

Vietnam

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1 General: Treaties

1.1 How many income tax treaties are currently in force in Vietnam?

Vietnam has entered into income tax treaties with 58 countries around the world, of which 47 tax treaties are currently in force. The treaties are signed with most South East Asian countries, several European countries and a number of African countries.

1.2 Do they generally follow the OECD or another model?

In general, the Vietnamese tax treaties follow the OECD model with some modifications.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

Yes. A tax treaty must be incorporated into domestic law before it takes effect. Under the Law on Conclusion of, Accession to, and Implementation of International Treaties, depending on the requirements, contents and natures of the treaties, Vietnamese competent authorities will decide whether: (i) to apply the whole or a part of the treaties in cases where the treaties are clear and specific enough for implementation; or (ii) to revise, supplement or repeal existing domestic regulations or issue legal documents to implement the treaties. In respect of an agreement for the avoidance of double taxation, the Prime Minister shall issue a decision to approve the executed agreement prior to its implementation.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation of benefits" articles)?

In general, there are no "limitation of benefits" articles applied to all international treaties. However, in some treaties, there are some general relevant clauses. For instance, the treaty with the Philippines contains a clause which provides that the competent authorities of the Contracting States may deny the benefits of this treaty to any person, or with respect to any transaction, if, in their opinion, the granting of those benefits, under the circumstances, would institute an abuse of the treaty according to its purpose. Similarly, the treaty with Hong Kong provides that nothing in the treaty shall prejudice the right of each Contracting Party to apply its domestic laws and measures concerning tax avoidance, whether or not described as such. Please note that the treaty with Hong Kong is currently not effective.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

Under Vietnamese regulations, it is certain that in cases where there is discrepancy between an international treaty and Vietnamese laws in respect of an issue, the regulations of the international treaty shall prevail.

2 Transaction Taxes

2.1 Are there any documentary taxes in Vietnam?

Stamp duty, which was formally known as a registration fee in Vietnam, is a tax on the required registration of acquisition of certain assets, e.g. land use rights, boats/ships, cars, motorcycles. Under current regulations, the stamp duty rates vary from 0.5% to 15%, but the duty is capped at VND500 million per asset (equivalent to US\$28,000), except for passenger cars with less than ten seats. For instance, the rate is 0.5% for house and land, and 1% for boats/ships.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

Vietnamese Value Added Tax ("VAT") is applied to all goods and services used for production, trading and consumption in Vietnam. VAT is charged on the value of the goods and services supplied. The general VAT rate is 10%, and the preferential rates are 5% and 0%. While the rate of 0% mainly applies to export goods, goods processed for export, export services, the rate of 5% applies generally to essential goods and services such as clean water, books, foodstuffs, medicine and medical equipment, various agricultural products and services, etc. The 10% rate applies to the remaining goods and services.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

VAT exemption is applied to many categories, such as:

- Certain agricultural products.
- Transfer of land use rights.
- Financial derivatives and credit services.
- A number of insurance services (e.g. life insurance, non-commercial insurance).
- Medical services.

- Teaching and training.
- A number of cultural, artistic, sport services/products.
- Transfer of technology and software services.
- Imports of machinery equipment and special means of transport used in technology research and development activities and which cannot be produced in Vietnam; etc.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

Input credit can be claimed in the month when invoices are issued. Supplementary declaration and credit can be made within the time-limit of six months from the date of the discovery of the mistake.

Only input VAT on goods and services used in manufacturing or performing businesses for value added taxable goods and services are fully credited. If an enterprise sells goods and services which are VAT exempt, it cannot recover input VAT from its purchases. Input VAT on fixed assets used in manufacturing and performing businesses for both value added taxable and non-taxable goods and services are fully credited. Input VAT withheld from payment to overseas suppliers (under a foreign contractor's withholding tax system) can also be claimed.

Conditions to be entitled to a credit of input VAT are as follows:

- Having a VAT invoice for the goods and services purchased or a receipt for payment of VAT at the import stage.
- Payment via a bank, except in cases where the value of the goods or services is less than VND20 million (equivalent to US\$1,120).
- Having a contract signed with a foreign party, an invoice, proof of payment via a bank, customs declaration documents, in respect of exported goods and services.

2.5 Are there any other transaction taxes?

Prior to 2009, the transfer of land use rights was subject to tax of 4% on the value of the land which was counted based on the land price promulgated by the local provincial People's Committee. This tax on transfer of land use rights, however, is currently not applicable.

2.6 Are there any other indirect taxes of which we should be aware?

Special Sales Tax is a type of excise duty which applies to the production or import of a number of goods and services such as: cigarettes; liquor; beer; automobiles less than 24 seats; airplanes; boats; playing cards; discotheque; massage; karaoke; casino; gambling, etc.

Import and Export duties generally apply on import and export goods, except for some exemptions. The duty rates change frequently and are classified into three categories: ordinary rates, preferential rates, and special preferential rates.

Other indirect taxes include fuel surcharge, and Customs duties.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

There is no withholding tax imposed on dividends paid by a locally resident company to a non-resident.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Income arising in Vietnam for a non-resident (a foreign contractor) paid by a local company which income is royalties in any form paid for the use or transfer of intellectual property rights or for technology transfer shall be subject to Vietnamese foreign contractor withholding tax ("FCWT"). The FCWT comprises of CIT and VAT. In normal cases, the foreign contractor shall be subject to 10% CIT on the received royalties, but shall be entitled to VAT exemption. If the foreign contractor keeps separate accounting records for its operation in Vietnam and applies the Vietnamese Accounting System ("VAS") (note that there are a number of conditions for the foreign contractor to apply the VAS), the CIT rate shall be 25% on the profits generated from the royalties (reasonable expenses are allowed to be deducted), and VAT shall be exempt. However, the application of the Vietnamese FCWT should be checked with the relevant treaty on avoidance of double taxation.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Similar to royalties, interest paid by a local company to a non-resident (a foreign contractor), including charges payable by the local company in accordance with the loan agreement, shall be subject to FCWT. Under current Vietnamese regulations on FCWT, such interest will be subject to 10% CIT (no VAT will be applied). If the foreign contractor applies VAS, the profits generated from the interest shall be subject to 25% CIT. Similarly to the above case, VAT will not be applied on such interest. However, the application of Vietnamese FCWT should be checked with the relevant treaty on avoidance of double taxation.

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Interest so paid to the foreign contractor shall be deductible against the taxable income of the local company. There is no thin capitalisation rule in Vietnam; however, the equity/debt ratio is specified in a business registration certificate/investment certificate by virtue of specifying the charter capital and the investment capital. In practice, if the charter capital represents less than about 20% of the total amount of investment capital (more or less depending on the nature and size of the project), the licensing authorities may request the investors to provide further clarifications on the feasibility of the project or may simply refuse to approve the project unless the charter capital is increased. If the offshore loans are in line with the issued business registration certificate/investment certificate, there will be no restriction on the interest so paid.

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

There are no safe harbour rules under Vietnamese laws.

3.6 Would any such "thin capitalisation" rules extend to debt advanced by a third party but guaranteed by a parent company?

As discussed at question 3.4, there are no "thin capitalisation" rules in Vietnamese laws.

3.7 Are there any restrictions on tax relief for interest payments by a local company to a non-resident in addition to any thin capitalisation rules mentioned in questions 3.4-3.6 above?

There are no relevant regulations under Vietnamese laws.

3.8 Does Vietnam have transfer pricing rules?

Yes. Vietnamese transfer pricing regulations deal with the pricing of goods and services transferred through business transactions between commonly controlled parties such as a parent corporation and its subsidiaries or other brother-sister corporations. The requirement is that prices in inter-company transactions should not differ from the prices determined by unrelated parties. Vietnamese laws permit the use of five different pricing methods inspired by those set out by the OECD Guidelines, which include: comparable uncontrolled price; resale price; cost plus; comparable profits; and profit split.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

The headline rate of tax is currently 25%.

However, the rate applicable to activities of prospecting, exploration and mining of petroleum and gas and other rare and precious natural resources is from 32% to 50%.

4.2 When is that tax generally payable?

CIT has to be paid in advance on a quarterly basis no later than the 30th day of the subsequent quarter. The deadline for paying CIT is no later than the 90th day from the end of the calendar year or the fiscal year if it is different from calendar year.

In the context of the economic downturn, there is a nine-month extension of time for payment of CIT payable and arising in 2009 from the expiry of the above deadline for each quarter of 2009, for companies producing or processing agricultural, forestry or seafood products, textiles and garments, footwear and electronic components; and on income from the manufacture of mechanical engineering products being means of production, manufacture of certain building materials (bricks, tiles, lime and paint), construction, assembly and installation, tourism services, food products businesses and fertilizer business.

4.3 What is the tax base for that tax (profits pursuant to commercial accounts subject to adjustments; other tax base)?

The tax base is the accounting profit in the annual financial statements prepared in accordance with the Vietnamese accounting standards, subject to adjustments by particular increasing and decreasing items stipulated by the Law on CIT.

In particular, assessable income shall equal taxable income less exempt income and less losses carried forward from previous years. Taxable income shall comprise income from business activities and other income including income received from offshore.

The following key adjustment items shall be noted:

Tax base increasing items:

- expenses incurred not relating to the business activities and

not accompanied by complete invoices and source vouchers;

- depreciation of fixed assets which is incorrect in terms of the law;
- business management expenses allocated by a foreign parent company that exceeds the permitted level by the law of Vietnam; and
- interest payments on loans corresponding to the unpaid portion of charter capital, etc.

Tax base decreasing items:

- losses carried forward from previous years;
- income earned from performance of technical services directly serving agricultural production;
- income distributed from capital contribution, joint venture and/or association with a domestic company after payment of CIT; and
- the amount of science and technology development fund, which can be 10% of pre-tax annual income, etc.

4.4 If it otherwise differs from the profit shown in commercial accounts, what are the main other differences?

The accounting profit in the annual financial statements should be used along with the increasing and decreasing items stipulated by law (see answers to question 4.3 above) for determination of the tax base.

Nevertheless, income from capital assignment and transfer of securities and income from real property transfers shall be subject to the following specific regulations:

- Assessable income from a capital assignment shall equal the price of the assignment less purchase price of assigned capital portion and less assignment expenses.
- Assessable income from a transfer of securities within the tax period shall be fixed as equal to the selling price less purchase price of the transferred securities and less expenses related to the transfer.
- Assessable income from a real property transfer shall equal taxable income less losses carried forward from real property transfer of previous years. In which taxable income from a real property transfer shall equal turnover receivable from the real property transfer less prime cost of the real property and less related deductible expenses.

4.5 Are there any tax grouping rules? Do these allow for relief in Vietnam for losses of overseas subsidiaries?

There is no tax grouping rules in Vietnamese law.

Although Vietnamese accounting law provides a possibility for a parent company to prepare consolidated financial statements at the end of annual accounting periods, Vietnamese tax law does not permit a group company to file a consolidated tax return.

There is no relief in Vietnam for losses of overseas subsidiaries. Losses arising from an offshore investment project of a Vietnamese company shall not be permitted to be deducted from the amount of income arising in Vietnam when such Vietnamese company assesses its CIT.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

No, tax is not imposed at a different rate upon distributed, as opposed to retained, profits in Vietnam.

4.7 What other national taxes (excluding those dealt with in "Transaction Taxes", above) are there - e.g. property taxes, etc.?

The most relevant Vietnamese taxes (excluding the above mentioned CIT and VAT) are the following:

- personal income tax;
- business license tax;
- import and export tax;
- special sales tax;
- land and housing tax;
- tax on exploitation of natural resources; and
- registration fees, etc.

4.8 Are there any local taxes not dealt with in answers to other questions?

There are no other local taxes.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

CIT is imposed on both income from business activities and income from capital assignment and transfer of securities. There is a separate rule for computing assessable income from capital assignment and transfer of securities (see the answer to question 4.4 above).

5.2 If so, is the rate of tax imposed upon capital gains different from the rate imposed upon business profits?

The tax rate applicable to income from capital assignment and transfer of securities is also 25%. However, any incentive rate to which a company may currently be entitled pursuant to Vietnamese CIT law shall not apply to income from capital assignment and transfer of securities.

5.3 Is there a participation exemption?

There is no participation exemption in Vietnam.

5.4 Is there any special relief for reinvestment?

Since 2004, there is no longer any special relief for reinvestment in Vietnam.

6 Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

There are no taxes imposed on the formation of a subsidiary.

However, registration fees from VND1 million to VND200 million (approximately from US\$55 to US\$11,111) must be paid for the establishment of a subsidiary in Vietnam in some sectors, in particular, banking, securities or insurance.

6.2 Are there any other significant taxes or fees that would be incurred by a locally formed subsidiary but not by a branch of a non-resident company?

No, both a Vietnamese resident subsidiary and a Vietnamese branch of a non-resident company would pay CIT on taxable income arising in Vietnam as well as on taxable income arising outside Vietnam (which relates to its operation, in case of a Vietnamese branch of a non-resident company).

6.3 How would the taxable profits of a local branch be determined?

The taxable income of a local branch of a non-resident company must be determined in the same way as other independent entities in Vietnam.

6.4 Would such a branch be subject to a branch profits tax (or other tax limited to branches of non-resident companies)?

There is no branch profits tax in Vietnam.

6.5 Would a branch benefit from tax treaty provisions, or some of them?

A branch registered in Vietnam is not a Vietnamese tax resident, and may not benefit from a corresponding tax treaty. Moreover, a branch of a non-resident company is considered a permanent establishment of such non-resident company in Vietnam which may sometime take away the treaty protection of the Vietnamese double tax treaties for such non-resident companies.

6.6 Would any withholding tax or other tax be imposed as the result of a remittance of profits by the branch?

No withholding tax or other tax would be imposed to the remittance of profits by the branch.

7 Anti-avoidance

7.1 How does Vietnam address the issue of preventing tax avoidance? For example, is there a general anti-avoidance rule or a disclosure rule imposing a requirement to disclose avoidance schemes in advance of the company's tax return being submitted?

There are neither general anti-avoidance rules nor disclosure rules in Vietnam. In practice, there are ways for the tax authorities to deal with tax avoidance, such as regulations on transfer pricing, and the application of fixed prices issued by the authorities for a number of assets/goods/products such as land, imported goods, etc. to determine the tax liabilities. In general, Vietnamese laws address the issue of preventing tax avoidance by applying heavy monetary penalties and other administrative measures to deal with violations on tax declaration and payment. They provide a list of acts of violations, forms and levels of penalties applied to such acts. In addition, relevant individuals committing the breach can also be subject to criminal penalties under Vietnamese laws.

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Gide Loyrette Nouel

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