. DTA entitlements will be denied where the main purpose of an arrangement is to obtain beneficial treatment under the terms of a DTA (treaty shopping) or where the recipient of the income is not the beneficial owner. The guidance dictates that a substance over form analysis is required for the beneficial ownership and outlines the factors to be considered, which include:

- Where the recipient is obligated to distribute more than 50% of the income to an entity in a third country within 12 months;
- Where the recipient has little or no substantive business activities;
- Where the recipient has little or no control over or risk in relation to the income received;
- Back to back arrangements;
- Where the recipient is resident in a country with a low tax rate;
- Where the recipient is an intermediary or agent.

## *Capital Assignment Profits Tax (“CAPT”)*

Gains derived from the sale of a Vietnam company are in many cases subject to 20% CIT. This is generally referred to as capital assignment profits tax (CAPT) although it is not a separate tax as such. The taxable gain is determined as the excess of the sale proceeds less cost (or the initial value of contributed charter capital for the first transfer) less transfer expenses.

Where the vendor is a foreign entity, a Vietnamese purchaser is required to withhold the tax due from the payment to the vendor and account for this to the tax authorities. Where the purchaser is also a foreign entity, the Vietnamese enterprise in which the interest is transferred is responsible for the CAPT administration. The return and payment is required within 10 days from the date of official approval of the sale by a competent body or, where approval is not required, 10 days from the date the parties reach agreement on the sale in the contract.

The tax authorities have the right to adjust the transfer price for CAPT purposes where the price is not consistent with the market price or where the price is not stipulated in the agreement.

Transfers of securities (bonds, shares of public joint stock companies, etc.) by a foreign entity are subject to CIT on a deemed basis at 0.1% of the total sales proceeds. Gains derived by a resident entity from the transfer of securities are however taxed at 20%.

## Value Added Tax (“VAT”)

### Scope of Application

VAT applies to goods and services used for production, trading and consumption in Vietnam (including goods and services purchased from non-residents). A domestic business must charge VAT on the value of goods or services supplied.

In addition, VAT applies on the duty paid value of imported goods. The importer must pay VAT to the customs authorities at the same time they pay import duties. For imported services, VAT is levied via the FCT mechanism.

VAT payable is calculated as the output VAT charged to customers less the input VAT suffered on purchases of goods and services. For input VAT to be creditable, the taxpayer must obtain a proper VAT invoice from the supplier. For VAT paid on imports, the supporting document is the tax payment voucher, and for VAT collected via the FCT mechanism, the supporting document is the FCT payment voucher.

### Goods or Services where VAT declaration and payment are not required

For these supplies, no output VAT has to be charged but input VAT paid on related purchases may be credited. These supplies include:

- Compensation, bonuses and subsidies, except those provided in exchange for certain services;
- Transfers of emission rights and various financial revenues;
- Certain services rendered by a foreign organisation which does not have a PE in Vietnam where the services are rendered outside of Vietnam, including repairs to means of transport, machinery or equipment, advertising, marketing, promotion of investment and trade to overseas brokerage activities for the sale of goods and services overseas, training, certain international telecommunication services;
- Sales of assets by non-business organisations or individuals not registered for VAT;
- Transfer of investment projects;
- Sale of agricultural products that have not been processed into other products or which have only been through preliminary processing;
- Capital contributions in kind;
- Certain asset transfers between a parent company and its subsidiaries or between subsidiaries of the same parent company;
- Collections of compensation/indemnities by insurance companies from third parties;
- Collections on behalf of other parties which are not involved in the provision of goods/services (e.g. if company A purchases goods/services from company B, but pays to company C and subsequently company C pays to company B, then the payment from company C to company B is not subject to VAT);
- Commissions earned by (i) agents selling services, including postal, telecommunications, lottery, airlines/bus/ship/train tickets, at prices determined by principals; and (ii) agents for international transportation, airlines and shipping services entitled to 0% VAT; and (iii) insurance agents;
- Commissions from the sale of exempt goods/services;
- Lending or return of machinery, equipment, goods;
- Goods exported and then re-imported back to Vietnam due to sales returns by overseas customers.

### Exempt Goods and Services

There are stipulated categories of VAT exemption, including:

- Certain agricultural products;
- Goods/services provided by individuals having annual revenue of VND 100 million or below;
- Imported or leased drilling rigs, aeroplanes and ships of a type which cannot be produced in Vietnam;
- Transfer of land use rights (subject to limitations);

- Financial derivatives and credit services (including credit card issuance, finance leasing and factoring); sale of VAT able mortgaged assets by the borrower under the lender's authorization in order to settle a guaranteed loan and provision of credit information;
- Various securities activities including fund management;
- Capital assignment;
- Foreign currency trading;
- Debt factoring;
- Certain insurance services (including life insurance, health insurance, agricultural insurance and reinsurance);
- Medical services;
- Teaching and training;
- Printing and publishing of newspapers, magazines and certain types of books;
- Passenger transport by public buses;
- Transfer of technology, software and software services except exported software which is entitled to 0% rate;
- Gold imported in pieces which have not been processed into jewellery;
- Exported unprocessed mineral products such as crude oil, rock, sand, rare soil, rare stones, etc.;
- Imports of machinery, equipment and materials which cannot be produced in Vietnam for direct use in science research and technology development activities;
- Equipment, machinery, spare parts, specialised means of transport and necessary materials which cannot be produced in Vietnam for prospecting, exploration and development of oil and gas fields;
- Goods imported in the following cases: international non-refundable aid, including from Official Development Aid, foreign donations to government bodies and to individuals (subject to limitations);
- Fertilizer, feed for livestock, poultry, seafood and other animals, machinery and equipment specifically used for agriculture.

### Tax Rates

There are three VAT rates as follows:

- 0% This rate applies to exported goods/services including goods/services sold to overseas/non-tariff areas and consumed outside Vietnam/in the non-tariff areas, goods processed for export or in-country export (subject to conditions), goods sold to duty free shops, certain exported services, construction and installation carried out for export processing enterprises, aviation, marine and international transportation services.
- 5% This rate applies generally to areas of the economy concerned with the provision of essential goods and services. These include: clean water; teaching aids; books; unprocessed foodstuffs; medicine and medical equipment; husbandry feed; various agricultural products and services; technical/scientific services; rubber latex; sugar and its by-products; certain cultural, artistic, sport services/products and social housing.
- 10% This "standard" rate applies to activities not specified as not-subject to VAT, exempt or subject to 0% or 5%.

When a supply cannot be readily classified based on the tax tariff, VAT must be calculated based on the highest rate applicable for the particular range of goods which the business supplies.

### Exported Goods and Services

Services directly rendered and goods sold to foreign companies, including companies in non-tariff areas, are subject to 0% VAT if they are consumed outside Vietnam or in non-tariff areas.

Various supporting documents are required in order to apply 0% VAT to exported goods and services (except for international transportation services): e.g. contracts, evidence of non-cash payment and customs declarations (for exported goods).

There are a number of services specified in the VAT regulations which do not qualify for 0% VAT, in particular advertising, hotel services, training, entertainment, tourism provided in Vietnam to foreign customers; and various services provided to non-tariff areas (including leasing of houses, transport services for employees to and from their work place, certain catering services) and services in relation to trading or distribution of goods in Vietnam

### VAT Calculation Methods

There are two VAT calculation methods, the deduction method and the direct calculation method.

#### *Method one - Deduction method*

This method applies to business establishments maintaining full books of accounts, invoices and documents in accordance with the relevant regulations, including:

- Business establishments with annual revenue subject to VAT of VND1 billion or more;
  - Certain cases voluntarily registering for VAT declaration under the deduction method.
- Determination of VAT payable

VAT payable = Output VAT – Input VAT

- Calculation of output VAT

The output VAT to be charged is calculated by multiplying the taxable price (net of tax) by the applicable VAT rate. With respect to imported goods, VAT is calculated on the import dutiable price plus import duty plus special sales tax (if applicable) plus environment protection tax (if applicable). For goods sold on an instalment basis (except for real estate), VAT is calculated on the total price without interest, rather than the instalments actually received.

- Input VAT

For domestic purchases, input VAT is based on VAT invoices. For imports, as there is no VAT invoice, input VAT credits are based on the tax payment voucher. VAT invoices can be declared and claimed any time before the company receives notice of a tax audit by the tax authorities. Input VAT credits on payments of VND20 million or more can only be claimed where evidence of payment by bank is available. Input VAT withheld from payments to overseas suppliers (i.e. under the foreign contractor tax system) can also be claimed where the taxpayer makes VATable supplies.

If a business sells exempt goods or services it cannot recover any input VAT paid on its purchases. This contrasts with supplies entitled to 0% VAT or not subject to VAT, where the input VAT can be recovered. Where a business generates both VATable and VAT exempt sales, it can only claim an input VAT credit for the portion of inputs used in the VATable activity.

#### *Method two - Direct method*

This method applies to:

- Business establishments with annual revenue subject to VAT of less than VND1 billion;
  - Individuals and business households;
  - Business establishments which do not maintain proper books of account and foreign organisations or individuals carrying out business activities in forms not regulated in the Law on Investment;
  - Business establishments engaging in trading in gold, silver and precious stones.
- Determination of VAT payable

VAT payable = value added of goods or services sold x VAT rate

Where there is a negative value added from the trading in gold, silver or precious stones in a period, it can be offset against any positive value added of those activities in the same period. Any remaining negative balance can be carried forward to a subsequent period in the same calendar year but cannot be carried over to the next year.

Once selected, the VAT declaration method must be maintained for 2 consecutive years.

### **Discounts and Promotions**

Price discounts generally reduce the value on which VAT applies. However, certain types of discounts may not be permitted as a reduction before the calculation of VAT and various rules and conditions apply.

### **Goods and Services for internal consumption**

Goods or services for internal use are no longer subject to output VAT, provided that they relate to the business of the company.

### **Administration**

All organisations and individuals producing or trading VATable goods and services in Vietnam must register for VAT. In certain cases, branches of an enterprise must register separately and declare VAT on their own activities.

Taxpayers must file VAT returns on a monthly basis by the 20<sup>th</sup> day of the subsequent month, or on a quarterly basis by the 30<sup>th</sup> day of the subsequent quarter (for companies with prior year annual revenue of VND 50 billion or less).

### **Refunds**

Where the taxpayer's input VAT for a period exceeds its output VAT, it will have to carry the excess forward for a period of twelve months. It can then claim a refund from the tax authorities. In certain cases (e.g. exporters where excess input VAT credits exceed VND300 million), a refund may be granted on a monthly/ quarterly basis. Newly established entities in the pre-operation investment phase may claim VAT refunds on a yearly basis or where the accumulated VAT credits exceed VND300 million.

Newly established entities and certain investment projects which are in the pre-operation stage may be entitled to refunds for VAT paid on imported fixed assets based on shorter timelines than normal, subject to certain conditions.

### **Tax Invoices**

Entities in Vietnam can use pre-printed invoices, self-printed invoices or electronic invoices. The tax invoice template must contain stipulated items and be registered with or notified to the local tax authorities. For exported goods, commercial invoices can be used instead of domestic tax invoices.

## Special Sales Tax (“SST”)

SST is a form of excise tax that applies to the production or import of certain goods and the provision of certain services.

Imported goods (except for various types of petrol) are subject to SST at both the import and selling stages.

### Taxable Price

There are various anti-avoidance rules which specify minimum prices for SST purposes.

For example, for certain manufactured or imported goods which are subsequently sold by a trading entity, the SST taxable price cannot be less than 93% of the average selling price of the trading entity. A "trading entity" is the first entity within the distribution network that has no parent - subsidiary relationship with or does not have the same parent as the manufacturing or importing company.

For imported cars with less than 24 seats sold via a trading entity, the SST taxable price is the importer's selling price, but this cannot be lower than 105% of the imported car cost (import price + import duty + SST at import stage)

### Tax Credits

Taxpayers producing SST liable goods from SST liable raw materials are entitled to claim a credit for the SST amount paid on raw materials imported or purchased from domestic manufacturers.

Where taxpayers pay SST at both the import and selling stages, the SST paid at importation will be creditable against SST paid at the selling stage.

### Tax Rates

The Law on SST classifies objects subject to SST into two groups:

1. Commodities - cigarettes, liquor, beer, automobiles having less than 24 seats, motorcycles, airplanes, boats, petrol, air-conditioners up to 90,000 BTU, playing cards, votive papers; and
2. Service activities - discotheques, massage, karaoke, casinos, gambling, lotteries, golf clubs and entertainment with betting.

The SST rates are as follows:

Products / services	Tax rates (%)
<b>Cigar/Cigarettes</b>	
- From 1 January 2016 to 31 December 2018	70
- From 1 January 2019	75
<b>Spirit/Wine</b>	
a) Spirit/Wine with ABV $\geq 20^\circ$	
- From 1 January 2016 to 31 December 2016	55
- From 1 January 2017 to 31 December 2017	60
- From 1 January 2018	65
b) Spirit/Wine with ABV $< 20^\circ$	
- From 1 January 2016 to 31 December 2017	30
- From 1 January 2018	35
<b>Beer</b>	
- From 1 January 2016 to 31 December 2016	55
- From 1 January 2017 to 31 December 2017	60
- From 1 January 2018	65
<b>Automobiles having less than 24 seats</b>	10 - 60
<b>Motorcycles with cylinder capacity above 125cm<sup>3</sup></b>	20
<b>Airplanes</b>	30
<b>Boats</b>	30
<b>Petrol</b>	7 - 10
<b>Air-conditioner (not more than 90,000 BTU)</b>	10
<b>Playing cards</b>	40
<b>Votive papers</b>	70
<b>Discotheques</b>	40
<b>Massage, karaoke</b>	30
<b>Casinos, jackpot games</b>	35
<b>Entertainment with betting</b>	30
<b>Golf</b>	20
<b>Lotteries</b>	15

## *Natural Resources Tax (“NRT”)*

Natural resources tax is payable by industries exploiting Vietnam’s natural resources such as petroleum, minerals, forest products, seafood and natural water. Natural water used for agriculture, forestry, fisheries, salt industries and sea water for cooling purposes may be exempt from NRT provided that certain conditions are satisfied.

The tax rates vary depending on the natural resource being exploited, ranging from 1% to 40%, and are applied to the production output at a specified taxable value per unit. Various methods are available for the calculation of the taxable value of the resources, including cases where the commercial value of the resources cannot be determined.

Crude oil, natural gas and coal gas are taxed at progressive tax rates depending on the daily average production output.

## *Property Taxes*

Foreign investors generally pay rental fees for land use rights. The range of rates is wide depending upon the location, infrastructure and the industrial sector in which the business is operating.

In addition, owners of houses and apartments have to pay land tax under the law on non-agricultural land use tax. The tax is charged on the specific land area used based on the prescribed price per square meter and progressive tax rates ranging from 0.03% to 0.15%.

## Environment Protection Tax

Environment protection tax is an indirect tax which is applicable to the production and importation of certain goods deemed detrimental to the environment, the most significant of which are petroleum and coal. The tax rates are as follows:

No.	Goods	Unit	Tax rate (VND)
1.	Petrol, diesel, grease, etc.	litre/kg	900 - 3,000
2.	Coal	ton	10,000 - 20,000
3.	HCFCs	kg	4,000
4.	Plastic bags (*)	kg	40,000
5.	Restricted use chemicals	kg	500 - 1,000

\* Excludes plastic bags used for packaging or which are “environmentally friendly”

## Import and Export Duties

### Rates

Import and export duty rates are subject to frequent changes and it is always prudent to check the latest position.

Import duty rates are classified into 3 categories: ordinary rates, preferential rates and special preferential rates. Preferential rates are applicable to imported goods from countries that have Most Favoured Nation (MFN, also known as Normal Trade Relations) status with Vietnam. The MFN rates are in accordance with Vietnam's WTO commitments and are applicable to goods imported from other member countries of the WTO.

Special preferential rates are applicable to imported goods from countries that have a special preferential trade agreement with Vietnam. Vietnam has such free trade agreements ("FTA") with various countries including the ASEAN member states, Japan, China, India, Korea, Chile, Australia, New Zealand and the Customs Union of Russia, Belarus, Kazakhstan.

Vietnam has recently concluded 2 important agreements, the Trans-Pacific Partnership (TPP) and the European Union FTA and is negotiating other agreements including the Regional Comprehensive Economic Partnership (RCEP), FTAs with Iceland, Liechtenstein, Norway, Switzerland, Hong Kong, and Israel.

To be eligible for preferential rates or special preferential rates, the imported goods must be accompanied by an appropriate Certificate of Origin. When goods are sourced from non-preferential treatment/non-favoured countries, the ordinary rate (being the MFN rate with a 50% surcharge) is imposed.

### Calculations

In principle Vietnam follows the WTO Valuation Agreement with certain variations. The dutiable value of imported goods is typically based on the transaction value (i.e. the price paid or payable for the imported goods, and where appropriate, adjusted for certain dutiable or non-dutiable elements). Where the transaction value is not applied, alternative methodologies for the calculation of the dutiable value will be used.

SST applies to some products in addition to import duties. VAT will also be applied on imported goods (unless exempt under the VAT regulations).

### Exemptions

Import duty exemptions are provided for projects which are classified as encouraged sectors and other goods imported in certain circumstances.

Categories of import duty exemption include:

- Machinery & equipment, specialised means of transportation and construction materials (which cannot be produced in Vietnam) comprising the fixed assets of certain projects;
- Raw materials, spare parts, accessories, other supplies, samples, machinery and equipment imported for the processing of goods for export and finished products imported for use in the processed goods;
- Companies manufacturing goods for export do not pay import duties on raw materials where the products are destined for export. However, where the enterprise does not, or is not expected to, export the finished product within 275 days, the Customs Department will charge temporary import duty on the raw materials. Penalties for late payment can apply. Where the enterprise then exports the finished product, a refund will be provided in proportion to the raw materials contained in the exports.
- Machinery, equipment, specialised means of transportation, materials (which cannot be produced in Vietnam), health and office equipment imported for use in oil and gas activities.

## Refunds

There are various cases where a refund of import duties is possible, including for:

- Goods for which import duties have been paid but which are not actually physically imported;
- Imported raw materials that are not used and which must be re-exported;
- Imported raw materials that were imported for the production of products for the domestic market but are later used for the processing of goods for export under processing contracts with foreign parties.

## Export Duties

Export duties are charged only on a few items, basically natural resources such as sand, chalk, marble, granite, ore, crude oil, forest products, and scrap metal. Rates range from 0% to 40%. The tax base for computation of export duties is the FOB /Delivered At Frontier price, i.e. the selling price at the port of departure as stated in the contract, excluding freight and insurance costs.

## Customs audit

The customs office may perform post customs audits either at their offices or at the taxpayers' premises. These inspections normally focus on issues including HS code classification, valuation, compliance with export/ toll manufacturing duty deferral/ exemption schemes and certificate of origin.

## Personal Income Tax (“PIT”)

### Tax Residency

Residents are those individuals meeting one of the following criteria:

- Residing in Vietnam for 183 days or more in either the calendar year or the period of 12 consecutive months from the date of first arrival;
- Having a permanent residence in Vietnam (including a registered residence which is recorded on the permanent / temporary residence card or a rented house in Vietnam with a lease term of 183 days or more in a tax year in case of foreigners) and unable to prove tax residence in another country.

Tax residents are subject to Vietnamese PIT on their worldwide taxable income, wherever it is paid or received. Employment income is taxed on a progressive tax rates basis. Other income is taxed at a variety of different rates.

Individuals not meeting the conditions for being tax resident are considered tax non-residents. Tax non-residents are subject to PIT at a flat tax rate of 20% on their Vietnam related employment income, and at various other rates on their non-employment income. However, this will need to be considered in light of the provisions of any DTA that might apply.

### Tax Year

The Vietnamese tax year is the calendar year. However, where in the calendar year of first arrival an individual is present in Vietnam for less than 183 days, his / her first tax year is the 12 month period from the date of arrival. Subsequently, the tax year is the calendar year.

### Employment Income

The definition of taxable employment income is broad and includes all cash remuneration and various benefits-in-kind. However, the following items are not subject to tax:

- Payments for business trips;
- Payments for telephone charges / stationery costs;
- Office clothes (subject to a cap if the office clothes are provided in cash);
- Overtime premium (i.e. the additional payment above the normal wage, not the full amount of the overtime / nightshift payment);
- One-off allowance for relocation
  - from Vietnam for Vietnamese working overseas
  - to Vietnam for expatriates working in Vietnam
  - to Vietnam for Vietnamese residing overseas on a long term basis and returning to Vietnam to work;
- Transportation to and from work;
- Once per year home leave round trip airfare for expatriate employees and Vietnamese working overseas;
- School fees up to high school in Vietnam / overseas for children of expatriates / Vietnamese working overseas;
- Training;
- Mid-shift meals (subject to a cap if the meals are provided in cash);
- Certain benefits in kind provided on a collective basis (e.g. membership fee, entertainment, healthcare);
- Airfares for employees working on a rotation basis in a number of industries (e.g. petroleum, mining);
- Employer’s contributions to certain local and overseas non-mandatory insurance schemes (e.g. medical insurance, accident insurance); and
- Allowances / benefits for wedding, funeral (subject to a cap).

There are a range of conditions and restrictions applicable to the above exemptions.

### Non-employment Income

Taxable non-employment income includes:

- Business income (including rental income in excess of VND100 million/year);
- Investment income (e.g. interest, dividends);
- Gains on sale of shares;
- Gains on sale of real estate;
- Inheritances in excess of VND10 million;
- Prizes/gifts in excess of VND10 million (excluding income from winnings at casinos);
- Income from copyright / franchising / royalties / receiving gifts in excess of VND10 million.

### Non Taxable Income

Non taxable non-employment income includes:

- Interest earned on deposits with credit institutions / banks and on life insurance policies;
- Compensation paid under life / non-life insurance policies;
- Retirement pensions paid under the Social Insurance law (or the foreign equivalent);
- Income from transfer of properties between various direct family members;
- Inheritances / gifts between various direct family members;
- Monthly retirement pensions paid under voluntary insurance schemes;
- Income of Vietnamese vessel crew members working for foreign shipping companies or Vietnam international transportation companies;
- Income from winnings at casinos.

### Foreign Tax Credits

In respect of tax residents who have overseas income, PIT paid in a foreign country on the foreign income is creditable.

### Tax Deductions

Tax deductions include:

1. Employee contributions to mandatory social, health and unemployment insurance schemes;
2. Employee contributions to local voluntary pension schemes (subject to a cap);
3. Employee contributions to certain approved charities;
4. Tax allowances:
  - Personal allowance: VND9 million/month;
  - Dependent allowance: VND3.6 million/month/dependent. The dependent allowance is not automatically granted, and the taxpayer needs to register qualifying dependents and provide supporting documents to the tax authority.

### PIT Rates

#### *Residents - employment income*

Annual Taxable Income (million VND)	Monthly Taxable Income (million VND)	Tax rate
0 – 60	0 – 5	5%
60 – 120	5 – 10	10%
120 – 216	10 – 18	15%
216 – 384	18 – 32	20%
384 – 624	32 – 52	25%
624 – 960	52 – 80	30%
More than 960	More than 80	35%

*Residents – other income*

Type of taxable income	Tax rate
Business income	0.5% - 5% (based on the type of business income)
Interest (but not bank interest) / dividends	5%
Sale of shares	0.1% of the sales proceeds
Capital assignment	20% of the net gain
Sale of real estate	2% of the sales proceeds
Income from copyright	5%
Income from franchising / royalties	5%
Income from winning prizes	10%
Income from inheritances / gifts	10%

*Non-residents*

Type of taxable income	Tax rate
Employment income	20%
Business income	1% - 5% (based on the type of business income)
Interest / dividends	5%
Sale of shares/ Capital assignment	0.1% of the sales proceeds
Sale of real estate	2% of the sales proceeds
Income from royalties / franchising	5%
Income from inheritance / gifts / winning prizes	10%

**Administration***Tax codes*

Individuals who have taxable income are required to obtain a tax code. Those who have taxable employment income must submit the tax registration file to their employer who will subsequently submit this to the local tax office. Those who have other items of taxable income are required to submit their tax registration file to the district tax office of the locality where they reside.

*Tax declarations and payment*

For employment income, tax has to be declared and paid provisionally on a monthly or quarterly basis by the 20th day of the following month or by the 30th day of the month following the reporting quarter, respectively. The amounts paid are reconciled to the total tax liability at the year-end. An annual final tax return must be submitted and any additional tax must be paid within 90 days of the year end. Expatriate employees are also required to carry out a PIT finalisation on termination of their Vietnam assignment. Tax refunds are only available to those who have a tax code.

For non-employment income, the individual is required to declare and pay PIT in relation to each type of taxable non-employment income. The PIT regulations require income to be declared and tax paid on a receipts basis.

## Social, Health and Unemployment Insurance Contributions

Social insurance (“SI”) and Unemployment insurance (“UI”) contributions are applicable to Vietnamese individuals only. Health insurance (“HI”) contributions are required for Vietnamese and foreign individuals that are employed under Vietnam labour contracts.

SI/HI/UI contribution rates are as follows:

	SI	HI	UI	Total
Employee	8%	1.5%	1%	10.5%
Employer	18%	3%	1%	22%

From 1 January 2016 to 31 December 2017, the salary subject to SI / HI / UI contributions is the salary and certain allowances stated in the labour contract, but this is capped at 20 times the minimum salary for SI / HI contributions and 20 times the minimum regional salary for UI contributions (the minimum salary is currently VND1,150,000 and the minimum regional salary varies from VND2,400,000 to VND3,500,000 depending on the region – these minimum salaries are subject to change each year).

Statutory employer contributions do not constitute a taxable benefit to the employee. The employee contributions are deductible for PIT purposes.

## *Other Taxes*

Numerous other fees and taxes can apply in Vietnam, including business licence tax and registration fees (akin to stamp duty) on the transfer of certain registerable assets.

## *Tax Audits and Penalties*

Tax audits are carried out regularly and often cover a number of tax years. Prior to an audit, the tax authorities send the taxpayer a written notice specifying the timing and scope of the audit inspection.

There are detailed regulations setting out penalties for various tax offences. These range from relatively minor administrative penalties through to tax penalties amounting to various multiples of the additional tax assessed. For discrepancies identified by the tax authorities (e.g. upon audit), a 20% penalty will be imposed on the amount of tax under-declared. Late payment of tax is subject to interest of 0.05% of the tax liability for each day late.

The general statute of limitations for imposing tax and late payment interest is 10 years (effective 1 July 2013) and for penalties is up to 5 years. Where the taxpayer did not register for tax, there is no statute of limitation for imposing tax and late payment interest.

## *Accounting and Auditing*

Accounting records are generally required to be maintained in VND. Entities that receive and pay mainly in foreign currency can select a foreign currency to be used for their accounting records and financial statements provided that they meet all stipulated requirements. Accounting records are required to be maintained in Vietnamese language, but this can be combined with a commonly-used foreign language. At the end of a financial year, the entity must perform a physical count of its fixed assets, cash and inventory.

Companies operating in Vietnam are required to comply with the Vietnam Accounting System (“VAS”) which applies the historical cost convention. The tax authorities treat VAS non-compliance as a basis for tax reassessment and imposition of penalties, including withdrawal of CIT incentives, disallowance of expenses for CIT purposes and denial of input VAT credits/refunds.

The annual financial statements of all foreign-invested business entities must be audited by an independent auditing company operating in Vietnam. Audited annual financial statements must be completed within 90 days from the end of the financial year. These financial statements should be filed with the applicable licensing body, Ministry of Finance, local tax authority, Department of Statistics and certain other authorities.

Vietnam has issued 26 accounting standards and 47 auditing standards which are primarily based on international standards with some local modifications.

## Appendix I - Double Taxation Agreements

A summary of withholding tax rates is presented below:

No	Recipient	Interest (%)	Royalties (%)	Notes
1	Algeria	15	15	1, 2
2	Australia	10	10	-
3	Austria	10	7.5/10	2
4	Azerbaijan	10	10	2
5	Bangladesh	15	15	2
6	Belarus	10	15	2
7	Belgium	10	5/10/15	2
8	Brunei Darussalam	10	10	2
9	Bulgaria	10	15	2
10	Canada	10	7.5/10	2
11	China	10	10	2
12	Cuba	10	10	-
13	Czech Republic	10	10	2
14	Denmark	10	5/15	2
15	Eastern Uruguay	(*)	(*)	1
16	Egypt	15	15	1
17	Finland	10	10	2
18	France	Nil	10	-
19	Germany	10	7.5/10	2
20	Hong Kong	10	7/10	2
21	Hungary	10	10	-
22	Iceland	10	10	2
23	India	10	10	2
24	Indonesia	15	15	2
25	Iran	10	10	2
26	Ireland	10	5/10/15	2
27	Israel	10	5/7.5/15	2
28	Italy	10	7.5/10	2
29	Japan	10	10	2
30	Kazakhstan	10	10	2
31	Korea (South)	10	5/15	2
32	Korea (North)	10	10	2
33	Kuwait	15	20	1, 2
34	Laos	10	10	-
35	Luxembourg	10	10	-
36	Macedonia	10	10	1
37	Malaysia	10	10	2
38	Mongolia	10	10	2
39	Morocco	10	10	2
40	Mozambique	10	10	-

No	Recipient	Interest (%)	Royalties (%)	Notes
41	Myanmar	10	10	2
42	Netherlands	10	5/10/15	2
43	New Zealand	10	10	-
44	Norway	10	10	2
45	Oman	10	10	2
46	Pakistan	15	15	2
47	Palestine	10	10	1
48	Philippines	15	15	2
49	Poland	10	10/15	-
50	Qatar	10	5/10	2
51	Romania	10	15	2
52	Russia	10	15	-
53	San Marino	10/15	10/15	-
54	Saudi Arabia	10	7.5/10	2
55	Serbia	10	10	2
56	Seychelles	10	10	-
57	Singapore	10	5/10	2
58	Slovakia	10	5/10/15	2
59	Spain	10	10	2
60	Sri Lanka	10	15	2
61	Sweden	10	5/15	2
62	Switzerland	10	10	-
63	Taiwan	10	15	-
64	Thailand	10/15	15	2
65	Tunisia	10	10	2
66	Turkey	10	10	2
67	UAE	10	10	1, 2
68	Ukraine	10	10	2
69	United Kingdom	10	10	2
70	United States	10	5/10	1, 2
71	Uzbekistan	10	15	2
72	Venezuela	10	10	2

**Notes:**

1. Not in force yet
2. Interest derived by certain government bodies is exempt from withholding tax.

In most cases the limits set by the DTA are higher than the present withholding rates under domestic law; therefore the domestic rates will apply

(\*) The content of these new DTAs is not available at the time this booklet was published.

## **PwC Services in Vietnam**

PwC Vietnam established offices in Hanoi and Ho Chi Minh City in 1994. Our team of more than 750 Vietnamese and expatriate staff have a thorough understanding of the economy in which they work and a wide knowledge of policies and procedures covering investment, legal, tax, accounting and consulting matters throughout Vietnam. PwC Vietnam has built strong relationships with key ministries, financial institutions, state owned companies, private companies, commercial organizations and the ODA community.

We also have an affiliated law company in Vietnam, licensed by the Ministry of Justice in 2000, with its head office in Ho Chi Minh City and a branch office in Hanoi.

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- Transfer pricing
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- Corporate finance
- Business restructuring
- M&A Strategy
- Capital projects and infrastructure
- Valuation

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- Operations
- Procurement
- People and change
- Advisory strategy
- Technology
- Finance & Banking
- Risk consulting
- Fraud consulting

#### **Assurance Services:**

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- Review of financial information
- Agreed-upon procedures
- IFRS conversion
- Risk assurance (Internal Audit, IT Assurance and Performance, Risk and Compliance, Third Party Assurance, Process Assurance)
- Technical accounting advice / training

### **Support for local IPO and Overseas listing**

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We have an affiliated law company in Vietnam, PwC Legal (Vietnam) Co., Ltd, and are therefore able to provide both tax and legal services to our clients.

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