



Taxation in Vietnam

2008 Edition

TAX

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Summary Data

Corporate Tax Rates

All business entities carrying on business in Vietnam, including foreign invested enterprises and domestic enterprises, are liable for the standard CIT, imposed at a rate of 28 percent. It should be noted that the National Assembly is currently considering reducing the rate to 25 percent.

Lower preferential tax rates and tax holidays may be available but are subject to various conditions such as location of investment and/or line of business.

Personal Tax Rates

Although the tax rates are the same, the tax thresholds for Vietnamese citizens and foreign residents are different. The tax rates for foreign tax residents and Vietnamese working overseas are shown below:

Scale	Monthly averaged taxable income/person	Rate (%)	Unit: VND Tax calculation formula ^(a)
1	Up to 8,000,000	0	$T = 0$
2	Over 8,000,000 to 20,000,000	10	$T = 0.1G - 800,000$
3	Over 20,000,000 to 50,000,000	20	$T = 0.2G - 2,800,000$
4	Over 50,000,000 to 80,000,000	30	$T = 0.3G - 7,800,000$
5	Over 80,000,000	40	$T = 0.4G - 15,800,000$

Note: (a) T: Income tax; G: Taxable income

Foreign non-residents are subject to tax at a flat rate of 25 percent of Vietnam source income.

Currency

1 US Dollar = 15,960 Vietnam Dong (as of 1 April 2008)

1 Vietnam Dong (VND) = 0.0000626 US Dollar (USD)

Source: Published rates of the State Bank of Vietnam

1 General

Effective on January 11, 2007, Vietnam became a member of the WTO. With a commitment for an early accession into the WTO, Vietnam made radical changes to its taxation system in 2004. The Government revised all major tax laws, i.e. CIT, Value Added Tax Law, Special Sales Tax Law, Ordinance on Personal Income Tax, and issued new guidance on the Foreign Contractor Tax.

In addition, in 2006, Vietnam introduced two new laws to standardise the treatment of foreign and domestic investors. The Law on Investment and the Law on Enterprises became effective on July 1, 2006. The new legal framework seeks to apply the same rules to all companies regardless of whether they are established by foreign or domestic investors.

Vietnam has a comprehensive taxation system applying to businesses operating in the country and to individuals working or deriving income from Vietnam. The main categories of tax imposed in Vietnam include:

CIT:

The CIT Law took effect from January 1, 1999 and uniformly applies to all domestic and foreign entities that invest in Vietnam. The Amended CIT Law was ratified in 2003 and is effective from January 1, 2004. The National Assembly is currently contemplating changes to the CIT Law and has issued a draft for review.

VAT:

The VAT system in Vietnam applies to goods and services used for production, trading and consumption in Vietnam. The Law on Value Added Tax took effect on January 1, 1999 and was amended by the Amended Law effective from January 1, 2004. The National Assembly has issued a draft of a new VAT law for review.

PIT:

Vietnamese citizens and expatriates who derive personal income in Vietnam must pay tax in accordance with the Ordinance on Personal Income Tax for High Income Earners which was amended and effective from July 1, 2004. A new law on Personal Income Tax takes effect on January 1, 2009.

FCT:

FCT, which is also called Withholding Tax, applies to all foreign organisations and individuals carrying on businesses in Vietnam without setting up legal entities in Vietnam. In 2005, FCT saw significant improvement with the introduction of Circular 05/2005/TT-BTC dated January 11, 2005.

SST:

See 9.4.

Import and Export Duties:

See 9.3.

2 Taxation of Companies

2.1 Introduction

In Vietnam, business entities engaged in the production and trading of goods and services and deriving income are subject to CIT. This is regulated under the Law on CIT which was first introduced in 1999 and then amended in 2003 and 2004. Effective from January 1, 2004, the Amended Law on CIT provides a more consistent treatment of domestic companies and entities licensed under the Law on Investment in Vietnam¹ Business entities subject to CIT include:

- State owned enterprises established and operating pursuant to the Law on State Owned Enterprises²;
- Enterprises established and operating pursuant to the Law on Enterprises;
- Enterprises with foreign owned capital and foreign parties to business co-operation contracts under the Law on Investment in Vietnam; and
- Other organisations and individuals trading in goods and services.

With the introduction of the Amended Law on CIT, a standard tax rate is uniformly applied to both foreign-invested and domestic entities.

Generally, the tax year runs from January 1 to December 31 for both corporate entities and individuals. An enterprise may apply to the MOF to adopt a financial year other than the calendar year.

2.2 Residence

All companies, including other forms of legal entities, which are incorporated under Vietnamese law, or which are incorporated under foreign law and carry on business in Vietnam, are subject to CIT.

Foreign companies shall be regarded as doing business through a PE in Vietnam if they take 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 for natural resources;

¹ The Law on Investment, effective on 1 July 2006, replaced the prior Law on Foreign Investment in Vietnam and its subsequent amendments, as well as the Law on Promotion of Domestic Investment.

² The Law on State Owned Enterprises has been replaced with the Law on Enterprises, effective July 1, 2006. Article 166 of the new law requires state owned companies to be converted into a limited liability company or a shareholding company, over the period of 4 years from the effective date of the new law. However, during the conversion period, the provisions of the Law on State Owned Enterprises 2003 will remain applicable.

- A building site, construction, installation or assembly project, 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 in Vietnam in cases:
 - having the authority to sign contracts under the name of the foreign company; and
 - not having the authority to sign contracts under the name of the foreign company but regularly delivering goods or providing services in Vietnam.

Where DTA to which Vietnam is a signatory contain different provisions on permanent establishments, then these provisions shall prevail. However, application of DTAs is not automatic in Vietnam, and a formal application claim has to be made to the tax authorities.

2.3 Taxable Income

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

Revenue comprises income from sales, provision of services, and any price subsidies, charges and surpluses earned by the enterprise.

Other income includes:

- The difference between the purchase and sale of securities;
- Income from operations concerning the ownership of intellectual property or copyright;
- Other income from the ownership of, or right to use assets;
- Income from assignment or liquidation of assets;
- Income from assignment of land use right or land lease right;
- Any interest on deposits, loans, or sales of goods with deferred payment;
- The difference earned from the sale or exchange of foreign currency;
- The closing balance of allocated funds and provision which were not fully expended;
- Income earned from bad debts which were written off and are now repaid;
- Income from accounts payable of unidentifiable creditors;

- Income from fines receivable for breaches of economic contracts after deduction of fines payable for breaches of contracts;
- Income from production, business or services omitted in the previous years which have been newly discovered; and
- Income earned from the production and trading of goods and services overseas.

Foreign sourced income, which may also be included in the “other income” category, is income before deducting income tax paid overseas. However, foreign income tax paid will be allowed as a credit against the income tax payable in Vietnam, up to the Vietnamese income tax calculated in accordance with the Vietnamese CIT regulations.

2.4 Capital Gains Tax

Generally, capital gains made by an enterprise in Vietnam will form part of the taxable income of the enterprise, and will be taxed at that enterprise’s CIT rate.

There is a specific type of CIT (called Capital Assignment Tax) imposed on the transfer of legal capital in an enterprise.

The Capital Assignment Tax rate is 28 percent on the gain derived by foreign investors from the transfer of an equity interest in a company with foreign investment capital.

2.5 Dividends

From January 1, 2004, remittance (i.e. withholding) tax will not be applicable. Profit repatriated abroad or retained outside Vietnam by foreign invested enterprises is not subject to Profit Remittance Tax, as provided for in Decree 164/2003/ND-CP dated December 22, 2003.

If received from a domestic business establishment to which the corporate entity contributed equity (after payment of tax), dividends are generally not subject to further CIT.

If received from a foreign entity, gross dividends are included in the taxable income of the corporate entity in Vietnam. Any foreign tax which is paid on the part of income out of which dividends are paid will be deductible against the CIT payable in Vietnam, up to the Vietnamese tax payable on that income.

2.6 Exempt Income

The following income earned by domestic entities is exempt from CIT:

- Income earned from the performance of contracts for scientific and technological research;
- Income earned from the development of science and technology;

- Income earned from the sale of products during their period of test production in accordance with the correct production process, but only for a maximum of 6 months from the date of commencement of the test production;
- Income earned from the sale of products made from new technology during the first year in Vietnam, but only for a maximum of one year from the date of application of the new technology to the production of the products;
- Income earned from the performance of technical service contracts directly serving agricultural production;
- Income earned from vocational training specially reserved for ethnic minority people;
- Income earned from the production and trading of goods and services by business establishments specially reserved for employees who are disabled; and
- Income earned from vocational training specially reserved for disabled people, for children living in particularly difficult conditions and for persons involved in social vices.

Receipts from patents, technical know-how, technological processes and technical services used as a legal contribution by a foreign investor to an approved investment project can also be exempt from CIT.

2.7 Deductions

Generally, all expenses incurred for the purpose of earning taxable profits are deductible provided they fall into the specified categories. Deductible expenditure must be “reasonable and legitimate”. The Law on CIT provides detailed guidelines on what is allowable as a deductible expense. The major deductible expenses are as follows:

- Depreciation of fixed assets used for producing or trading goods and services, including facilities for employees;
- Costs of raw materials, supplies, fuel, power and goods used for production, business and service activities relating to the taxable income of the relevant period;
- Salaries, wages, mid-shift meal allowances, and other expenditures similar to that of salaries and wages, as stated in the employment contract and/or collective labor agreement;
- Expenditures on scientific and technological research, improvements initiatives costs, education, health care and personnel training costs, environmental protection costs;
- Expenses for services rendered including utilities, telephone, rental, legal, auditing and technical services, fixed asset repairs, property insurance and the like;
- Expenses paid to sub-contractors by main contractors, costs of travel allowances for annual leave of staff;
- Costs of purchases and use of technical documents, patents, technology transfer licenses, design, determination and protection of trademarks;

- Expenditures especially reserved for female laborers, including re-training, labor protection expenses, costs for uniforms, facilities protection expenses, social and health insurance contributions, trade union fees;
- Interest payments for loans (subject to limits);
- Severance allowances paid to employees;
- Expenses related to the sale of goods and services;
- Expenditure on advertising, marketing and sales promotion directly related to production, construction and transportation are capped at 10 percent of the total deductible expenses;
- Expenditure on taxes (excluding CIT), fees and land leases related to production, trading and service activities, business registration fees and royalties; and
- Head office administration expenses allocated by the overseas head office to its PE in Vietnam, subject to a limitation formula.

Deductions must be substantiated with proper invoices and vouchers.

The following expenses are specifically treated as non-deductible:

- Amounts advanced for expenses but not actually expended in full;
- Expenses incurred without proper source documents;
- Fines for breaches of laws;
- Expenses unrelated to taxable income, such as capital expenditure, insurance fees, donations and charitable contributions;
- Expenses funded by other budgets such as sickness and maternity expenditures and others;
- Bonuses to employees which are not in the nature of salary or wages and which are not included in the labour contract;
- Salaries where no labour contract exists, except in the case of seasonal workers;
- Salaries and wages of owners of private enterprises, members of partnerships, individual business people, remuneration paid to founding members, members of boards of management who are not directly involved in the business;
- Expenses for business management fees allocated by foreign companies to their permanent establishments in Vietnam in excess of specific limits; and
- Tax on assignment of land use rights.

2.8 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 of five years. Carry back of tax losses is not allowed.

2.9 Grouping / Consolidation

Losses are not allowed to be consolidated with profits of other group companies for tax purposes.

2.10 Tax Depreciation / Capital Allowances

Depreciation can be claimed on fixed assets used for business purposes. Depreciation is calculated using the straight-line method or an accelerated depreciation method in the case of technology renovation purposes. The accelerated rate must not be more than twice the rate as that applied under the straight-line method. Fixed assets are depreciated for a minimum of a full month.

Assets are classified according to a comprehensive schedule setting out the useful lives of assets. Sample specified depreciation periods are as follows:

Assets	Years
Buildings	6 – 50
Warehouses	5 – 20
Vehicles	6 – 30
Machinery, equipment	3 – 15

Entities wishing to allocate the cost of assets over different periods from the above must obtain approval from the MOF.

2.11 Amortisation of Expenditure

Purchased intangible fixed assets or expenses can usually be amortised from between five and 20 years. Amortisable expenses include:

- Advance payments for land use (land tax or rental) for a certain period;
- R&D expenses;
- Expenses for purchase of patents, copyright, technology transfers; and
- Goodwill.

Pre-operating expenses, including research, preparation of feasibility study, evaluation fees, etc., are not considered intangible fixed assets.

2.12 Interest

Interest payments are generally allowed as a deduction if it serves the production and trading of goods and services.

Deductible interest payments for loans borrowed from banks, credit institutions and economic organisations are determined at the actual interest rate pursuant to a loan contract.

In respect of loans from other organisations, deductible interest payments are determined at the actual interest rate in the signed loan contract but not more than 1.2 times the interest rate at the same time of commercial banks which have a trading relationship with the business establishment.

Interest payments on loans for contributions to the legal capital of enterprises are not deductible expenses.

Business establishments may access short term overseas loans without registration with the State Bank. For medium and long term overseas loans, they must be registered with the State Bank within 30 days after signing the loan contract and before any loan disbursement.

2.13 Tax Rates

The standard CIT rate applicable to both foreign entities and domestic entities carrying on business in Vietnam is 28 percent gross-tax profits. Preferential CIT rates are also regulated uniformly given certain circumstances of business.

Type of tax rate	Tax rate (%)
Standard tax rate	28
Preferential tax rates	20, 15 and 10
Other tax rates	Above 28

Standard Tax Rate – 28 percent

The standard CIT rate applicable to all business entities, including foreign invested enterprises and foreign partners in business co-operation contracts, is 28 percent. This rate will be applicable unless enterprises meet certain conditions for preferential tax rates.

The former standard CIT rate of 25 percent, which was applied for foreign invested enterprises licensed before January 1, 2004, is still available for such enterprises (i.e. those licensed before January 1, 2004).

Preferential Tax Rates – 20 percent, 15 percent and 10 percent

Enterprises that satisfy certain conditions qualify for a lower tax rate as follows:

CIT rate (%)	Criteria	Applicable period	CIT exemption period	50% CIT reduction period
28	Applicable to every business enterprise unless it qualifies for a concessional rate (see below).	Entire period.	2 years from generation of taxable income for newly set up manufacturing enterprises.	2 years from end of exemption period.
20	Enterprises engaged in encouraged business sectors.	10 years from commencement of business operations.	2 years from generation of taxable income.	3 years from end of exemption period.
	Enterprises implemented in geographical areas with difficult socio-economic conditions.	10 years from commencement of business operations.	2 years from generation of taxable income.	6 years from end of exemption period.
15	Enterprises engaged in encouraged business sectors <i>and</i> implemented in geographical areas with difficult socio-economic conditions.	12 years from commencement of business operations.	3 years from generation of taxable income.	7 years from end of exemption period.
10	Enterprises implemented in geographical areas with “specially” difficult socio-economic conditions.	15 years from commencement of business operations.	4 years from generation of taxable income.	9 years from end of exemption period.
	Enterprises engaged in “specially” encouraged business sectors.	15 years from commencement of business operations.	4 years from generation of taxable income.	9 years from end of exemption period.

Note, after the expiration of the preferential rates (i.e. 10%, 15% or 20%), the standard rate of 28% shall apply for the remaining period of the project licensed period.

Other Tax Rates

The CIT rate applicable to local or foreign organisations carrying out exploration and exploitation of oil and gas is 50 percent; exploration of other precious natural resources may apply tax rates ranging from 32 percent to 50 percent depending on the individual projects and entities.

The CIT rate applicable to enterprises in Economic Zones is approved by the Government on a case-by-case basis.

2.14 Tax Administration

Corporate entities must have a tax file number (called the Tax Code), except for those paying taxes on a withholding basis. Unless a business is granted special permission, it must use a calendar year for accounting and tax purposes.

Corporate entities must submit payment and lodge their returns to the tax agencies that directly manage them. CIT is calculated and payable on a quarterly basis in accordance with an establishment's declaration of corporate income tax or in accordance with the amount fixed by the tax office.

The tax office has the right to fix taxable income for the purpose of calculation of the amount of CIT payable by business establishments in the following cases:

- Failure to maintain, or adequately maintain books, invoices and source documents as required;
- Failure to declare, or accurately declare, the basis for the tax calculation or substantiate the contents of declaration forms are requested;
- Refusal to provide books of account, invoices, source documents and other necessary documents; or
- If the business conducts activities without being registered.

On an annual basis, businesses must lodge a CIT finalisation with the tax office within 90 days from the last day of the calendar year or financial year. If the amount of tax provisionally paid for the year is less than the total amount payable, the shortfall shall be paid within ten days from the date of submitting the tax finalisation. If the amount payable for the year is less than the amount provisionally paid, businesses may deduct such excess from the amount of tax payable in the next period.

3 Setting up Business

Effective on July 1, 2006, the Vietnamese Government introduced two new laws, the *Law on Investment* and the *Law on Enterprises*, which uniformly applies the rules to all companies regardless of whether they are established by foreign or domestic investors³.

The *Law on Enterprise* allows investors to select the form of entity most suitable for their business. The 4 forms of business entities are:

- Private enterprise;
- Partnership;
- Limited liability company (with one or more members); and
- Shareholding company.

Under the *Law on Investment*, foreign investors are permitted to directly invest in Vietnam, in the following methods:

- 100 percent owned economic organisation;
- Joint venture;
- BCC – Contracts entered into between investors to co-operate in business and to share profits or products without creating a legal entity;
- BO contract – A form of investment whereby a competent State body and an investor enter into a contract in order to construct and operate for business purposes an infrastructure facility;
- BT contract – A form of investment whereby a competent State body and an investor enter into a contract in order to construct an infrastructure facility. Upon completion of the facility, the investor transfers the facility to the State of Vietnam and the Government creates conditions for the investor to implement another project in order to recover the invested capital and gains / profits or makes a payment to the investor in accordance with an agreement in the BT contract;
- BTO contract – A form of investment whereby a competent State body and an investor enter into a contract in order to construct an infrastructure facility. Upon completion of facility, the investor transfers the facility to the State of Vietnam and the Government grants the investor the right to commercially operate the facility for a fixed duration in order to recover the invested capital and gain profits;
- BOT contract – A form of investment whereby a competent State body and an investor enter into a contract in order to construct and operate for business purposes

³ Foreign investment enterprises which were licensed before 1 July 2006 have the option to re-register their business and investment in accordance with the new laws. The re-registration must be carried out within a 2 year period from July 1, 2006. Existing foreign investment enterprises opting for non re-registration cannot apply for changes in the scope of business or an extension of their business license.

an infrastructure facility for a fixed duration and upon expiration of the duration, the investor transfers without compensation such facility to the State of Vietnam;

- Business development;
- Ownership of share or contribution of capital in order to participate in the management of investment activities; and
- Investment in the carrying out of mergers and acquisitions of enterprises.

Under the new laws, enterprises may now engage in multiple and diversified investment projects. Investments over VND 300 billion and/or projects falling under conditional sectors must undergo an investment evaluation process. The evaluation process must be completed within 30 – 45 days from the date of a complete and valid application submission.

Projects under VND 300 billion not falling in the conditional sectors only require registration of the investment and the issuance of an investment certificate by the appropriate authority. The certificate issuing authorities are required to issue an investment certificate within 15 working days from the date of receipt of the application dossier. In practice, the licensing process can take substantially longer depending on the nature and size of the project.

4 Foreign Exchange Controls

Transactions in foreign currency in Vietnam are controlled by the SBV. The official currency is the Vietnam Dong, which is not freely convertible.

Foreign invested enterprises and foreign partners to business co-operation contracts must open a foreign currency deposit account at an authorised bank to process all capital transactions. They are also required to open a foreign currency and/or Vietnam Dong account for their operations in Vietnam, through which all business transactions are to be conducted. Foreign currency accounts outside Vietnam of foreign invested enterprises may be permitted only upon the SBV's approval.

Medium and long-term overseas borrowings by enterprises and banks must be registered with the SBV. Acknowledgement of registration from the SBV is required whenever the enterprise has a commitment to repay money overseas.

Foreign invested entities must balance their own currency needs. Some entities, such as manufacturers of essential import substitutes, investors in infrastructure projects or especially encouraged projects, may be guaranteed conversion rights by the authorities. However, the local bank may consider requests from other foreign invested companies to convert Vietnam Dong into foreign currency where foreign currency reserves are available and are for legitimate allowable transactions (e.g. payments for imported goods / services or dividends).

All domestic business transactions must be in the Vietnamese currency. An enterprise with foreign owned capital is required to transfer its capital into Vietnam according to the schedule stated in its contract and charter approved by the Investment License Issuing authorities. At the end of the contract or on the dissolution of the business, the capital may be transferred abroad after satisfactory discharge of the enterprise's financial obligations, including paying all taxes due and completion of all liquidation procedures.

5 Tax Incentives

Tax incentives are available to businesses which satisfy specific conditions for incentives. Reduced tax rates of 10, 15 and 20 percent are available for set periods of time ranging from 10 to 15 years. In addition, there are also tax exemptions and reductions of up to 50 percent for certain types of newly established businesses. Please refer to table on page nine above for further details.

6 International Tax

6.1 Double Tax Relief

Vietnam provides unilateral relief against international double taxation through a foreign tax credit on the foreign tax paid by resident taxpayers on their foreign sourced income.

For a country which has a DTA with Vietnam, a foreign tax credit is also available to resident taxpayers in respect of foreign taxes paid. Generally, provisions of DTAs prevail over the domestic tax laws.

The amount of credit given is the lower of the tax suffered in the foreign country or Vietnamese CIT attributable to the foreign income.

There is no provision in Vietnamese tax law allowing excess foreign tax credits to be carried forward.

6.2 Withholding Taxes

Remittance Tax

Since 2004, foreign investors are no longer subject to remittance tax when transferring their profits out of Vietnam.

Royalties Tax

Royalties paid for the right to use or for the licensing of inventions, industrial property, designs, trademarks, copyright, technical know-how and supporting services such as technical assistance, consultancy and technology management services are subject to royalties tax.

Approved payments for technology transfers to foreign entities are subject to withholding tax at 10 percent.

FCT

FCT (or withholding tax) is applied to foreign entities which do not fall within the forms of investment provided for in the Law on Foreign Investment. It is comprised of two components, a VAT and a CIT.

The imposition of the foreign contractor tax is split into two periods – before and after February 16, 2005.

Contracts signed on and after February 16, 2005 are subject to Circular No. 05/2005/TT-BTC which was introduced in January 2005. Under this Circular, foreign entities having

income sourced from Vietnam will be subject to the foreign contractor tax even though they are not physically present in Vietnam.

Contracts signed before February 16, 2005 are subject to Circular No. 169/1998/TT-BTC dated December 1998. This Circular only imposes withholding tax on payments to a foreign entity (foreign contractor) having income sourced from Vietnam and carrying on business in Vietnam.

This Circular does not apply to imports of goods under CIF / FOB contracts provided that the suppliers provide no onshore services.

Classification of foreign contractor

The system distinguishes between contractors who apply the VAS and those who do not.

VAS contractors must apply for a tax code and are entitled to issue VAT invoices. For VAT purposes, the conventional VAT deduction method (i.e. VAT payable = output VAT – input VAT) will apply, and the contractor will be able to claim input VAT credits. CIT will be imposed on these contractors at the standard rate of 28 percent on taxable income or under the deemed method (where the records are insufficient to calculate the actual taxable income).

Non-VAS registered contractors will not be entitled to issue VAT invoices and claim input VAT credits. For VAT purposes, the direct value added method will apply. In this case, the Vietnamese contracting party must register the contract with the tax authorities and is responsible for withholding FCT. The Vietnamese contracting party will be entitled to a credit for deemed input VAT withheld from payments to the foreign contractor provided that it is a VAT registered entity.

The applicable rates of withholding tax depend on the industry and services being provided.

Interest Withholding Tax

The new Law on Corporate Income Tax introduced an interest withholding tax imposed on offshore interest payments to overseas financiers. The withholding tax of 10 percent only applies to loan agreements signed on or after January 1, 1999. There are exceptional treatments with respect to loan agreements signed before January 1, 1999 or extended after January 1, 1999.

6.3 Double Tax Agreements

Vietnam has signed DTAs with the following countries, out of which 44 DTAs are currently in force (updated as at January 4, 2008):

Algeria	Egypt	Malaysia	Seychelles
Australia	Finland	Mongolia	Singapore
Bangladesh	France	Myanmar	Spain
Belarus	Germany	Netherlands	Sri Lanka
Belgium	Hungary	Norway	Sweden
Brunei	Iceland	Pakistan	Switzerland
Bulgaria	India	People's Rep. of Korea	Tawain
Canada	Indonesia	Philippines	Thailand
China	Italy	Poland	Ukraine
Cuba	Japan	Republic of Korea	UK
Czech Republic	Laos	Romania	Uzbekistan
Denmark	Luxembourg	Russia	

These DTAs follow the basic principles contained in the OECD Model Convention.

	Country	Dividend	Interest	Royalties	Notes
1	Algeria ^(a)	15	15	15	3
2	Australia	10	10	10	1
3	Bangladesh	15	15	15	3
4	Belarus	15	10	15	3
5	Belgium	5/7/10/15	10	5/10/15	2, 3, 4
6	Bulgaria	15	10	15	3
7	Canada	5/10/15	10	7.5/10	2, 4
8	China	10	10	10	3

	Country	Dividend	Interest	Royalties	Notes
9	Cuba	5/10/15	10	10	2
10	Czech Republic	10	10	10	3
11	Denmark	5/10/15	10	5/15	2, 3, 4
12	Egypt ^(a)				
13	Finland	5/10/15	10	10	2
14	France	7/10/15	Nil	10	2
15	Germany	5/10/15	10	7.5/10	2, 3, 4
16	Hungary	10	10	10	2, 3
17	Iceland	10/15	10	10	3
18	India	10	10	10	3
19	Indonesia	15	15	15	2, 3, 4
20	Italy	5/10/15	10	7.5/10	3
21	Japan	10	10	10	2, 3, 4
22	Korea (North)	10	10	10	2
23	Korea (South)	10	10	5/15	2, 3, 4
24	Laos	10	10	10	3
25	Luxembourg	5/10/15	10	10	2, 3, 4
26	Malaysia	10	10	10	2
27	Myanmar	10	10	10	3
28	Mongolia	10	10	10	3
29	Netherlands	5/7/10/15	7/10	5/10/15	2, 3, 4
30	Norway	5/10/15	10	10	2, 4
31	Pakistan	15	15	15	3
32	Philippines	10/15	15	15	3

	Country	Dividend	Interest	Royalties	Notes
33	Poland	10/15	10	1/10/15	2, 4
34	Romania	15	10	15	2, 3, 4
35	Russia	10/15	10	15	2
36	Seychelles	10	10	10	
37	Singapore	5/7/12.5	10	5/15	2, 3, 4
38	Spain	7/10/15	10	10	2, 3
39	Sweden	5/10/15	10	5/15	2, 3, 4
40	Switzerland	7/10/15	10	10	2
41	Taiwan	15	10	15	
42	Thailand	15	10/15	15	3
43	Ukraine	10	10	10	3
44	United Kingdom	7/10/15	10	10	2
45	Uzbekistan	15	10	15	3
46	Sri-Lanka	10	10	15	1, 3
47	Brunei ^(a)	Not updated yet	Not updated yet	Not updated yet	Not updated yet

It should be noted that the rates provided in the DTAs are applicable for foreign direct investment. It is unknown to the market that how these rates will be applied in the context of portfolio investment due to the lack of regulations and guidance from the regulators.

Notes:

1. *In some cases the limits set by the treaty are higher than the present withholding rate under domestic law. Therefore the domestic rates will apply.*
2. *Dividend withholding tax (WHT) rates vary according to ownership interest in the company.*
3. *Interest derived by certain government bodies is exempt from WHT.*
4. *Royalty WHT rates vary for certain types of royalties.*

(a) The agreements between Vietnam and Algeria, Egypt, and Brunei are signed but not effective at moment.

7 Anti-avoidance Rules

7.1 Introduction

The tax authorities have powers to carry out tax audits of any company's business to examine the accurate determination of tax obligations of the company.

A number of specific anti-avoidance provisions are in place to prevent excessive deductions of depreciation, management fees, interest payments, etc.

7.2 Transfer Pricing

On December 19, 2005, the MOF promulgated Circular 117/2005/TT-BTC (Circular 117), which provides the guidelines on transfer pricing between affiliated parties. Circular 117 is applicable to assessments beginning with tax year 2006.

Generally, Circular 117 stipulates the scope of application, provides definitions of technical terms, methods of application of the transfer pricing treatment, etc. Circular 117 gives the tax authority extensive power to make transfer price adjustments with respect to non-arm's length related party transactions (RPT) or where a taxpayer fails to comply with the disclosure requirements.

There are five transfer pricing methods:

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

Taxpayers are required to disclose their RPTs in a prescribed form to be attached with annual CIT returns.

The Vietnamese transfer pricing guidelines place the burden of proof on taxpayers to demonstrate that RPT are dealt with at 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 transfer pricing documentation (original must be in Vietnamese), must generally be provided to the tax authority within 30 working days of written request, although a one-time extension for 30 days may be granted.

This development of transfer pricing regulations demonstrates the Vietnamese tax authority's focus to protect revenue through the requirement of arm's length transfer prices between related parties.

7.3 Permanent Establishment

In Vietnam, the definition of PE under domestic tax law and under the specific tax guidance for DTAs is materially similar in nature. If there is any difference in the interpretation of the definition of a PE, the DTAs will prevail.

Under domestic tax law, foreign companies shall be regarded as doing business through a PE in Vietnam if they form any of the following:

- 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 for natural resources;
- A building site, construction, installation or assembly project, 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; or
- A representative in Vietnam in cases:
 - having the authority to sign contracts under the name of the foreign company; or
 - not having the authority to sign contracts under the name of the foreign company but regularly delivering goods or providing services in Vietnam.

Under the specific guidance for DTAs, an enterprise of a contracting State shall be regarded as having a PE in Vietnam if they meet all of the following requirements:

- Maintain an “establishment” in Vietnam such as a building, an office or part of that building/office, a transportation means or plant;
- This establishment is stable, that is, being installed in a certain location and / or maintained regularly. The stability of the establishment should not always go with a certain geographical place during a determined period; and
- The enterprise carries all or part of its operating activities through this establishment.

Further, an enterprise of a contracting State shall be regarded as doing business through a PE in Vietnam if it forms any of the following:

- An operational office, a branch, an office (including commercial representative offices which are authorised to negotiate and sign off commercial contracts), plant, workshop, mine, petroleum or gas field, warehouse for receipt and delivery of goods, any location where natural resources are explored or exploited or where there are equipment and facilities serving the exploration of natural resources;
- A construction site, construction works, or installation and assembly works; the location of supervisory activities for construction, construction works, or installation or

assembly works provided that those above sites, works and activities last more than six or three months (depending on the specific DTAs) in Vietnam;

- Construction site, construction works, or installation includes site, construction works of buildings, roads, bridges, establishment of pipe lines, excavating, dredging of rivers and canals. The period (six or three months) starts from the date that the contractor begins to prepare for the construction in Vietnam, such as the establishment of office for construction planning, until the complete handover of the project in Vietnam, including the interruption period due to any reason.

The construction duration to determine PE for main contractors includes periods to carry out all parts of subcontractor's contracts and construction duration of main contractor;

- The enterprise provides services in Vietnam, including consultancy services provided through its employees or another entity provided that these above services of one or several related projects are carried out in Vietnam for a period or periods exceeding in the aggregate 183 days in each 12-month period; or
- The enterprise has in Vietnam a brokerage agent or commission agent that spends all or most of his operating time for that enterprise.

7.4 Thin Capitalisation

There are no specific tax-driven thin capitalisation rules, but the Law on Foreign Investment in Vietnam previously required the legal capital (contributed equity) of a foreign invested enterprise to be at least 30 percent of the total invested capital (contributed equity plus long term debts). In special cases, this ratio may be lower upon approval of the investment license issuing body. The new Law on Investment has repealed this requirement.

In the Bilateral Trade Agreement with the United States of America and several agreements signed with other countries (i.e. Japan or the European Union), there is no requirement on the ratio between legal capital and total invested capital for foreign investors.

7.5 Controlled Foreign Company (CFC) Provisions

Any Vietnamese enterprise which makes an investment overseas and derives income from production and business activities overseas must declare and pay CIT, including a case where an enterprise is entitled to a tax reduction or exemption under the law of the foreign country. The rate of CIT shall be 28 percent without applying any incentive rate to which the Vietnamese enterprise which invests overseas may be entitled pursuant to the current law on CIT.

If income from an investment project overseas has been subject to CIT (or any other type of tax which is basically similar to CIT) overseas, then the Vietnamese enterprise shall be entitled to deduct the amount of tax paid overseas, but the amount of tax deductible must not exceed the amount of tax payable pursuant to the law of Vietnam on CIT. If the Vietnamese enterprise is entitled pursuant to the foreign law to a tax reduction or exemption on part of the profit earned from the investment project overseas, then the amount of such exemption or reduction shall also be deductible from the amount of CIT payable in Vietnam.

In a case of income derived from production and business activities of an investment project in a country which has a treaty on avoidance of double taxation to which Vietnam is a signatory, the Vietnamese enterprise making the investment overseas shall declare and pay tax in accordance with the provisions of such treaty.

8 Taxation of Individuals

8.1 Introduction

Vietnamese citizens and expatriates who derive personal income in Vietnam pay PIT in accordance with the Ordinance on Personal Income Tax for High Income Earners.

Vietnamese citizens and residents are taxed on worldwide income while non-tax residents are taxed only on Vietnam source income.

On November 27, 2007, the National Assembly passed Law 04 which significantly changes PIT as of January 1, 2009. Of particular note is that the disparity on tax rates and bands between Vietnamese citizens and expatriate residents will no longer exist and there will no longer be an exemption from PIT for any amount of income. Personal and family allowances are introduced. Owner of private household businesses will pay PIT as opposed to CIT under the current tax regime. Those income items currently not subject to tax such as dividends and capital gains will be taxed under the new PIT law. Gains on the transfer of real estate property will also be taxed.

8.2 Residence

Residents

An expatriate living in Vietnam for 183 days or more during the applicable tax year (12-month period or calendar year) from the date of their arrival in Vietnam will be treated as a tax resident of Vietnam, and are taxed on their worldwide income at progressive tax rates.

Non-residents

Expatriates who are present in Vietnam for 182 days or less during the relevant tax year (12-month period or calendar year) from the first date of their arrival in Vietnam are considered as non-tax residents and are taxed at a flat rate of 25 percent on their regular Vietnam source income only.

Exemption from PIT

Exemption from PIT may be available for an individual with reference to the provisions of the DTA between Vietnam and the relevant country (if any).

Vietnamese citizens may be subject to the same marginal tax rates as those imposed on expatriates if they are working outside Vietnam during the tax year.

8.3 Taxable Income

The types of taxable income are:

Regular income

- Salaries, wages, allowances, bonuses and like payments;
- Income received from participation in business associations and a board of management;
- Regular income derived from business activities including design, architecture, consultancy services, teaching, cultural and artistic performances and other activities of professional nature which are not subject to corporate income tax; and
- Housing benefit in kind.

Vietnamese citizens are subject to tax on their regular income including overseas income. The total taxable income in a tax year is averaged over the year to determine the monthly taxable income. Tax is imposed on the average monthly taxable income.

Irregular income

- Income received from technology transfer contracts, from royalty payments for copyright of literary or art works, etc;
- Income from design, consultancy services, training, brokerage services, etc. (of an irregular nature);
- Income from scientific activities such as seminars and research;
- Gifts in kind from overseas, lottery winnings; and

Irregular income is taxed each time the income is earned.

8.4 Capital Gains Tax

Capital gains are not currently subject to tax under the PIT regulations.

8.5 Dividends

Dividends paid to individuals are currently not subject to PIT.

8.6 Employment Income / Employee Benefits

Taxable employment income includes salaries, wages, allowances, bonuses and any income of similar nature. Bonuses and incentives are taxable if paid in cash.

Non-cash housing benefits are taxed on the basis of 15% of gross income or actual house rental, whichever is lower. Utilities such as electricity, water and telephone charges are taxable in full.

There are also other types of fringe benefits that are not subject to PIT, including provision of a car for business purposes, staff training fees made directly to providers, air ticket expenses for expatriates taking home leave, tuition fees for children of expatriates that are directly made to schools, etc. This is an evolving area, and current advice should be sought.

8.7 Exempt Income

Certain allowances at the rates and circumstances provided in the specific regulations, including night-shift allowance, hardship allowance, responsibility allowance, location allowance, are exempt from PIT.

In addition, interests received from bank deposits, bank savings and trading of Government bonds, ordinary bonds, term bonds and dividends from shares are temporarily exempt from PIT.

Severance and redundancy allowances calculated in accordance with the labor regulations are also exempt from PIT.

8.8 Deductions

No individual deductions are allowed.

Compulsory deductions representing the employees' Social Insurance and Health Insurance contributions or the likes pursuant to the laws of foreign countries are allowed to be deducted from the employees' taxable income for PIT calculation purposes. Payment evidence for such compulsory deductions may be required by the Vietnamese tax authorities for verification purpose.

8.9 Personal Allowances and Rebates of Tax

For regular income, the tax-free threshold (i.e. zero percent) applicable to Vietnamese citizens working in Vietnam is VND 5,000,000 per month. A higher tax-free threshold of VND 8,000,000 per month is applicable for expatriates working in Vietnam and Vietnamese citizens working overseas.

8.10 Tax Rates

The tax rates and tax thresholds for Vietnamese citizens and non-citizens are different. The respective tax rates are shown below:

Schedule I. Regular Income - Tax rates for Vietnamese citizens

Scale	Monthly averaged taxable income/person	Rate (%)	Unit: VND
			Tax calculation formula ^(a)
1	Up to 5,000,000	0	T = 0
2	Over 5,000,000 to 15,000,000	10	T = 0.1G – 500,000
3	Over 15,000,000 to 25,000,000	20	T = 0.2G – 2,000,000
4	Over 25,000,000 to 40,000,000	30	T = 0.3G – 4,500,000
5	Over 40,000,000	40	T = 0.4G – 8,500,000

Schedule II. Regular Income - Tax rates for foreign tax residents and Vietnamese citizens working overseas

Scale	Monthly averaged taxable income/person	Rate (%)	Unit: VND
			Tax calculation formula ^(a)
1	Up to 8,000,000	0	T = 0
2	Over 8,000,000 to 20,000,000	10	T = 0.1G – 800,000
3	Over 20,000,000 to 50,000,000	20	T = 0.2G – 2,800,000
4	Over 50,000,000 to 80,000,000	30	T = 0.3G – 7,800,000
5	Over 80,000,000	40	T = 0.4G – 15,800,000

Note: (a) T: Income tax; G: Taxable income

8.11 Tax Administration

As a general rule, PIT is a liability of the employee, rather than the employer, but the obligation to withhold or pay the PIT may initially rest with the employer. Where employees are remunerated on a gross basis, the employer is liable to withhold PIT payable before making income payment to them, and remit the tax withheld to the State budget (via local tax departments or authorised agencies). If the employer remunerates the employees on a net basis, the employer is required to gross up the net income, calculate the applicable PIT and pay such PIT to the State budget.

PIT is required to be provisionally declared and paid on the actual income of the previous month no later than the twentieth day of the following month. Final PIT declarations are to be lodged and any shortfall paid, no later than 90 days after the end of the calendar year or 30 days after the employment contract terminates.

9 Indirect and Other Taxes

9.1 Social Security Taxes

Vietnam exempts social insurance payments from PIT.

9.2 Value Added tax

The VAT system in Vietnam is similar to traditional VAT systems with output tax on supplies and input tax on purchases. The VAT system is regulated by the Law on VAT, which took effect on January 1, 1999, its Amended Law dated June 17, 2003.

Tax rates

There are three VAT rates:

- Zero percent for exported goods or export services;
- Five percent for certain goods and services such as medical, education, scientific products, coal, mechanical engineering products, chemicals and others; and
- 10 percent which will be the standard rate for most activities.

There is a list of goods and services which are exempt from VAT, including goods which cannot be produced in Vietnam.

Calculation

VAT payable for each supply of goods or services will be the taxable price of the goods or services multiplied by the applicable VAT rate. There are two methods for VAT payers:

- Deduction method

This method applies to business entities and organisations, enterprises established under the Law on Enterprises or the Law on Co-operatives and enterprises with foreign owned capital and other business entities or organisations permitted to apply this method; and

- Direct addition method

This method applies to foreign enterprises not licensed under the Law on Investment in Vietnam who do not adopt the VAS, unregistered Vietnamese suppliers that do not maintain adequate accounting records, and gold, silver, precious stone and foreign currency traders.

VAT Compliance

A monthly VAT declaration must be submitted with payment to the local tax office no later than twentieth day of the following month. Within 90 days of the calendar or financial year end, a final VAT return must be submitted to the local tax office to finalise VAT for the year.

Any tax overpaid will be permitted to be carried forward to offset tax payable of the following months.

9.3 Import and Export Duties

Goods entering or leaving Vietnam are generally subject to import or export duties. The rates for import and export duties vary depending on the nature of the goods and countries that the goods originate from.

Import tariffs are imposed at standard, preferential, and especially preferential rates.

- The standard tariff is generally 50 percent higher than the preferential tariff, and is imposed on goods imported from non-WTO member countries;
- The preferential duty rate is applicable only to imports that originate from WTO member countries; and
- The especially preferential duty rate is applicable to certain specific imports from specific countries under special agreements, such as ASEAN countries (under the ASEAN Free Trade Area – AFTA), China and South Korea.

Goods imported to form the fixed asset of encouraged project may qualify for import duty exemption.

9.4 Special Sales Tax

SST is imposed on a limited number of items. It is levied only once at the production (or import) stage and products for export are exempt. The tax is calculated based on the quantity of goods for sale at the sales price.

The major goods that are subject to SST are tobacco/cigarettes, spirits, beer, air conditioners, fireworks, automobiles, gasoline, discotheque/massage/karaoke business, casino/slot machine business, horse racing/car racing and golf business.

9.5 Stamp Duty

Stamp duty (formally known in Vietnam as "Registration Fee") only applies on the required registration of ownership of certain assets. The applicable rate is one percent in respect of buildings, land use right and boats/ships, one percent to one percent for motor vehicles. However, the duty payable is capped at VND500 millions per asset per transaction.

9.6 Property Tax

For investment projects requiring land, the investor shall contact the relevant land management body in the location where the project is to be implemented in order to carry out procedures for allocation of the required land (i.e. investors pay land use fee) or lease of land (i.e. investors pay land rental).

In case of a JV where the Vietnamese party contributes the capital in the form of land use right, the foreign investors usually need not worry about any legal procedures nor any financial obligations in relation to the land contributed by the Vietnamese party throughout the projects, unless agreed otherwise.

Land Use Fee

According to Decree 198 dated 3 December 2004, organisations which are allocated land by the State to invest in construction of infrastructure for sales or leases are subject to land use fee. This fee is based on the area of land, price per unit of land (land use price) and the duration of land usage allocated. However, please note land used for construction of infrastructures for common use in industrial parks under projects approved by competent authorities is not subject to land use fee.

The land use price is stipulated by the People's committee of the province or city under central authority.

Land Lease / Rental Fee

Under Decree 142 dated November 14, 2005, foreign investors may lease/rent land in Vietnam at the following rates:

- (i) The *annual* land rent rate shall be equal to half a percent of the corresponding *land use price* promulgated by provincial/ municipal People's Committees;
- (ii) For land of urban centers, commercial or service centers, traffic hubs, concentrated population quarters, which may yield special profits or be used as ground for production, business and/or service activities, provincial-level People's Committee Chairmen shall base on the local situation to decide on the promulgation of land rent rates higher than the set ones, which, however, must not exceed four times the land rent rate calculated under (i) above; and
- (iii) For land used as ground for production and/or business activities of projects in the domains entitled to investment encouragement or special investment encouragement, provincial-level People's Committee Chairmen shall decide on the promulgation of land rent rates lower than the set ones, which, however, must not be lower than half the set one specified in (i) above.

Based on annual land rent rates set by the provincial-level People's Committees, the directors of provincial/municipal Finance Services shall decide on the applicable rate for each specific project.

The land rent rate of each project shall be kept stable for five years. At the end of this period, directors of provincial/municipal Services of Finance or presidents of district-level People's Committees shall adjust land rent rates for application to the subsequent period except in certain special circumstance.

9.7 Payroll Tax

Vietnam does not have a Payroll Tax.

9.8 Inheritance Tax

Currently, Vietnam does not have an inheritance tax. However, as of January 1, 2009, with the exception of income being receipt of an inheritance of real property as between husband and wife; as between parents and children, including foster parents and adopted children; as between parents-in-law and children-in-law; as between grandparents and grandchildren; and as between siblings which is exempt, income from inheritances in excess of 10,000,000VND will be subject to tax at the rate of 10 percent.

9.9 Gift Tax

Currently, Vietnam does not have a Gift Tax. However, as of January 1, 2009, with the exception of income being receipt of a gift of real property as between husband and wife; as between parents and children, including foster parents and adopted children; as between parents-in-law and children-in-law; as between grandparents and grandchildren; and as between siblings which is exempt, income from gifts in excess of 10,000,000VND will be subject to tax at the rate of 10 percent.

9.10 Other Taxes

Royalties on Exploitation of Natural Resources

Royalties are imposed on exploitation and use of natural resources in accordance with the Ordinance on Royalties (amended) passed by the National Assembly on April 16, , 1998. The basis for the calculation of royalties is the output extracted.

10 Glossary

AFTA	ASEAN Free Trade Area
ASEAN	Association of Southeast Asian Nations
BCCs	Business Co-operation Contracts
BO	Build-Operate
BOT	Build-Operate-Transfer
BT	Build-Transfer
BTO	Build-Transfer-Operate
CFC	Controlled Foreign Company
CIF	Cost, Insurance and Freight
CIT	Corporate Income Tax
DTAs	Double Taxation Agreements
EPZ	Export Processing Zone
FCT	Foreign Contractor Tax
FIE	Foreign Invested Enterprise
FOB	Freight on Board
HTZ	Hi-Tech Zone
IMF	International Monetary Fund
IZ	Industrial Zone
LFI	Law on Foreign Investments
MOF	Ministry of Finance
NTR	Normal Trade Relations
OECD	Organisation for Economic Cooperation and Development
PE	Permanent Establishment
PIT	Personal Income Tax

R&D	Research and development
RPT	Related Party Transactions
SBV	State Bank of Vietnam
SST	Special Sales Tax
VAS	Vietnamese Accounting System
VAT	Value Added Tax
WHT	Withholding Tax
WTO	World Trade Organisation

11 Useful links

Further to the information contained in the following sections, information and developments regarding tax laws in Vietnam can be obtained from the following websites.

- KPMG Global Tax website: www.kpmg.com; and
- Vietnam General Department of Taxation website: www.gdt.gov.vn/.

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