

Vietnam

Pocket Tax Book

2009



**VIETNAM
POCKET TAX BOOK
2009**

A SUMMARY OF VIETNAM TAXATION

The information in this booklet is based on current taxation regulations and practices including certain legislative proposals and measures as at 1 January 2009.

This booklet is intended as a general guide. Where specific transactions are being contemplated, definitive advice should be sought. A list of appropriate contacts is given opposite.

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TAXATION

General overview

Most foreign investments and foreign investors will be affected by the following taxes:

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

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

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

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

BUSINESS INCOME TAX (“BIT”)

Rates of tax

Taxpayers are subject to the tax rates imposed under the BIT Law. The standard rate of tax has been reduced to 25% effective from 1 January 2009.

Enterprises operating in the oil and gas industry will be subject to BIT rates ranging from 32% to 50% depending on each project.

Tax incentives

Tax incentives are granted based on regulated encouraged sectors and difficult socio-economic locations. The sectors which are encouraged by the Vietnamese Government include education, health care, sport/culture, high technology, environmental protection, scientific research, infrastructural development and computer software manufacture.

The two preferential rates of 10% and 20% are available for 15 years and 10 years respectively, starting from the commencement of operating activities. When the preferential rate expires, the BIT rate generally reverts to the standard rate.

BUSINESS INCOME TAX (“BIT”)

Taxpayers may be eligible for tax holidays and reductions. The holidays take the form of a complete exemption from BIT for a certain period beginning immediately after the enterprise first makes profits, followed by a period where tax is charged at 50% of the applicable rate. However, where the enterprise has not derived profits within 3 years of the commencement of operations, the tax holidays/tax reduction will start from the fourth year of operation. Criteria for eligibility to these holidays and reductions are set out in the BIT regulations.

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

Calculation of taxable profits

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

Taxpayers are required to prepare an annual BIT return which includes a section for making adjustments between accounting profits and taxable profits.

Non-deductible expenses

Expenses which relate to revenue generation, are properly supported by suitable documentation and not specifically identified as being non-deductible are tax deductible. Examples of non-deductible expenses include:

- Depreciation of fixed assets which is not in accordance with the prevailing regulations;
- Employee remuneration expenses which are not actually paid or are not stated in a labour contract or collective labour agreement;
- Life insurance premiums for employees;
- Interest on loans corresponding to the portion of charter capital not yet contributed;
- Reserves for research and development not in accordance with the prevailing regulations;
- Interest on loans from economic organisations exceeding 1.5 times the interest rate set by the State Bank of Vietnam;
- Provisions for stock devaluation, bad debts, financial investment losses, product warranties, or construction work which are not in accordance with the prevailing regulations;

BUSINESS INCOME TAX (“BIT”)

- Advertising, promotion (except certain items), conferences/parties, commissions, prompt payment discounts exceeding 10% of total other deductible expenses (this cap is increased to 15% for newly-established enterprises for the first 3 operating years);
- Unrealised foreign exchange losses;
- Donations except certain donations for education, health care, natural disasters, or building charitable homes for the poor;
- Management expenses allocated to permanent establishments in Vietnam by the foreign company’s head office which are not in accordance with the regulations;
- Penalties;
- Creditable input value added tax, business income tax, personal income tax and other fees/ charges.

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

Business entities in Vietnam are allowed to set up a tax deductible Research and Development fund. Enterprises can appropriate up to 10% of annual profits before tax to the fund. Various conditions apply.

Losses

Taxpayers may carry forward their tax losses for five years. Carry-back of losses is not permitted. There is no provision for any form of consolidated filing or group loss relief.

Transfer pricing

Vietnam has transfer pricing regulations which outline various situations, where transactions will be considered as being between related parties, and the mechanisms for determining the market “arm’s length” transaction value, e.g. comparable uncontrolled price, cost plus, resale price, comparable profits and profit split.

Under the wide ranging definition of associated parties, the control threshold is lower than in many other countries (20%), and the definition also extends to certain significant supplier, customer and funding relationships between otherwise unrelated parties.

BUSINESS INCOME TAX (“BIT”)

Compliance requirements include an annual declaration of related party transactions and transfer pricing methodologies used, which is required to be filed together with the annual BIT return, as well as contemporaneous documentation requirements.

Administration

Provisional quarterly BIT returns are filed based on actual revenues/expenses arising in the quarter. The deadline for the quarterly provisional BIT declaration and payment is the 30th day of the first month of the subsequent quarter.

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

Where a taxpayer has dependent branches in different provinces, a single BIT return is required. However, manufacturing enterprises are required to allocate tax payments to the various provincial tax authorities in the locations where they operate. The basis for allocation is the proportion of expenditure spent by each branch over the total expenditure of the company.

The standard tax year is the calendar year. However, different tax and accounting year-ends can be used if approval is obtained from the Ministry of Finance.

Tax audit inspections

Tax audits are carried out regularly and often cover a number of tax years. The general statute of limitations for imposing penalties is 5 years. The tax authorities can collect under declared and unpaid tax at any time. Prior to an audit, the tax authorities send the taxpayer a written notice of time and scope of the audit inspection.

FOREIGN CONTRACTOR WITHHOLDING TAX (“FCWT”)

FCWT applies to payments of interest, royalties, licence fees, foreign contractors’ fees, cross border leases, insurance/ reinsurance, airline and express delivery charges.

Dividends

No remittance tax is imposed on profits paid abroad.

Interest

An interest withholding tax of 10% applies to interest paid on loans from foreign entities. Pre 1999 loans may be exempt. Offshore loans provided by certain Government or semi-Government institutions may obtain an exemption from interest withholding tax where a relevant Double Tax Agreement (“DTA”) or Inter-Governmental Agreement applies.

Royalties, licence fees, etc.

A 10% royalty withholding tax applies in the case of payments made to a foreign party for transfers of technology. Transfers of technology are defined broadly.

Freight & transportation services

The former freight tax was abolished effective 1 January 2009. Foreign entities performing transportation services are now subject to the FCWT .

Payments to foreign contractors

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

This FCWT generally applies to payments derived in Vietnam for services provided in Vietnam and overseas, except for the pure supply of goods, services performed and consumed outside Vietnam, and various other services performed wholly outside Vietnam (e.g. certain repairs, training, advertising, etc).

Foreign contractors can choose between two methods for tax payment.

FOREIGN CONTRACTOR WITHHOLDING TAX (“FCWT”)

Method One – Deduction Method

Foreign contractors can register for VAT if they meet the requirements below:

- They have a permanent establishment in Vietnam;
- The duration of the project in Vietnam is more than 182 days;
- They adopt the full Vietnamese Accounting System (“VAS”).

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

In case the foreign contractor carries out many projects, and qualifies for application of the deduction method for one project, the contractor is required to apply the deduction method for its other projects as well.

In this case, the foreign contractor will pay BIT at 25% of its net profits.

Method Two – Direct Method

Direct method foreign contractors do not register for VAT. VAT and BIT will be withheld by the Vietnamese contracting party at deemed percentages of taxable turnover. Various rates are specified according to the nature of the services performed. The VAT withheld by the contracting party is generally an allowable input credit in the Vietnamese contracting party's VAT return.

FOREIGN CONTRACTOR WITHHOLDING TAX (“FCWT”)

The VAT and BIT rates are summarised below:

Industry	Effective VAT rate	Deemed BIT rate
Trading: distribution, supply of goods, materials, machinery and equipment in Vietnam.	Exempt	1%
Services	5%	5%
Services together with provision of goods	3%	2%
Construction, installation without supply of materials or machinery, equipment.	5%	2%
Construction, installation with supply of materials or machinery, equipment.	3%	2%
Leasing of machinery and equipment	5%	5%
Leasing of aircraft, vessels (including components)	Not specified	2%
Transportation	3%	2%
Interest	Exempt	10%
Royalties	Exempt	10%
Insurance	Exempt	2%
Transfer of securities	Exempt	0.1%
Manufacturing, other business activities	3%	2%

Double taxation agreements (“DTAs”)

The above withholding taxes may be affected by relevant DTAs. For example, the deemed BIT on foreign contractors may be eliminated or reduced through a relevant DTA.

Vietnam currently has 49 agreements signed, and numerous others at various stages of implementation and negotiation. The agreements in force include those with Australia, France, Germany, Japan, Korea, Malaysia, the Netherlands, Singapore, Thailand, and the United Kingdom, etc. Notably absent is a DTA with the United States of America. A summary of the provisions of some key DTAs is given in Appendix I.

CAPITAL ASSIGNMENT PROFITS TAX

Gains on transfers of interests (as opposed to shares), in a foreign invested or Vietnamese enterprise are subject to 25% BIT. The taxable gain is determined as the excess of the sales proceeds less cost (or the initial value of contributed charter capital for the first transfer) less transfer expenses.

Where the vendor is a foreign organisation or foreign individual, the purchaser is required to withhold the tax due from the payment to the vendor, and account for this to the tax authorities. The return and payment is required within 10 days from the date of the approval of the assignment.

Transfers of securities (bonds, shares etc) are subject to BIT on a deemed basis at 0.1% of the total value of the disposal proceeds.

VALUE ADDED TAX (“VAT”)

Scope of application

VAT applies to goods and services used for production, trading and consumption in Vietnam (including goods and services purchased from abroad). In each case the business must charge VAT on the value of goods or services supplied.

In addition, VAT applies on the duty paid value of imported goods. The importer must pay VAT to Customs at the same time that they pay import duties.

VAT payable is calculated as the output VAT charged to customers less the input tax suffered on purchases of goods and services. For input tax to be creditable, the taxpayer must obtain a proper VAT invoice from the supplier.

VALUE ADDED TAX (“VAT”)

Exempt goods and services

There are many categories of VAT exemptions, including:

- Certain agricultural products;
- Imported leased drilling rigs, aeroplanes and ships of a type which cannot be produced in Vietnam;
- Transfer of land use rights;
- Financial derivatives and credit services;
- Certain insurance services (including life and non-commercial insurance);
- Medical services;
- Teaching and training;
- Printing and publishing of newspapers, magazines, and certain types of books;
- Certain cultural, artistic, sport services/products;
- Passenger transport by public buses;
- Transfer of technology and software services, except exported software which is entitled to 0% rate;
- Gold imported in pieces which have not been processed into jewellery;
- Exported unprocessed mineral products such as crude oil, rock, sand, rare soil, rare stones, etc;
- Imports of machinery, equipment and special means of transport which are directly for use in technology research and development activities and which cannot be made in Vietnam;
- Equipment, machinery, spare parts, specialised means of transportation and necessary materials used for prospecting, exploration and development of oil and gas fields (which cannot be produced in Vietnam);
- Goods imported in the following cases: international non-refundable aid, including from Official Development Aid, foreign donations to government bodies and to individuals (subject to limitations).

VALUE ADDED TAX (“VAT”)

Rates of tax

There are three rates as follows:

- 0% This rate applies to exported goods including goods sold to enterprises without permanent establishments in Vietnam (including companies in non-tariff zones), goods processed for export, goods sold to duty free shops, exported services and construction and installation carried out abroad or for export processing enterprises.
- 5% This rate applies generally to areas of the economy concerned with the provision of essential goods and services. This includes: clean water; fertiliser production; teaching aids; books; foodstuffs; medicine and medical equipment; husbandry feed; various agricultural products and services, technical/scientific services; rubber latex; sugar and its by-products.
- 10% This "standard" rate applies to activities not specified as exempt or subject to the 0% or 5%.

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

Exported services

Services rendered to foreign companies, including companies in non-tariff areas, will be zero rated if the following conditions are met:

- The foreign company has no permanent establishment (“PE”) in Vietnam. (PE is not defined in the VAT regulations and it is assumed that the definition under the domestic BIT regulations will apply in this respect); and
- The foreign company is not a VAT registrant in Vietnam.

It should be noted however that there are a number of services specified in the VAT regulations which will not qualify for zero rating, in particular various services provided to non-tariff areas.

Calculation of output tax

The output tax to be charged is calculated by multiplying the taxable price (net of tax) by the applicable VAT rate. With respect to imported goods, VAT is calculated on the import dutiable price plus import duty plus special sales tax (if applicable). For goods sold on an instalment basis, VAT is calculated on the total price, rather than the instalments actually received.

VALUE ADDED TAX (“VAT”)

Input tax credits

Input credits can be claimed in the month in which the invoice is issued. For imports, input credits are based on the date of payment to the Customs office. Input credits can be declared and claimed within 6 months from the month they arise. From 2009, input VAT credits can only be claimed where payments are made through the banking system, except for purchases of less than VND20 million.

Input VAT withheld from payments to overseas suppliers (i.e. under the foreign contractor withholding tax system) can also be claimed.

If a business sells exempt goods or services, it cannot recover any input tax paid on its purchases. This contrasts with "zero rating", where the sales are within the VAT system (albeit at a VAT rate of zero), and hence input tax can be recovered. Where a business generates both taxable and exempt sales, it can only claim an input tax credit for the portion of inputs used in the taxable activity.

Discounts and promotions

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

Goods and services used internally

Goods and services used internally by a business are taxable at cost.

Administration

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

Taxpayers must file VAT returns monthly, by the 20th day of the following month. Taxpayers paying tax under the deduction method are not required to lodge an annual VAT finalisation or reconciliation.

VALUE ADDED TAX (“VAT”)

Refunds

Generally, where the taxpayer’s input VAT for the period exceeds its output VAT, it will have to carry the excess forward for three months. It can then claim a refund from the tax authorities. In certain cases (e.g. exporters where excess input VAT credits exceed VND 200 million), a refund may be granted on a monthly basis. Newly established entities in a construction period and having no output VAT may claim VAT refunds on a quarterly or yearly basis depending on the amount of input VAT incurred.

SPECIAL SALES TAX (“SST”)

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

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

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

SPECIAL SALES TAX (“SST”)

The tax rates are as follows:

Products / services	Tax rates (%)
Cigar/Cigarette	65
Spirit/Wine	20 - 65
Beer	40 – 75
Automobiles	15 - 60
Motorcycle of cylinder capacity above 125cm ³	20
Airplane	30
Boat	30
Petrol	10
Air-conditioners (not more than 90,000BTU)	10
Playing cards	40
Votive paper	70
Discotheques	40
Massage, karaoke	30
Casinos, jackpot games	30
Entertainment with betting	30
Golf	20
Lottery	15

NATURAL RESOURCES TAX

Natural resources tax is payable by industries exploiting Vietnam’s natural resources such as petroleum, minerals, forests, fisheries and natural water.

The tax rates vary depending on the natural resource being exploited and are applied to the production output at a specified taxable value per unit. Various methods are available for the calculation of taxable value of the resources, including cases where the resources have no commercial value.

PROPERTY TAXES

The rental of land use rights by foreign investors (if not contributed as capital) is in effect a form of property tax. It is usually known as land rental and the range of rates is wide depending upon the location, infrastructure and the industrial sector in which the business is operating.

IMPORT AND EXPORT DUTIES

Rates

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

The import duty rates are classified into 3 categories: ordinary rates, preferential rates and special preferential rates. Preferential rates are applicable to imported goods from countries that have Most Favoured Nation (MFN, also known as Normal Trade Relations) status with Vietnam.

With the accession to the WTO, the MFN rates are in accordance with the WTO commitments and are applicable to goods imported from other member countries of the WTO.

Special preferential rates are applicable to imported goods from countries that have a special preferential trade agreement with Vietnam. Vietnam has special preferential trade agreements with the following countries:

- ASEAN member states (i.e. Singapore, Thailand, Malaysia, Indonesia, Philippines, Cambodia, Laos, Myanmar, Brunei);
- Japan (signed but not yet in force).

Also, as part of ASEAN, Vietnam has special preferential trade agreements with:

- China;
- Korea;
- Japan;
- Australia and New Zealand (signed but not yet in force).

To be eligible for preferential rates or special preferential rates, the imported goods must be accompanied by an appropriate Certificate of Origin ("C/O"). Without such a C/O, or when goods are sourced from non-preferential treatment countries, the ordinary rate (being the MFN rate with a 50% surcharge) is imposed.

IMPORT AND EXPORT DUTIES

Import duties - calculations

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

- Method 2 – Value of Identical Goods
- Method 3 – Value of Similar Goods
- Method 4 – Deductive Value Calculation
- Method 5 – Computed Value Calculation
- Method 6 - Fall-back Method

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

Import duties – exemptions

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

There are 18 categories of import duty exemption, including:

- Machinery & equipment, specialised means of transportation and construction materials (which cannot be produced in Vietnam) comprising the fixed assets of certain projects.
- Raw materials, spare parts, accessories, other supplies, samples, machinery and equipment imported for the processing of goods for export and finished products imported for use in the processed goods.

Currently, export enterprises do not pay import duties on raw materials where the products are destined for export. However, where the enterprise does not, or is not expected to, export the finished product within 275 days the local Customs Department will charge temporary import duty on the raw materials. Penalties for late payment can apply. Where the enterprise actually exports the finished product, a refund will be provided in proportion to the raw materials contained in the exports.

IMPORT AND EXPORT DUTIES

- Machinery, equipment, specialised means of transportation, materials (which cannot be produced in Vietnam), health and office equipment imported to use for oil and gas activities.
- Exemptions are also available, inter alia, for Build-Operate-Transfer enterprises, including their sub-contractors and for direct production of software.

Import duties – Refund

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

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

Export duties

Export duties are charged only on a few items, basically natural resources such as sand, chalk, marble, granite, forest products, and scrap metal etc. Rates range from 0% to 37%. The price for the computation of export duties is Free on Board /Delivered at frontier price, i.e. selling price of goods at the port of departure as stated in the contract, excluding freight and insurance costs.

PERSONAL INCOME TAX (“PIT”)

Introduction

A new PIT law came into effect on 1 January 2009. This made wide ranging changes to the PIT system in Vietnam including:

- abolition of previous dual system such that Vietnamese and foreigners are now taxed at the same rates;
- widening of scope of PIT to include various type of non employment income hitherto not taxed;
- withdrawal of various tax concessions and exemptions for employment income;
- new administrative and filing procedures.

Vietnam taxes individuals based on whether they are tax resident or non-resident. Residents and non-residents are subject to PIT at different rates, and on different ranges of income.

Liability to personal income tax – residents

Residents are those individuals residing in Vietnam for 183 days or more in a calendar year, or in 12 consecutive months from the first date of arrival; or those having a permanent residence in Vietnam (including a registered residence, or a leased house in Vietnam with a lease duration of 90 days or more in a tax year).

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

Vietnamese nationals are no longer automatically tax resident based on citizenship. They are subject to the normal residency test.

Liability to personal income tax – non residents

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

PERSONAL INCOME TAX (“PIT”)

Employment income

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

- payments for business trip (subject to a cap);
- payments for telephone charges (subject to a cap);
- payments for uniform/stationery costs (subject to a cap);
- overtime premium (i.e. the additional payment above the normal wage, not the full amount of the overtime payment).

Non-employment income

The following are now taxable in Vietnam:

- rental income;
- investment income (e.g. interest, dividends);
- gains on sale of shares;
- gains on sale of real estate;
- inheritances in excess of VND 10 million.

Non taxable income

Non taxable income includes:

- interest earned on deposits with credit institutions/banks and on life insurance policies;
- compensation paid under life/non-life insurance policies;
- retirement pensions paid under the Social Insurance law;
- income from transfer of properties between wife & husband, natural/adoptive father/mother and children/adopted children;
- inheritances/gifts between wife and husband, natural/adoptive father/mother and children/adopted children.

Foreign tax credits

In respect of tax residents who have overseas income, PIT paid in a foreign country is creditable. The credit shall not exceed the PIT amount payable on the income in Vietnam.

PERSONAL INCOME TAX (“PIT”)

Tax deductions

Tax deductions include:

- 1 Contributions to mandatory overseas social and health insurance schemes;
- 2 Contributions to certain approved charities;
- 3 Tax allowances:
 - Personal allowance: VND48 million/year,
 - Dependent allowance: VND 1.6 million/month. The dependent allowance is not automatically granted, and the taxpayer needs to register qualifying dependants and provide supporting documents to the tax authority.

Personal income tax rates

Residents - employment income

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

Residents – non-employment income

Type of taxable income	Tax rate
Interest/ dividends	5%
Sale of securities: Net gain; or Sales proceeds	20% 0.1%
Sale of real estate: Net gain; or Sales proceeds	25% 2%
Income from copyright	5%
Income from franchising/royalties	5%
Income from winning prizes	10%
Income from inheritances/gifts	10%

PERSONAL INCOME TAX (“PIT”)

Non-residents

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

Administration

Tax codes

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

Tax declarations and payment

For employment income, tax has to be declared and paid provisionally on a monthly basis by the 20th day of the following month. The amounts paid are reconciled to the total tax liability at year-end. Tax refunds due to excess tax payments are only available to those who have a tax code.

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

SOCIAL INSURANCE, HEALTH INSURANCE AND UNEMPLOYMENT INSURANCE

These statutory contributions are applicable to Vietnamese individuals only.

The level of compulsory social insurance (“SI”) contribution is 20% of total salary of which 15% is the employers’ obligation and the remaining 5% is the employees’ obligation.

The salary subject to SI contribution is the salary stated in the labour contract, but is capped at 20 times the minimum salary (from 1 May 2009, the minimum salary is VND 650,000 per month).

Employers are required to pay health insurance (“HI”) premiums. The rate is 3%, of which 2% is the responsibility of the employer and 1% of the employee. The salary subject to HI contribution is the contractual salary and is not subject to a cap. On 1 July 2009, a new law on HI will come into effect. Accordingly, there will be some changes in, inter alia, contribution rates and the salary subject to HI contributions.

Unemployment insurance applies from 1 January 2009. The employer and employee contributions are 1% on gross salary each. The employee contribution is capped at 20 times the minimum salary.

Statutory social insurance, health insurance and unemployment insurance employer contributions do not constitute a taxable benefit to the employee. The employee contributions are deductible for PIT purposes.

OTHER TAXES

Numerous other fees and taxes can apply in Vietnam, including, business license tax and stamp duty/registration fees.

PENALTIES

There are detailed regulations setting out penalties for various tax offences. These range from relatively minor administrative penalties through to tax penalties amounting to various multiples of the additional tax assessed.

In practice, imposition of penalties has been arbitrary and inconsistent. However in recent periods, there has been a much tougher stance adopted by the tax authorities. Hence where tax is paid late, as a result for example of a tax audit investigation, there is a significant likelihood of penalties being imposed. Notably where tax adjustments are made at a tax audit, any resulting additional taxable profits are not eligible for any BIT incentives to which a company may be entitled.

ACCOUNTING AND AUDITING

Foreign-invested business entities are generally required to adopt the Vietnamese Accounting System (“VAS”). If a company strictly follows the VAS, registration with the Ministry of Finance (MoF) is not required. However, if the VAS is modified, a written approval from the MoF is required before implementation.

Accounting records are required to be maintained in VND. A foreign-invested business entity may however make an application to the MoF for a foreign currency to be used for its accounting records and financial statements. Accounting records are required in Vietnamese language, although a commonly-used foreign language can be used at the same time along with the Vietnamese language. At the end of the fiscal year, the entity must perform a physical count of its fixed assets.

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

Vietnam has issued 26 accounting standards and 37 auditing standards which are primarily based on international standards, but with some local modifications.

APPENDIX I

DOUBLE TAXATION AGREEMENTS

A summary of withholding tax rates is presented follows:

Recipient	Interest %	Royalties %	Notes
1.Algeria (*)	-	-	-
2.Australia	10	10	-
3.Bangladesh	15	15	1,2
4.Belarus	10	15	1, 2
5.Belgium	10	5/10/15	1, 2, 3
6.Brunei Darussalam (*)	-	-	-
7.Bulgaria	10	15	1, 2
8.Canada	10	7.5/10	3
9.China	10	10	2
10.Cuba	10	10	-
11.Czech Republic	10	10	2
12.Denmark	10	5/15	1, 2, 3
13.Egypt (*)	-	-	-
14.France	Nil	10	-
15.Finland	10	10	-
16.Germany	10	7.5/10	2, 3
17.Hong Kong (*)	10	7/10	2,3
18.Hungary	10	10	-
19.Iceland	10	10	2
20.India	10	10	2
21.Indonesia	15	15	1, 2
22.Italy	10	7.5/10	2, 3
23.Ireland	10	5/10/15	2
24.Japan	10	10	1, 2, 3
25.Korea (South)	10	5/15	-
26.Korea (North) (*)	-	-	-
27.Laos	10	10	-
28.Luxembourg	10	10	2
29.Malaysia	10	10	2
30.Mongolia	10	10	2
31.Myanmar	10	10	1, 2, 3
32.Netherlands	10	5/10/15	2
33.Norway	10	10	1,2
34.Pakistan	15	15	1
35.Philippines	15	15	1, 3
36.Poland	10	10/15	1, 2

APPENDIX I

DOUBLE TAXATION AGREEMENTS

A summary of withholding tax rates is presented follows:

Recipient		Interest %	Royalties %	Notes
37.	Romania	10	15	1
38.	Russia	10	15	-
39.	Seychelles	10	10	1, 2, 3
40.	Singapore	10	5/15	2
41.	Spain	10	10	1,2
42.	Sri Lanka	10	15	1,2,3
43.	Sweden	10	5/15	2
44.	Switzerland	10	10	1
45.	Taiwan	10	15	1,2
46.	Thailand	10/15	15	2
47.	Ukraine	10	10	2
48.	United Kingdom	10	10	1,2
49.	Uzbekistan	10	15	

(*) not in force yet

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 Interest derived by certain government bodies is exempt from withholding tax.
- 3 Royalty withholding tax rates vary for certain types of royalties.

PRICEWATERHOUSECOOPERS SERVICES IN VIETNAM

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