

National and International Business and Tax Law

**Vietnam Investment Guide
and
Guidelines for Foreign Suppliers**

**2nd Book
TAXATION AND CUSTOMS DUTIES**

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**DUANE MORRIS
Hanoi**

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HONG KONG LIMITED

Hong Kong, 11 February 2010

To Whom It May Concern

My name is Thomas Domanski and I am heading the Vietnamese operations of Bauer HK, which is a member of German based Bauer Group and a subsidiary of MDax listed ultimate holding company Bauer AG, specializing in foundation engineering, machinery and related services. A considerable part of Bauer Group's corporate activities takes place in Asian countries, among them Vietnam.

While we try our utmost to avoid entering into legal proceedings to enforce contractual rights, this is – unfortunately – not always possible. In this regard, we would like to highlight our satisfaction with the highly professional services rendered by Mr. Oliver Massmann of Duane Morris LLC, Hanoi, who successfully represented Bauer in a Singapore (SIAC) based arbitration proceeding concerning a dispute about payment for construction works provided by Bauer in Vietnam.

We would like to note that Mr. Massmann's successful handling of the case significantly contrasts with the performance of a well established Vietnamese office of one of the biggest international law firms to which we assigned the handling of the dispute initially. Mr. Massmann's services combined thorough legal analysis with a strong commercial approach, leading to a timely and efficient resolution of the dispute at hand. In addition, we would also like to mention that our Vietnamese staff confirmed that they have not yet met a foreign lawyer with comparably proficient Vietnamese language skills and the ability to use them so well in negotiations. Mr. Massmann has all the necessary background capabilities to be a real problem solver. We regard him and Duane Morris LLC as an excellent choice for dispute resolution services and would not hesitate to entrust them with further work.

Best regards

Thomas Domanski
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I am Andrew Meyer, CEO of Nine Dragons Group LLC. We have been actively involved in Vietnam Real Estate since 1999. We have gone through many lawyers and law firms, and were disappointed by all of them. Lack of knowledge of the laws, the differences between buying and selling in specific cities, very slow response time and poor client service.

Finally, we met Mr. Oliver Massmann. The first project we did with him was the same as working with our attorneys in NYC. He has a very strong knowledge of the laws, procedures and intricacies of Vietnam. Speaks the language fluently (a rarity) and is a consummate professional who responds to my requests very quickly.

We continue to work with Mr. Oliver Massmann and are thrilled to have an attorney who brings so much to the table working on our team.

I highly recommend Mr. Oliver Massmann and his firm, Duane Morris Vietnam LLC. Should you have any questions, please feel free to contract me at any time.

Andrew Meyer

CEO

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CHAPTER 1: TAXATION

1.1 Innovations and developments

With the reform of the CIT Law and the introduction of the VAT system as of 1.1.1999 Vietnam's Government has taken first steps towards streamlining the hitherto quite unclear tax system, enhancing its transparency and adjusting it to the standards of the international trading community.

However, these reform efforts, especially with regard to foreign investment, were critically judged at first, and the confusion and uncertainty of foreign investors concerning the implementary regulations coerced the Vietnamese government to early amendments. In principle, however, especially the introduction of the VAT system as compared the previous legal situation has contributed to more clarity and certainty of the law.

After Vietnam's WTO accession in 2007 its efforts towards adjusting the system have gained a new quality since the previous edition. Ambitious legal initiatives were initiated, also in the area of tax legislation. The most important developments are the new Law on Investments with its impact on taxation of enterprises as well as the reform of the PIT Law.

The most important taxes affecting investors in Vietnam are:

- Corporate Income Tax;
- Withholding tax on interests and royalties;
- Value Added Tax;
- Special Sales Tax;
- Withholding Tax;
- Natural Resource Tax;
- Personal Income Tax and
- Land and Housing Tax

All taxes are levied and collected by the Ministry of Finance.

1.2 The impact of double taxation agreements

The Agreement for the avoidance of double taxation (DTA)¹ signed between Germany and Vietnam on November 16, 1995 applies to taxes on income and on capital irrespective of the manner in which they are levied². In particular, no double taxation may occur in regard to the German corporate income tax, personal income tax and trade tax as well as the

¹ Agreement between the Federal Republic of Germany and the Socialist Republic of Vietnam for the avoidance of double taxation with respect to taxes on income and on capital, signed on November 16, 1995 and in effect as of November 12, 1996, BGBl [*Federal Law Gazette*] Part 2 1996, p. 49

² See Art. 1 Par. 2 DTA

Vietnamese corporate income tax and personal income tax. The double taxation avoidance agreement does not apply to VAT or turnover tax.

The Agreement applies to persons who are residents of one or both of the contracting states. The applicability of the Agreement does not depend on the nationality. The term “person” means an individual or corporate body.

Under the Double Taxation Agreement, all profits of companies are taxable in the country where the entity is a resident. However, if a company has a permanent establishment, i.e. a fixed place of business through which the business of an enterprise is wholly or partly carried on (with exceptions) or derives certain income as defined by the Double Taxation Agreement in Vietnam, the company is subject to taxation in Vietnam, however, only to the extent that such profits are attributable to the permanent establishment.

Article 14, paragraph 1 stipulates that *“Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that state unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing of his activities.”* The income may be taxed in the other country to the extent that it is attributable to the fixed base.

Income from salaried work derived by a resident of a contracting country should be taxable in that country unless the employment is exercised in the other country (Article 15, paragraph 1). Notwithstanding of this, *“remuneration derived by a resident of the Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State and the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.”* (Article 15, paragraph 1).

Special regulations apply to, among others, ship and air crew members, payment derived by supervisory board and management board members, artists and athletes, pensions, remunerations paid by authorities as well as teachers, students and other trainees.

1.3 Taxation depending on the form of investment

To run their business in Vietnam, foreign enterprises may choose either the form of direct investments or project contracts.

The essential difference between them is that direct invested projects are conducted through a permanent establishment while projects on a merely contractual basis may also be carried out from abroad, thus without the need of a permanent establishment in Vietnam. Besides having legal effects, the distinction between these forms of investment is also visible in Vietnam’s tax law.

The main legislation for foreign investors are the LI (Law on Investment)³ governing direct investments and Circular No. 103⁴ governing contractual projects.

1.3.1 Taxation under the Law on Investment

The most important legislation governing taxation of companies with foreign-owned capital in Vietnam is the LI. The LI and its implementing provisions (most of all the Decree 118)⁵ provide the legal framework for direct investments; furthermore, they include a range of special tax regulations with references to relevant tax laws. Thus, in the area of tax law, the LI is a framework law (for further information see comments to particular tax laws).

1.3.2 Taxation of contractors under Circular 103 (Foreign Contractor Tax)

Foreign investors who do their businesses in Vietnam not under the Law on Investment but conduct projects on the basis of a contract are referred to as “foreign contractors”. Foreign contractors may, in certain circumstances, have no office in Vietnam and are taxable in accordance to Circular 103. Similarly to the LI, Circular 103 is also a framework law which modifies the existing tax laws.

Effective from 1 October 2014, Circular 103 (103/2014/TT-BTC) replaces Circular 60 (Circular 60/2012/TT-BTC)

Circular 103 regulates all contractual relations between a foreign enterprise and a Vietnamese company or a consumer that resides in Vietnam. It includes all legal entities established under Vietnam’s law, so that companies with foreign-owned capital, branches of foreign enterprises, offices of foreign organizations and other organizations, and individuals are regarded as Vietnamese enterprises.

The services may be provided in Vietnam or outside Vietnam. The decisive factor is that the income/profit is achieved in Vietnam regardless of physical location of the service provider.

“Foreign contractors” can have their project management offices abroad. In certain areas, such as construction projects or projects concerning exploration of natural resources, project offices may be established in Vietnam for the duration of the project.

Foreign enterprises and subsidiary companies of Vietnamese enterprises may, on behalf of foreign enterprises, purchase goods or services abroad. As long as these goods and services are used in Vietnam, related costs may be transferred to the Vietnamese enterprise or consumer. The foreign enterprise is in this context regarded as “foreign contractor” and is subject to the withholding tax.

³ Law No. 67-2014-QH13 on Investment, enacted on 26.11.2014.

⁴ Circular No. 103-2014-TT-BTC on Foreign Contractor Tax, enacted on 01.10.2014.

⁵ Decree No. 118-2015-ND-CP, issued on 12.11.2015

Circular 103 distinguishes between contractors who implement the Vietnamese Accounting System VAS and those who do not and, on this base, stipulates different methods of taxation. Since the VAS does not comply with international standards, we will focus solely on taxation of companies which do not apply VAS. This is also the choice of the vast majority of foreign companies.

Circular 103 includes regulations on VAT and CIT. Other Vietnamese taxes remain unaffected and should be paid in accordance with the general tax regime.

Circular 103 and VAT

Foreign contractors and sub-contractors running business are VAT payers under Circular 103.

The basis for tax calculation is the revenue subject to VAT and tax rate (%).

$$\text{VAT payable} = \text{Revenue subject to VAT} \times \text{VAT rate}$$

No.	Business line	VAT rate
1	Services (excluding petroleum drilling services) , machinery and equipment leasing business and insurance	5
2	Petroleum drilling services	5
3	(a) Construction and assembly and installation where the tender included supply of materials, machinery and equipment in the construction work	3
	(b) Construction and assembly and installation where the tender did not include supply of materials, machinery and equipment in the construction work	5
4	Transportation and other business and production	3

Foreign contractors and subcontractors being VAT payers under the regime of Circular 103 must not deduct the VAT resulting from the service or goods purchase contract with Vietnamese party.

Pursuant Article 12, the Revenue Subject to VAT is the total revenue from provision of services and services attached to goods subject to VAT received by the foreign contractor or foreign sub-contractor inclusive of subtracting taxes payable and any costs (if any) paid by the Vietnamese party instead of the foreign contractor or foreign sub-contractor.

To determine the revenue subject to VAT, in some cases:

1) If the main contract or subcontract stipulates that revenue earned by the foreign contractor or foreign sub-contractor does not include VAT, the revenue subject to VAT must be converted into VAT-inclusive revenue and shall be calculated as follows:

$$\text{Revenue subject to VAT} = \frac{\text{VAT-exclusive revenue}}{1 - \text{VAT rate}}$$

2) If a foreign contractor signs a contract with Vietnamese sub-contractors or foreign sub-contractors who pay tax using direct method or foreign sub-contractors who pay tax using mixed methods to do part of the works in the main contract signed with the Vietnamese entity, and a list of such Vietnamese sub-contractors and foreign sub-contractors is enclosed with the main contract, the revenue subject to VAT of the foreign contractor does not include the value of works carried out by Vietnamese sub-contractors or foreign sub-contractors.

Circular 103 and CIT

Foreign contractors and subcontractors are liable to CIT under Circular 103. CIT rates depend on business line and range between 1% and 10% of taxable turnover.

$$\text{CIT payable} = \text{Revenue subject to CIT} \times \text{CIT rate}$$

No.	Business line	CIT rates as % of taxable turnover
1	Trading: distribution and supply of goods, raw materials, supplies, machinery and equipment associated with services in Vietnam (including supply of goods under on spot export-import (excluding the processing of goods for foreign entities or individuals); supply of goods under DDP, DAT, DAP delivery terms (international commercial terms – Incoterms))	1
2	Services, lease of machinery and equipment, lease of	5

3	drilling rig Restaurants, hotels, casino management services	10
4	Lease of aircraft, aircraft engines, aircraft spare, ship	2
5	Construction and assembly and installation where the tender included or did not include supply of materials, machinery and equipment in the construction work	2
6	other production or business activities and transportation (including sea and air transportation)	2
7	Assignments [transfer] of securities, offshore reinsurance, reinsurance transfer commission	0.1
8	Derivative financial services	2
9	Loan interests	5
10	Income from royalties	10

The basis for tax calculation is the revenue subject to corporate income tax CIT and tax rate (%).

$$\text{CIT payable} = \frac{\text{Revenue subject to CIT}}{\text{CIT}} \times \text{CIT rate}$$

The determination of the Revenue subject to CIT depends of the case:

1) If the main contract or subcontract stipulates that revenue received by the foreign contractor or foreign sub-contractor is exclusive of CIT, the revenue subject to CIT shall be calculated as follows:

$$\text{Revenue subject to CIT} = \frac{\text{CIT-exclusive revenue}}{1 - \text{CIT rate}}$$

2) If a foreign contractor signs a contract with Vietnamese sub-contractors or foreign sub-contractors who pay tax using direct method or foreign sub-contractors who pay tax using mixed methods to do part of the works in the main contract signed with the Vietnamese entity, and a list of such Vietnamese sub-contractors and foreign sub-contractors is enclosed

with the main contract, the revenue subject to CIT of the foreign contractor does not include the value of works carried out by Vietnamese sub-contractors or foreign sub-contractors.

Payment of corporate taxes

The Vietnamese enterprise is responsible to withhold the taxes from payments due to the foreign contractor.

Furthermore, within 10 days after signing the contract the Vietnamese contractual party must register the contract with the tax office. Within 15 days after making payment to the foreign contractor, the Vietnamese contractual party shall pay VAT and CIT to the State budget.

1.3.3 Tax control

Tax audits are to be expected when one of the following circumstances arises:

- New enterprises are loss-making for three or more consecutive years;
- An enterprise files erroneous, unclear or incomplete tax declaration;
- An enterprise fails to submit the tax declaration (on time); or the company's financial situation is substantially different from the previous year.

1.4 From BTA to WTO

Changes to taxes in the recent years pursued two key objectives: (1) consolidation of the existing tax system and (2) adjusting it to international standards. With these goals, progressive changes to laws on VAT, corporate and personal income tax were undertaken. Furthermore, while fulfilling "National Treatment" and "Most Favored Nation"-obligations towards ASEAN and WTO, the principles of non discrimination have been incorporated into the national laws. These efforts came in useful for Vietnam's tax system but do not necessarily entail tax advantages for foreign investors or traders.

1.4.1 Commencement of BTA

The BTA⁶ was concluded on July 13, 2000 between the USA and Vietnam, entered into force on December 10, 2001 and was a significant milestone for Vietnam's economy. The BTA is very comprehensive and includes provisions on trade in goods and services, investments, intellectual property rights, transparency, and rights in court proceedings. With the exception of customs tariffs, tax issues have not been addressed in the BTA. However, the principles of "National Treatment" and "Most Favored Nation" for the US enterprises indirectly affect the taxation of foreign companies.

⁶ U.S. - Vietnam Bilateral Trade Agreement (BTA), came into force December 10, 2001

The implementation of BTA has radically changed Vietnam's market structure and opened new door for foreign investors.

1.4.2 Tax effects of the BTA: the existing tax law in comparison with the BTA provisions

Below, Vietnam's tax relevant obligations resulting from the BTA will be elucidated and compared to the existing tax laws.

- **The MNF principle**

According to Art. 1.1D, paragraph 1 of the BTA, the principles of "National Treatment" and "Most Favored Nation"(MFN) are applicable to all taxes and internal tariffs relating to imports from the USA.

The MFN principle was incorporated into Vietnam's national law in the following way: According to Article 9 of the Decree No. 94 there are three categories of tax rates applicable to import goods – (1) the ordinary tax rates, (2) the preferential tax rates and (3) special preferential tax rates. The preferential tax rates apply to goods imported from countries that have the MFN status. To goods imported from all other countries apply the ordinary tax rates. The ordinary tax rates are calculated by increasing the preferential tax rates by a certain percentage. The ordinary tax rates are usually 50% higher and must not be higher than 70% than the preferential tax rates. Under Article 9.2 of the Decree No. 94 additional import taxes may be imposed, for example, in case of dumping prices, subsidized import goods or goods originating from a country practicing discrimination against exports of Vietnam.

Even before BTA came into effect, the USA were granted preferential tax rates on goods imported from countries having the MFN status.

Only ASEAN member countries enjoy lower tax rates than the USA. This privilege is also in line with the WTO regulations, because ASEAN member states create a customs union or trade union on the base of an agreement. There are also special preferential tax rates for the EU-countries which do not apply to other MNF states.

- **Customs valuation**

Currently, the customs tariffs on certain imported goods are set under the supervision of the state (e.g. minimum prices set by the state). They are calculated on criteria partly relating to the origin of the product's country of origin which are discriminating and, thus, inconsistent with the BTA. This lack of compliance could be addressed through the recent adoption of GATT customs valuation into the national customs law, being in force as of January 1, 2002, on the condition, however, that the implementing regulations will be formulated in accordance with the BTA. According to a literal interpretation of the new customs law, all imported goods should be equally treated regardless of the country of origin. There are also some exceptions for preferential customs tariffs in Article 1 (3) paragraph 1 of the Law on customs. Although the law objectively conforms to the BTA, a final assessment will only be possible after implementing regulations are promulgated,

as it depends on whether these are compliant with the obligation of the principle “National Treatment”.

- **Internal taxes**

Under Article 2.2 of the BTA Vietnam is obliged to provide “National treatment” to products imported from the USA in relation to internal taxes and other tariffs. Exceptions for the application of the national treatment are listed in GATT Article III of 1994 and Annex A. This obligation affects numerous areas of Vietnam’s tax law.

- **Value added tax**

Under the Law on VAT, imported and domestic goods of the same type are generally subject to the same VAT rate. Discriminative treatment applies to unprocessed or semi-processed products of cultivation, aquaculture and cattle raising. These products are exempted from VAT while sold by domestic producers and are subject to 5% VAT while imported. Less favorable treatment to imported goods may occur in cases where different enterprises are allowed to apply different methods of VAT calculation.

- **Supplemental taxes**

According to the Decision No. 4210 certain imported goods, such as e.g. ceramic and paper, are subject to a supplemental tax. Income from this tax source should flow into export aid funds. So far it remains unclear, whether this fund may be regarded only as an exclusive payment of subsidies under Article III 8(b) of the GATT 1994.

- **Income tax**

Pursuant to the Law on Foreign Investment (LFI) foreign enterprises pay a lower enterprise income tax (28% rate) than their Vietnamese competitors (32% rate). On the other hand, foreign companies are subject to profit remittance tax (at rates of 3%, 5% or 7%) whereas domestic companies are not. However, this regulation might be incompatible with the WTO’s TRIMs Agreement (Trade-Related Investment Measures). Further, foreign importers enjoy lower income tax rates (10% instead of 25%) and are not considered under the restrictions of the LFI in cases when they sell imported products with the help of Vietnamese enterprises. Enterprises that use domestic materials for processing are offered tax incentives. These tax incentives create disadvantage for imported materials used by other companies and may lead to discrimination among the same type of businesses.

- **Special consumption tax law**

Imported cars and cars produced in Vietnam are subject to the same special consumption tax. However domestic manufacturers may be granted tax reduction or exemption in case that they suffer losses. Under Article 2 (5) of the Annex to BTA, within the first three years from the entry into force, products such as cigarettes, cigars and vehicles under 12 seats are not subject to taxation.

- **Customs tariffs**

Since January 1, 2000 Vietnam has been using the 6-digit-harmonized system of the Internal Customs Organization with a 3-year transition period for some products. The principles for classification are listed in the Explanation of the Harmonized System of the International Customs Organization. Currently, Vietnam is working on unification of commodity description, so that the system might be used for the customs tariffs of MFN-products.

- **WTO accession**

Vietnam's WTO accession took the mentioned developments and reforms to a further level. While the BTA had a bilateral character and covered solely trade relations between the USA and Vietnam, all 160 members of the WTO are subject to the same regulations. Vietnam's commitments to the WTO go far beyond those resulting from the BTA. However, a detailed listing of these commitments will be omitted here. Tax relevant issues will be extensively elucidated throughout the entire book.

- **Summary**

Since the coming into effect of the BTA, Vietnam has implemented the required tax reforms in a timely manner and, so far, the same is true with the WTO commitments. This allows to expect that outstanding commitments will also be satisfied in the future.

1.5 Corporate income tax

The Law on CIT was passed in 1999 and has been subject to continual amendment and adjustment ever since with the to date most significant step being the version of 26.11.2014⁷

1.5.1 Tax bases

The CIT Law applies to all enterprises whether they are foreign owned (Joint-Ventures and 100% branches) or not.

Difference in CIT rate between domestic and foreign partners was removed by the Law on Investment and Enterprise. While the foreign party had to pay the CIT directly, it is now subject to capital gains tax (for further explanation see the chapter below).

In case of cooperation contracts CIT is calculated separately for each contract, even if the foreign investor is conducting many cooperation contracts at the same time. It also includes situations where a general operating office for all cooperation contracts is located in Vietnam.

⁷ Law No. 71-2014-QH13 on taxes, promulgated by the National Assembly on 26 November 2014.

Taxable profit is defined as total revenue less reasonable and legal expenditures. These expenditures include depreciation, salaries and wages, rent and materials as well as insurance premiums. Newly, deductions are permitted for charitable and humanitarian contributions to Vietnamese organizations.

Under Article 9 par. 2 lit. d CIT parts of business management expenses allocated by a foreign enterprise are also deductible. Before, it was an ambiguous issue and translated into disputes among tax offices.

Since August 1, 2000 companies with foreign-owned capital may carry forward their losses of a financial year to offset against future profits for a maximum of 5 years. The enterprise can freely choose how to allocate the loss to the later 5 years. For example, the loss incurred in the tax year 00 may be allocated to the following years 01-05. However, it is completely possible to allocate the losses to some of the following years or even to one of the following years. Companies with foreign-owned capital must register a loss carry forward plan with the tax authorities within 15 days after receipt of the yearly tax decision. However, it remains unclear what measures are taken by the tax office, if the deadline is missed. In response to an oral inquiry it has been disclosed that the losses would be automatically forwarded and offset against the first taxable profits. This procedure would be unfavorable for investors enjoying tax holidays. Tax holidays start in the first profitable year with no possibility of deduction of losses from previous years. Thus, it might happen that the loss deduction and tax holiday coincide and get lost. This issue must be taken into consideration while developing a loss carry forward plan.

1.5.2 Capital gains tax

Both the German tax law as well as the Vietnamese stipulate the capital gains tax as one of the forms of collecting CIT. Under Art. 3 paragraph 2 CIT law No. 14/2008/QH12 as amended by the law No. 71/2014/QH13, taxable income includes income from capital transfers, interest on deposits, foreign currency sale, and contingency reserves.

Basically, the below presented rules and principles apply and there is no separate capital gains tax rate. Capital gains are taxed as any other income.

However, there are exceptions for particular sectors, where capital gains, such as income from capital transfer, of the enterprises are taxed in a different way. The sector exploring and exploiting crude oil may be an example here. The Ministry of Finance has issued special regulations with regard to transfer of the capital amount contributed for participation in a petroleum contract⁸. No tax exemption and reduction are applicable to income from capital transfers and the calculation of the tax burden is modified to the effect that objective factors of value (market prices) are considered in order to prevent speculative trading in shares and fall of the shares value.

⁸ See Chapter IV Circular No. 36/2016/TT-BTC of February 26, 2016.

Further special regulations should not be expected to occur very often. With these regulations concerning the oil sector Vietnam's Government was aimed to protect the relatively young domestic market (only recently, with the construction of the first refinery Vietnam started to establish its petroleum market) and to avoid the risk of hampering its continual development by speculation or short-term interest of international investment companies.

1.5.3 Standard tax rate

The general tax rate for all enterprises which are not foreign contractors as defined by the Circular 134⁹ is 22%¹⁰. Enterprises with total annual revenue below VND 20 billion is subject to 20% CIT rate. According to the new law this rate applies now also to 100% subsidiaries of foreign companies and Joint-Ventures. The government plans to cut the tax gradually to 20% by 2020.

The rate of CIT applicable to enterprises conducting exploration of natural resources is generally higher and may be set by the licensing authority at its sole discretion between 32% and 50%¹¹.

1.5.4 Tax incentives

Vietnam's Government strives to support deficient sectors and to provide the local community with best education and training opportunities. Therefore, certain enterprises enjoy preferential tax rates or tax holidays.

This applies to newly established enterprises which operate in areas with difficult socio-economic conditions or in high-tech zones, as well as to those operating in the sectors of software development and scientific research. These enterprises may be granted preferential tax rate of 10% for up to 15 years. The tax rate of 10% for an unlimited period of time applies to companies operating in the sectors of education and training, occupational training, health care, culture, sports and the environment. Article 13 CIT contains a detailed list of preferential tax rates. Enterprises of this type may receive four years of tax exemption and nine years of half corporate income tax payment, if many criteria are met at the same time (construction of a production plant in an area with especially weak structure)¹².

1.5.5 Additional income tax

Before January 1, 2009, besides the general CIT rate of 32% there was an additional tax for high profit companies. The tax was imposed on companies which derived large profits due to objective advantages (good location, small competition etc.). However, this tax

⁹ See Chapter 1.3.2. to „Foreign Contractor Tax”

¹⁰ Art. 10, paragraph 1 CIT, as amended by Article 1, paragraph 6 of the Law No. 32/2013/QH13.

¹¹ Art. 10 paragraph 2 CIT

¹² See Art. 13 and 14 CIT for detailed list of incentives and levels of tax incentives.

was levied only on profits that exceeded by 20% the previous year profit (after taxes). The additional income tax was abolished by the CIT reform.

1.5.6 Tax return

CIT return must be made at the end of a business year (=calendar year) and filed within 90 days from the tax year end (in general 31.12).

However, this doesn't apply to companies which use different tax-accounting year-ends. This option is available both in Germany and Vietnam.

1.5.7 Enterprises holding old investment licenses

Investors holding investment licenses issued before August 1, 2000 which stipulate tax rates higher than those provided for in the new CIT Law may apply to the license issuing authority for a relevant adjustment of the license.

Enterprises holding investment licenses issued before August 1, 2000 and meeting the criteria for preferential tax rates or tax exemptions, should apply to the licensing authority in writing for changing their license and granting tax advantages until the expiry day of the license.

1.5.8 Special rules for subsidiaries

The Circular No. 08 provided taxation guidelines for branches which had a retroactive effect as of 1999. The tax reform abolished this Circular and under the new CIT law regime the tax rate is 22% for branches and subsidiaries¹³.

While determining taxable income of a branch, administrative expenses of a foreign parent company may be allocated to the branch in Vietnam under the following conditions:

- only actually incurred costs which are related to business activities of the branch may be included and
- the maximal cost sharing of the subsidiary must not exceed the ratio of its turnover to the total turnover of the foreign parent company¹⁴.

Within three months after filing CIT tax return, the tax office must be submitted with the foreign parent company's audited financial statement. This document should clearly indicate the parent company's total turnover, its administrative expenses and administrative expenses allocated to the branch.

¹³ Art. 10 par. 1 CIT, as amended by Article 1, paragraph 6 of the Law No. 32/2013/QH13.

¹⁴ Art. 9 par. 2 lit. d CIT.

1.5.9 Basic strategies for tax savings

- *What is the capital gains tax rate for non residential foreign companies in relation to interest, dividends and land use rights?*

The legal basis here are the regulations on taxation applicable to non-resident foreign partner companies¹⁵. Depending on the source from which the gains are derived, the resulting total income is part of the basis for calculating the capital gains tax. Further, it includes taxes and other expenses incurred by the Vietnamese party.

The EIT rate is

- for loan interests
- and use rights 5%

of the turnover for EIT calculation

For the turnover from business activity, depending on the business line

- securities trading 0,1%
 - wholesale and retail trade 1%
 - services 5%
 - and production, transportation and construction 2%
- *Is income from services performed abroad (by a third party or self-performed) also taxable? If yes, what is the rate?*

Taxable according to the same rules.

- *Are management fees paid to foreign partner company taxable?*

Taxable according to the same rules.

- *Is there a limit for fees paid by resident companies in Vietnam to a non-resident foreign company in relation to rights of use, royalties, services or management services?*

There is no limit. These costs may be partly claimed as deduction in the tax return.

- *Are there international tax treaties which would stipulate more favorable conditions in relation to the withholding tax on interest, dividends and royalties?*

Currently Vietnam is a signatory to 35 bilateral double taxation agreements which stipulate more favorable income tax rates. In general, an enterprise should pay taxes to

¹⁵ Circular No 103/2014-TT-BTC on Foreign Contractor Tax of 01.10.2014 (Circular 103).

the country where the head office is located. However, there are some differences among the treaties. For example, according to Agreement for the avoidance of double taxation signed between Germany and Vietnam¹⁶, royalties paid to a German company residing in Vietnam may be taxed in Vietnam. However, if the recipient is the beneficial owner of the royalties, the tax rate must not exceed 10% of the gross amount of such royalties (Article 12.1 DTA). Apart from that, in exceptional cases income may be exempt from Vietnamese tax (Art. 11.3 DTA).

- *Are there any tax incentives in relation to services?*

In general, there are not. However, there are tax rate incentives for newly set up enterprises operating in the area of education, vocational training, healthcare, cultural, sports and environmental domains¹⁷

- *Are there any other possibilities of lower income tax rates for non-resident foreign companies?*

Such possibilities and strategies of their effective implementation are described in detail below:

- Taxation of foreign contractors

Foreign contractors not governed by the CIL are subject to VAT and enterprise income tax¹⁸. Both taxes are in this context collectively called the withholding tax. Beyond this, a foreign contractor has no other tax obligations towards the State of Vietnam.

- Planning strategies with regard to the withholding tax (applicable to all foreign enterprises)

Below we will explain the possibilities of reducing the withholding tax for non-resident foreign companies. Furthermore, we will elucidate strategies of how to use these possibilities most effectively. Eventually, a short commentary on new developments in the area of different taxation methods will be presented.

- *Choice of investment form in Vietnam*

The choice of an investment form is important to the effect that each particular investment type, be it in the form of Business Cooperation Contract (BCC) under the CIL¹⁹ or through establishment of a branch or representative office entail certain tax advantages and disadvantages.

¹⁶ Law on the Agreement between the Federal Republic of Germany and the Socialist Republic of Vietnam for the avoidance of double taxation with respect to taxes on income and on capital, of November 12, 1996, BGBl [Federal Law Gazette] 1996 II, p. 2622 ff.

¹⁷ Under Art. 13 No 2 CIT the tax rate is lowered in this case from 25% to 10%

¹⁸ Circular N 103/2014/TT-BTC

¹⁹ Art. 21 CIL (for conditions of eligibility see Art. 9 of the Decree 118/ 2015/ND-CP

- Investments under LFI/ Implementation of CIL

Enterprises with foreign owned capital under the previously effective LFI²⁰ enjoyed generally lower income tax rates but were also subject to stricter conditions in relation to tax return and tax paying as well as regulatory supervision. With the new Common Investment Law (CIL) effective as of July 1, 2006 there is no differentiation between foreign and domestic enterprises anymore. Investments made by domestic or foreign persons are subject to the same tax regime²¹. The enterprise income tax rate is 22%. The profit remittance tax with tax rates of 3%, 5%, or 7 % (depending on the size, type and location of the enterprise) was abolished in 2004.

- Other forms of investments / subsidiaries

Before, branches of foreign companies were taxed with a higher income tax rate (32%), they were exempt from profit remittance tax, though. The new Law stipulates no such special treatment²². However, business management fees paid to the foreign parent company are to a high extent still deductible²³.

▪ Foreign and domestic capital share

Under the LFI, capital contribution ratio for branches and representative offices was 70% foreign and 30% Vietnamese. This regulation could entail tax advantages. What arguments does a higher involvement of foreign-owned capital have in its favor? On the one hand, loan interest as negative costs may be offset in the balance sheet and even the payable Vietnamese withholding tax on loan interest of 10% is relatively lower than the corporate income and profit remittance taxes eventually payable abroad. Secondly, there is more flexibility in relation to foreign-owned capital, since otherwise the investment of domestic capital must remain unchanged during the course of operation of the enterprise in Vietnam. Apart from that, when a longer period of losses is likely, the share of foreign owned capital invested is recommended as low as possible, because in this case there is no profit from which loan costs might be deducted.

▪ Withholding tax and tax preferential rates

In general, companies in Vietnam are subject to a standard CIT rate of 22%; newly set up enterprises in geographical areas with socioeconomic difficulties or in domains eligible for special support are granted preferential tax rates of 10 or 20%, in some cases for an unlimited period²⁴. In practice, FIEs usually pay no enterprise income tax if they incur losses since income tax is levied on profits.

²⁰ “Law on Foreign Investment in Vietnam”, passed on November 12, 1996

²¹ See also Art. 2 CIT, where no differentiation between domestic and foreign enterprises is made while determining taxpayers

²² See Art. 2, 1 (b), where there is no differentiation between foreign enterprises with or without Vietnam-based permanent establishments

²³ See Art. 9, 2 lit. d.

²⁴ See Art. 13 CIT, as amended by Article 1, paragraph 6 of the Law No. 32/2013/QH13.

Tax incentives include so called “Tax Holidays” which may last four years and be followed by a 50% reduction of payable tax amounts for nine subsequent years²⁵. The tax exemption or reduction duration is counted from income or turnover in the first fiscal year²⁶. Under the previous law, foreign investors who reinvested after-tax profits were eligible to apply to the Ministry of Finance for refund of the paid CIT. Unfortunately, this regulation has been abolished by the new Law on Investment.

- ***Tax-deductible expenses***

- ***Problems with definition***

According to law, tax-deductible are all expenses which arose or relate to production and business activities of the enterprise and are accompanied with adequate invoices and documents²⁷. It remains unclear how to interpret these ambiguous terms. The relevant guidelines for implementation²⁸ provide no aid to interpretation.

The obsolete Law on corporate income of July 31, 2003 was also not clear in this point and made the deductibility of expenses depending on their “appropriateness and suitability for business”. Usually, the last word belonged to tax authorities who took decisions in each individual case. For this purpose, tax authorities called on different documents and checked the tax credibility of the enterprise in a complex process. Whether the new legislation will also provoke tax authorities to proceed this way remains to be seen. However, it has to be said already that the intended simplification has been achieved inadequately, leaving much discretion to the authorities. There are still no legal procedures for complaints against decisions of tax authorities and costs of an alternative way would far outweigh the possible benefits.

- ***Strategy tips on how to proceed with Vietnamese authorities***

The best and safest way to ensure the deductibility of certain expenses in the area of enterprise income tax is to try to convince the tax authority in direct negotiations that the business expenses are appropriate. Otherwise, the investor can never be sure, if the expenses are deductible or not and the process may extend over several years.

- ***Summary***

The recent reform of enterprise tax law and law on investments considerably reduced the opportunity of implementing tax strategies based on selecting the form of investment.

On the other hand, size, location and industrial sector of the investment take on greater significance as far as tax advantages are concerned, in particular “tax holidays” and

²⁵ See Art. 14 CIT

²⁶ Article 14, paragraph 1, CIT, as amended by Article 1, paragraph 8 of the Law No. 32/2013/QH13.

²⁷ See Art. 9 CIT, as amended by Article 1, paragraph 5 of the Law No. 32/2013/QH13.

²⁸ Decree No. 218-2013-ND-CP und Circular No. 78-2014-TT-BTC.

preferential tax rates. The main tax burden for all enterprises are VAT and enterprise income tax.

Furthermore, deductible business expenses are also relevant, as long as documented. However, until now there is no precise legal definition of the term “business expense”. Therefore it is highly recommended, to confirm the deductibility of business expenses with the tax office in each case.

1.6 Interest and royalties

Income from interest is subject to withholding tax as of 01.01.1999. If a foreign enterprise receives interest in Vietnam, this income is taxed under the DTA at 10%²⁹. Income from royalties and fees for technical services are taxed at 10% or 7.5%, depending on the source³⁰. In case of a tax assessment in Germany, this tax may be basically credited.

Regulation on BOT contracts of May 11, 2007³¹ was replaced by Decree No. 15/2015/ND-CP dated February 14, 2015 and stipulate tax exemptions during the execution of the project.

Recently, according to the Official letter No. 10453/BTC-CST dated 27 July 2016, the Ministry of Finance advises that when a foreign party allows a vietnamese party to use a trademark for purposes of selling the trademarked goods, the activity is considered to be the transfer of a right to use a trademark and be subject to value added tax (but distinguished from the transfer of intellectual property).

1.7 Value Added Tax

The Law on VAT was passed together with the law on CIT by the National Assembly on May 10, 1997, took effect as of 01.01.1999 and was most recently amended on June 19, 2013.

The implementation of the VAT law caused difficulties both for the taxpayers and the tax offices, as has always been the case with implementation of new laws.

Before we go into detail about the most important VAT regulations, we would like to provide some general comments on the new tax.

VAT is principally governed by:

- The Law on Value Added Tax (VAT) in effect from January 1, 1999 as amended on June 19, 2013;
- Decree No. 209/ 2013/ ND/ CP guiding the implementation of the law on value-added tax (“Decree 209”) promulgated by the Government on December 18, 2013;

²⁹ See Art. 11 paragraph 2 DTA

³⁰ See Art. 12 paragraph 1 DTA

³¹ Decree No. 15/2015/ND-CP on the investment in the form of PPP.

- Circular No. 219/2013/ TT/ BTC “Circular 219” contains guidelines for implementation of Decree 209 and was enacted 31st of December 2013 and amended by Circular No. 219/2013/TT-BTC;

The value added tax is imposed on the added value of goods or services arising during the process of production, distribution to consumption. All goods and services produced, consumed or traded in Vietnam, including imported goods, are subject to VAT.

Circular 09/2011/TT-BTC on VAT and CIT came into effect on 7 March 2011. They are levied on insurance businesses. It has added two new aspects of insurance business to the list of services subject to VAT, a. consultancy services and b. non-life insurance brokerage. In counterbalance the new Circular has also added the following to the list of objects which are not subject to VAT, a. reinsurance and b. insurance agent training services, while insurance and services provided to international transportation vehicles has been removed from the exclusion list. Insurance services provided to offshore individuals and entities are also entitled to the 0% VAT rate. It is not clear if Circular 9 intended to exclude turnover from financial investment activities, however this seems unlikely as it may be a significant source of tax revenue. It is likely that CIT on revenue from financial investment activities is simply no longer specifically covered in the insurance business Circular, but remains covered under the general CIT rules. Several of the specific deductions referred to Circular 111 are not mentioned in Circular 9, although several of the removed items were not particularly relevant to the insurance industry. Deductible expenses still remain to be determined in accordance with the general regulations on CIT, so any items removed may still be deductible.

However, a number of products and services are exempt from VAT. The most important of them are passenger transportation, education and vocational training, medical services and credit allocation³².

1.7.1 Tax rates

The law on VAT stipulates three tax rates: 0%, 5% and 10%. It is important to understand the dogmatic difference between tax exempt and tax rate of 0%! Vietnam’s law faced in recent decades a fast reform movement. No law remains unchanged for more than the first two years. The WTO implementation process constantly requires marginal adjustments and modifications. Therefore the legislative has started to pursue the strategy of pointing up long-term concepts through such dogmatic differences. Tax exempts are durable, while tax rate of 0% stipulates that changes are possible any time.

The classification depends on the type of services³³:

- The tax rate of 0% applies to exported goods and services except for, among others, international transportation, credit and bank services and, above all, technology transfers and intellectual property transfers to foreign countries.

³² For a full list see Art. 5 paragraph 1 VAT

³³ See Art. 8 VAT

- The tax rate of 5% applies, for example, to scientific services, husbandry, trade and equipment, teaching and study aids and children's toys³⁴.
- And finally, the tax rate of 10% applies to all other goods and services, among others, to petroleum business, commercial power trading, paper, legal advice, cosmetics, hotel, tourism and gastronomy.

1.7.2 Methods of tax calculating

The sale of goods and services by foreign enterprises to Vietnamese enterprises and customers is subject to VAT.

The choice of the method of tax calculation for/by a foreign contractor, be it the deduction method or the direct method as standard methods or the special method of tax calculation, depends on whether the enterprise has implemented the Vietnamese accounting system VAS.

Foreign contractors which manage the implementation of their Vietnam-based projects from within Vietnam have the possibility to choose the VAS. They have to apply to the Ministry of Finance for registration in order to receive the necessary permit. In this context it needs to be taken into consideration that the process of applying for the permit to use the VAS is very complicated and time consuming. The foreign contractor is then liable to pay both VAT and corporate income tax.

Foreign contractors that applied for VAS registration and received the necessary permit issue invoices for their customers and charge VAT. Moreover, they are allowed to offset the input VAT³⁵ against the output VAT³⁶.

The offset of the input and output VAT is made either under the deduction method or the direct method³⁷.

Under the deduction method, the payable tax is determined according to the following formula:

Payable VAT = output VAT - input VAT

Output VAT = turnover * tax rate

Input VAT = the tax indicated on value added invoice for sold goods or services

Under the direct method, the payable tax is determined according to the following formula:

Payable VAT = added value * the VAT rate

³⁴ For details see Art. 8 paragraph 2 VAT

³⁵ Input VAT is the tax resulting from purchase of goods and services, which is specified on invoices

³⁶ Output VAT is the price of the goods or services sold multiplied by the tax rate

³⁷ See Circular No. 219-2013- TT-BTC, Section 1, Chapter II.

Added value = turnover – value of goods or service purchased

1.7.3 Filing and Payment of VAT

The Vietnamese company is responsible to withhold VAT from payments to foreign contractors. Furthermore, the Vietnamese party to a contract signed with foreign contractor must register this contract with tax office within 10 days after signing it. Within 15 working days after making payment to the contractors, the Vietnamese contractual party must pay VAT and EIT to the tax office.

1.7.4 Qualified personnel of non-resident enterprises in Vietnam

Foreign companies, usually subsidiaries, may relocate their employees to Vietnam to work on their projects which are implemented by a Vietnamese company.

Delegating work force to Vietnam is not a turnover in the sense of the Law on VAT, as long as the work performed under the employment contract is explicitly exempt from VAT. However, the income earned by these employees may be subject to personal income tax. The tax rates arise from regulations stipulated by relevant treaties (in particular from double taxation prevention treaties) in which reference is made to the employment duration and income source.

1.7.5 VAT refund and deductibility

Pursuant section 2, article 18.5, if a foreign enterprise has not established a representative office or a business office in Vietnam and its contractual partners withhold and pay VAT in its name, it has no possibility to claim VAT refund currently.

However, the Vietnamese enterprise has the right to claim a relevant amount equal to the paid VAT on behalf of the foreign partner.

1.7.6 Concluding remarks

Tax returns must be in general filed on a monthly basis (by the 10 of the following month). VAT must be paid in Vietnamese Dong. At the end of each fiscal year (calendar year, unless otherwise specified) annual tax record must be made and filed within 90 days from the tax year end (31.12).

If the monthly payable amount of tax exceeds the VAT paid on purchased goods and services, the negative difference may be refunded (only in case of credit method).

Caution is advised when purchasing without official invoice. The VAT will be levied afterwards and the purchaser - not the seller, will be responsible for paying it. Administration penalty will be imposed on the purchaser. Costs of the purchase and the tax on the purchase may be reduced, however, costs of the penalty not.

A 50% tax reduction is granted to some imported goods. Enterprises with foreign owned capital are exempt from VAT on certain products including imported equipment and construction materials as long as these materials are used for building the company's fixed facilities. Furthermore, they are exempt from import tax on natural resources used in production, as long as they operate in areas with socio-economic difficulties.

1.8 Special Sales Tax

The Law on special sales tax was amended as of 01.01.2016. Changes were mainly connected with the then introduced VAT. Currently, special sales tax rates are 10% and 70%³⁸. The basis for calculating special sales tax is the sale price exclusive VAT³⁹.

Special sales tax is levied on certain goods and services, such as tobacco products, liquors, passenger cars under 24 seats, yacht, special crude oil products, discotheques, massage salons and casinos⁴⁰. The list shows that the tax is imposed on products which in the eyes of Vietnam's government are luxury goods or amusement places. Those who consume beyond the average needs should support common wealth at the same time.

The SST rates on those goods vary, for example cigar/cigarettes tax rate is currently 70% but will go up to 75% from 1 January 2019.

This basic approach is meanwhile not the only criterion for determining tax objects and rates. Rising taxes on liquors, tobacco products and certain amusement places simultaneously serves as additional regulation of the current policy aimed at curbing the excessive consumption or mastering the prostitution that emerges particularly there. The special sales tax became a tool to underline and manifest superior policy objectives.

In general, foreign companies are also subject to tax insofar as they produce, import or offer such goods and services.

The law stipulates some exceptions which eliminated the basic tax burden. Exempt from the special sales tax are goods and services that:

- are directly exported abroad or to export processing zones (also for fairs and exhibitions)
- are imported from abroad directly into export processing zones or export processing enterprises
- Vehicles (ship, airplane, automobile) that are used commercially as means of transportation.

Besides, there are from time to time exemptions and reductions granted in individual cases by the Government and the Ministry of Finance in order to address economic difficulties or offer incentives. Thus, car manufacturers were taxed at 5% of the rate indicated by law between 1999 and 2004.

³⁸ Art. 7 Law on Special Sales Tax (SST).

³⁹ Art. 6 SST

⁴⁰ see Art. 2 und 3 SST with a detailed list

End for “red invoices”

Decree 51/2010/ND-CP dated on 14 May 2010 regulation on invoices in relations to sales of goods and provisions of services, so Circular 39/2014/TT-BTC dated 17 January 2014 of the Ministry of Finance guiding the implementation of Decree 51. Significant changes have been introduced affecting the printing, issuing, use and management of tax invoices. Some entities which have a tax code and fall in the category established in Circular 39 are allowed to print their own invoices and even electronic ones.

1.9 Natural Resources Tax

Domestic and foreign investors exploiting natural resources are subject to natural resources tax.

Although dogmatically a royalty, in practice it is treated as a tax. The amount of payable tax results from the product of the tax rate, the volume of natural resources actually exploited and the sales price. Currently, tax rates range from 1% to 35%⁴¹.

Natural resources include mineral resources, forest products and aquatic resources. Depending on the exploited resources, tax may be exempted or reduced⁴².

1.10 Personal Income Tax

Regulations on income tax once dispersed in laws and decrees have been since 01.01.2009 integrated in one law – the Law on Personal Income Tax (PIT)⁴³ for the first time and the latest amendment was of 22 November 2012. However, the law should be expected to undergo further changes in the coming years.

1.10.1 Taxpayers

Basically, apart from Vietnamese residents, PIT taxpayers include also non-residents who earn incomes in Vietnam. Resident means a person who is present in Vietnam for a minimum of 183 days. They are subject to PIT on their world-wide employment income (see tax rate table below).

As far as income of foreigners is concerned, it might turn out that partial or full exemption results from the provisions of the double tax treaty (see Chapter “1.2 The impact of double taxation agreements”).

It is the responsibility of the employers to remit the tax due by their employees⁴⁴. Whether they withhold the tax from the payments to employers and remit the tax themselves or pay

⁴¹ Law No. 45/2009/QH12 dated 25 november 2009, on severance tax

⁴² See Decree No. 50/2010/ND-CP.

⁴³ Passed by the National Assembly on November 21, 2007 under 04-2007-QH12.

⁴⁴ Art. 24, 33 paragraph 1 PIT.

their employees gross and urge their crews for tax payment in any other way, is left to their discretion.

Natural persons having a place of habitual residence outside Vietnam (present in Vietnam for less than 183 days in tax year) are themselves responsible for remitting the tax⁴⁵.

The income earned by a foreigner (or of someone who is classified as “non-resident”) is taxed at rates ranging from 0.1 to 20%, depending on the income source.

Some tax offices take up a position that chief representatives are always taxable on personal income tax exemption regardless of how many days they stay in Vietnam.

1.10.2 Taxable income

The former differentiation between regular and irregular income sources has been abolished by the new PIT law. Regular and irregular income is equally taxed.

Under the law, relevant incomes are salaries, wages, allowances and bonuses; further, incomes in addition to salaries or wages which are earned in form of share in production, trading and service activities, as long as these are not subject to enterprise tax. Incomes from scientific and technical services, from the area of IT, advisory services, from the area of training, from author’s fees resulting from patents and trademarks, agent commissions.

Income tax is also levied on lottery winnings and incomes from technology transfer, as well as on income from fees for using the technological know-how, engineering drawings and similar payments.

Gifts in form of money or other valuable gifts (excluding real estate) are, however, not taxable.

Income received in foreign currency must be converted into Vietnam dong at the average exchange transaction rate of the State Bank at the time of income generation. Income received in the form of a product or service must be converted into Vietnam dong at the market price of that product or service at the time of income attainment.

1.10.3 Tax-exempt incomes

The law specifies sources of income which are exempt from PIT. Here emerge notable differences between the Vietnamese and German PIT laws.

First of all, exempt from PIT are incomes which arise from originally non-business activities, for example, from transfer of real property between first and second degree relatives, scholarships, transfer benefits and received development aid.⁴⁶

⁴⁵ Art. 33 paragraph 2 PIT.

Tax free are also shift allowances and incomes from husbandry and fishery on family farms which are the only source of income⁴⁷.

1.10.4 Tax rates

Despite the dogmatic division of regular and irregular sources of income has been given up, it is still visible in the tax rate framework. Incomes (mainly from freelance work or employment) are progressively taxed at quite moderate rates:

Tax Bracket	Portion of Annual Assessable Income (million dong)	Portion of Monthly Assessable Income (million dong)	Tax Rate (%)
1	Up to 60	Up to 5	5
2	Over 60 to 120	Over 5 to 10	10
3	Over 120 to 216	Over 10 to 18	15
4	Over 216 to 384	Over 18 to 32	20
5	Over 384 to 624	Over 32 to 52	25
6	Over 624 to 960	Over 52 to 80	30
7	Over 960	Over 80	35

Similar to German regulations, premiums of social insurance and other compulsory insurance are deducted before the tax obligation is calculated⁴⁸.

Income sources not covered here, for example, from capital investments, inheritance or gifts, systematically unrecognized, as well as from royalties and author's emoluments are taxed at fixed and special rates:

Assessable Income	Tax Rate (%)
(a) Income from capital investments	5
(b) Income from royalties and franchises	5
(c) Income from winnings or prizes	10
(d) Income from inheritances and gifts	10
(e) Income from transfers stipulated in article 13.1	20
(f) Income from transfers stipulated in article 13.2	0.1
(g) Income from real property transfers stipulated in article 14.1	25

⁴⁶ See Art. 4 PIT

⁴⁷ For a detailed list of tax-exempt income with relevant comments see Decree No. 65/2013/ND-CP of June 27, 2013 and Circular No. 111/2013/TT-BTC of August 2013

⁴⁸ See Art. 21 paragraph 1 PIT

(h)Income from real property transfers stipulated in article 14.2	2
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1.10.5 Taxation of non-monetary benefits

Taxation of benefits other than monetary has been regulated by the new PIT reform of 2005 in a totally different way. Under Art. 3 paragraph 2(a) taxable income is remuneration of all kinds, monetary or non-monetary.

Explicitly excluded are one-off relocation costs of foreign employees, school expenses of own children and costs of one travel per year to their home country⁴⁹.

In general, tax free are fictitious incomes granted by the employer, for example, when the employer commits under the employment contract to provide a canteen free of charge, to offer a vehicle for ride sharing or provides the employees with access to sports, leisure and cultural facilities. It must be, however, group benefits and not personal ones. Vietnam's law sees here no possibility of taxing individuals. This principle does not apply as soon as the person receives personal rights, thus a clear, specialized and valuable asset arises. In this case the monetary benefit is subject to tax⁵⁰.

1.11 Land and Housing Tax

Land and Housing Taxes are levied on land and housing use rights⁵¹. This tax should not be confused with royalties that are paid to the State for land use rights. However, currently the housing tax is not levied. Enterprises with foreign-owned capital are exempt from land tax if they have already paid land rent.

The base for calculating the land and housing tax on land use rights consists of three elements: land area, category of the land and tax rate.

The tax rate on land use rights is 0.5% of the taxable land value per year and 0.3% of the taxable value per year on a building.

“The taxable value” is the land price consisting of two components – area and category of the land. Both components are determined by the State and vary depending on the type of the land and its intended use. On this base the Government has several times used the possibility to exert influence on the tax amount.

1.12 Taxation of representative offices

Representative offices are generally not allowed to carry out business activities which generate profits, thus the corporate income tax does not apply.

⁴⁹ See Circular No. 111/2013/TT-BTC on personal income tax

⁵⁰ See Circular 111-2013-TT-BTC.

⁵¹ Ordinance on Residential Housing-Land Tax.

However, if a representative office is allowed to enter into legally binding contracts on behalf of the foreign company or regularly delivers goods or provides services, it is legally treated as a resident establishment. Should any of the above mentioned conditions be met, the representative office is taxed on equal terms with the permanent establishment, thus is subject to a 22% tax⁵².

1.13 Taxation of branches/permanent establishments

Permanent establishments of foreign enterprises are subject to tax on taxable incomes at a standard rate of 22%⁵³.

Unlike other forms of investment, permanent establishments may deduct management expenses allocated by the parent company. Moreover, permanent establishments are not subject to profit remittance tax.

In this context, the Vietnam-Germany double taxation treaty must also be observed. Provisions of the DTA supersede any conflicting provisions of Vietnam's tax law. For example, under the enterprise income law all enterprises having permanent establishments in Vietnam have to pay taxes also on profits which are not associated with the activities of the permanent establishment. According to Art. 7, par. I of DTA this rule does not apply to Germany-based companies.

CHAPTER 2: IMPORT AND EXPORT LAW

2.1 Import and export relations

The Ministry of Trade and Commerce is responsible for managing export and import activities and granting relevant permits. Vietnam's foreign trade is still strongly regulated.

2.2 Foreign trade

Vietnam's Government controls foreign trade through import duties, import controls, and licensing of importers and exporters in order to reduce the current trade deficit. Further, Vietnam is interested in an efficient use of the limited quantity of foreign currencies. Therefore, the Vietnamese government endeavors to decrease imports of goods and, as a countermove, to boost domestic production for the domestic market and for exports.

However, first of all there is a risk that this restrictive import policy will in the long-term negatively affect the Vietnamese economy, since Vietnamese enterprises are increasingly experiencing difficulties with importing materials and equipment necessary for production.

Secondly, considering the commitments towards WTO, continuing of this policy is not viable any more. Nevertheless, the fear of weakening the domestic production translates into

⁵² Article 10.1, CIT, as amended by Article 1, paragraph 6, Law No. 32/2013/QH13.

⁵³ Article 10.1, CIT, as amended by Article 1, paragraph 6, Law No. 32/2013/QH13.

rather moderate reforms. For example, it is still not easy to be granted the trade license, a huge number of products are not allowed to be freely imported, these are, among others, tobacco and oil products, videos, CDs and DVDs. The list of banned imports is becoming visibly shorter, the WTO protocols are adopted reluctantly but still mostly in due time⁵⁴.

2.3 Import and export duties

In general, all imported or exported goods are subject to clearance and duties, including goods passing between domestic non-tariff zones.

Duty is exempted for transit goods which cross the State's borders only for the purpose of transshipment or transit through the country's territory or humanitarian aid⁵⁵.

Since Vietnam's accession to the ASEAN, the ASEAN Free Trade Area (AFTA) and WTO a reduction of import and export duties could be observed. The maximum duty rate which fell from 100% to 60% already in 1996 was further differentiated and lowered.

The Law on Export and Import Duties (LIE)⁵⁶ governs import and export duty collection. As import and export duties are reviewed and newly set every year, no reliable data on the rates may be given. Generally, there are two different types of duty rates: standard rates and preferential rates for certain groups of products⁵⁷.

The basis for calculation of import duties is Cost Insurance Freight (CIF) and for export duties Free on Board (FOB). All duties must be paid in VND. If the goods value is specified in foreign currency, it must be converted at the average exchange transaction rate of the State Bank and the duty must be paid in VND.

The bilateral trade agreement (BTA) was expected to entail reduction of duties on US-products but also on goods from the EU (see below). Noticeable simplifications for traders regardless of their country of origin resulted from the adjustment of Vietnam's tariff system to the WTO requirements.

2.4 Import and Export Licenses

2.4.1 Export

Since August 1, 2000 companies with foreign-owned capital are allowed to export goods directly or through export trustors. The general obligation to register an export plan has been repealed. If the exported products are products manufactured in tune with the Investment License, the customs office must be at the beginning provided with a copy of the

⁵⁴ See Circular 34/2013/TT-BCT, announcing the scheduling for implementation of trading and distribution activities, passed on December 24, 2013

⁵⁵ For detailed list see Art. 3 LIE.

⁵⁶ Law No. 107/2016/QH13 on Export and Import Duties, promulgated on April 6, 2016

⁵⁷ For "preferential rates" see the currently binding Decision No. 25-2008-QD-BTC, amending the preferential Import rates applicable to passenger vehicles in the preferential import tariff list, of 13 May 2008.

investment license to carry out the export procedure. Otherwise, the exporters must inscribe in customs declaration forms the words "goods purchased in Vietnam for export".

On completion of the project it is necessary to obtain a permit of the Ministry of Commerce both for liquidation of imported equipment, machines, means of transport and materials in Vietnam as well as for re-export of these items that formed a part of fixed assets of the foreign investor.

2.4.2 Import

On the basis of the investment license and feasibility study companies with foreign owned capital are required to submit their import plans for importing fixed assets with the Ministry of Commerce for approval. It includes equipment, machinery, means of transportation and materials which are used to form fixed assets for the first time. If an import plan is inconsistent with the investment license and feasibility study it must be certified by the investment license-issuing body. In case that the investment license is changed due to extending the investment, or equipment, machinery and means of transportation are replaced or modernized, it is also necessary to prepare an import plan and submit to the Ministry of Commerce for approval.

For the import of raw materials and materials for production purposes as well as products for business purposes it is also required to prepare and submit for approval of the Ministry of Commerce an import plan on the base of feasibility study and results of the implementation of the import plan of previous year. The plan should cover:

- raw materials imported in order to produce goods for exports;
- raw materials imported in order to produce goods for domestic market and
- materials used in the production process in the sense that they will not become a part of the product.

Where the equipment for the business activity is replaced or the value of imports does not exceed by 10% the approved plan and USD 200,000 in absolute value it is allowed to carry out import procedures with the customs office without having to obtain the approval of the import plan from the Ministry of Trade.

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