

The International Comparative Legal Guide to: Corporate Tax 2011

A practical cross-border
insight to corporate tax work

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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 60 countries around the world, of which 50 tax treaties are currently in force.

1.2 Do they generally follow the OECD or another model?

Though Vietnam is not a member of the OECD, in general Vietnamese tax treaties follow the OECD model with some modifications. In particular, certain provisions (e.g. provisions relating to the definition of permanent establishment or the rights to tax “at source income” rather than “residence” criteria) conform with the United Nations model which is appropriate for a developing country such as Vietnam.

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 nature of the treaty, the Vietnamese competent authorities will decide whether to: (i) directly apply the whole or a part of the treaty in cases where the treaty is clear and specific enough for implementation; or (ii) revise, supplement or repeal existing domestic regulations or issue specific legal documents to implement the treaty. In respect of an agreement for the avoidance of double taxation, the Prime Minister must 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 almost all double tax treaties which Vietnam signed with other countries. However, in some treaties, there are some provisions relating to this area. 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.

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

Under Vietnamese regulations, 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 referred to 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 (approximately, US\$26,000), except for passenger cars with less than ten seats. For instance, the rate of 0.5% is applicable to house and land, and 1% is applicable to 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 selling price (exclusive of VAT) of the goods and services supplied. The standard VAT rate is 10%, and the preferential rates are 5% and 0%. While the rate of 0% mainly applies to export goods and 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, including:

- 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.
- Certain 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.

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

Input VAT for service/goods purchased to be directly used for the making of VAT taxable supplies are fully creditable. If the output of an enterprise (i.e. an enterprise sells goods and services which are not subject to VAT) are VAT-exempt, the relevant input VAT is non-creditable. Input VAT on fixed assets used in manufacturing and performing businesses for both VATable and non-VATable goods and services are however fully credited.

Input VAT is creditable in the month when such VAT input is incurred or within six months. A valid tax invoice must generally be retained to support claims for input tax credits. The tax invoice must state the pre-tax price, the VAT and the total amount payable.

Input VAT is only creditable if:

- the claim is supported by proper invoices for the purchase of goods or services or vouchers;
- payments for goods or services in excess of VND20 million (approx. US\$1,200) must be made by and supported with bank transfer documentation; and
- goods and services are purchased for business related purposes. In practice, if an expense is viewed as non-deductible for corporate income tax purposes, it is likely that related input VAT is also non creditable.

2.5 Are there any other transaction taxes?

Prior to 2009, the transfer of land use rights was subject to a tax of 4% on the sale proceeds, which were chiefly calculated 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 in force.

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 importation of a number of goods and services which are considered as a luxury in relation to the economic conditions of the country and are therefore not encouraged to be consumed in Vietnam, such as cigarettes, liquor, beer, automobiles of less than 24 seats, airplanes, boats, playing cards, discotheques, massages, karaokes, casinos, and gambling.

Import and export duties generally apply on import and export goods, except for some exemptions. The import duty rates change frequently and are classified into three categories: ordinary rates; preferential rates; and special preferential rates. Exports are however generally encouraged. Therefore, zero rate export duty is applicable to almost all types of export goods except crude oil and minerals.

Other indirect taxes include fuel surcharges.

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 who are not individuals.

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

Royalties paid by a local company to a non-resident are currently subject to withholding tax which is normally referred to as foreign contractor withholding tax (FCWT) in Vietnam. The FCWT regime applies to foreign contractors and foreign subcontractors doing business in Vietnam or having Vietnam-sourced income on the basis of contracts, agreements or commitments with Vietnamese organisations/individuals. FCWT includes two components VAT and corporate income tax (CIT). The royalties are however not subject to VAT but only subject to CIT at 10%. The tax treatment/protection may be impacted differently under any relevant double tax treaties ("DTTs").

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

Any interest paid by a Vietnamese entity to foreign lenders who are not individuals will be subject to withholding tax (under the FCWT regime as discussed above) at 10% of CIT on the gross amount of interest paid, unless otherwise stipulated in DTTs. Similarly to royalties, interest is not subject to VAT.

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

Vietnam does not have thin capitalisation rules. It did previously have a maximum 70:30 debt to equity limit, but this was removed in 2006, and the debt to equity structure of the company will be subject to individual negotiations with and approval of the licensing authority. In practice, this ratio may still apply to foreign invested companies, and Vietnamese authorities may refuse to grant a licence if the charter capital is less than about 20% of the total amount of investment capital, depending on the nature and size of the project. 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.

Notwithstanding the above discussion, interest expenses shall not be deductible for CIT purposes for a local borrower in the following cases:

- Interest expenses on loans corresponding to the portion of committed 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 at the time the loan is concluded.

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 law.

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

As discussed in question 3.4, there are currently no “thin capitalisation” general rules in Vietnam.

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 law.

3.8 Does Vietnam have transfer pricing rules?

Yes. The first detailed transfer pricing guidelines of Vietnam were issued and effective in 2006 and were recently replaced by a new circular issued in April 2010.

The guidelines apply to transactions between related parties both domestically and internationally and to transactions between an offshore parent and its subsidiaries, and/or other brother-sister corporations.

There is a comprehensive definition of related parties. The control threshold is much lower than in many other countries (20%) and therefore this significantly increases the number of companies potentially subject to transfer pricing rules in Vietnam.

Although not a member of the OECD, the methodologies generally follow the principles put forward in the revised OECD transfer pricing guidelines and the internationally accepted “arm’s length principle”, but with additional prescriptive requirements. The acceptable methods of determining an arm’s length price are: (i) Comparable Uncontrolled Price (CUP); (ii) Resale Price Method; (iii) Cost Plus; (iv) Comparable Profits Method (CPM); and (v) Profit Split.

A declaration of transactions with related parties is required to be completed in a prescribed form, to be filed together with the CIT return which details of associated transactions and the methodologies adopted must be described.

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%.

The rate applicable to the activities of prospecting, exploration and mining of petroleum and gas ranges from 32% to 50%.

4.2 When is that tax generally payable?

CIT has to be provisionally paid on a quarterly basis no later than the 30th day of the subsequent quarter. The deadline for paying annual finalisation CIT is no later than the 90th day from the end of the fiscal year.

In the context of the economic downturn, the Vietnamese government has allowed small and medium enterprises to defer the payment of 2010 CIT liabilities as follows:

- provisional CIT for the first quarter of 2010 shall be paid by 30 July 2010;
- provisional CIT for the second quarter of 2010 shall be paid by 30 October 2010;

- provisional CIT for the third quarter of 2010 shall be paid by 31 January 2011;
- provisional CIT for the fourth quarter of 2010 shall be paid by 30 April 2011; and
- final CIT 2010 shall be paid by 30 June 2011.

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 Vietnamese accounting standards, subject to adjustments stipulated by the Law on CIT.

In particular, assessable income shall equal to the taxable income less exempt income and losses carried forward from previous years. Taxable income is computed by starting with revenue/turnover and deducting allowable incurred expenses. Additional adjustments are made for expenses that are not deductible for income tax purposes. To be deductible for tax purposes, expenses must be supported by proper invoices or receipts.

Taxable income is the difference between total revenue, whether domestic or foreign sourced, and deductible expenditures, plus other additional income.

The following key adjustment items can be noted:

Items increasing the tax base

Generally, adjustments increasing taxable income are mostly related to the difference between accounting and CIT treatment and are typically related to expenses which are disallowed for tax deduction, including:

- incurred expenses not relating to business activities;
- expenses which are not supported by legitimate invoices and source vouchers;
- depreciation of fixed assets which are not correctly calculated in accordance with CIT regulations;
- business management expenses allocated by a foreign parent company to its local branch that exceed permitted levels;
- accruals and provisions which are not actually and fully spent;
- advertisement and promotional expenditures which exceed the deductible cap as provided by CIT regulations;
- employment costs which are non-deductible under CIT regulations (e.g. life/health insurance or any other kind of insurance which are not compulsory under Vietnamese regulations relating to employees);
- unrealised foreign exchange losses due to the revaluation of foreign currency items other than accounts payables at the end of a financial year; and
- interest payments on loans corresponding to the unpaid portion of committed charter capital.

Items decreasing the tax base

- losses carried forward incurred within five years;
- income earned from the performance of technical services directly serving agricultural production;
- after tax dividends;
- interest income from bonds which are tax exempt;
- foreign tax credit claims;
- differences in the recognition of accounting revenues and revenues for taxation purposes; and
- amounts related to science and technology development funding, which can be up to 10% of pre-tax annual income.

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 adjustments required by CIT regulations (see the answer to question 4.3 above) for the determination of the tax base.

Income from the assignment of capital in a Limited Liability Company and the transfer of securities and income from real property transfers are subject to the following specific treatments:

- Assessable income from a capital assignment shall be the excess of the transfer price less the cost base which is the initial value of the capital contribution portion and any assignment expenses.
- Assessable income from a transfer of securities shall be equal to the selling price less the purchase price of the transferred securities and less any expenses related to the transfer.
- Assessable income from a real property transfer shall equal to the taxable income less losses carried forward from real property transfer of previous years. Taxable income from a real property transfer shall equal to revenues from the real property transfer less the initial cost of the real property and less any related deductible expenses.

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

There are no tax grouping rules or tax group reliefs 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 offset against the Vietnamese taxable income generated by the company for CIT purposes.

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;
- import and export tax;
- special sales tax;
- foreign contractor withholding tax;
- natural resource tax;
- registration fees (similar to stamp duty in other jurisdictions);
- business licence tax;
- property tax: currently there are no actual property taxes in Vietnam but there are land use fees to be paid to the government by certain users such as foreign invested enterprises; and

- compulsory social insurance/health insurance and unemployment insurance contributions (which may be similar to payroll tax in other jurisdictions).

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?

Vietnam does not have a separate capital tax rule. Tax on capital gains is covered under income tax (corporate income tax and/or personal income tax). Further to the discussion in question 4.4 above, generally, the tax treatment of capital gains/capital transfer is subject to particular guidance. For example, the transfer of an interest or shares by non-resident investors who are not individuals in a Vietnamese entity shall be subject to tax as follows:

- 25% CIT on gains when transferring an interest in a limited liability company. The gains will be defined as the excess of the sale proceeds less the cost base (i.e. initial value of capital contribution for first sale) and transfer expenses.
- 0.1% CIT on the sale proceeds in the case of a transfer of listed shares or the transfer of shares in a public company registered for trading at a securities trading centre.

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

The tax rate of 25% is commonly applicable to income from capital assignment and transfer of securities generated by residents who are not individuals (see the answer to question 5.1 for tax treatment of capital gains generated by non-residents). Income from capital assignment or securities transfer is however not entitled to tax incentives (e.g. CIT preferential tax rate or CIT exemption/reduction).

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 has been no 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 must be paid for the establishment of a subsidiary in Vietnam in certain 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 generated 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 profits of a local branch must be determined in the same way as other independent entities in Vietnam as discussed above. A local branch can however claim a tax deduction on the management expenses which are allocated to the branch by its overseas head office up to the level allowed by CIT regulations.

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 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 declarations and payment obligations.



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