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Corporate Income Tax in Vietnam

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List of abbreviations

CIT	Corporate Income Tax
DTA	Double Taxation Agreement
EBIDA	Earnings Before Interest, Depreciation and Amortization
EPZ	Export Processing Zone
FCWT	Foreign Contractors Withholding Tax
FIBO	Foreign-invested business organization
FIC	Foreign Invested Company
IRC	Investment Registration Certificate
LAW on CIT	Law No. 14/2008/QH12 on CIT amended by Law No. 32/2013/QH13 and Law No. 71/2014/QH13
LOI	Law on Investment
LLC	Limited Liability Company
MOF	Ministry of Finance
PE	Permanent Establishment
PIT	Personal Income Tax
SGA	Sales, General and Administrative (Expenses)
VAT	Value Added Tax
VAS	Vietnamese Accounting System
VND	Vietnamese Dong

1 Executive Summary

The Corporate Income Tax (**CIT**) is applied with the general rate of 20% from the beginning of 2016 (reduced from 22% which was applied from 1 January 2014 until 31 December 2015). A variety of tax reductions and –exemptions is applied depending on the type and region of the investment.

2 Introduction

2.1 General information

Corporate Income Tax is levied on the income of business organizations and governed by the 2009 law on CIT, first amended on 16 June 2013 by Law 32/2013/QH13 and latest amended by Law 71/2014/QH13 dated 26 November 2014. The current tax rate applicable to corporate income is 20%.

In contrast to common tax systems, the Vietnamese law on CIT does not focus only on corporate enterprises. Sole Proprietorships are also subject to CIT.

2.2 Tax liability

The law on CIT stipulates that any organization conducting activities of production, business in goods and services that earns taxable income must pay corporate income tax to the Vietnamese State. Whereas the term organization according to Article 2 of the law on CIT comprises:

i. Enterprises established pursuant to the laws of Vietnam.

ii. Enterprises established pursuant to foreign laws doing business in Vietnam or with a Vietnamese party regardless whether a permanent establishment in Vietnam is constituted; this is subject to certain conditions.

iii. Enterprises established pursuant to the law on Co-Operatives.

iv. Professional entities established pursuant to the law of Vietnam.

v. Any other organization conducting activities of production or business that earns income.

The Vietnamese tax system distinguishes between Vietnamese and foreign companies[1]. The regulations on CIT do not make a difference between companies regarding their ownership. When mentioning a foreign company, a company is meant, which is registered outside of Vietnam. When mentioning a Vietnamese company (or Domestic Company), this includes Vietnamese and foreign owned companies.[2]

It must be noted, that under perspective of the regulations on foreign investment, a company registered in Vietnam is treated as Foreign Invested Business Organization (**FIBO**) depending on its charter capital.[3]The FIBO will also be called Foreign Invested Company (**FIC**).

Domestic companies (companies established pursuant to the Vietnamese Laws including those having foreign investment) are due to unlimited tax liability, which means they must pay tax on their worldwide income.[4] Foreign companies having a permanent establishment in Vietnam are due to pay tax on their income arising in Vietnam regardless whether the income is related to the operation of the permanent establishment. Furthermore, foreign companies with a permanent establishment in Vietnam are due to pay tax on their income arising outside of Vietnam but related to the operations of the Vietnamese establishment.[5] Foreign companies not having a

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[1] The term "foreign company" is not always used in the correct meaning. It must be separated between registration and ownership. We use "foreign company" in the meaning of a company being registered outside of Vietnam regardless of ownership.

[2] A foreign owned company is -regarding the Corporate Income Tax- a Vietnamese company, if registered in Vietnam.

[3] "A *Foreign-invested business organization*" under Art 23 Law on Investment (**LOI**) is a company registered in Vietnam having:

- at least 51% of its charter capital held by a foreign individual or an organization established outside Vietnam; or
- at least 51% of its charter capital held by an organization established in Vietnam having at least 51% of its charter capital held by a foreign individual or an organization established outside Vietnam; or
- at least 51% of its charter capital held by these two together:
  - a foreign individual or an organization established outside Vietnam;
  - an organization established in Vietnam having at least 51% of its charter capital held by a foreign individual or an organization established outside Vietnam.

[4] Example: A Vietnamese LLC earns income in Vietnam which is 100 billion VND and income in Germany which is 100 billion VND. The tax liable income of this LLC in Vietnam therefore is 200 billion VND.

[5] Example: The German company A having a PE in Vietnam earns income in Germany which is 100 billion VND (not related to the Vietnamese PE), in Vietnam which is 50 billion VND and in Cambodia which is 20 billion VND. The income arising in Cambodia is caused by shipping and selling goods to Cambodian customers, using the Vietnamese PE. The tax liable income in Vietnam is 70 billion VND.

permanent establishment in Vietnam under certain conditions are due to pay taxes on their income arising in Vietnam.[1]

In response to the high number of foreign companies and individuals delaying or failing to pay their (corporate, personal and value added) taxes in Vietnam, the Foreign Contractors Withholding Tax (**FCWT**) was introduced. One aim of the FCWT is to ensure, that these foreign companies and individuals fulfill their tax liability in Vietnam (on time). Therefore, the FCWT regulates the way of calculating and deducting the CIT, PIT and VAT value for foreign contractors. As a result of introducing FCWT, the legislation on FCWT needs to be applied when stipulating the tax rate, taxable income, etc. for enterprises established outside of Vietnam pursuant to foreign law (regardless of the constitution of a PE in Vietnam) and foreign individuals having income arising from Vietnam. As this document focusses on CIT **the following chapters will not consider the special characteristics of the FCWT applicable to foreign enterprises generating income in Vietnam.** For further information on the FCWT please check our Brochure on FCWT. The FCWT comprises CIT, VAT and in certain situations PIT.

2.3 Tax assessment period

According to Article 5 of the Vietnamese Law on CIT, the tax assessment period shall be in accordance either with the western calendar year or the financial year of business. Enterprises are allowed to switch their tax assessment period from the western calendar year or vice versa but the regular tax assessment period has to equal twelve months. However, whenever switching, the tax period of the year in which the change occurs may unequal, but never exceed twelve months.[2]

The first (new establishment) or the last tax period (Mergers and Acquisitions, dissolution) could be merged with a tax assessment period if not exceeding 3 months.[3]

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[1] Example: The German company A receives 100 billion VND interest from a Vietnamese company. The tax liable income in Vietnam is 100 billion VND.

[2] Example pursuant to Circular 78/2014/TT-BTC: In 2013, enterprise A uses the calendar year as CIT period. At the beginning of 2014, it changes to use the financial year of business (April 1 to March 31) of the subsequent year. The CIT period in the year of change will be counted from January 1, 2014, through March 31, 2014. The subsequent CIT period will be counted from April 1, 2014, through March 31, 2015 (Circular 78/2014/TT-BTC, Article 3, No. 4, Example No. 1).

[3] Example: enterprise A gain the ERC in 1st November 2016 and determine tax period as calendar year. The first CIT period could be added up to calendar year 2017 ended December 31st 2017 (Circular 78/2014/TT-BTC, Article 3, No. 2.)

2.4 Tax Payable

According to the Vietnamese law on CIT the tax payable to the Vietnamese State has to be calculated as illustrated below.

Turnover of activities of production and business (Article 8) - **Deductible expenses** of activities of production and business (Article 9) + **Other income**, including income receivable from outside Vietnam
<u>= **Taxable Income** within one period</u> - **Tax exempt income** (Article 4) - **Losses carried forward** from previous years (Article 16)
<u>= **Assessable income** within one period (Article 7)</u> x Applicable **tax rate** (Article 10) - Creditable corporate income **tax paid** on income arisen **outside Vietnam**
<u>**= Tax payable in Vietnam**</u>

Table 1: Calculation of the Vietnamese corporate tax payable

The following chapters will reflect the above illustrated structure.

3 Turnover

3.1 General information

Article 8 of the Vietnamese law on CIT defines turnover being the total goods' sales revenue, processing fees and fees for providing services including price subsidies, additional charges and fees, irrespective of whether or not money has been received. If an enterprise pays VAT by the tax credit method (input VAT is creditable from VAT-liability) the turnover used to assess the taxable income excludes the VAT.[1] If

[1] Example: Company A is paying VAT using the credit method and sells a good for 100 VND plus 10 VND VAT. The turnover used to assess the taxable income is 100 VND (Circular 78/2014/TT-BTC, Article 5, No. 1).

an enterprise pays VAT calculated directly on the basis of added value, turnover used to assess taxable income includes VAT.[1]

The point of time for fixing a turnover shall be:

- In respect of goods sold: the point of time marking the transfer of ownership.
- In respect of services: the point of time marking the completion of service or the partial completion of service.[2]
- In respect of air transport services: the point of time marking the completion of supply of air transport services.[3]

Turnover in any foreign currency needs to be converted into VND at the actual exchange rate at the time for fixing a turnover above. The actual exchange rate used for recording turnovers is the buying exchange rate [4] of the commercial bank where the tax payer opened accounts.[5]

3.2 Regulation of special situations[6]

The turnover of goods and services used for the purpose of **exchange, donation or internal consumption** shall be assessed on the basis of the selling price of such goods or services in the market at the same time.

With respect to goods and services sold by way of instalments or deferred payment, turnover shall be calculated on a lump sum payment price excluding any interest.[7]

With regard to **agencies** selling goods on commission on behalf of a principal, the turnover shall be the amount of commission.

When **processing goods**, the turnover shall be the income from processing (processing fees, expenses for servicing the processing).

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1 Example: Company B is paying VAT calculated directly on the basis of added value and sells a good for 110 VND including 10 VND VAT. The turnover used to assess the taxable income is 110 VND (Circular 78/2014/TT-BTC, Article 5, No. 1).

2 Circular 78/2014/TT-BTC, Article 5, No. 2 amended by Circular 96/2015/TT-BTC.

3 Circular 78/2014/TT-BTC, Article 5, No. 2 (c)

4 Exchange Rates against VND

5 Circular 156/2013/TT-BTC, Article 27 amended by Circular 26/2015/TT-BTC.

6 Circular 78/2014/TT-BTC, Article 5 No. 3.

7 Circular 78/2014/TT-BTC, Article 5, No. 3 (a)

With respect to the lease out of assets, the turnover shall be the amount of **leasing** rate paid for each period according to the contract. If leasing rates are paid in advance they shall be allocated to the period they are paid for.

With respect to golf course business, the turnover shall be revenue from the sale of membership cards and tickets to play golf and other types of income.[1]

In case of **construction and installment activities**, the turnover shall equal the value of the works or items which have been accepted by the customer.

With respect to business activities on the basis of **business co-operation contracts**, the turnover shall be:

- The share of turnover distributed, if the parties distribute their business results in the form of turnover.
- The turnover from products distributed, if the parties distribute their business results in the form of products.
- Proceeds from the sale of goods and services, if the parties distribute their business results in the form of pre- or after-tax profits.

In the case of the operation of credit institutions, the turnover shall be the loan interest, the deposit interest, revenue from the finance leasing.[2]

In case of **security business**, turnover shall be revenue from brokerage services, securities self-trading, underwriting of issues, portfolio management, financial consultancy, management of funds or certificates issued.

With respect to **derivative financial services**, turnover shall be proceeds from the provision of such services arising and performed in one period.

With respect to transportation activities, turnover shall be the total turnover from passenger, luggage and cargo transportation.

With respect to supply of electricity or clean water, turnover shall be the sum recorded in VAT invoice on the date of the meter index reading in the invoice.

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[1] Circular 78/2014/TT-BTC, Article 5, No. 3 (g)

[2] Circular 78/2014/TT-BTC, Article 5, No. 3 (h)

With respect to insurance business, turnover used to assess taxable income shall be the whole proceeds from provision of insurance services and other goods and service, including extra charges and additional charges but excluding VAT.

4 Expenses

4.1 General Information

The previous practice of the Ministry of Finance (**MOF**) was to stipulate both, the deductible as well as the non-deductible expenses. As this practice caused uncertainty for many taxpayers assessing expenses not fitting in any of those two lists, the MOF started to exclusively provide a list of non-deductible expenses. All expenses not mentioned to be non-deductible by the Vietnamese legislations can be considered to be deductible expenses, if:

i. The expenses actually arose and relate to the activities of production or business of the enterprise

ii. and are supported by complete invoices and source vouchers as stipulated by law.

Invoices for the purchase of goods and services, on each occasion valued twenty million VND or more (including VAT) must also have a payment voucher, proving payment not using cash[1]. For domestic purposes, the tax copy of the VAT invoice (also known as a 'red invoice') usually is required. Where the expense is charged by an overseas entity, the underlying agreement usually is required.

Expenses in foreign currency must be converted into VND at the actual exchange rate at the time such expenses arise.[2] The actual exchange rate used for recording expense is the selling exchange rate[3] of the commercial bank where the tax payer opened accounts.

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1 Circular 78/2014/TT-BTC, Article 6, No. 1 (c)

2 Circular 156/2013/TT-BTC, Article 27 (amended by Circular 26/2015/TT-BTC)

3 Exchange Rates against VND

4.2 Non-deductible Expenses[1]

Expenses that didn't actually arise or are not supported by invoices are not deductible. Furthermore, the Vietnamese law on CIT mentions the following expenses to be non-deductible:

a) Expenses for **non-business** purposes;

b) **Accruals**[2];

c) **Fines** for administrative offenses;

d) **Expenses covered** by other funding sources (e. g. another enterprise);

e) **Business management expenses allocated to a Vietnamese** PE from abroad, exceeding the allocable expenses stipulated by law;

f) Expenses exceeding the allowed level for **contingency reserves** as stipulated by law;

g) That part of an **interest payment** exceeding 150% of the basic interest rate published by the State Bank (now this is 9%) if not paid to a credit institution or economic organizations; Loan interest expenses from related party exceed 20% of Earnings before interest, depreciation and amortization (**EBIDA**)[3];

h) **Remuneration** paid to founding members who not directly involved in executive management;

i) **Remuneration** paid to employees if not actually expended or expended without invoice;

j) **Interest** payment on loan of unpaid charter capital;

k) Credited **value added tax;**

l) **Financial aid/subsidies**, except for aid in order to overcome the consequences of natural disaster, to build charitable homes or to support programs in special socio-economic areas;

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1 For further information: Circular 78/2014/TT-BTC, Article 6

2 Expenses allocated in advance for a term or cycle but not actually spent or not spent in full as they don't actually arise except case of the expenses corresponding to the recorded turnover.

3 Decree 20/2017/ND-CP dated 24 Feb 2017 (which takes effect from 01 May 2017), Article 8, No. 3.

m) The part of expenses for **voluntary retirement** exceeding insurance exceeding the cap of 1 million VND a month per person;

n) Expenses for business activities being **banking, insurance, lotteries or securities;**

o) **Depreciation for fixed assets** which aren't used for production or business[1] and depreciation in excess of the appropriate rate in the current regulations of the MOF[2];

p) **Interest** due to **late payment of tax** liabilities[3];

4.3 Deductible Expenses

4.3.1 Costs of Goods Sold

Cost of raw materials, supplies, fuel, power and goods are deductible if they actually arose and are accompanied by an official invoice.

However, expenses for the purchase of goods and services without official invoices are deducted if the enterprise can prepare a list of external purchase of goods and services accompanied by the payment vouchers (Non-cash payment vouchers are not mandatory) in some cases:

- Agricultural, seafood or aquaculture products purchased from the producer or from the fisherman;
- Products made directly by farmers from rattan, bamboo, reed, coconut or grass;
- Soil, stone, sand or gravel mined by the direct sellers;
- Scrap sold by persons who collected themselves;
- Appliances, assets and services sold directly by a non-business household and a non-business individuals;

1 Circular 78/2014/TT-BTC, Article 6, No. 2.2 (a)

2 An enterprise having economically efficient operation may depreciate fixed assets faster than applicable in the standard but the maximum rate of depreciation shall not exceed twice the rate of depreciation fixed in accordance with the straight line depreciation method in order to rapidly reform its technology. The enterprise must ensure profitable business when adopting faster depreciation. (Circular 78/2014/TT-BTC, Article 6, No. 2.2 (d)

3 Decree 218/2013/NĐ-CP

- Goods and services provided by a business household or an individual that earn the annual revenue of less than 100 million VND.

If purchase prices of goods and services on the list are higher than the market prices at the time of purchase, then the tax department may rely on the market price at the time of purchase of goods and services of the same or similar type to re-fix prices for the purposes of re-determining reasonable expenses when calculating taxable income.

For this reason, information on the market price should be collected and kept in a documentation.

4.3.2 Labor Costs

Expenses being salaries, wages and bonuses are deductible if in fact been paid and supported by proper documentation[1]. However, bonuses which are not salary in nature or which are not specified in labor contracts or collective labor agreements are non-deductible.

Remuneration paid to founders and members of the members' council or board of directors who do not personally participate in administering the business activities of the enterprise are also non-deductible.[2] Payments in the form of 13th or 14th month salary or other fixed payments are deductible. Additional payments made to expatriates for house rental, electricity and water consumption fees are deductible if managed according to the guidelines of the MOF.[3] Expenses for uniforms paid to employees in money exceeding an amount of five million VND per person per year and in kind if not supported by complete invoices and vouchers are non-deductible.[4] Fares and accommodation paid to employees being on business trips are deductible

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1 Existing labor contract, Salary is appearing on the payroll, PIT is withheld and remitted.

2 Circular 78/2014/TT-BTC, Article 6, No. 2.5. (d)

3 Circular 78/2014/TT-BTC, Article 6, No. 2.5 (b) state house rental fees, electricity, water consumption fees paid to foreign employees (expatriates) to be deductible. However, in order to be deductible this fees/rent must be defined as additional wages by one of the following documents: the labor contract, the collective labor agreement, the regulations on finances of the company or the regulations on bonuses and be accompanied by legal invoices including name, address and tax code of the enterprise paying this additional wages.

4 Circular 78/2014/TT-BTC, Article 6, No. 2.6.

if having adequate invoices and vouchers.[1] Travel allowances for staff on holiday leave must be in accordance with the provisions of the labor code in order to be deductible.[2]

Business trip allowances must be paid in accordance with financial policies and internal policies of enterprises to be deductible[3]. Contributions to life insurance for employees are fully deductible if stipulated in labor contract, collective agreement, financial policies or remuneration policies of enterprises.

In case the contract between a Vietnamese party and an overseas party clearly stipulates that the Vietnamese party shall be responsible for housing expenses for expatriates coming to Vietnam for business purposes, these housing expenses are deductible[4].

4.3.3 Depreciation

4.3.3.1 General Information

Depreciation calculated in accordance with the regulations of the MOF guidelines is deductible. Both tangible and intangible assets may be depreciated. Tangible assets comprise buildings, plants, machinery and equipment, vehicles and others. Intangible Assets comprise: land use rights[5], software, copyrights, trademarks, goodwill[6] and others.

In order to be eligible for depreciation assets must meet all of the following conditions:[7]

i. Economic benefit will be attained from the future use of this asset.

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[1] When purchasing air tickets for its employees' business trips, source documents shall include the e-ticket, boarding pass and the voucher of non-cash payment (Circular 78/2014/TT-BTC, Article 6, No. 2.8).

[2] Circular 78/2014/TT-BTC, Article 6, No. 2.9 (amended by Circular 96/2015/TT-BTC), the Vietnamese labor code hardly offers any restrictions on travel allowances as literally stated in Article 113: 'travel expenses and salary in the traveling days shall be agreed by both parties.'

[3] Circular 78/2014/TT-BTC, Article 6, No. 2.9 (amended by Circular 96/2015/TT-BTC). Former regulations, deductible expenses are subject to a cap but now these expenses are fully deductible.

[4] Circular 78/2014/TT-BTC, Article 6, No. 2.6 (amended by Circular 96/2015/TT-BTC).

[5] Long-term land use rights cannot be depreciated. Land use right for a definite term participating in production or business activities may be gradually allocated to deductible expenses if there are adequate source vouchers and the legal procedures required by law. (Circular 78/2014/TT-BTC, Article 6, No. 2.2 (k))

[6] Expenses incurred in relation to intellectual property such as the cost of purchasing and charges for using technical data, copyrights, technology licenses, trademarks, goodwill and so forth may be allocated to business costs and gradually deducted for a maximum period of 3 years. Software may be depreciated over a period of 3-8 years.

[7] Circular 45/2013/TT-BTC, Article 3.

ii. The useful life of the asset exceeds one year.

iii. The original costs of the assets can be identified reliably and amount at least 30 million VND.

The cost for any asset failing to meet the conditions (ii) or (iii), will be accounted directly as expense.

Depreciation is calculated on the gross value of a tangible or intangible asset, comprising:

i. The purchasing price.

ii. Taxes paid (excluding refundable taxes).

iii. Transportation costs.

iv. Interest expense incurred for purposes of investing in the asset.

v. Installation and testing costs.

vi. Registration costs.

If an enterprise is depreciating fixed assets produced by its own, the gross value of such assets shall comprise the total expenses of production.[1]

Depreciating this gross value, enterprises need to determine the useful life of the underlying asset and choose between the following methods of depreciation:

(An overview about the useful life of assets as published by the MOF can be found in **Appendix 1**: The useful life of assets as published by the MOF *of this document)*

i. **Straight-line depreciation:** depreciation at fixed rates depending on the underlying asset and the respective assumed useful life as published by the MOF (e. g. 10 years useful life; 10% depreciation per year). Straight-line depreciation is applicable to assets, used for business activities. Economically efficient enterprises may adopt the accelerate method which represents an accelerate way of straight-line depreciation. Using this method enterprises are allowed to increase the depreciation rate to a maximum of twice the rate as fixed by the straight-line method.[2] Each year enterprises shall make their own decision on the rate of such depreciation in accordance with this regulation.

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1 For further information on the determination of historical prices: Circular 45/2013/TT-BTC, Article 4.

2 Circular 78/2014/TT-BTC, Article 6, No. 2.2 (d).

ii. **Declined balance depreciation:** This method of depreciation is only applicable to enterprises operating in fast-developing technology businesses to depreciate new machinery, equipment and laboratory equipment in a fast way.

iii. **Production output depreciation:** Depreciation based on output. Applicable to machinery or equipment directly related to production which monthly capacity is not lower than 100% of the designed capacity.

Enterprises must notify the tax authority which of the depreciation methods they select to apply before commencing applying such method for each fixed asset. Furthermore, they must apply the chosen method consistently throughout the useful life of the asset. Under special circumstances enterprises are allowed to change the method of depreciation but only a one-time change is accepted. In such cases, they need to report the reasons for changing the depreciation method to the tax authority.

Any upgrading of fixed assets is considered to be capital expenditure and is deemed to increase the value of the upgraded asset. If an asset is merely repaired the amount paid for reparation is gradually accounted as (deductible) expense within three years.

4.3.3.2 Regulation of special situations

Leased assets which are leased by finance leasing need to be accounted as if they belong to the enterprise (capitalization in the enterprise's balance sheet, depreciation).[1] Leased assets which are leased by operating leasing are treated as business expense.[2] Finance leasing is assumed where the total lease payments equal the value of the underlying asset at the time when the leasing contract was signed and the leasing entity as the right upon the expiry of the contract either to buy the underlying asset or to prolong the contract at the same conditions.[3]

Fixed **assets which are not used for production** and business of goods and services or for which there is no document proving ownership are not depreciable. Fixed assets serving employees working for the enterprise (e. g. cafeteria, rooms for breaks,

1 Leasing expenses cannot be accounted as business expenses as the asset is capitalized in the balance sheet and expenses for depreciation are accounted.

2 No capitalization in the enterprise's balance sheet, no depreciation, leasing fees are accounted as business expenses of the respective period (Circular 45/2013/TT-BTC, Article 8).

3 Circular 45/2013/TT-BTC, Article 2.

library, kindergarten, sport complex and the related machineries and equipment etc.) are regarded to be used for business of goods and services.[1]

Assets being instruments, tools, recyclable packaging etc. which are not eligible for fixed assets are not allowed for depreciation. However, the expenses for purchasing such assets may be gradually allocated to expenses of production and business over a maximum period of three years[2].

Goodwill is not considered to be an asset according to the Vietnamese tax legislation. Expenses related to goodwill must be classified as business expenses and can only be deducted for up to three years after the commencement of operations[3]. In case of goodwill considered as capital contribution, allocated expense shall be non-deductible.

That part of depreciation corresponding to the original cost of a newly registered **automobile** of nine seats or less, exceeding 1.6 billion VND (around 65.000 Euro) is non-deductible. The automobiles specialized in the field of transportation, tourism or hotel services are exempt from this legislation.[4]

4.3.4 Sales, General and Administrative Expenses

Business management expenses allocated by overseas companies to their resident establishments in Vietnam are deductible if the resident establishment adopts the Vietnamese Accounting System (**VAS**) for advertising, marketing, promotion and brokers' commissions, expenses for reception, formal occasions and conferences, expenses for assisting marketing, discounting payments is fully deductible if having adequate invoices and vouchers.

Costs of electricity and water are non-deductible if the contract for the electricity/water supply is signed by the lessor of the business location and there are insufficient source documents proving the payment of those costs through the enterprise.[5]

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1 Circular 78/2014/TT-BTC, Article 6, No. 2.2 (a) (amended by Circular 96/2015/TT-BTC).

2 Circular 78/2014/TT-BTC, Article 6, No. 2.2 (d).

3 Circular 78/2014/TT-BTC, Article 6, No. 2.16.

4 Circular 78/2014/TT-BTC, Article 6, No. 2.2 (e) (amended by Circular 151/2014/TT-BTC).

5 Source documents are considered to be insufficient if the enterprise pays the cost of electricity/water to the lessor or directly to the supplier without receiving invoices for payment and without a lease contract for the business location (Circular 78/2014/TT-BTC, Article 6, No. 2.15 amended by Circular 96/2015/TT-BTC).

4.3.5 Reserves

The following reserves may be accounted as (deductible) expenses if established pursuant to the guidelines of the MOF:[1]

i. Reserves for a decline in the price of inventory.

ii. Reserves for a decline in the price of financial investments.

iii. Reserves for bad debts.[2]

iv. Reserves for warranties.

v. Reserves for occupational risks for enterprises providing business valuation services and enterprises providing independent audit services.

At the end of the period any balance in the reserves for a decline in the price of inventory or financial investments as well as any reserve for bad debts must be reversed by reducing expenses accordingly. Balances in the reserve for warranties must be reversed by recording this balances as other income.[3]

In addition to the above mentioned, enterprises are allowed to set up a contingency fund for salaries, wages and allowances payable to employees but not in fact been paid till the tax finalization. However, the amount of such contingency fund must not exceed 17% of the total amount of salaries which were paid in the period upon the tax finalization.[4]

4.3.6 Dividends, Interest and Royalties

Expenses directly relating to an issue of **shares and dividends** on shares are not deductible except for the shares and dividends being a type of debt payable[5].

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[1] Circular 78/2014/TT-BTC, Article 6, No. 2.19.
The guidelines of the MOF can be found at Circular 228/2009/TT-BTC amended by Circular 34/2011/TT-BTC and Circular 89/2013/TT-BTC.

[2] In order to constitute a reserve for a bad debt, the underlying debt must be either overdue or the debtor must have been fallen into bankruptcy. For debts overdue the amount of reserve is limited as follows: 30% of the value of debt if overdue between 6 months and 1 year, 50% of the value of debt if overdue less than 2 years, 70% if overdue less than 3 years, 100% if overdue more than 3 years. For debts where the client has fallen into bankruptcy status, is making dissolution procedures or disappeared, the enterprise estimates the amount of irrecoverable loss in order to constitute the reserve. (Circular 228/2009/TT-BTC, Article 6)

[3] Circular 228/2009/TT-BTC, Article 7, No. 3.

[4] Decree 218/2013/ND-CP, Article 9, No. 2 (m).

[5] Decree 218/2013/ND-CP, Article 9, No. 2 (r).

Payments of **interest** on loans are deductible expenses.[1] Wherever the interest of a loan not received from a credit institution or economic organization like foreign company exceeds 150% of the basic interest rate announced by the State Bank at the date of the loan,[2] that part of the interest is non-deductible. Interest payments that may be associated to the lack of contributing legal capital are non-deductible.[3]

Royalties are deductible to a reasonable amount.

4.3.7 Other

Enterprises established pursuant to the law of Vietnam are allowed to deduct up to 10% of their annual assessable income in order to establish a **Science and Development Fund**. Expenses made by this fund cannot be accounted by the enterprise as deductible expense. The contribution to the fund already was accounted as deductible expense. If this fund doesn't use up at least seventy percent of the contributed funds within a period of five years or uses them for incorrect purposes, the enterprise must pay CIT calculated on that part of income which was taken to establish the fund.

Taxes that are deductible include the following:

i. Input VAT which cannot be credited against the VAT-liability.

ii. CIT paid on behalf of foreign contractors (FCWT).[4]

iii. Import and export duties.

PIT paid for the employees is not a deductible expense as it is paid on behalf of the employees and withheld on behalf of the governmental body. The amount of PIT paid is already included in the accounted costs of labor (gross salary) which are deductible.

Enterprises having **expenses** related to a loss **due to natural disaster, epidemic or** other event of **force majeure** for which compensation is not payable, such expenses

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[1] For further information about the handling of interest please also check chapter 4.2 about Other Income.

[2] The basic interest rate of Vietnam dong is 9% per annum applied from 01 December 2010 by Decision No. 2868/QD-NHNN.

[3] Circular 78/2014/TT-BTC, Article 6, No. 2.18; Example: The charter capital payable in year 1 of an enterprise is 10 million USD, the loan capital is 15 million USD. However, only 8 million USD of charter capital were actually contributed during the first year. Based on these facts the Vietnamese tax authorities would assume the enterprise to have used 2 million USD of loan capital in order to finance the shortage of the charter capital. Therefore only the interest relating to 13 of the 15 million USD would be deductible.

[4] Circular 78/2014/TT-BTC, Article 6, No. 2.37.

shall be deductible. In order to deduct these expenses the enterprise itself must specify the total value of loss by an inventory.[1]

Losses resulting from **changes in exchange rates** are deductible at the time they are recognized.[2] In case losses resulting from changes in exchange rates which are not directly related to the main business activities, these are considered to be financial expense and deductible. Exchange rate losses from re-assessing of monetary items at the end of the tax period are not deductible (except for losses caused by the re-assessment of debts).[3]

Charitable contributions are not deductible except for the contributions mentioned in the following: Donations for educational purposes are deductible if paid to public or private schools, as scholarship for students or for funding competitions in school subjects or establishing educational funds. Donations for medical health care, remedying consequences of natural disaster and funding for charitable housing are also deductible if fulfilling the conditions stipulated by law and accompanied by source vouchers. Donations for scientific research, remedy of the consequence of a natural calamity, construction of charity houses or houses for the poor are deductible if paid to appropriate beneficiaries.[4]

Organizational expenses like expenses for the establishment of an enterprise, training expenses and advertising expenses incurred before establishing the enterprise cannot be accounted as intangible assets. Therefore, no amortization of intangible assets is applicable. However, they may be amortized as business expenses over a maximum period of three years upon the establishment of business.[5]

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[1] Circular 78/2014/TT-BTC, Article 6, No. 2.1 amended by Circular 96/2015/TT-BTC.

[2] Circular 78/2014/TT-BTC, Article 7, No. 9.

[3] Example 1: a trade receivable in USD 100 is caused in October (value in VND 2.1 million), at the end of the tax period the dollar has appreciated (new value of receivable 2 million VND). This loss is not deductible till actually arose.

Example 2: a debt in foreign currency is caused in October worth 3 million VND, at the end of the period the VND depreciated (new value of debt 3.2 million VND). A loss of 0.2 million VND is deductible, even if not actually arose.

[4] Circular 78/2014/TT-BTC, Article 6, No. 2.23-2.26. Donations not mentioned in this Articles are non-deductible.

[5] Circular 45/2013/TT-BTC, Article 3, No. 3.

5 Other Taxable Income

5.1 General Information

The term 'other taxable income' (also known as 'irregular income') comprises all types of income derived by business entities not being income from activities of production and business in goods and services. Article 3 of the Vietnamese law on CIT as well as the guidelines on CIT published by the MOF literally comprise various types of other income. The subsequent chapters will name these different types of irregular income and provide further information about how the respective income is calculated for CIT purposes. All types of other income mentioned in the following chapters are subject to the common CIT-rate of currently 20% (compare section 8.1).

5.2 Types of Other Taxable Income

5.2.1 Income from Capital Assignment

Income from capital assignment is defined as income receivable from a transfer of ownership. The time calculating taxable income is fixed as **the time when the ownership is transferred**.[1] The assessable income from capital assignments is determined as follows:

Price of the assignment – purchase price of assigned capital – assignment expenses

The **price of assignment** is the actual total value receivable by the assignor as stipulated in the assignment contract. If the assignment is not paid by money but in the form of assets or other material benefits, the price of assignment is fixed as the market purchasing price of the received assets/materials. [2] If the enterprise conducts its cost accounting in foreign currency and the purchasing price is paid in foreign currency too, then the price of assignment may be fixed in foreign currency. If the cost accounting is in VND but the price of assignment is paid in foreign currency, then the purchasing price of the assignment needs to be converted into VND.

1 Circular 78/2014/TT-BTC, Article 14, No. 1.

2 If the assignment contract provides payments in installments, interest payable on such installments shall not be included in the assessable income of capital assignment. If the assignment contract doesn't stipulate any purchasing price or the stipulated purchasing price appears to be inconsistent with the market value of such assignment, then the tax authorities have the right to fix the purchasing price (Circular 78/2014/TT-BTC, Article 14, No. 2(a)).

Converting the purchasing price the exchange rate as published by the Commercial Bank of Vietnam where the tax payer opened bank account.

The **purchasing price** of the assignment shall be the value of portion of capital contribution based on the books of account. If the assigned capital also resulted from acquisition before, the prime cost of acquisition is fixed as purchasing price.

All actual costs directly related to the assignment of capital and accompanied by valid source documents and invoices are considered to be deductible **assignment expenses**.[1] Assignment expenses comprise expenses in order to conduct the legal procedures of assignment, fees and charges related to the assignment, expenses for transacting, negotiating and signing the assignment contract and other reasonable expenses with proper evidence.

In case of capital assignments where the transfer company is a foreign entity, the assignee is responsible to determine, declare and withhold CIT on behalf of such a foreign organization.[2]

The **purchasing price** shall be the actual purchasing price announced by the Stock Exchange Centre at the time buying the securities. In case the company is not registered at a Stock Exchange Centre, the purchasing price shall be the price recorded in the transfer contract. In case the company purchases the securities at an auction, the purchasing price shall be the winning bid price announced by the auctioneer.

All **expenses** directly related to the transfer, having valid invoices and source vouchers are deductible. Expenses directly related to the transfer comprise expenses for legal procedures, fees and charges related to the transfer, fees for depositing securities, fees for entrusting the securities, expenses for transacting, negotiating and signing the transfer contract and other expenses with proper evidence.[3]

5.2.2 Income from Real Property Transfer

Income from real property transfer comprises income from the transfer of land use/lease rights, income from transfer of houses or construction works regardless of

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[1] Expenses arisen overseas must be notarized by an authorized body of the foreign country and translated into Vietnamese (Circular 78/2014/TT-BTC, Article 14, No. 2(a)).

[2] If the assignee also is a foreign organization, then the enterprise established according to the Vietnamese law where such foreign organization invests capital is responsible to determine, declare and withhold CIT (Circular 78/2014/TT-BTC, Article 14, No. 2(c)).

[3] Circular 78/2014/TT-BTC, Article 15, No.2.

whether the underlying land use/lease right is transferred, income from the transfer of assets attached to the transferred land, houses or construction works and income from the transfer of right to use a residential house.[1] The assessable income from real property transfers is defined to equal the taxable income less the carried forward losses from real property activities of previous years. Whereas the taxable income is defined as follows:

Taxable income = turnover receivable – prime cost of real property transferred – transfer expenses

The **turnover receivable** from real property transfers equals the actual price of the transfer including any fees and extra charges under the contract in compliance with the law.[2] The point of time to calculate the tax assessable turnover is the time when the seller delivers the real property to the purchaser, irrespective of the registering of ownership.[3]

For the **prime cost** of real property there is no explicit definition under the Vietnamese legislation. However, the prime cost actually arisen when once obtaining the real property and provable by valid documents may be deducted.[4]

Deductible **transfer expenses** must correspond with the turnover receivable. Transfer expenses comprise:[5]

i. Costs being compensation for loss and damage to land;

ii. Cost being compensation for loss of crops;

iii. Costs being compensation and assistance for resettlement;

iv. Costs being fees and charges for relating to the issuance of land use rights;

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1 Circular 78/2014/TT-BTC, Article 16, No.2.

2 If the price of a land transferred is below the land price stipulated by the provincial people's committee as at the date of signing the contract, then the price stipulated by the provincial people's committee shall apply (Circular 78/2014/TT-BTC, Article 17, No.1 (a1)).

3 Circular 78/2014/TT-BTC, Article 17, No.1 (a2) additionally defines the assessable turnover of real property transfers for a number of specific situations, comprising situations of sub-leasing, situations of enterprises being entitled to CIT incentives selling the property or situations of credit institutions selling the property.

4 Further explanations how to assess the prime cost of land received: from another entity, from the State, as capital contribution, in exchange for a building, from an auction, as an inheritance are given in Circular 78/2014/TT-BTC, Article 17, No.1 (b2).

5 Circular 78/2014/TT-BTC, Article 17, No. 1 (b2).

v. Costs for land improvement;

vi. Costs being expenses on construction of infrastructure;[1]

vii. Other expenses directly related to the assignment of the real property.

Appearing negative amounts (losses) of taxable income from real property transfers can be offset against profits from other business activities in the same tax year.[2] If there remain losses after the offsetting, losses may be carried forward to taxable income from real property transfer for a maximum period of 5 consecutive years as from the year following the year in which the loss arose. In contrast, profit of real property transfers cannot be offset against losses from any other type of income except case liquidation of real estate considered as fixed assets incurred during dissolution process.

If a real estate project is partially completed and gradually transferred during the completion progress, then expenses shall be divided by the total square meter of the land and allocated to the land area assigned by multiplying with the square meter of the transferred land.

5.2.3 Income from Ownership of or Rights to use Assets

Income from ownership or rights to use assets comprises income from all forms of copyright paid for ownership of or right to use assets; income from intellectual property rights; and income from technology transfer.[3]

Income from ownership or rights to use assets equals the total income receivable less prime cost or expenses for creating, less expenses for maintaining, upgrading and developing and other deductible expenses.

5.2.4 Income from Transfer or Lease out of Assets

Income from the transfer of assets (except for the transfer of real property) comprises monetary or non-monetary receivables from assignment or liquidation of assets. The assessable income from the transfer of assets is fixed as the amount receivable deducted by the residual value of the underlying asset at the time the

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1 Infrastructure comprises roads, power, water supply and water discharge systems, posts and telecommunication and others (Circular 78/2014/TT-BTC, Article 17, No. 1 (b2)).

2 Circular 78/2014/TT-BTC, Article 4, No. 2 (amended by Cir 96/2015/TT-BTC, Article 2) & Article 17, No. 3.

3 Circular 78/2014/TT-BTC, Article 7, No. 4.

transfer/liquidation arises. Whereas the time of liquidation is determined by the transfer of ownership.[1]

Income from leasing out of assets equals the turnover receivable from leasing activities less expenses of depreciating, maintaining, repairing, and preserving the assets, less other deductible expenses (if any).[2]

5.2.5 Income from Exchange Rate Differences

According to the Vietnamese guidelines on taxation income from exchange rate differences arises in a period or when reassessing foreign currency debts at the end of the year.[3] However when such differences appear and they are directly related to revenue and expenses of the main business of the company, they shall be included in the income/expense of such activity. Income from exchange rate differences not related to the main business of the company shall be accounted as other taxable income. Negative income from exchange rate differences not related to the main business of the company shall be included in the deductible expenses of the main business as illustrated in chapter 4.3.7.[4]

Exchange rate gains arising from the reassessment of foreign currency debts shall be set off against losses from the reassessment of foreign currency debts. The residual profit shall be accounted as other income.[5]

5.2.6 Income earned from Production and Business Abroad

Income derived abroad by a Vietnamese company is classified as other taxable income and therefore subject to the Vietnamese CIT. Incentive rates applicable to the Vietnamese sourced income of such an enterprise cannot be applied to the foreign sourced income of that enterprise. Income from investments abroad shall be declared in the CIT-finalization of the year when the profit remittance is conducted. Losses of foreign sourced income cannot be offset against Vietnam-soured income. [6]

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1 Circular 78/2014/TT-BTC, Article 7, No. 6.

2 Circular 78/2014/TT-BTC, Article 7, No. 5.

3 Gains from the reassessing of cash, money in the course of remittance and foreign currency debts recoverable cannot be accounted as income for CIT purposes (Circular 78/2012/TT-BTC, Article 7, No. 9).

4 Circular 78/2014/TT-BTC, Article 7, No. 9, 1st bullet point, last sentence.

5 Circular 78/2014/TT-BTC, Article 7, No. 9.

6 Circular 78/2014/TT-BTC, Article 3, No. 1 amended by Circular 96/2015/TT-BTC.

Foreign paid taxes generally can be credited against the Vietnamese tax payable. For further information check chapter 8.

5.2.7 Further Types of Other Taxable Income

In addition to the types of other taxable income as described in the previous chapters, the Vietnamese tax legislations mentions to be other income: [1]

i. Income from the transfer of a project or implement a project.

ii. Income from the right to explore, mine or process minerals.

iii. Income from interest.[2]

iv. Income from the sale of foreign currency.[3]

v. Income from bad debts which were written off and now are repaid.

vi. Income from accounts payable for which the creditor can't be identified.

vii. Newly discovered income omitted in previous years.

viii. Income from fines and compensations payable by another contracting party.

ix. Income being gifts or donations in cash or kind.

x. Income from the revaluation of assets except the income which results from the revaluation of assets for capital contribution and transfer after the enterprise is separated/ incorporated/ merged/ transformed under the plan to equitize, restructure and renew entirely state-owned enterprises.[4]

xi. Income from sales of waste materials.[5]

xii. Other items defined as income by law.

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1 Circular 78/2014/TT-BTC, Article 7.

2 If there is a positive balance when deducting the interest paid from the interest received, then such balance shall be accounted as other taxable income. If the before mentioned balance is negative, then it shall be included in the deductible expenses as mentioned in chapter 3.3.6 (Circular 78/2014/TT-BTC, Article 7, No. 7.)

3 Such income shall equal the total receipts from such a sale less the purchasing price of the quantity sold (Circular 78/2014/TT-BTC, Article 7, No. 8.)

4 Income from revaluation of assets is defined as the difference between the re-valued value and the residual book value of the underlying asset. Revaluation of assets may appear in terms of divisions, de-merger, merger, consolidation or conversion of business (Circular 78/2014/TT-BTC, Article 7, No. 14 amended by Circular 151/2014/TT-BTC).

5 Costs for collection and costs of sales can be deducted from such income (Circular 78/2014/TT-BTC, Article 7, No. 19).

6 Tax Exempt Income

The following types of income are considered by the Vietnamese legislations on CIT to be tax-exempt:[1]

i. Income earned from cultivation, husbandry, agricultural and aquaculture processing, salt production.[2]

ii. Income earned from fishing activities.

iii. Income earned from technical services directly serving agricultural production.

iv. Income earned from: performance of contracts for scientific research and technological development, sale of products during their test production, products made from new technology applied in Vietnam for the first time.[3]

v. Income earned from activities of business and production by enterprises having an average number of 30% or more employees being disabled, reformed drug addicts or infected with HIV.[4]

vi. Income earned from occupational training for ethnic minorities, disabled people, children living in particularly difficult conditions and reformed offenders.

vii. Income distributed from activities being capital contribution, purchase of shareholding, joint venture or co-operation, distributed by a domestic

[1] Law on CIT (2013), Article 4 amended by Law No. 71/2014/QH13. Please note that in this part, we only list the remarkable exemption.

[2] Only if earned by organizations established pursuant to the Law on Co-operatives or by the companies located in geographical areas with special difficult socio-economic conditions.

[3] In such cases the tax exemption shall not exceed three years from the date of commencement of having turnover from performing the contract for science research and applying new technology and five years from the date of commencement of having turnover form selling products made from applying new technology. In order to be tax exempt, scientific research must be registered and certificated by the State body in case of income from contracts of scientific research. In case of income generated by the sale of new products, these products must be certificated by the State administrative body to be applied in Vietnam for the first time (Circular 78/2014/TT-BTC, Article 8, No. 3 amended by Circular 151/2014/TT-BTC).

[4] Exempt income does only include income from business and production, irregular income earned by such an enterprise is taxable. The tax exemption does not apply to enterprises operating in the sectors of finance or real estate business. Enterprises having a total number of less than 20 employees are not entitled to this tax exemption either. In order to be entitled to this tax exemption enterprises must have certification from the medical health authority and drug reform center about the number of disabled, HIV-infected and reformed drug addicted employees (Circular 78/2014/TT-BTC, Article 8, No. 4).

company after paying tax in accordance with the law on CIT on that income (**dividends**).[1]

viii. Aid funds receivable for use for educational, scientific research, cultural, artistic, charitable, humanitarian and other social activities in Vietnam.

ix. Income from transfer of certified emission reductions (CERS) of enterprises issued with certificates of emission reduction.

x. Income from the transfer of technology if prior technology transferred to organizations/individuals in areas with special socio-economic conditions.

7 Losses carried forward

Losses are negative amounts of taxable income.[2] Enterprises which suffer losses are entitled by Article 16 of the Vietnamese law on CIT to carry forward these losses to the following year in order to deduct it from the assessable income arising in the subsequent year. The carrying forward of a loss is continuous and limited to a maximum period of five consecutive years, counting from the year following the year the losses arise. There is no limitation on the amount of loss carried forward.[3]

Losses incurred prior to a company separation or division are also allowed to be carried forward with a respective equity ratio for the successor companies.[4]

Losses arising from activities being real property transfer, transfer of an investment project (except for mineral exploration and mineral extraction projects) shall be accepted to be offset against the profit in the same tax period. If there remain losses

1 Tax incentives to which the distributing entity is entitled don't affect the tax exemption of the distributed dividends. Example: Company A generates an income of 100 billion VND. As it is entitled to us a preferential tax rate of 10% the distributable profit is 90 billion VND. Company B which is the recipient of this distribution is allowed to fully exempt this 90 billion VND from CIT according to Circular 78/2014/TT-BTC, Article 8, No. 6.
Dividends received from a foreign entity are not covered by this tax exemption and will be included in the taxable income of the Vietnamese company receiving such dividends. However, 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 Circular 78/2014/TT-BTC, Article 9.

3 Example 1: Enterprise A suffers a loss of VND 10 billion in 2013. In 2014 it has a taxable income of VND 12 billion. The loss can completely be carried forward to 2014 and offset against the taxable income of that year.
Example 2: Enterprise B suffers a loss of VND 20 billion in 2013. In 2014, it has a taxable income of VND 15 billion. The loss can partially be carried forward to 2014 and offset against the taxable income of that year.
The remaining loss of VND 5 billion can be carried forward up to 2018.

4 Circular 78/2014/TT-BTC, Article 9 amended by Circular 96/2015/TT-BTC.

after the offsetting, losses can be carried forward to the assessable income from such activities for a maximum period of five years.[1]

8 Tax Rate and Tax Incentives

8.1 Standard Tax Rate

The current standard CIT-rate is 20% applied from 01 January 2016 (The previous rate was 22%).[2]

For activities of prospecting, exploring and mining petroleum, gas or other rare and precious natural resources in Vietnam a special CIT-rate between 32% and 50% applies, depending on each specific project/business establishment.

8.2 Tax Incentives

Vietnam is very reluctant granting direct subsidies to corporations or individuals. It rather offers various tax benefits to corporations or individuals operating in specific economic fields or geographic areas in order to take influence on the economic development of those areas/fields.

8.2.1 Decision on CIT incentives

A foreign invested company will have received an Investment Registration Certificate (**IRC**). In the application for the IRC the investor must indicate (besides other contents) the requested tax incentives[3]. If granted they will be listed in the IRC.[4] In case no IRC is issued (for example if the project does not have a foreign investor) the tax incentives will be granted in other form.[5]

These tax benefits being granted for improving investment conditions are not to be mixed with the decision of tax authority on tax exemption or tax reduction in cases where the tax-payer has suffered from material damage caused, or where production or business is directly affected, by natural disasters, fires or accidents.

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1 Law on CIT, Article 7 No. 3 & Article 16, No. 2.

2 The past CIT rates were: until 31.12.2008: 28%; until 31.12.2013: 25%.

3 Law on Investment, Article 33, No. 1 (c).

4 Law on Investment, Article 17, No. 1 and Article 39, No. 9.

5 Law on Investment. Article 17, No. 2.

8.2.2 Conditions for the Application of CIT incentives

Any enterprise aiming to apply one of the tax incentives illustrated in this chapter must implement the Vietnamese Accounting System (**VAS**) and declare and pay taxes in accordance with its declarations[1].

If the enterprise conducts a number of different business activities, it must conduct separate accounting for that part of income entitled for tax incentives as tax incentives can only be applied on the amount of corporate income fulfilling the respective conditions.[2]

If an enterprise that is entitled to a certain tax incentives for a definite period fails to satisfy the respective conditions at any year during the tax incentive period, then it shall not be entitled for such incentives for that year and must pay tax at the standard rate.[3]

Losses appearing from business activities entitled to tax incentives can be offset against profits from activities of business and production or other income, excluding income from real property transfers, transfers of a project, income from a transfer of a right to implement a project or to exploit or process minerals.[4]

Enterprises must self-determine whether they are fulfilling the conditions for a granted tax incentive or not. However, when conducting a check and assessing the enterprise to fail the conditions for the respective tax incentive, the tax office is authorized to impose penalties because of administrative offence in relation to taxation.[5]

8.2.3 Preferential Tax Rates

The Vietnamese law on CIT offers the following preferential tax rates:

a) A CIT-rate of 10% is applied to a period of 15 years to:

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1 Circular 78/2014/TT_BTC, Article 18, No. 1.

2 If it fails to do so, the part of income entitled for tax incentives will be fixed as equal to total assessable income (excluding other income) multiplied with the percentage of revenue or expenses of the business entitled to tax incentives (Circular 78/2014/TT-BTC, Article 18, No. 2).

3 Circular 78/2014/TT-BTC, Article 18, No. 8.

4 Example: In 2014 Enterprise A incurred a loss of 1 billion VND from computer software production (entitled to tax incentives) but earned profit of 2 billion VND from trading activities (no incentives). The enterprise is permitted to offset the loss. The total taxable income is 1 billion VND. The applicable tax rate is the common tax rate (22%).

5 Circular 78/2014/TT-BTC, Article 22.

- income of enterprises from implementation of new investment projects[1] in geographical areas[2] with special socio-economic conditions, in economic zones and high-tech zones;
- income from implementation new investment projects for scientific research and technological development, high-tech projects, computer software productions, infrastructure, renewable energies or other environmental projects;
- the new investment project in production having either an investment capital of more than 6,000 billion VND plus a revenue exceeding 10,000 billion VND disbursed within the first 3 years of investment or an investment capital of more than 6 billion VND disbursed within 3 years and employing more than 3,000 people;
- high-tech enterprise and agricultural enterprises applying high-tech technologies;
- income of enterprises from implementing investment projects manufacturing products in the List of products of supporting industries prioritized for development either products of high technology supporting industries or products of supporting industries for manufacturing of textiles – garment, leather – footwear, electronics – information technology, automobile assembly, mechanical fabrication[3];
- income from implementing investment projects in the manufacturing sector[4] with the minimum investment capital of 12,000 billion VND disbursed within

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[1] 'New investment projects' are those must be granted with the first investment certificate from 1st January 2014 and generate revenue since the issuance date of the investment certificate (including those have been granted with investment certificate before 1st January 2014 but still in investment progress and have not operated, have not generated revenue, are granted with amended investment certificates from 1st January 2014; except for investment projects as a result of merger, division, de-merger, consolidation, conversion of ownership, etc. (Circular 178/2014/TT-BTC, Article 18, No. 5). Enterprises having investment projects from the result of merger, consolidation, etc., shall be entitled to inherit the CIT incentives of the former company/ investment projects for the residual period if they continue fulfilling the respective conditions (Circular 78/2014/TT-BTC, Article 18, No. 6 (a)).

[2] A list of those geographical areas can be found in the appendix of Decree 218/2013/ND-CP.

[3] Only mechanical fabrication which could not be domestically produced up to 01 January 2015 or domestically manufactured but meeting the technical standards of European Union or equivalent.

[4] Except for manufacture of lines of goods subject to special consumption tax and mineral exploitation projects.

5 years[1] and using technology evaluated in accordance with the Law on High-Tech and/or Law on Science and Technology.

b) A timely unlimited CIT-rate of 10% applies to that part of the income being activities engaged in:

- social education, social health, culture, sports, the environment;
- social housing;
- planting, caring for and protecting forestry;
- agricultural, aquaculture cultivation and processing in geographical areas with difficult socio-economic conditions;
- cultivation of forestry products in geographical areas with difficult socio-economic conditions;
- producing, multiplying and hybridizing crop seeds and livestock breeds;
- preservation of post-harvest agricultural products and preservation of agricultural, aquaculture and food products and;
- and that part of the income earned from publication activities in accordance with the law on publication.

c) A CIT-rate of 17% (previous was 20%) for the period of 10 years applies to new investment projects in geographical areas with difficult socio-economic conditions; income from implementation of new investment projects in of high-grade steel, energy-saving products or agricultural machinery.

d) A timely unlimited CIT-rate of 17% (previous was 20%) applies to people's credit funds and microfinance institutions.

e) A timely unlimited CIT-rate of 15% applies to income from cultivation, husbandry and processing in agricultural and aquaculture sectors not located in geographical areas with difficult or especially difficult socio-economic conditions.

The duration of the above mentioned preferential tax rates shall be calculated consecutively from the first year in which the enterprise generates turnover from the entitled activity. The duration of applicability of preferential tax rates may be extended for large scale and high-tech project, however, the duration of such extension shall not exceed 15 years.

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[1] From the date of investment licensing.

8.2.4 Example of Tax Incentive

A newly established company producing in an Export Processing Zone (EPZ) is entitled to the CIT rate of 10% for 15 years, for income arising from implementing this new investment project[1].

Additionally, a full CIT tax exemption for a 4-year period and a 50% reduction of the payable CIT for a period of 9 subsequent years are applied consecutively from the first year in which the company generates taxable income (profit) from the activity entitled to the respective tax incentive2.

<u>Example</u>: Assuming in the year 1 the project does not have any revenue and in the years 2 and 3 the project does not have taxable profit; the taxation develops like this:

<u>Location in EPZ having a general tax rate of 20% CIT.</u>

Here the <u>incentive tax rate of 10%</u> is applied for 15 years (beginning with the first year in which the FIC is having revenue from this production).

year 1	tax rate 20%, but no CIT payable
year 2 and 3	tax rate 10%, but no CIT payable
year 4 to 7	tax rate 10%, profit fully exempted, no CIT payable
year 8 to 16	tax rate 10%, resulting payable CIT reduced by 50%
year 17 and following	tax rate 20% (the normal tax rate applicable at that time).

8.2.5 Other Incentives

Enterprises mentioned in clause a) of the previous chapter and enterprise investing in socialization activities in the sectors of education and training, vocational training, medical health, culture, sports and environment are also entitled to a tax exemption for a four-year period and a 50% reduction of the amount of CIT payable for a period of nine subsequent years.

[1] Law on CIT, Article 13, No. 1 (a): "*the CIT rate of 10% will be applied within 15 years for incomes of enterprises form implementing new investment projects in geographical areas with especially difficult socio-economic conditions, in* ***economic zones****, in hi-tech zones.*"

[2] Law on CIT, Article 14, No. 1.

Enterprises mentioned in clause c) of the previous chapter and enterprises having income from new projects in industrial zones[1] are also entitled to a tax exemption for a two-year period and a 50% reduction of tax payable for a period of four subsequent years[2] starting in the first year in which there is taxable income.

New investment projects in the socialization sector operating in areas other than those with difficult socio-economic conditions are exempt from CIT for a period of four years and entitled to a 50% reduction of the amount of CIT payable for a period of five subsequent years. Newly established enterprises with investment projects in areas with difficult socio-economic conditions are exempt from CIT for a period of two years and entitled to 50% reduction of the amount of CIT payable for a period of four subsequent years.[3]

The duration of the abovementioned tax incentives is calculated consecutively from the first year in which the enterprise generates taxable income from the activity entitled to the respective tax incentive.[4]

9 Creditability of foreign paid taxes

As already mentioned in chapter 4, income derived abroad by a Vietnamese company is classified as other taxable income and therefore subject to the Vietnamese CIT. However, such income may be subject to CIT in the country of source too. As a result any income derived by a Vietnamese company abroad would be taxed twice, once in the foreign country and once in Vietnam. Generally, there are two ways to avoid such double taxation: unilateral and bilateral reliefs. While unilateral methods regulate the deductibility of foreign paid taxes in general, bilateral methods regulate the deductibility of foreign paid taxes between the two countries. Bilateral regulations take precedence over unilateral regulations. The most common bilateral regulations are Double Taxation Agreements (**DTA**).

9.1 Unilateral Relief

According to Article 11 of the Vietnamese Law on CIT, taxes paid outside of Vietnam will be deducted from the amount of corporate tax payable in Vietnam. However,

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1 Except industrial zones located in geographical areas with favorable socio-economic conditions.

2 Law on CIT, Article 14, No. 2.

3 Decree 218/2013/NĐ-CP, Article 16 No 1, 2 and 3.

4 Example: If a company starts to generate turnover from an activity entitled to tax incentives in 2014 but firstly generates taxable income in 2017, then the period of its tax incentive shall start in 2017.

such a deduction is limited to the amount of tax payable to such income pursuant to the Vietnamese law. In conclusion, a foreign tax credit is allowed. Profits generated abroad increase the taxable income in Vietnam. However, when calculating the amount of tax payable on that income, the taxes paid abroad can be credited against the Vietnamese tax payable. Losses appearing abroad are not deductible from the taxable income in Vietnam.[1]

In order to illustrate the above mentioned, examples shall be given in the following. Generally, a distinction needs to be made between investing abroad using a separate legal entity and investing abroad using a permanent establishment (≠ separate legal entity).

<u>Example 1:</u> A Vietnamese company generates a foreign-sourced income of 1 billion VND using a permanent establishment in a foreign country in 2016 (Vietnamese tax rate 20%). The foreign tax rate is 15%. This income is taxable in Vietnam. But as the taxes paid in the foreign country are creditable against the Vietnamese tax payable, the amount of tax payable in Vietnam is 50 million VND (200 million VND tax payable in Vietnam – 150 million VND paid in the foreign country).

<u>Example 2:</u> A Vietnamese company generates a foreign-sourced income of 1 billion VND using a permanent establishment in a foreign country in 2016 (Vietnamese tax rate 20%). The foreign tax rate is 30%. The amount of tax payable in Vietnam is zero, as the creditable amount of CIT paid in the foreign country is limited to the amount of CIT payable pursuant to the Vietnamese law.

In case of using a separate legal entity for investing abroad, firstly, there is no appearance of double taxation. The legal entity constituted abroad only is liable to the CIT of the foreign country. The Vietnamese enterprise holding this separate legal entity is not generating any profits from production and business abroad. However, when profits of the foreign company are distributed to the Vietnamese holding (e. g. by the payment of dividends), the Vietnamese enterprise generates income in the foreign country. This foreign sourced income may be taxed in both countries.

<u>Example 3:</u> A Vietnamese company generates 100 million VND income from dividends in a foreign country in 2016. The foreign country may withhold a tax on capital gains on this dividend payment. Receiving the remaining net-dividend will lead

[1] Circular 78/2014/TT-BTC, Article 7, No. 22.

to taxable income in Vietnam (Vietnamese tax rate 20%). However, foreign tax paid on the part of income out of which the dividend is paid (including taxes payable on shareholding)[1] will be deductible against the CIT payable in Vietnam, up to the Vietnamese tax payable on that income (maximum deduction 20 million VND).[2]

Example 4: A Vietnamese company generates 100 million VND income from interest in a foreign country in 2016 (Vietnamese tax rate 20%). The foreign withholding tax rate on that interest is 18%. The tax payable on that income in Vietnam is 2 million VND (20 million VND tax payable in Vietnam – 18 million VND paid in the foreign country).

The above shown methods of unilateral tax crediting are only applicable if the country in which such income is generated is not the contractor of a DTA with Vietnam. An existing DTA prevails.[3]

9.2 Double Taxation Agreements

Currently there are more than 76 DTA's signed by Vietnam, in which 70 in-force. Please see **Appendix 2:** DTAs signed by **Vietnam**

Commonly these DTA's Vietnam offer the **principle of ordinary credit** in order to avoid the double taxation of income derived outside Vietnam. Depending on DTA signed with each country, Vietnam may apply one or a combination of 3 following methods for elimination of double taxation:

- tax deduction method[4],
- deduction method of deemed tax[5],
- deduction method of indirect tax[6].

[1] Circular 78/2014/TT-BTC, Article 7, No. 22.

[2] In order to deduct taxes paid abroad, the enterprise must provide several official documents, including the decision of the enterprise about the distribution of profits from offshore; the financial statements of the enterprise certified by an independent auditor; the declaration of tax on income of the offshore enterprise; the minutes of tax finalization conducted by the enterprise (if any); the certification or proof of the amount of tax already paid in the foreign country (Circular 78/2014/TT-BTC, Article 7, No. 22).

[3] Circular 78/2014/TT-BTC, Article 7, No. 2.

[4] Circular 205/2013/TT-BTC, Article 48.

[5] Circular 205/2013/TT-BTC, Article 49.

[6] Circular 205/2013/TT-BTC, Article 50.

Using this principle, taxes paid abroad can be deducted from the domestic tax payable, but the amount of deduction is restricted to that part of the tax which is appropriate to the income that may be taxed in the other state. This principle just reflects the same way of avoiding double taxation as the unilateral relief stipulated in the Vietnamese law on CIT. Additionally, DTA regularly restrict the percentage of tax on dividends, interest and royalties withheld by the country in which is the source of such income. Often, the DTA limits the tax withhold on dividends in the country of source to be 15%, 10% or 5% depending on the percentage of shares owned by the company receiving the dividends. The percentage of tax withhold on the payment of interest regularly is limited to 10%. The percentage of tax withhold on the payment of royalties usually is restricted to an amount of 15% (uncommon), 10% or 5%. To illustrate the above mentioned, examples based on the Vietnamese DTA arranged with Germany and Singapore will be given below.

DTA Agreement	Germany	Singapore
Dividends	Maximum withholding: - 5% if recipient is a corporation owning at least 70% of the capital - 10% if recipient is a corporation owning at least 25% of the capital - 15% in all other cases	Maximum withholding: - 5% if recipient is a corporation owning at least 50% or more than 10 million USD of the capital - 7% if recipient is a corporation owning at least 25% of the capital - 12.5% in all other cases
Interest	Maximum withholding: - 10% if recipient is the beneficial owner	Maximum withholding: - 10% if recipient is the beneficial owner
Royalties	Maximum withholding: - 10% if recipient is the beneficial owner	Maximum withholding: - 5% in respect of patents, models, plans, […] and the recipient is the beneficial owner - 15% in all other cases where the recipient is the beneficial owner

Table 2: Maximum withholding taxes on dividends, interest and royalties according to the Vietnamese DTA with Germany and Singapore

Example 1: A Vietnamese company generates a foreign-sourced income of 1 billion VND caused by a permanent establishment in Singapore in 2016 (Vietnamese tax rate 20%). The Singaporean CIT rate currently is 17%.[1] The amount of tax payable on that income in Vietnam is 30 million VND, as the amount of CIT paid in Singapore is creditable against the Vietnamese CIT liability of 200 million VND pursuant to the Vietnamese – Singaporean DTA.

1 Bloomberg L. P., Worldwide Tax Table, October 2013.

Example 2: A Vietnamese company generates 1 billion VND income from dividends in Germany in 2016. Receiving this dividend, the Vietnamese company will constitute tax liability in Germany. According to the German law on CIT the taxable income will be 25% of the gross-dividend.[1]. The legal entity paying the dividend is due to withhold this tax. As the withheld tax does exceed the restrictions of the underlying DTA with Germany, the DTA will affect this situation. Art. 10 DTA Germany – Vietnam limits taxation of dividends to 5% if the receiving Vietnamese company holds at least 70% of the paying German company. If the ownership is at least 25% the limitation is 10%. In all other cases the limitation is 15%. Receiving the dividend furthermore is taxable in Vietnam (Vietnamese tax rate 20%). However, foreign tax which is paid on the part of income out of which the dividend is paid off will also be deductible against the CIT payable in Vietnam, up to the Vietnamese tax payable on that income.

Example 3: A Vietnamese company generates 1 billion VND income from interest in Singapore in 2016 (Vietnamese tax rate 20%). The Singaporean withholding tax rate on interest paid to non-residents is 15%.[2] However, as the underlying DTA restricts the percentage of tax withheld on payments of interest not to exceed 10%, the paying entity will only withhold 10%. The withheld tax can be credited against the Vietnamese tax payable. The remaining tax payable in Vietnam therefore is 100 million VND (200 million VND tax payable in Vietnam – 100 million VND paid in Singapore).

10 Tax administration

10.1 Tax Registration[3]

In the normal cases of setting up a company, no tax registration is required because the Enterprise Code stated in the Enterprise Registration Certificate has the function of the tax code.

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1 § 8b, paragraph 1 of the German Law on CIT (KStG); §43a EStG.

2 Bloomberg L. P., Worldwide Tax Table, October 2013.

3 Tax-payers are due to conduct tax registration within a time-limit of ten business days from the date on which a business registration certificate, investment certificate or license for establishment is issued. However, from 1st July 2015 when the Law on Enterprise 2014 and the Law on Investment 2014 took effect, the Enterprise Code stated in the Enterprise Registration Certificate is the same with the Tax Code. This means tax registration is only applied on tax-payers which are not common companies licensed by

Special cases still require a registration. This refers esp. to Rep. Offices, Law Firms, Foreign Contractors if they chose to be registered.

10.2 Tax submission

Enterprises are required to estimate for CIT payment quarterly and declare tax finalization for the tax year.[1]

The total temporally payment during quarter should be exceed 80% of the annual CIT obligation declared in the finalization report. Any under payment in compare with 80% CIT payable annually shall be calculate for penalty as late payment with 0.03% per day from the latest quarterly payment deadline – 30 days after Quarter IV ended[2].

The deadline to submit the CIT finalization declaration and make the outstanding payment is the 90th day of the year following the tax year in which tax obligation arose.[3-4]

For income from real estate transfer and other taxable income stated at Chapter 5, it is required to declare and pay upon a tax obligation arising within 10 days from the day on which the tax obligation arises.

In case, an enterprise fails to submit the tax declaration file before the deadline, the tax payable for the period will be fixed by the governmental body.[5]

Taxes need to be paid in VND.

Department of Planning and Investment ("**DPI**") such as representative offices, foreign contractors, law companies, etc. The tax body will issue a tax registration certificate to the tax-payer within ten business days from the day of receipt.[3] Changes in items in a lodged tax registration file, must be notified to the tax body or DPI (in case DPI is the body issuing the license) by the tax payer within a time limit of ten business days too[3].

1 Decree 83/2013/NĐ-CP (amended by Decree 91/2014/ND-CP), Article 12.

2 The Company fiscal/tax year is from 01 Oct 2015 to 30 September 2016, total CIT finalization payable is VND100 million. Total estimated CIT for temporally payment for the year until 30 Oct 2016 is:
   (a) VND 80 million. Result: The outstanding VND 20 million shall be paid without penalty.
   (b) VND 70 million. Result: The outstanding VND 30 million shall be paid with a later penalty calculated on under payment of VND 10 million.

3 In case of natural calamities, fires or contingent accidents the time limit for submitting may be extended according to the Law on Tax Management (2012), Article 33.

4 Law on Tax Management (2012), Article 42. The date on which tax was paid is determined as the date on which the State Treasury, a commercial bank or another credit institution of the tax management body certifies a receipt for payment.

5 Law on Tax Management (2012), Article 36.

10.3 Tax Checks and Inspections

The Vietnamese tax authority will conduct checks and inspections in order to assess the observance of law or to collect or verify proof to identify any breach of the law. Information and data received from the taxpayer or other sources relating to the taxpayer will be used.

Tax checks will be conducted at the headquarters of the tax management body on a regular basis in order to assess the completeness and accuracy of information and source documents in tax files.[1] In some cases, the tax checks will be conducted at the head office of the tax payer.[2] When conducting a tax check at the head office of the tax payer, the tax management body will announce the decision on tax check to the taxpayer.[3] Afterwards it will conduct the tax check within five business days and provide a record about results of the tax check to the taxpayer within five business days from the expiration day of the time-limit for the tax check.

Enterprises with diversified lines of business and a wide scope of business will be subject **to tax inspections** regularly. Whenever the tax management body decides to inspect an enterprise it will send a decision about the inspection to the enterprise within three days and inspect the enterprise within 30 days from the date of such an announcement.[4] After inspecting it will provide a report of inspection to the tax payer.

10.4 Penalties and Fines

Taxpayers being late on any payment of tax are liable to pay the full amount of tax payable plus a fine of 0.03% (reduced since 1st July 2016) of the amount of tax payable for each day of **late payment**. Taxpayers conducting a false declaration resulting in a reduction of the amount payable but paying in full the amount of tax payable before the competent body detects the breach are regarded to be late with that amount of tax payable they firstly didn’t pay because of the false declaration.[5]

Taxpayers correctly reflecting economic activities but making false declarations resulting in a tax reduction have to pay in fully the shortfall as well as a fine of 20%

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1 Law on Tax Management (2012), Article 77.

2 Law on Tax Management (2012), Article 78.

3 The taxpayer has the right to refuse the tax check if there is no decision about such check (Law on Tax Management (2012), Article 79).

4 Law on Tax Management (2012), Article 83.

5 Law on Tax Management (2012), Article 106.

of the shortfall of tax or the excess amount of tax refund.[1] In respect of export or import goods, this violence shall be subject to a fine of 10% if the taxpayer itself discovers the mistake and make an amendment to the declaration within 60 days from the declaration date.

Any taxpayer committing acts of tax evasion or tax fraud has to pay in full the amount of tax payable pursuant to the regulations and will be fined with an amount of up to three times the amount of the tax evaded.[2]

The statute of limitation for applying penalties on breaches of the law in matters of tax procedures is two years from the date on which the breach was committed. The statute of limitation for applying penalties on breaches of the law in matters of tax evasion or tax fraud, late tax payment or declaration or incomplete tax obligation is five years from the date on which the breach was committed. The limited period for applying penalties applies to tax evasion or tax fraud serious enough to warrant prosecution for criminal liability is ten years from the date on which the crime is committed. Upon the expiration of a limited period for applying penalties on a breach of the law as mentioned before, the taxpayer is not penalized but must still pay the shortfall of tax as caused by the breach of law.[3]

11 Distribution of Profits

Vietnam does not operate an imputation system.

Once CIT is paid on the profits of a corporation, no further CIT is imposed on **dividends**[4]. This tax exemption is also applicable to dividends paid to <u>organizations</u> residing abroad.

The dividends paid to an <u>individual</u> are taxable under the regime of the Personal Income Tax (**PIT**). But these dividends are exempted from PIT, if the receiving individual is the sole owner of a LLC. If that person receives a salary from the LLC the cost for that salary are non-deductible cost for the LLC (if such person does not involve in business operation of the LLC) under regime of CIT but are taxable income of the individual under regime of PIT.

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1 Law on Tax Management (2012), Article 107.

2 Law on Tax Management (2012), Article 108.

3 Law on Tax Management (2012), Article 110.

4 Circular 78/2014/TT-BTC, Article 8, No. 6.

But **Interest and royalties** paid to foreign organizations will be subject to Foreign Contractor Withholding Tax (**FCWT**) in Vietnam. A withholding rate of 5% on CIT will be applied for interest payments. Payments for royalties will be subject to a 10% withholding tax on CIT. FCWT-VAT is not applied on interest and royalties. However, if the respective DTA stipulates to apply a lower withholding rate, the lower rate needs to be applied (e. g. 5% on royalties as stipulated in the Vietnamese – Singaporean DTA). Please refer to our Brochure on FCWT for further information.

Please note: Regulations of an underlying DTA are not automatically applied in Vietnam. The taxpayer must file in an application for tax reduction respective to the applicable DTA and must be responsible for the accuracy of the information contained therein.

Dividends which are paid to individual members of a multi member LLC, interest or royalties which are paid to a foreign individual are subject to a 5% withholding tax.[1]

However, the **receipt** of dividends, interest or royalties irrespective no matter whether it is received by an organization or an individual **may be taxed** in the country of residence **for a second time**, depending on the domestic legislation and the underlying DTA.[2]

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1 Law on PIT (2012), Article 27 and 30. Concerning royalties paid to a foreign individual there is a tax exempt amount of 10 million VND pursuant to each royalty contract.

2 In Case of German residents (individuals or organization) deriving income from dividends in Vietnam, taxation will be as follows:
- A German corporation (GmbH, AG) deriving an income from dividend of 100 will receive a net dividend of 95. A CIT of 5% will be withheld by the Vietnamese entity paying the dividend. This dividend income is exempt from CIT (KSt., GewSt. + Soli.) in Germany. However 5% of the gross-dividend will be treated as non-deductible expenses according to § 8b, paragraph 1 of the German law on CIT. Therefore the taxable income of the German entity will be increased by 5 and be taxed at 30%. As a result the total tax burden on the received dividend is 6.5 (5% tax in Vietnam plus 1.5% tax in Germany). Expenses related to this dividend income are not deductible, neither in Vietnam nor in Germany.
- A German non-incorporated firm (KG, OHG, Partnership, GbR) deriving an income from dividend of 100 will receive a net dividend of 95 (regardless whether the German firm is recognized as corporation or federation of individuals by the Vietnamese body). 60% of the gross dividend will be treated as taxable income from business operations and therefore be liable to the PIT-rate applicable to the partners of the non-incorporated firm. Taxes paid in Vietnam will be creditable. Assuming top income tax rate (47%) the total tax burden would be 28.2 (5 in Vietnam plus 28.2 in Germany but the 5 paid in Vietnam will be creditable against the German tax liability). However, 60% of the expenses related to this dividend income would be deductible when determining the income from business operations in Germany.
- A German private individual deriving an income from dividend of 100 will receive a net dividend of 95. The gross dividend will be treated as taxable income in Germany. The applicable tax on dividends is 25%. Taxes paid in Vietnam will be creditable on the German tax payable according to the respective DTA. Therefore the total tax burden will be 25% (5% in Vietnam plus 20% in Germany).

12 Disclaimer

All information provided is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future.

No one should act upon such information without appropriate professional advice after a thorough examination of the facts of the particular situation. Liability claims regarding damage caused by the use or disuse of any information provided, including any kind of information which is incomplete or incorrect, will therefore be rejected, if not generated deliberately or grossly negligent.

Appendix 1: The useful life of assets as published by the MOF

The following table is extracted from the appendix of Circular 45/2013/TT-BTC.

Item	Minimum Useful Life in years	Maximum Useful life in years
1. Dynamic Machinery and Equipment		
a) Dynamic generators	8	15
b) Electrical generators	7	20
c) Electrical transformers and power source equipment	7	15
d) Others	6	15
2. Working Machinery and Equipment		
a) Tool	7	15
b) Mining and construction machinery	5	15
c) Tractors	6	15
d) Machines used for agriculture and forestry	6	15
e) Oil, petrol and water pumps	6	15
f) Metallurgical equipment	7	15
g) Machinery for the manufacture of chemicals	6	15
h) Machinery for the manufacture of building materials, terracotta, glass and porcelain	10	20
i) Equipment for the manufacture of optical and electronic components	5	15
j) Machinery for the manufacture of leather and cultural products	7	15
k) Machinery for the use in textile industry	10	15
l) Machinery for the use in textile industry	5	10
m) Machinery for the use in paper industry	5	15
n) Machinery for production of grains and foodstuffs	7	15

o) Machinery used in the film industry and in health services	6	15
p) Telecommunication, electronics, informatics, TV	3	15
q) Machinery for the manufacture of pharmaceutical drugs	6	10
r) Machinery used in petroleum refining industry	10	20
s) Machinery used in petroleum exploration	7	10
t) Construction machinery	8	15
u) Cranes	10	20
v) Other working machinery and equipment	5	12
3. Measurement and Laboratory Equipment		
a) Equipment for measurement of mechanical, sonic and thermodynamic experiments	5	10
b) Optical and optical spectrum measurement	6	10
c) Electrical equipment	5	10
d) Analytic measurement equipment for physical chemistry	6	10
e) Radioactivity measurement equipment	6	10
f) Equipment used in specialized sectors	5	10
g) Other experimental equipment	6	10
h) Molds used in the casting industry	2	5
4. Transport Equipment and Means of Transport		
a) Means of transport by road	6	10
b) Means of transport by rail	7	15
c) Means of transport by water	7	15
d) Means of transport by air	8	20
e) Equipment for conveyance via pipelines	10	30

f) Equipment for goods discharge and lifting	6	10
g) Other facilities and means of transport	6	10
5. Instruments for Management		
a) Calculating and measurement instruments	5	8
b) Machinery and software for the purpose of management	3	8
c) Other instruments and facilities for management purposes	5	10
6. Buildings and Architectural Works		
a) Substantial buildings	25	50
b) Resting rooms between shifts; canteens; changing rooms; parking facilities; etc.	6	25
c) Buildings of other kinds	6	25
d) Storehouses; tanks/reservoirs; bridges; roads; air runways; parking lots; drying yards; etc.	5	20
e) Quays; dams; sewers; canals; ditches;	6	30
f) Harbors and docks	10	40
g) Others	5	10
7. Livestock and Perennial Plantations		
a) Livestock of all kinds	4	15
b) Industrial and perennial plantations and orchards	6	40
c) Lawns and green areas	2	8
8. Tangible fixed assets of other kinds which are not yet included in the above categories	4	25
9. Intangible Assets	2	20

Appendix 2: DTAs signed by Vietnam

Country	Type/Scope	Date Signed	Effective Date
1. Australia	Income Tax Treaty	13 Apr 1992	22 Nov 1996
2. Algeria	Income And Capital Tax Treaty	06 Dec 1999	Not effective
3. Austria	Income and Capital Tax Treaty	02 Jun 2008	01 Jan 2010
4. Azerbaijan	Income Tax Treaty	19 May 2014	11 Nov 2014
5. Bangladesh	Income Tax Treaty	22 Mar 2004	19 Aug 2005
6. Belarus	Income And Capital Tax Treaty	24 Apr 1997	26 Dec 1997
7. Belgium	Income And Capital Tax Treaty	28 Feb 1996 Amended on 12/03/2012	25 Jun 1999 Protocol: not effective
8. Bulgaria	Income Tax Treaty	24 May 1996	04 Oct 1996
9. Brunei	Income Tax Treaty	16 Aug 2007	1 Jan 2009
10. Canada	Income Tax Treaty	14 Nov 1997	16 Dec 1998
11. China (People's Rep.)	Income Tax Treaty	17 May 1995	18 Oct 1996
12. Cuba	Income Tax Treaty	29 Oct 2002	26 Jun 2003
13. Czech Republic	Income And Capital Tax Treaty	23 May 1997	03 Feb 1998
14. Denmark	Income Tax Treaty	31 May 1995	24 Apr 1996
15. Eastern Uruguay	Income and Capital Tax Treaty	06 Jun 2014	26 July 2016
16. Egypt	Income Tax Treaty	06 Mar 2006	Not effective
17. Estonia	Tax Treaty	28 Sep 2015	Not effective
18. Finland	Income Tax Treaty	21 Nov 2001	26 Dec 2002

19. France	Social Security Treaty (Students),	20 Sep 1974	20 Sep 1974
	Income And Capital Tax Treaty	10 Feb 1993	01 Jan 1994
20. Germany	Income And Capital Tax Treaty	16 Nov 1995	27 Dec 1996
21. Hong Kong	Income Tax Treaty	16 Dec 2008 Amended on 13/01/2014	12 Aug 2009 Protocol: not effective
22. Hungary	Income Tax Treaty	26 Aug 1994	30 Jun 1995
23. Iceland	Income Tax Treaty	03 Apr 2002	27 Dec 2002
24. India	Income Tax Treaty	07 Sep 1994	02 Feb 1995
25. Indonesia	Income Tax Treaty	22 Dec 1997	10 Feb 1999
26. Iran	Income Tax Treaty	14 Oct 2014	26 June 2015
27. Ireland	Income Tax Treaty	10 Mar 2008	01 Jan 2009
28. Israel	Income And Capital Tax Treaty	04 Aug 2009	24 Dec 2009
29. Italy	Income Tax Treaty	26 Nov 1996	01 Jan 1996
30. Japan	Income Tax Treaty	24 Oct 1995	01 Jan 1996
31. Kazakhstan	Income And Capital Tax Treaty	31 Oct 2011	18 June 2015
32. Korea (Rep.)	Income Tax Treaty	20 May 1994	11 Sep 1994
33. Korea (Dem. People's Rep.)	Income Tax Treaty	03 May 2002	12 Aug 2007
34. Kuwait	Income Tax Treaty	10 Mar 2009	11 Feb 2011
35. Laos	Income Tax Treaty	14 Jan 1996	30 Sep1996
36. Luxembourg	Income And Capital Tax Treaty	04 Mar 1996	19 May 1998
37. Macedonia	Income Tax Treaty	15 Oct 2014	Not effective
38. Malaysia	Income Tax Treaty	07 Sep 1995	13 Aug 1996

39. Malta	Income Tax Treaty	17 Jul 2016	25 Nov 2016
40. Mongolia	Income Tax Treaty	09 May 1996	11 Oct 1996
41. Morocco	Income Tax Treaty	24 Nov 2008	12 Aug 2009
42. Mozambique	Income and Capital Tax Treaty	03 Sep 2010	07 Mar 2011
43. Myanmar	Income Tax Treaty	12 May 2000	12 Aug 2003
44. Netherlands	Income Tax Treaty	24 Jan 1995	25 Oct 1995
45. New Zealand	Income Tax Treaty	05 Aug 2013	07 May 2014
46. Norway	Income Tax Treaty	01 Jun 1995	14 Apr 1996
47. Pakistan	Income Tax Treaty	25 Mar 2004	4 Feb 2005
48. Panama	Income And Capital Tax Treaty	26 Jun 2014	14 Feb 2017
49. Palestine	Income And Capital Tax Treaty	06 Nov 2013	02 Apr 2014
50. Oman	Income Tax Treaty	28 Apr 2008	01 Jan 2009
51. Philippines	Income Tax Treaty	14 Nov 2001	29 Sep 2003
52. Poland	Income Tax Treaty	31 Aug 1994	28 Jan 1995
53. Portugal	Income Tax Treaty	03 Jun 2015	09 Nov 2016
54. Qatar	Income Tax Treaty	08 Mar 2009	16 Mar 2011
55. Romania	Income And Capital Tax Treaty	08 Jul 1995	24 Apr 1996
56. Russia	Income Tax Treaty	27 May 1993	21 Mar 1996
57. San Marino	Income And Capital Tax Treaty	14 Feb 2013	13 Jan 2016
58. Saudi Arabia	Income Tax Treaty	14 Apr 2010	01 Feb 2011
59. Serbia	Income And Capital Tax Treaty	01 Mar 2013	18 Oct 2013
60. Seychelles	Income Tax Treaty	04 Oct 2005	7 Jul 2006

61. Slovakia	Income Tax Treaty	27 Oct 2008	29 Jul 2009
62. Singapore	Income Tax Treaty	02 Mar 1994 Amended on 19 Sep 2012	09 Sep 1994 Protocol: 11 Jan 2013
63. Spain	Income Tax Treaty	07 Mar 2005	22 Dec 2005
64. Sri Lanka	Income Tax Treaty	26 Oct 2005	28 Sept 2006
65. Sweden	Income Tax Treaty	24 Mar 1994	08 Aug 1994
66. Switzerland	Income And Capital Tax Treaty	06 May 1996	12 Oct 1997
67. Taiwan	Income Tax Treaty	06 Apr 1998	06 May 1998
68. Thailand	Income Tax Treaty	23 Dec 1992	01 Jan 1993
69. Tunisia	Income Tax Treaty	13 Apr 2010	06 Mar 2013
70. Turkey	Income Tax Treaty	09 Jul 2014	Not effective
71. UAE	Income and Capital Tax Treaty	16 Feb 2009	12 Apr 2010
72. Ukraine	Income And Capital Tax Treaty	08 Apr 1996	22 Jan 1996
73. United Kingdom	Income Tax Treaty	09 Apr 1994	15 Dec 1994
74. United States of America	Income Tax Treaty	07 Jul 2015	Not effective
75. Uzbekistan	Income Tax Treaty	28 Mar 1996	16 Aug 1996
76. Venezuela	Income Tax Treaty	20 Nov 2008	26 May 2009