TAX MANAGEMENT
PORTFOLIOS™

FOREIGN INCOME

Business Operations in Vietnam

by

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PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Business Operations in Vietnam*, No. 7420, provides important information on the business environment in Vietnam from the tax and legal perspectives. It introduces the forms of doing business in Vietnam and analyzes the related legal issues on corporate establishment, foreign participation, exchange control, intellectual property, labor and financing. The section on taxation explains Vietnam's tax system and addresses the common tax issues faced by businesses. The Worksheets set forth details on the conditions for enterprise income tax incentives and provide several registration forms and tax returns.

Given the developing economy in Vietnam and its accession to the World Trade Organization, the legislation, including the tax regulations, are in a state of constant reform. The information contained herein provides only general information. Specific professional advice should be sought on the particular facts and circumstances at issue.

This Portfolio may be cited as Nguyen, and Dao, 7420 T.M., *Business Operations in Vietnam*.

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DETAILED ANALYSIS

I. Vietnam — Political Organization and Economy

A. Political and Governmental Organization

1. The Country

The Socialist Republic of Vietnam is situated in South East Asia, bordering the Gulf of Thailand, the Gulf of Tonkin and the East Sea (also known as the South China Sea). It shares land borders with China, Laos and Cambodia, and has an area of 331,000 square kilometers and a coastline of 3,260 kilometers. The country's administrative units comprise 58 provinces and five cities directly under the central government.

2. Political and Government Organization

Under the 2013 Constitution, Vietnam's major institutional bodies are:

(i) The National Assembly, Vietnam's elected legislature, and its Standing Committee;

(ii) The Government, a cabinet-style body that includes the Prime Minister, Ministries and Ministry-equivalent State bodies (central administration);

(iii) The President, who is the Head of State;

(iv) The People's Courts: the Supreme Court and Local Courts;

(v) The People's Organs of Control, which conduct prosecutions and control judicial practices;

(vi) The People's Councils and the People's Committees, which serve as local-level legislatures and executive organs, respectively, in the 58 provinces and five cities; and

(vii) The Communist Party of Vietnam and the Fatherland Front.

3. Economy

Vietnam's main exports include crude oil, garments, shoes, marine products, wooden products, rice, coffee and rubber. Vietnam's major export partners include the United States, Japan, China (PRC), Korea, the European Union (EU) countries and the Association of Southeast Asian Nations (ASEAN) countries. Vietnam continues to push for international integration with more and more ambitious bilateral and multilateral agreements. Vietnam participates in various international organizations including the Asia Pacific Economic Cooperation (APEC) forum, the ASEAN and the World Trade Organization (WTO). It has entered into various free trade agreements as well.[1]

[1] See II.C.1.b. for further details of free trade agreements to which Vietnam is a signatory.

B. Statutes/Sources of Law

The Vietnamese supreme law is the Constitution, which was enacted in 2013. The implementation of the Constitution is provided for under Resolution No. 64/2013/QH13 of November 28, 2013.

1. Organization of the Tax Law

Each kind of tax is governed by a single law passed by the National Assembly.

2. Other Legislative Documents that May Be Used to Interpret the Law

According to Law No. 80/2015/QH13 on Legal Instruments, the Standing Committee of the National Assembly is the body responsible for interpreting laws and ordinances promulgated by the National Assembly and the Standing Committee of the National Assembly respectively.[2] Accordingly, the Standing Committee of the National Assembly will issue resolutions interpreting legislative documents such as laws and ordinances.

3. Legislative Process

Under the Law on Legal Instruments, tax laws go through the following stages before they are promulgated:

(i) The National Assembly passes the schedule of legislation annually.[3]

(ii) The Standing Committee of the National Assembly or a ministry in charge of drafting laws, ordinances or resolutions sets up a drafting board.[4]

(iii) The drafting board drafts laws, ordinances and resolutions. During the course of drafting, the board may seek the opinion of concerned authorities or organizations.[5]

(iv) Draft laws, ordinances and resolutions are assessed by the Commission of Ethnic Affairs, the Legal Committee and other relevant committees of the National Assembly.[6]

(v) Draft laws, ordinances and resolutions are submitted to the National Assembly for approval.[7]

(vi) The National Assembly/Standing Committee of the National Assembly discusses and approves draft laws, ordinances and resolutions.

(vii) The President promulgates an Order to announce laws, ordinances and resolutions.[8]

[2] Law on Legal Instruments, Art. 16.
[3] Law on Legal Instruments, Art. 31.2.
[4] Law on Legal Instruments, Art. 52.
[5] Law on Legal Instruments, Art. 57.
[6] Law on Legal Instruments, Art. 63.1.
[7] Law on Legal Instruments, Art. 70.
[8] Law on Legal Instruments, Art. 80.

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4. Constitutional Challenge

The Commission of Ethnic Affairs, the Legal Committee and other relevant committees of the National Assembly review draft laws, ordinances and resolutions to ensure that they comply with the Constitution.[9]

Once a legal instrument takes effect, the National Assembly, the Standing Committee of the National Assembly, the Commission of Ethnic Affairs, the Legal Committee and other relevant committees of the National Assembly, the Government, the Prime Minister and Ministers within their respective authority may challenge the instrument if they find it to be inconsistent with the Constitution or other legal instruments.[10]

In terms of administration, the Government issues decrees and the Ministry of Finance issues circulars to provide implementing guidelines with respect to tax laws.

C. Court System and Arbitration

1. Court System

People's courts are organized as follows:

(i) Supreme People's Court;

(ii) Provincial People's courts; and

(iii) District People's courts.

Vietnam follows the rule of two-level adjudication; accordingly, the Supreme People's Court or a provincial People's court will reconsider a judgment or decision of a first instance court that is appealed.

To resolve tax disputes, taxpayers may choose either:

(i) Administrative appeal to a tax authority; or

(ii) Adjudication by the administrative court.

Taxpayers can file appeals to either the tax authority through the administrative appeal channel or to an administrative court through the administrative lawsuit channel.

A taxpayer that receives an assessment decision from the tax authority can file a first administrative appeal with the tax authority that issues the decision. Alternatively, the case may be brought before the administrative court for an administrative lawsuit.

If the taxpayer chooses to file an administrative appeal and the settlement of the tax authority is not favorable or the tax authority does not respond within the stipulated timeframe, the taxpayer can file a second administrative appeal with the higher-level tax authority or, alternatively, an administrative lawsuit with the administrative court.

If the taxpayer chooses to file a second administrative appeal with the higher-level tax authority and the settlement of that tax authority is not favorable or the tax authority does not respond within the stipulated time frame, the taxpayer may file an administrative lawsuit with the administrative court.

There are two levels of adjudication at the administrative court: the first instance trial and the appellate trial. The administrative court is not a designated tax court but a court that handles various types of administrative lawsuits against administrative decisions and administrative acts of state organizations. In practice, court actions are usually taken as the last resort when the first and second administrative appeals have been exhausted.

The default language of Vietnamese court proceedings is Vietnamese.

2. Arbitration

Arbitration in Vietnam is mainly governed by Law No. 54/2010/QH12 on Commercial Arbitration (the "Law on Commercial Arbitration") with further guidance provided by Resolution No. 01/2014/NQ-HDTP of the Supreme People's Court of Vietnam on March 20, 2014 ("Resolution No. 01").

Vietnam International Arbitration Centre (VIAC) is the leading and most commonly used arbitration center in Vietnam.

Under Article 2 of the Law on Commercial Arbitration, the following disputes can be resolved by arbitration in Vietnam: (i) disputes between parties arising from commercial activities; (ii) disputes arising between parties at least one of which engages in commercial activities; and (iii) other disputes between parties that the law stipulates that may be resolved by arbitration. "Commercial activities" are defined under Commercial Law as activities for profit-making purposes including the sale and purchase of goods, the provision of services, investment, trade promotion, etc. Matters such as administrative (including tax), criminal and labor disputes are thus considered non-arbitrable.

[9] Law on Legal Instruments, Arts. 63 and 68.

[10] Law on Legal Instruments, Arts. 162, 163, 164, 165, and 166.

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II. Operating a Business in Vietnam

A. Foreign Investment Regulation

1. Opportunities

Since Vietnam first opened its doors to foreign direct investment in the late 1980s, the primary way of establishing a long-term independent corporate presence in Vietnam has been to set up a foreign-invested enterprise (FIE) or enter into a business cooperation contract (BCC)[11] under the Law on Foreign Investment in Vietnam (LFI).

On July 1, 2006, Investment Law No. 59/2005/QH11 (IL) and Enterprise Law No. 60/2005/QH11 (EL) (as amended in 2013) superseded the LFI's long-established regulatory framework and introduced a common set of rules for domestic and foreign-invested companies. Apart from the forms of business provided for under these laws, other means of establishing a commercial presence in Vietnam include representative offices (ROs) and branch offices. Contracted projects and franchising (licensing) arrangements are also possible. Increasingly, the law allows foreign investors to take minority positions in domestic companies (see 3., below).

The situation is dynamic, with the Government implementing measures to comply with bilateral and multinational commitments that will gradually open the Vietnamese market. This means that new foreign investment and trade opportunities are abundant, but also that the rules governing business activities are prone to change.

On November 26, 2014, the National Assembly passed the Investment Law No. 67/2014/QH13 (Investment Law 2014) and Enterprise Law No. 68/2014/QH13 (Enterprise Law 2014) to replace the existing Investment Law and Enterprise Law, both coming into effect as from July 1, 2015. The laws adopt a pro-investor approach, aiming to reduce administrative bureaucracy and attract more foreign investment into Vietnam.

On June 17, 2020, a new Law on Investment (Investment Law 2020) was passed by the National Assembly of Vietnam, with effect from January 1, 2021. The most notable change in Investment Law 2020 is the introduction of the "negative list" approach, according to which foreign investors will be entitled to market access conditions applicable to domestic investors for any sectors not included in the list of sectors in which foreign investors are restricted from accessing.

2. Incentives

a. Tax Incentives

Investment projects may be eligible for preferential enterprise income tax (EIT) rates, tax reduction and a tax-free period if they fulfill certain investment conditions in terms of industry sector, location, and large-scale investment capital applicable to manufacturing projects. Worksheet 1 contains a detailed discussion of the EIT incentives. The law allows enterprises to carry their losses forward for a maximum period of five consecutive years.

Enterprises and BCCs engaging in or conducting encouraged projects in terms of industry sector and location, projects invested in by Official Development Assistance sources, and oil and gas projects may import fixed assets such as equipment, machinery, special-purpose means of carriage and their components and spare parts, and construction materials not yet locally produced free of import duty.

As a result of its membership of the World Trade Organization (WTO), Vietnam has undertaken to eliminate prohibited subsidies in the form of export-related investment incentives. The Government has, therefore, no longer provided investment incentives contingent on export performance to new beneficiaries (whether domestic or foreign). Such beneficiaries, however, were able to keep their previous incentives for a five-year period beginning on the date of Vietnam's accession to the WTO, except in the textile and garment industries, where such prohibited subsidies were eliminated on accession.[12]

b. Non-tax Incentives

Land rent may be exempted for a number of years in the case of projects in sectors qualifying for what the law refers to as "special preferential treatment" and/or projects located in certain geographic regions, as follows:

(i) For projects in sectors qualifying for special preferential treatment and projects located in geographic areas with especially difficult socioeconomic conditions;

(ii) During the period of project construction. subject to the approval of the authorities; and

(iii) As from the date on which the project is put into operation, as follows:

- Three years for projects in sectors qualifying for preferential treatment or involving the new establishment of a company that has moved its location as a result of master planning or environmental pollution;
- Seven years for projects located in geographic areas with difficult socioeconomic conditions;
- 11 years for projects located in geographic areas with especially difficult socioeconomic conditions, projects in sectors qualifying for special preferential treatment, and projects in sectors qualifying for preferential treatment that are located in geographic areas with difficult socioeconomic conditions; and
- 15 years for projects in sectors qualifying for preferential treatment and located in geographic areas with especially difficult socioeconomic conditions, and projects in sectors qualifying for special preferential treatment that are located in geographic areas of difficult socioeconomic conditions.

From June 20, 2017, new land rent incurred in implementing investment projects, excluding natural resource exploita-

[11] A business cooperation contract is a document that is signed by two or more parties (of which at least one party must be a Vietnamese legal entity and one party must be a foreign legal entity) and stipulates the responsibilities of, and the sharing of business results between, the parties for purposes of conducting investment and business in Vietnam without creating a legal entity.

[12] World Trade Organization (WTO) Working Party Report WT/ACC/VNM/48, dated Oct. 27, 2006, Paras. 286 and 288.

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tion, in Economic Zones and High-Technology Zones is also exempted for certain periods as follows:[13]

- Up to three years during infrastructure construction;
- 11 years for investment projects in other than investment preferential sectors, invested in Economic Zones located in district areas other than investment preferential locations;
- 13 years for investment projects in other than investment preferential sectors, invested in Economic Zones located in district areas of harsh socio-economic conditions;
- 15 years for investment projects in other than investment preferential sectors, invested in Economic Zones located in district areas of especially harsh socio-economic conditions; investment projects in investment preferential sectors, invested in Economic Zones located in district areas other than investment preferential locations;
- 17 years for investment projects in investment preferential sectors, invested in Economic Zones located in district areas of harsh socio-economic conditions;
- 19 years for investment projects in investment preferential sectors, invested in Economic Zones located in district areas of especially harsh socio-economic conditions.

Land rent for development of infrastructure of industrial zones, industrial areas, and export processing zones, will be exempted for an additional period after the project construction, as follows:[14]

- 11 years of land rent exemption for projects in suburban district areas that are not included in the List of Investment Preferential Areas;
- 15 years of land rent exemption for projects located in geographic areas with difficult socioeconomic conditions;
- No land rent during the land rent term for projects located in geographic areas with especially difficult socioeconomic conditions; and
- 15 years for projects in sectors qualifying for preferential treatment and located in geographic areas with especially difficult socioeconomic conditions, and projects in sectors qualifying for special preferential treatment that are located in geographic areas of difficult socioeconomic conditions.

3. Restrictions

Under the Investment Law 2020, foreign investors are entitled to the same market access conditions as domestic investors for those sectors that are not included in the List of Restricted Sectors. Foreign investors are restricted from accessing those sectors on the list. Foreign investors are entities that meet any of the following thresholds:

(i) More than 50% of their charter capital is held by one or more foreign investors (foreign majority company);

(ii) More than 50% of their charter capital is held by one or more foreign majority companies; or

(iii) More than 50% of their charter capital is held by:

- One or more foreign investors; and
- Foreign majority companies.

The List of Restricted Sectors[15] includes:

(i) Business sectors where market access is prohibited; and

(ii) Business sectors where market access is conditional. Specifically, market access conditions applicable to foreign investors include:

- Foreign ownership limitations;
- Form of investment;
- Scope of business and investment activities;
- The capability of the investor and business partners joining the investment activity; and
- Other conditions stipulated under international treaties and Vietnamese laws.

Additionally, foreign investors, or more specifically their foreign invested companies, must also fulfill relevant business conditions applicable to any entity engaging in a regulated industry (regardless of foreign ownership), including permits, eligibility certificates, practicing licenses and confirmation letters.

The Investment Law 2020 lists out 228 conditional business sectors which are applicable to all enterprises in Vietnam as business conditions (see Worksheet 2A). Other specific conditions applicable to these sectors are not included in the Investment Law 2020 but are scattered in different legislative documents, including international treaties to which Vietnam is a member.[16]

For public companies, the foreign ownership limitations and conditions, as well as the procedures for the investment and participation in the securities market by foreign investors and organizations with foreign capital, are provided by Decree No. 155.[17] In general, the maximum foreign ownership limitation applicable for a business line is 100%, unless otherwise regulated by an international treaty to which Vietnam is a member, or applicable Vietnamese laws, or the List of Restricted Sectors or as determined by the general meeting of shareholders of the public company.

Decree No. 94/2017/ND-CP, issued in August 2017, consolidates over 20 groups of goods and services subject to state monopoly, including those for national defense and security, production of gold bars, lottery, import of cigarettes and cigars, etc. The purpose of the Decree is to provide transparency in the regulation of goods and services subject to state monopoly

[13] Decree No. 35/2017/ND-CP of the Government dated April 3, 2017, effective on June 20, 2017, Art. 8.

[14] Decree No. 135/2016/ND-CP of the Government dated Sept. 9, 2016, effective on Nov. 15, 2016, Art. 3.6, as amended by Decree No. 35/2017/NĐ-CP dated April 3, 2017, effective from June. 20, 2017.

[15] Decree No. 31/2021/ND-CP regulatory of some articles of the Investment Law 2020 issued by the government on March 26, 2021 (Decree No. 31).

[16] Law No. 61/2020/QH14 with Annex IV amended by Law No. 03/2022/QH15.

[17] Decree No. 155/2020/ND-CP regulating a number of articles of the Law on Securities 2019 issued by the government on December 31, 2020 (Decree No. 155).

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that had not been officially consolidated in any regulatory document.

With a view to achieving its successful integration into the world economy and to catch up with other countries in the region, Vietnam is gradually opening up the service sector to foreign investors. In particular, Vietnam hopes to develop important sectors such as professional, communications, financial and health services.

Since its accession to the WTO, Vietnam has applied national treatment to certain categories of foreign services suppliers, with numerous exceptions listed in its Schedule of Specific Commitments in the Services List of Article II MFN Exemptions.

Vietnam will allow foreign service suppliers in the scheduled categories to establish a commercial presence in the form of a branch, a BCC, a joint-venture enterprise (JV), or an enterprise with 100% foreign-owned capital (EFOC). Nonetheless, the branching and foreign ownership of service companies operating in Vietnam varies depending on the sector (see below). In many cases, the level of foreign ownership permitted reaches 100%.

Vietnam allows the presence of foreign natural persons for purposes of supplying services, but has taken measures relating to the entry and temporary stay of intra-corporate transferees, certain personnel, service sales persons, persons responsible for setting up a commercial presence and contractual service suppliers.

Notable Services Sector Commitments and Limitations Under the Services Schedule	
Business Services	**Commitments and Limitations**
Computer and related services	100% foreign equity and branch allowed.
Advertising	Foreign-owned JV with no limitation of foreign ownership.
Market Research	100% foreign equity allowed.
Management Consulting	100% foreign equity and branch allowed.
*Architectural**	100% foreign equity allowed.
Engineering	No limitation on market access or national treatment (i.e., foreign engineering firms are subject to the same regulatory scheme as local firms).
Research and Development (R&D) Services	No limitation, or only for the cross-border supply of rental of industrial machinery and equipment.
Rental/Leasing Services without Operators	No limitations on market access or national treatment.
* The supply of certain services is subject to the authorization of the Government of Vietnam.	

Communication Services	**Commitments and Limitations**
Courier	100% foreign equity allowed.
Telecommunication	
Value-added Telecom (some slightly different commitments exist in this sector for Internet Service Providers)	BCC* and JV.
• Non-facilities-based services	BCC and 65% JV.
• Facilities-based services	BCC and 50% JV.
Basic Telecom (including mobile cellular and satellite)	
• Non-facilities-based services	70% JV.
• Facilities-based services	49% JV.
* Foreign investors in a BCC can renew or convert current arrangements into another form of establishment with conditions no less favorable than currently enjoyed	

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Distribution*	Commitments and Limitations
*Wholesale distribution, retail,** commission agents' services, franchising*** services*	100% foreign equity.
* Some products were restricted from distribution until 2009: cement and cement clinkers, tires (excluding tires for airplanes), paper, tractors, motor vehicles, cars and motorcycles, iron and steel, audiovisual devices, wines and spirits, and fertilizers	
** The establishment of outlets for retail services (after the first outlet) is allowed based on an economic needs test (ENT)	
*** Branches allowed	

Financial Services	Commitments and Limitations
	Upon Accession
Insurance	100% foreign equity.
Nonlife insurance	100% foreign equity. Branches are allowed subject to prudent regulations.

Financial Services	Commitments and Limitations
Banks	100% foreign-owned banks.
	Registered office (RO), branch*, JV financial leasing company, 100% foreign-invested financial leasing company, JV finance company and 100% foreign-invested finance company. * Limitations: A foreign bank branch is limited in its right to accept deposits in Vietnamese Dong from Vietnamese natural persons. Furthermore, a foreign commercial branch is not allowed to open other transaction points outside its branch office.
	A foreign bank's equity may not exceed 30% of the chartered capital of the Vietnamese bank unless otherwise provided by Vietnam's laws or authorized by Vietnam's competent authorities.
	Foreign credit institutions are allowed to issue credit cards on a national treatment basis.
* To establish a branch, the parent bank must have total assets of more than US$20 billion at the end of the year prior to application.	

Finances Services	Commitments and Limitations
Securities-related services	RO and 100% foreign-owned JV. Branches are allowed to supply certain securities-related services.

Health and Related Social Services	Commitments and Limitations
Health and related social services	100% foreign-invested hospital, JV with Vietnamese partners or through business cooperation contract. The minimum investment capital is $20 million for a hospital, $2 million for a polyclinic unit and $200,000 for a specialty unit.

Construction and Related Services	Commitments and Limitations
Construction and related services	100% FIEs; Branches are allowed.

B. Currency and Exchange Controls

1. Vietnamese Currency

The local currency, the Vietnamese Dong (VND), is not freely convertible. While the law allows investors and traders to remit foreign currency for current account transactions, the State exercises substantial control over outward remittances of foreign currency for other purposes. In addition, Vietnam's foreign currency regulations restrict the use of foreign currency in the domestic economy. To that end, the relevant exchange control regulations allow the use of foreign currency for permitted purposes only.[18] The regulations also make distinctions between resident and nonresident individuals/organizations. Listed below are the situations in which residents and nonresidents may hold and use foreign currency:

(i) Resident and nonresident institutions may open a domestic foreign currency account and use foreign currency for the following purposes:

- Receiving foreign currency remitted from foreign countries;

[18] Decree No. 70/2014/ND-CP dated July 17, 2014, Detailing the Implementation of Several Provisions of the Ordinance and the Amended Ordinance on the Foreign Exchange ("Decree No. 70"); Circular No. 19/2014/TT-NHNN dated Aug. 11, 2014, Guiding the Foreign Exchange Management for the Foreign Direct Investment Activities In Vietnam, Art. 7.

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• Receiving foreign currency from permissible domestic sources;

• Making payments and conducting domestic transactions that are allowed to be made in foreign currency;

• Converting it into other foreign currencies or other foreign currency payment instruments;

• Withdrawing cash in foreign currency for individuals working for organizations when they are sent abroad;

• Withdrawing or remitting cash for the payment of salaries, bonuses and allowances to residents and nonresidents being foreigners working for organizations; and

• Remitting foreign currency abroad, transferring it to foreign currency accounts of nonresidents, or paying it to residents for the export of goods or services.

(ii) Resident and nonresident individuals may open a domestic foreign currency account and may use foreign currency for the following purposes:

• Keeping and carrying foreign currency;

• Receiving foreign currency remitted from foreign countries;

• Receiving foreign currency cash brought in from foreign countries in accordance with the regulations of the State Bank of Vietnam (SBV);

• Receiving foreign currency from legal sources;

• Selling to permissible credit institutions;

• Making payments and conducting domestic transactions that are allowed to be conducted in foreign currency;

• Converting it into other foreign currencies or other foreign currency payment instruments;

• Offering it or giving it under inheritance;

• Withdrawing foreign currency;

• Remitting foreign currency abroad or transferring it to foreign currency accounts of nonresidents; and

• Depositing foreign currency into foreign currency savings accounts by Vietnamese.

2. Exchange Control

Investors may purchase foreign currency at commercial banks to meet foreign currency demands for current transactions, capital transactions and other allowable transactions.[19] As a practical matter, conversion is subject to the availability of foreign currency from commercial banks.

All indirect investment activities of foreign investors in Vietnam must be conducted in Vietnamese Dong. Foreign investors contributing capital to or buying shares of Vietnamese companies must convert their foreign currency funds into local currency in order to carry out investment transactions. After it has met its tax obligations and provided a commercial bank with confirmation from the tax authorities that it has done so, a foreign investor may purchase foreign currency from the commercial bank to enable remittance of its original investment and profit.[20]

C. Trade and Commerce Regulation

1. Imports and Exports

a. Licenses and Quotas

The Commercial Law No. 36/2005/QH11, dated June 14, 2005 (*Luat Thuong Mai so* 36/2005/QH11), the Foreign Trade Administration Law No. 05/2017/QH14, dated June 12, 2017, and other implementing regulations and related international agreements govern trading between Vietnam and other countries. The government will, from time to time, issue a list of goods that are not allowed to be imported and exported and a list of goods whose import and export are subject to license requirements.

Investors may import machinery, equipment, materials and goods for business operations, and may export their products, including the goods investors produce by themselves and the goods imported into Vietnam. Investors permitted to engage in import, distribution, trading and other commercial services are subject to specific rules and Vietnam's commitments under international agreements.[21]

In accordance with Decree No. 09,[22] foreign invested enterprises may be licensed to engage in export, import and distribution activities in conformity with Vietnam's commitments under international agreements. Such activities are, however, subject to restrictions in terms of the type of commodities and scope of distribution (see A.3., above).

Nonetheless, in an administration reform effort, the Ministry of Industry and Trade (MOIT) issued Decision No. 4846[23] to eliminate 15 procedures and simplify 108 others out of 443 administrative procedures in 17 fields under its management. In 2018, the MOIT continued to eliminate a number of administrative requirements by issuing Decision No. 1408/QD-BCT dated April 27, 2018.

Under Decree No. 90, foreign companies without a presence in Vietnam can act as importers of record and exporters of record upon obtaining certificates of registration of export rights and import rights.[24] These companies may buy goods for export and sell imported goods pursuant to a certificate of registration of export and import rights granted by MOIT. With this certificate, a foreign company will have the right, as the importer of record, to deal with and be responsible for import

[19] Ordinance No. 06/2013/UBTVQH13, dated March 18, 2013, on amending and supplementing a number of articles of the ordinance on foreign exchange control, Art. 11 ("Ordinance No. 06").

[20] Circular No. 05/2014/TT-NHNN Guiding the Opening and Use of Indirectly-Invested Capital Accounts for Implementation of Foreign Indirect Investment Activities in Vietnam, Arts. 4, 7.1.a, 7.2.b, and 8.

[21] Decree No. 09/2018/ND-CP dated Jan. 15, 2018.

[22] Decree No. 09/2018/ND-CP dated Jan. 15, 2018.

[23] Decision No. 4846/QD-BCT dated Dec. 9, 2016, to approve the general plan of simplifying administrative procedures within the scope of management thereof in 2017 ("Decision No. 4846").

[24] Decree No. 90/2007/ND-CP of the Government, issued on May 31, 2007, Stipulating Export and Import Rights of Foreign Merchants Without Commercial Presence in Vietnam ("Decree No. 90").

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procedures. Under this certificate, the scope of activities of a foreign company without a commercial presence in Vietnam is limited to selling imported goods to Vietnamese licensed distributors that are registered to trade in such goods.

Certain goods are considered restricted and therefore subject to a permit requirement on importation. The importer must obtain a permit from the relevant authorities prior to importation of the goods.

b. Customs Duties and Other Taxes

Upon importation into Vietnam, goods are subject to import duties and value added tax (VAT). The standard VAT rate is 10%. Certain goods are also subject to special consumption tax (SCT) or environmental protection tax.

Vietnam is a signatory to certain international agreements that provide for special preferential customs duties, including the Association of South East Asian Nations (ASEAN) Trade in Goods Agreement (ATIGA), the ASEAN-Korea Free Trade Agreement (AKFTA), the ASEAN-China Free Trade Agreement (ACFTA), the ASEAN-Japan Comprehensive Economic Partnership (AJFTA), the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), the ASEAN-India Free Trade Agreement (AIFTA), the ASEAN-Hong Kong Free Trade Agreement (AHKFTA), the Vietnam-Japan Economic Partnership Agreement (VJEPA), the Vietnam-Chile Free Trade Agreement (VCFTA), the Vietnam-Korea Free Trade Agreement (VKFTA), the Vietnam-Eurasian Economic Union Free Trade Agreement (VEAEU FTA), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Vietnam-EU Free Trade Agreement (EVFTA), the Regional Comprehensive Economic Partnership (RCEP), and the UK-Vietnam Free Trade Agreement (UKVFTA).

c. Customs Documentation

Customs documentation includes the customs declaration, commercial invoice, sale and purchase contract, transportation documents, permit issued by the authority where required in certain cases and other documents, depending on the type of goods imported/exported.

d. Guidelines on Advance Customs Rulings

One of the most significant changes under the Amended Tax Administration Law, effective from July 1, 2013, is the mechanism of seeking advance customs rulings to confirm HS (Harmonized System) codes, customs values, and the country of origin of exported and imported goods.[25] The Government issued Decree No. 83/2013/ND-CP on July 22, 2013, and the Ministry of Finance issued Circular No. 128/2013/TT-BTC on September 10, 2013, and its substitution, Circular No. 38/2015/ND-CP on March 25, 2015, and Circular No. 39/2018/ND-CP on April 20, 2018 to stipulate further details on this matter.

Taxpayers need to submit application dossiers to the General Department of Customs (GDC) to seek advance customs rulings. The GDC will give consideration and issue the rulings within 30 days (maximum 60 days in complicated cases) upon receiving sufficient dossiers.

A ruling is valid for a maximum period of three years. For customs value, the ruling is valid for the shipment under the ruling only. If taxpayers do not agree on the ruling, they can make a request for re-consideration. Upon such requests, GDC will conduct further examination within 10 days (maximum 30 days in complicated cases).

However, in practice, GDC has only issued advance rulings for HS codes.

e. Authorized Economic Operator Regime

The status of Authorized Economic Operator (AEO), regulated under Circular No. 72/2015/TT-BTC on May 12, 2015, issued by the Ministry of Finance as amended by Circular No. 07/2019/TT-BTC dated January 28, 2019 ("Circular No. 72"), will be granted to exporters, importers, agents, and other entities upon request.

Accordingly, enterprises that satisfy all the requirements for eligibility to be considered an AEO (i.e., no recorded violations in customs or tax matters for two consecutive years before the date of request, having export and import turnover of at least $100 million/year on average during the previous two years, etc.) can apply to the customs authority for an AEO certificate. The customs authority will conduct an assessment every three years to verify eligibility for AEO status. If enterprises qualify for the assessment, the AEO certificate will be automatically renewed. After having an AEO certificate, enterprises will enjoy the following Priority Regime:

(i) At the stage of customs clearance:

- No examination of customs dossiers;
- No physical inspection of goods (except for the cases showing clear signs of violation);
- Incomplete customs declaration form accepted;
- Priority in customs clearance with limited waiting time; and
- Self-declaration of goods that qualify for specialized testing is accepted. The actual specialized testing results of certain state agencies may be submitted at this stage of customs clearance upon request by the customs authority.

(ii) At the stage of post-clearance:

- Inspection at the head office of customs authority is exempted (except for cases of clear violations); and
- Inspection at the head office of the enterprise will be conducted no more than once every three consecutive years (except in cases of clear violations).

(iii) Priority in payment of duties and customs charges: advance refund of duties and document checking later.

2. General Regulation of Business

a. Monopolies and Restrictive Trade Practices

The Competition Law, No. 27/2004/QH11, dated December 3, 2004 (*Luat Canh tranh so* 27/2004/QH11), came into ef-

[25] Circular No. 38/2015/TT-BTC of the Ministry of Finance, issued March 25, 2015, Guiding customs procedures; customs inspection and supervision; import duty, export duty and tax administration applicable to imports and exports ("Circular No. 38"), Art. 7 (as amended by Circular No. 39/2018/TT-BTC).

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fect on July 1, 2005. The Competition Law regulates three general types of conduct:

(i) Restrictive agreements or practices;

(ii) Abuse of market dominance and monopoly status; and

(iii) Mergers, consolidations, acquisitions and joint-ventures.

The Competition Law prohibits restrictive agreements and certain restrictive practices. A restrictive agreement or practice is an agreement or practice that restricts competition in the marketplace to an impermissible extent, such as an agreement to impede competitors or exclude them from the market, and collusion in tendering for goods or services. The Competition Law prohibits certain restrictive practices where the parties, taken together, have 30% or more of the market. These practices include price fixing, customer or market sharing, agreements to restrict the quantity of production or supply, agreements to restrain technical development or investment, and agreements that impose unrelated requirements for the supply of goods or services.

Market dominance exists where an enterprise has 30% or more of the market or is deemed capable of substantially restraining competition. Market dominance also exists where two enterprises together have 50% or more of the market, where three enterprises have 65% or more of the market, or where four enterprises have 75% of the market and the enterprises act together to restrict competition. An enterprise that has monopoly status or market dominance is prohibited from: selling goods or services at prices below the cost price in order to exclude competitors; price fixing; restraining production, distribution and technical development; imposing different commercial conditions for similar transactions to create unfair competition; imposing unrelated requirements for the supply of goods and services; and impeding competitors. In addition, the Competition Law prohibits an enterprise with monopoly status from imposing disadvantageous conditions on customers, and from changing or canceling signed contracts unilaterally without valid reason.

The Competition Law prohibits "economic concentration" by way of mergers, consolidations, acquisitions or joint ventures, except in certain special cases, if the combined market share of the businesses concerned is more than 50%.

Note: From July 1, 2019, the new Competition Law has introduced stricter controls on competition. For instance, the 30% threshold of market share no longer applies to prohibited restrictive agreements or practice.[26]

Regarding market dominance, the new Competition Law, in addition to the 30% threshold of market share, introduces a new concept of "substantial market power," where such power may be measured by the relative market share as compared to other players, finance capacity, distribution network control, or infrastructure ownership, etc.[27]

Similarly, the threshold of 50% for prohibited "economic concentration" is also removed. Instead, the economic concentration is examined on the basis of a number of factors,[28] including combined market share, the pre and post concentration market density, relations between enterprises in the "economic concentration" in terms of supply chain, competitive advantages, etc.

b. Mergers

The purchase of a business can take a number of different forms. In Vietnam there are two ways to acquire a business: through a transfer of "charter capital" (owners' equity); or through a merger, consolidation, division or separation of a business. The most common form of acquisition, especially in the case of a foreign investor aiming to hold shares in an existing JV or an EFOC, is the transfer of charter capital. Businesses frequently use mergers, consolidations, divisions or separations of businesses for internal reorganization purposes.

A foreign investor wishing to acquire an interest in a JV or an EFOC in Vietnam may do so in one of the following three ways:

(i) The original investor may transfer its "charter capital" to the new investor;

(ii) The new investor may buy some or all of the shares of the offshore company that holds the interest of the foreign investor; or

(iii) An investor in a JV may purchase the charter capital of its local joint venture partner in order to convert the JV into an EFOC.

Asset acquisitions are also possible in cases where the investor wants to subsume new assets into an already licensed entity. Regardless of the mode, there are some special considerations an investor should take into account when acquiring an interest in an established company in Vietnam.

"Enterprise Merger" is a process whereby one or a number of companies (the "merging companies") merge into another company (the "merged company") by transferring all of its/their assets and legal rights, obligations and interests to the merged company, and by the same process the existence of the merging company[ies] is extinguished.[29]

"Enterprise Consolidation" is a process whereby two or more companies (the "consolidating companies") may consolidate into a new company (the "consolidated company") by transferring all of their assets/property and legal rights, obligations and interests to the consolidated company, and by the same process the existence of the consolidating companies is extinguished. However, the law does not specify the methods of consolidation.[30]

"Enterprise Division" is a process whereby an LLC or JSC may divide its members/shareholders and assets to establish two or several new companies.

The divided company will cease to exist after the new companies receive their Enterprise Registration Certificates.[31]

"Enterprise Separation" is a process whereby an LLC or a JSC splits off a part of the assets/property, rights and obligations of an existing company (the "separating company") being transferred to establish one or a number of new companies

[26] Competition Law No. 23/2018/QH14, Art. 12.
[27] Competition Law No. 23/2018/QH14, Art. 26.
[28] Competition Law No. 23/2018/QH14, Art. 31.
[29] Enterprise Law 2020, Art. 201.
[30] Enterprise Law 2020, Art. 200.
[31] Enterprise Law 2020, Art. 198.

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(the "separated companies") without bringing an end to the existence of the separating company.[32]

A transfer of capital, merger, consolidation, division or separation does not take effect until the relevant businesses make proper registration or the business registration authorities grant their approvals.

The parties to a JV have the right to assign the value of their portions of capital in the JV, but they must grant a right of first refusal to the other parties in the JV.

Regardless of the structure used to acquire an interest in an FIE, certain tax issues will need to be considered. If the acquisition is a straight forward purchase of the charter capital of the foreign party and consent from the Vietnamese party and authority approval is obtained, EIT at 20% will be payable on any capital gains over the original investor's actual contribution to the capital, less transaction cost. Vietnam has double taxation agreements in effect with numerous countries.[33] Investors should take these agreements into consideration when structuring cross-border acquisitions.

c. Price Controls

In general, the State respects lawful pricing and competition in pricing by businesses and administrates pricing in accordance with market rules.[34] The law prohibits dumping, defined as selling goods and services at prices lower than normal prices in the Vietnamese market in order to dominate the market, impede lawful competition, and damage lawful benefits of other businesses and the State.

The State may take measures to stabilize prices. Such measures include the adjustment of supply and demand, the purchase and sale of reserves, the control of inventory, financial and monetary measures, setting price ranges, controlling price components, the registration of prices, and public disclosure of price information. Certain goods and services are subject to price stabilization measures, including but not limited to gasoline, liquefied petroleum gas, chemical fertilizer, insecticides, veterinary vaccines, milk for children under six years old, rice and medicines.[35] In addition, the State determines/fixes the prices of electricity, telecommunication services and water.[36]

d. Securities and the Securities Market

Vietnam launched its first securities market in July 2000. This was a significant development for the financial markets of the country, facilitating the mobilization of domestic and foreign capital resources for the economic development of Vietnam. Under previous regulations, foreign ownership of securities in the Vietnamese stock market was limited to 49% of shares in a public JSC, investment fund certificates of a public securities investment fund, the charter capital of a public securities investment company, the charter capital of a securities company, or the charter capital of a fund management company. However, the promulgation of Decree No. 60, which entered into force on September 1, 2015, eliminated the 49% limitation, except for listed companies that operate in business lines in which foreign investors are subject to limitation and where the applicable thresholds of foreign capital contribution have not been promulgated.

The new Law on Securities, effective from January 1, 2021, provides that the Government will regulate the thresholds of foreign capital contribution and other conditions for foreign investors to invest in the stock exchanges.[37]

With respect to bonds, foreign investors are not subject to any limitation, except for those regulated by bond issuers.

Foreign investors for purposes of this rule include:

(i) Individuals of foreign nationality; and

(ii) Organizations established and operating under foreign law and conducting investment in Vietnam.[38]

Since July 1, 2006, foreign investors have been allowed to establish JSCs, LLCs, and partnerships, as domestic investors.

3. Licensing and Franchising

a. Copyright

Among the subjects of licensing in Vietnam is copyright. Civil Code No. 91/2015/QH13, dated November 24, 2015, effective on January 1, 2017, the Law on Intellectual Property, No. 50/2005/QH11, dated November 29, 2005 (*Luat So huu Tri tue so* 50/2005/QH11) (as amended on June 19, 2019, on June 14, 2009 and on June 16, 2022) ("Vietnam IP Law"), and **Decree No. 17/2023/ND-CP** dated April 26, 2023, regulating the Law on Intellectual Property regarding copyrights and related rights, provide for copyright and copyright protection. The rights of an author consist of the moral rights and property rights over the work created by the author. Copyright arises from the moment a person creates a work in a definite form.

The Vietnamese Government signed the Agreement on the Establishment of Copyright Relations with the Government of the United States of America (the "Copyright Agreement") on June 27, 1997. The Copyright Agreement entered into effect on December 23, 1998. Vietnam subsequently signed with Switzerland the Agreement on Protection and Co-operation in the Field of Intellectual Property on July 7, 1999, which came into effect on June 8, 2000. Vietnam acceded to the Berne Convention on October 26, 2004. Vietnam is also a member of the Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite; the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms; the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; the WIPO Copyright Treaty; and the WIPO Performances and Phonograms Treaty.

Copyright license agreements must be drawn up in writing and contain provisions dealing with the following principal matters:

(i) Full names and addresses of the parties;

[32] Enterprise Law 2020, Art. 199.

[33] For a complete list of Vietnam's tax treaties and other tax-related agreements, including the texts and information on signature, entry into force and effective dates, see *Bloomberg Tax International Tax Treaties.*

[34] Law No. 16/2023/QH15 passed by the National Assembly on June 19, 2023, on Pricing (the "Pricing Law"), Art. 5.

[35] Pricing Law, Annex I.

[36] Pricing Law, Annex II.

[37] Law No. 54/2019/QH14, Art. 51.

[38] Decree No. 60.

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(ii) Ground of license;

(iii) Scope of license;

(iv) License fees and payment methods;

(v) The rights and obligations of the parties; and

(vi) Responsibilities in case of breach of the agreement.

Recordation of the copyright license agreements in Vietnam is not mandatory. The Registry is the Copyright Office of Vietnam.

b. Industrial Property

Industrial property rights are the rights of individuals and juridical persons over inventions, utility solutions, industrial designs, trademarks, trade names, geographical indications, trade secrets, layout designs of integrated circuits and rights to prevent unfair competition.

The protection of industrial property rights is mainly regulated by Vietnam IP Law. Vietnam is also a member of the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property, the Patent and Cooperation Treaty, the Madrid Agreement Concerning the International Registration of Marks (the "Madrid Agreement"), the Protocol Relating to the Madrid Agreement, the Hague Agreement Concerning the International Registration of Industrial Designs, and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure (in force as of June 1, 2021).

Vietnam has also been active in negotiating with key trade partners to enter into generational free trade agreements, which require significant reforms to the local IP laws. Notable agreements include (i) the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), which entered into force as from January 14, 2019; (ii) the European Union (EU) — Vietnam Free Trade Agreement (EVFTA), which was signed on June 30, 2019 and which entered into force as from August 1, 2020; and (iii) the United Kingdom-Vietnam Free Trade Agreement (UKVFTA), which was signed on December 29, 2020 and officially entered into force as from May 1, 2021. Vietnam has also ratified the Regional Comprehensive Economic Partnership (RCEP), which officially entered into force on January 1, 2022.

Following the accession to the abovementioned trade pacts, on June 16, 2022, the National Assembly of Vietnam officially approved the Intellectual Property (Amendment) Bill to revise and supplement the Vietnam IP Law (the "Amended IP Law"). The Amended IP Law, which entered into effect on January 1, 2023, retained the exceptions for sound mark protection (January 14, 2022) and the protection of test data for agrochemicals (January 14, 2024). To implement the Amended IP Law with respect to industrial property rights, Vietnam issued Decree No. 65/2023/ND-CP on August 23, 2023, which entered into force on the same date.

Industrial property rights to inventions, utility solutions, industrial designs, trademarks (except well-known marks), geographical indications and layout designs of integrated circuits arise upon registration. Since Vietnam is a first-to-file jurisdiction, it is important for owners of inventions, utility solutions, industrial designs and trademarks, to register their industrial property as soon as possible. Vietnam has a well-organized national trademark registration system. The responsibility for conferring rights of ownership with respect to trademarks and other industrial property rights (and part of the responsibility for enforcing such rights) lies with the Intellectual Property Office of Vietnam (VNIPO) under the Ministry of Science and Technology (MOST).

Among industrial property rights, rights to geographical indications and rights to tradenames cannot be licensed. License agreements with respect to other industrial property rights must be drawn up in writing and contain provisions dealing with the following principal matters:

(i) Full names and addresses of the parties;

(ii) Ground of license;

(iii) Type of license;

(iv) Scope of license;

(v) License term;

(vi) License fee; and

(vii) The rights and obligations of the parties.

Traditionally, under Vietnam IP Law, recordation of a trademark, industrial design, patent, utility solution or layout designs of integrated circuits license agreements in Vietnam has been mandatory so that the license agreements become legally effective against a third party. The Registry is the VNIPO.

However, recordation of a trademark license agreement is no longer required under the CPTPP. On June 14, 2019, the National Assembly issued Law No. 42/2019/QH14 amending certain provisions of the Law on Insurance Business and the Vietnam IP Law. Accordingly, the requirements set out in the CPTPP are now reflected in the Vietnam IP Law. In particular, recordation of the trademark license agreement is not required for such agreement to be effective against third parties. Additionally, the use of a trademark by the licensee is considered the use of that trademark by the trademark holder, regardless of its recordation at the VNIPO. These amendments took effect as of November 1, 2019.

c. Technology Transfer

On May 15, 2018, the Government issued Decree No. 76/2018/ND-CP ("Decree No. 76") detailing and guiding the implementation of Law No. 07/2017/QH14 on Technology Transfer (the "2017 Technology Transfer Law"), which was promulgated by the National Assembly on June 19, 2017 to supersede Law No. 80/2006/QH11 (the "2006 Law"). Both the 2017 Technology Transfer Law and Decree No. 76 took effect on July 1, 2018.

The 2017 Technology Transfer Law lays down rules governing the science and technology sector, individuals working in the sector, procedures for technology transfer, and measures to stimulate the transfer of technology.

(1) Types of Technology Transfer

The 2017 Technology Transfer Law includes provisions on the types of technology transfer and also adds more clarification as to the classification of technology transfers. A technology transfer may be performed in two major ways, i.e., (i) as a whole or (ii) as part of another transaction. In particular:

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• To perform technology transfer independently; or

• To perform a technology transfer as part of projects or transactions as follows:

o Investment project;

o Capital contribution of technology;

o Franchise;

o License or assignment of intellectual property rights; or

o Sale or purchase of machinery attaching technology transfer.

It should be noted that the 2017 Technology Transfer Law requires the transfer of industrial property rights in technology transfer contracts to follow the regulations on intellectual property. However, unregistered or expired intellectual property may also be the subject of a technology transfer.

(2) Registration Requirements

Under the 2017 Technology Transfer Law, the technology transfer agreements and parts of technology transfer in investment projects, capital contribution by technology, franchise agreements, transfer of intellectual property rights and purchase or sale of machinery/equipment relating to technical know-how and technological know-how, technology plans or processes, engineering solutions, parameters, drawings or diagrams, formula, computer software and database, solutions for rationalization of production, and technology innovation, under the following circumstances must be registered with the state management agencies of science and technology:

• Technology transfer agreements from foreign countries to Vietnam;

• Technology transfer agreements from Vietnam to foreign countries; and

• Domestic technology transfer agreements using state capital or state budgets, except for those which have been granted a Certificate of registration of the results of scientific or technological missions.

(a) Application Dossier

The transferee (in case of domestic technology transfer or the transfer of technology from foreign countries to Vietnam) or the transferor (in case of the transfer of technology from Vietnam to foreign countries) (the "Applicant") must prepare the following documents:

• An application form requesting the registration of technology transfer, which specifies the parties' responsibility to ensure that the contents of the technology transfer agreement complies with relevant laws; and

• An original or a certified copy of the technology transfer agreement; in case such agreement is in a foreign language, a notarized and certified Vietnamese translation into Vietnamese is required.

(b) Procedure and Time Frame

Within 90 days from the execution of the technology transfer agreement, the Applicant must send the application dossier to the competent science and technology authorities.

Within five working days from the receipt of sufficient application, the competent science and technology authority must process and grant a Certificate of registration of technology transfer to the Applicant. If the dossier is not sufficient or needs amendment, the competent science and technology authority will require the Applicant to supplement or amend the dossier by a written notice within three working days (in case of supplementing the dossier) or five working days (in case of amending the dossier) from the receipt of such application.

If an application is refused, a written response which specifies the reasons thereof must be given to the Applicant within five working days from the receipt of such application.

The application dossier will be refused in the following cases:

• The technology transfer agreement relates to technologies which are subject to transfer restrictions;

• The technology transfer agreement does not include the technology subject or the content of the technology transfer; and

• The content of the technology transfer agreement violates the provisions of the law.

(c) Registration of Contracts Signed and Executed Before July 1, 2018

Technology transfer agreements which were signed and executed before the effective date of the 2017 Technology Transfer Law (i.e., July 1, 2018) that are subject to the registration requirement as specified above, must be registered under the above procedure if the parties to the contract wish to renew such agreements after July 1, 2018.

(d) Registration of the Renewal of, Amendment and Supplement to Registered Technology Transfer Agreements

If the registered technology transfer agreement is renewed, amended, or supplemented, the Applicant must register such renewal, amendment, or supplement with the competent science and technology authority which originally granted the Certificate of registration for such technology transfer agreement.

The process in this case is similar to the registration process.

(e) Transfer of Restricted and Prohibited Technologies

Technologies are classified into three types:

• Technologies with respect to which transfer is encouraged, e.g., environmentally friendly technologies and technologies preventing disasters, diseases, etc. ("encouraged technologies");

• Technologies with respect to which transfer is restricted, including those involving risks to human health, the environment and national security ("restricted technologies"); and

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• Technologies with respect to which transfer is prohibited, e.g., technologies having negative impacts on national security, human health and environment, etc. ("prohibited technologies").

An organization and/or individual involved in the transfer of restricted technologies must apply for a technology transfer permit. The issuance of such technology transfer permit must comply with a licensing process in which the party involved must obtain (i) approval and (ii) a permit from the Ministry of Science and Technology (the "MOST") to transfer restricted technologies.

Furthermore, an annual report on the execution of the technology transfer agreement must be submitted to the MOST by either the transferee (in case of transferring technology within the country or transferring technology from foreign countries to Vietnam) or the transferor (in case of transferring technology from Vietnam to foreign countries).

The transfer of prohibited technologies and the illegal transfer of restricted technologies are strictly forbidden under the 2017 Technology Transfer Law.

(3) Term of Contracts

The 2017 Technology Transfer Law removes all time limits for technology transfer transactions and allows the parties to freely determine the term of the contract.

The effective date of the technology transfer agreement is agreed upon by the parties involved. If the parties do not negotiate the effective date, the technology transfer agreement will become effective as of the signing date, except for the following

• The technology transfer agreement relating to restricted technologies is effective as of the issuance date of the technology transfer permit.

• The technology transfer agreements that are subject to the registration requirement become effective as of the issuance date of the Certificate of registration of technology transfer. If a technology transfer agreement is renewed, amended, or supplemented, the written agreement containing such renewal, amendment or supplement becomes effective as of the issuance date of the Certificate of registration of such renewal, amendment or supplement.

(4) Governing Law

Where a technology transfer involves a foreign party, the parties may agree to apply foreign law and international commercial practices, provided such law and practices are not contrary to the basic principles of Vietnamese law.

(5) Technology Transfer Fee and Payment Method

(a) Payment Methods

The technology transfer fee, as agreed upon by the parties in the contract, must be paid following one of the methods below:

• One-off or multiple payments in cash or in kind;

• Transfer of technology value as a capital contribution to the investment project or enterprise as regulated by law;

• Payment as a percentage of the net selling price;

• Payment as a percentage of the net revenue;

• Payment as a percentage of the earnings before income taxes of the transferee; or

• Other payment method as agreed upon by the parties.

(b) Audit Technology Transfer Fee

Special rules apply for the audit of the technology transfer fee in the following cases:

• The technology is transferred between parties, one or both of which are companies using state capital;

• The technology is transferred between parties in a parent-subsidiary company relationship;

• The technology is transferred between related parties that are regulated under tax law.

d. Franchising

The Commercial Law entered into effect on January 1, 2006. It contains Vietnam's first legal provisions on franchising. Decree No. 35[39] implements the provisions on franchising in the Commercial Law and has generated substantial domestic interest in this form of doing business.

Decree No. 35 sets forth guidance for franchising from overseas to Vietnam, from Vietnam to overseas and within the territory of Vietnam. It outlines the main legal terms that must be included in a franchising contract, as well as the requirements for registering franchising contracts and engaging in franchising business in Vietnam.

In general, Decree No. 35 adopts a disclosure system, requiring detailed information on the background, operations and bona fides of franchisors. Beyond that, as is common in Vietnam's bureaucratic culture, there are specific requirements for various types of supporting documents and procedures/formalities. The registration system provides a clear legal basis for using the franchise system to start a new business that combines international business models with local entrepreneurship.

Nevertheless, on January 15, 2018, the Government issued Decree No. 08/2018/ND-CP ("Decree No. 08") repealing numerous business requirements under the administration of the Ministry of Industry and Trade, with the aim to lift various administrative burdens that have long been imposed on local businesses, including with respect to franchising. Thus, Decree No. 08 has abolished some of the requirements for franchisors and franchisees under Decree No. 35.

(1) Choice of Law

Under the Commercial Law, the parties to a franchise transaction with a foreign element may agree to apply foreign law or international commercial practice if the consequences of such law or practice are not contrary to the fundamental principles of the law of Vietnam.

[39] Decree No. 35/2006/ND-CP, dated March 31, 2006, of the Government Stipulating in detail the Commercial Law on Franchising ("Decree No. 35"), as amended by Decree No. 120/2011/ND-CP dated Dec. 16, 2011 ("Decree No. 120") and Decree No. 08/2018/ND-CP dated Jan. 15, 2018 ("Decree No. 08").

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(2) Requirements for Franchisors

The franchisor is required to have a franchise system which has been in operation for at least one year before franchising. Previously, Decree No. 35 imposed the following requirements on franchisors: (i) the franchisor had to operate the franchise system for at least one year before franchising. In case of sub-franchising, if the sub-franchisor was a Vietnamese entity, it had to conduct the franchise business for at least one year before sub-franchising; (ii) the franchisor had to register its franchise with the competent State authorities. and (iii) the provision of products and services under a franchise could not violate the law, i.e., the law could not prohibit the provision of such products and services. In cases where the law restricted the provision of products or services, the providers had to obtain the necessary license(s) from the competent State authorities.

However, Decree No. 08 has abolished most of these requirements. As stated above, currently, the franchisor is only required to have a franchise system which has been in operation for at least one year before franchising.

(3) Franchise Registration

In the case of franchises from overseas to Vietnam, the franchisor must register with the Ministry of Industry and Trade (MOIT) before granting the franchise. The MOIT must execute the registration within five working days from the date of receipt of a duly filed registration dossier.

Comment: As mentioned above, Decree No. 08 has repealed the registration requirement for franchisors under Decree No. 35. However, Decree No. 08 does not extend to other regulations of Decree No. 35, which require a foreign franchisor to register its franchising activities with the Ministry of Industry and Trade before operating the franchise(s) in Vietnam. Thus, it is unclear, with the inception of Decree 08, whether franchising registration is still mandatory for foreign franchisors. Nevertheless, strictly speaking, because other regulations imposing the registration requirement on foreign franchisors under Decree No. 35 have not been removed, it can be argued that foreign franchisors must still register their franchises in Vietnam.

(4) Franchise Content

A franchise includes one or more of the following terms and conditions:

(i) The franchisor confers upon the franchisee the right to engage in a business, to provide goods or services in accordance with the system set forth by the franchisor, and to do so under the trademark, trade name, business motto, advertising and business symbols belonging to the franchisor.

(ii) The franchisor grants the franchisee the right to sub-franchise the franchised commercial rights.

(iii) The sub-franchisor confers upon the sub-franchisee the franchised commercial rights.

(iv) The franchisor grants the franchisee the commercial rights under a development contract.[40]

(5) Franchising Contract

The franchisor must provide the franchisee with information on its franchise system and a franchising sample contract at least 15 working days before concluding a franchising contract, unless otherwise agreed by the parties.

A franchising contract must be drawn up in writing and in the Vietnamese language. Where the franchise is from Vietnam and the franchisor desires to take it abroad, the parties to the contract may choose the language of the contract. A franchising contract may contain provisions dealing with the following principal matters when the parties choose Vietnamese law as the governing law:

(i) The content of the commercial right;

(ii) The rights and obligations of the parties;

(iii) The price, periodical franchise fee, and method of payment;

(iv) The term of the contract; and

(v) The renewal and termination of the contract, and dispute resolution.

(6) Protection of Franchisees

Decree No. 35 allows a franchisee to transfer a franchise to another party if the original franchisor does not have legitimate reasons to reject the transfer. Both the franchisor and the franchisee have the right to terminate the franchising contract before its expiry in certain circumstances stipulated in the Decree.

(7) Intellectual Property

If the franchising contract involves intellectual property rights, the part on licensing the intellectual property right to the franchisee must be drawn up as a separate part of the franchising contract. This separate contract will be subject to the laws on intellectual property.

(8) Disclosure Requirements

Circular No. 09[41] provides a detailed list of information that must be disclosed concerning the franchise, as specified in the Franchise Disclosure Document (FDD). The prescribed form for the FDD consists of: (i) general information about the franchisor; (ii) goods/services and intellectual property rights licensed; (iii) financial obligations of the franchisee; (iv) initial investment by the franchisee; (v) obligations of the franchisor; (vi) description of market for the goods/services to be traded in the form of franchising; (vii) main contents of the franchise agreement; (viii) information about the franchising system; (ix) financial statement of the franchisor; and (x) awards, recognition to be received and organization(s) that need to participate.

The franchisor must provide the franchisee with the FDD at least 15 working days before concluding a franchising contract, unless otherwise agreed by the parties.

[40] Development contract means a contract whereby the franchisor grants the franchisee the right to have or exploit a number of commercial rights under the same franchise system.

[41] Circular No. 09/2006/TT-BTM dated May 25, 2006, of the Ministry of Trade Guiding the Registration of Franchising ("Circular No. 09").

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D. Immigration Regulations

Law No. 47/2014/QH13 (the "Law on Immigration") on Entrance, Exit, Transit and Residence of Foreigners in Vietnam was amended and supplemented by Law No. 51/2019/QH14 and Law No. 23/2023/QH15, amending and supplementing several articles of Law No. 47/2014/QH13. Law No. 51/2019/QH14 and Law No. 23/2023/QH15 took effect on July 1, 2020 and August 15, 2023, respectively.

1. Entry Visas

Foreigners may apply for single or multiple entry visas. A visa may not be converted into another type of visa once issued,[42] except in some special circumstances. Thus, this change requires foreigners to exit Vietnam in order to change the type of visa. However, the following foreigners are allowed to change the visa purpose without having to exit Vietnam:

- Foreign investors or representatives of a foreign organization which invests in Vietnam;
- The parent, the spouse or children of the sponsor;
- Foreigners, who enter by e-visa or sponsorship for working in Vietnam, who have obtained a work permit or a work permit exemption certification.

The Law on Immigration provides for 27 different types of visa depending on the purpose for entry[43] The Law on Immigration also provides the period of validity of a single or multiple entry visa as follows:

(i) Up to five years for foreign investors;

(ii) Up to two years for foreigners working in Vietnam;[44]

(iii) Up to one year for relatives of foreigners visiting Vietnam; and

(iv) Up to 90 days for foreigners entering Vietnam to attend a workshop or conference.[45]

The Law on Immigration distinguishes between a working visa, a business visa, and a visa for attending a conference or workshop. Working visas and work permits are closely linked to one another. Accordingly, a working visa will only be issued after a foreign employee has obtained a work permit from the labor authorities.[46] By doing so, the authority can strictly supervise the issuance of working visas for foreigners entering Vietnam to work for local entities. A business visa is granted to foreigners coming to work with/meet local entities.

Overseas Vietnamese (colloquially called "Viet Kieu") who possess valid passports or international *laissez-passers* issued by foreign authorities, foreigners who are Viet Kieu's spouses or children, and foreigners who are spouses and children of Vietnamese citizens are entitled to visa exemption by law.[47]

Vietnam has allowed electronic visas (e-visas) since February 1, 2017. From August 15, 2023, citizens of all countries and territories are eligible to apply for e-visas with no sponsorship needed.[48] An e-visa can be used for a single entry or for multiple entries with a maximum duration of 90 days.[49] Visa applications are processed by the immigration authority within three working days and applicants can access and print their e-visa using an ID provided by the website after the approval.[50] Additionally, inviting or sponsoring entities or organizations in Vietnam may apply for electronic visas on behalf of foreigners. Electronic visas are accepted at 42 border gates, including international airports, land border checkpoints and maritime checkpoints. The Amended Law on Immigration supplemented the categories of visas, including Electronic visas (EV visas).

2. Work Permits

Acquiring an entry visa and a temporary residence card (see 3., below) only addresses the entry, exit and residence rights of foreigners in Vietnam. Foreigners, including overseas Vietnamese, wishing to work in Vietnam must obtain work permits (unless they qualify for an exemption).[51] To be granted a work permit, foreign employees must satisfy certain conditions set out under the law.

A work permit will be issued by the labor authorities at provincial and central levels. Generally, the local Departments of Labor, Invalids and Social Affairs of provinces (provincial DOLISA or DOLISA) are responsible for the issuance of work permits, except in the case where work permits are issued by the Ministry of Labor, Invalids and Social Affairs (MOLISA).[52] The MOLISA regulates and issues work permits in certain cases where foreign employees work for only the following employers:[53]

(i) International organizations; offices of foreign projects in Vietnam; and agencies and organizations permitted to be established and operated by the Government, the Prime Minister, ministries and branches in accordance with the law;

(ii) State agencies; political organizations, social-political organizations, social-professional organizations, social organizations and social-political-professional organizations; and

(iii) Public non-business and educational institutions established in accordance with the law.

[42] Law on Immigration, Art. 7(1).

[43] Law on Immigration, Art. 8 and Amended Law on Immigration, Art. 1(2).

[44] Law on Immigration, Arts. 9(5) and 9(6).

[45] Law No. 23/2023/QH15, Art. 2(2).

[46] Law on Immigration, Art. 10(4)(c).

[47] Law on Immigration, Art. 12(5).

[48] Resolution No. 127/NQ-CP of the Government dated August 14, 2023, Art. 1(1).

[49] Law No. 23/2023/QH15, Arts. 2.(1) and 2.

[50] Law No. 51/2019/QH14, Art. 1(9).

[51] Labor Code No. 45/2019/QH14 approved by the National Assembly on Nov. 20, 2019, with effect as from Jan. 1, 2021 ("Labor Code"), Art. 151.1(d).

[52] Decree No. 152/2020/ND-CP of the Government dated Dec. 30, 2020, on foreigners working in Vietnam and recruitment and management of Vietnamese working for foreign employers in Vietnam ("Decree No. 152"), Art. 11(2).

[53] Decree No. 152, Art. 30(1).

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From January 1, 2024, the MOLISA also has the authority to handle work permit-related matters for foreign employees working for one employer in a variety of provinces/cities.[54]

Notwithstanding the above requirements, the following persons, are exempt from the work permit requirement:[55]

(i) A capital-contributing member or owner of a limited liability company with a capital contribution value of at least VND 3 billion;

(ii) The chairperson or a member of the management board of a joint-stock company with a capital contribution value of at least VND 3 billion;

(iii) The chief representative of a representative office, a project of an international organization, or non-governmental organization in Vietnam;

(iv) A person entering Vietnam for a period of less than three months to offer services (a work permit is required for longer stays);

(v) A person entering Vietnam for less than three months to solve an incident or technically or technologically complex situation arising and affecting, or with the risk of affecting, production and business, which cannot be solved by Vietnamese experts and foreign experts already in Vietnam (a work permit is required for longer stays);

(vi) A foreign lawyer who is granted the right to practice in Vietnam in accordance with the Law on Lawyers;

(vii) A person covered under a provision of an international treaty to which Vietnam is a party;

(viii) A foreigner who marries a Vietnamese citizen and resides in Vietnam;

(ix) An employee as part of an intra-corporate transfer within the scope of the List of Commitments on Services of Vietnam with the WTO comprising the following services: business; information; construction; distribution; educational; environmental; financial; medical health; tourism, cultural and entertainment; and transportation services;

(x) A person entering Vietnam to provide expert and technical consultancy services or to undertake other tasks servicing the work of research, formulation, evaluation, monitoring and assessment, management and implementation of a program or project using official development aid (ODA) in accordance with provisions or agreements in an international treaty on ODA signed by the competent authorities of both Vietnam and the foreign country;

(xi) A person who is granted with an operational license in the information and press sector in Vietnam by the Ministry of Foreign Affairs in accordance with the law;

(xii) A person who is appointed by a foreign agency or organization to teach or act as a manager or executive at an educational institution that is established in Vietnam under a proposal of a foreign diplomatic mission or intergovernmental organization, or an establishment or organization formed in accordance with an international treaty to which Vietnam is a signatory;[56]

(xiii) A volunteer who is an unpaid foreign employee and voluntarily works in Vietnam to implement an international treaty to which Vietnam is a party with certification of a foreign diplomatic mission or international organization in Vietnam;

(xiv) A person entering Vietnam to work as manager, executive director, expert or technician for a period of less than 30 consecutive days (per trip) up to a maximum of three times a year;

(xv) A foreigner entering Vietnam to implement an international agreement by a central or provincial State agency or organization in accordance with the law;

(xvi) A student who is studying at a foreign school or institution entering Vietnam under an internship contract signed with an agency, organization or enterprise in Vietnam, or as a probationer or apprentice on a Vietnamese sea ship;

(xvii) A family member of a member of the staff of a foreign diplomatic mission who is exempt from the obligation to obtain a work permit in accordance with one of Vietnam's international treaties;

(xviii) A foreigner holding a public affairs passport entering Vietnam to work for a State agency, political organization or socio-political organization;

(xix) A foreigner responsible for establishing a commercial presence in Vietnam; and

(xx) A person who is certified by the Ministry of Education and Training as a foreign worker entering Vietnam:

- For teaching and research purposes; or
- To act as a manager, executive, principal or deputy principal of an educational institution that is established in Vietnam under a proposal of a foreign diplomatic mission or intergovernmental organization.[57]

Where a foreign employee is exempt from work permit requirements, the employer must, at least 10 working days prior to the foreigner commencing work, request the DOLISA in the locality where the foreigner will work on a regular basis to issue a certificate of exemption.[58] The application dossier to request the certificate must include a number of documents as specified by the law.

Foreign employees who are exempt from work permit requirements under (i), (ii), (iv), (vi), (viii), (xiv) and (xvii), above, are not required to acquire work permit exemption certificates. However, such foreign employees must report to the MOLISA or DOLISA at least three working days prior to commencing work.[59]

[54] Decree No. 70/2023/ND-CP of the Government dated September 18, 2023 amending and supplementing Decree No. 152 ("Decree No. 70"), Art. 1.11.(a).

[55] Labor Code, Art. 154; Decree No. 152, Art. 7.

[56] Decree No. 70, Art. 1.4.(a).

[57] Decree No. 70, Art. 1.4.(b).

[58] Decree No. 152, Art. 8(2).

[59] Decree No. 70, Art. 1.13(b).

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The term of a work permit will be in accordance with the term of the relevant employment contract or relevant agreement but may not exceed two years.[60] The individual concerned may renew his or her work permit only once and only for a maximum term of two years by requesting a renewal in accordance with the pertinent regulations.[61] The documentation to be included in the application for the reissuance of a work permit is specified by law.[62]

3. Temporary Residence

Foreign investors, chief representatives of foreign entities' representative office in Vietnam, foreign employees and their spouse and children may apply to the police department at the provincial security immigration office for a Temporary Residence Certificate ("TRC") upon presentation of a valid application dossier set out by the law.[63] The duration of the certificate should be consistent with the purpose of the temporary residence and the type of visa the foreigner possesses. TRCs are issued for a maximum term of 10 years in the case of foreign investors; for a maximum of three years in the case of chief representatives of foreign entities' representative offices in Vietnam; and a maximum of two years in the case of foreign employees working in Vietnam.[64] The TRC may be considered for renewal or extension. The holder of a valid TRC is exempt from entry/exit visa requirements.[65]

E. Labor Relations

Labor Code No. 45/2019/QH14, which was adopted by the National Assembly on November 20, 2019 ("Labor Code") governs labor relations in Vietnam. All employees and employers in all sectors of the national economy fall under the purview of the Labor Code.[66] The Labor Code also protects Vietnamese citizens employed at foreign-invested businesses, as well as foreigners working in Vietnam.[67]

1. Employment Contract

The law requires a written employment contract where a person is to be employed for one month or more.[68] Employment contracts in the form of a data message signed via electronic means, as per the law on electronic transactions, are valid contracts.[69] Employment contracts may be for a definite term of up to 36 months, or an indefinite term.[70] Employment contracts for both Vietnamese and foreign nationals must contain at least the mandatory terms required under the Labor Code.[71]

Employers and employees may agree on the probationary period, but the period may not exceed: (i) 180 days for enterprise managers (as defined by the Law on Enterprises); (ii) 60 days in respect of work which requires specialized or technical skills at the college level or higher; (iii) 30 days in respect of work which requires specialized or technical skills at the secondary level of vocational training or professional training, or for technical workers or professional staff; or (iv) six work days in respect of any other work.[72] Probation will not apply in cases of an employment contract with a term of less than one month.[73]

2. Termination

The Labor Code sets out the following very specific circumstances in which an employment contract terminates or is terminated:

(i) Upon the expiration of the contract;

(ii) The task under the employment contract has been completed;

(iii) The contract is terminated with the consent of both parties;

(iv) The employee is sentenced to imprisonment without being eligible for suspension, or release according to Article 385.5 of the Code on Criminal Procedure, capital punishment, or prohibited from performing his former job in accordance with an effective decision of a court;

(v) A foreign employee is deported under an effective judgment or decision of a court or competent authorities;

(vi) The employee dies or is declared dead, missing or incapable of civil acts by a court;

(vii) The individual employer dies, or is declared dead, missing or incapable of civil acts by a court; the organizational employer stops its operations, or a business registration authority under the provincial People's Committee issues a notice that the employer does not have a legal representative or a person authorized to exercise the legal representative's rights and obligations;

(viii) The employee is disciplined by way of dismissal;

(ix) The employer unilaterally terminates the employee;

(x) The employee unilaterally terminates the employment contract;

(xi) A foreign employee's work permit expires;

(xii) Retrenchment due to redundancy; or

(xiii) Either party revokes probation under an employment contract, or the employee does not pass the probationary period under the employment contract.[74]

a. Severance

When an employment contract is terminated, an employee who has worked for 12 months or more is entitled to a severance allowance equivalent to half a month's salary for each year of the employee's employment.[75] The salary for calcula-

[60] Labor Code, Art. 155; Decree No. 152, Art. 10.
[61] Labor Code, Art. 155.
[62] Decree No. 152, Art. 17.
[63] Law on Immigration, Arts. 36 and 37.
[64] Law on Immigration, Art. 38 and Amended Law on Immigration, Art. 1(16).
[65] Law on Immigration, Art. 12(2).
[66] Labor Code, Art. 2.
[67] Labor Code, Art. 2.
[68] Labor Code, Art. 14.
[69] Labor Code, Art. 13(1).
[70] Labor Code, Art. 20(1).
[71] Labor Code, Art. 21.
[72] Labor Code, Art. 25.
[73] Labor Code, Art. 24(3).
[74] Labor Code, Art. 34.
[75] Labor Code, Art. 46(1).

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tion of severance comprises the base salary, allowances, and other additional payments.

However, the period during which the employee and employer have made contributions into the unemployment insurance will be excluded from the service period used to compute the severance allowance.[76]

The employee is not entitled to severance allowance in the following circumstances:[77]

(i) The employee is dismissed due to misconduct;

(ii) The employee unilaterally terminates the contract in an unlawful manner;

(iii) A foreign employee is deported, or his/her work permit expires;

(iv) The employee is entitled to receive a pension provided by the social insurance fund;

(v) The employee is absent from work without a legitimate reason for at least five consecutive working days; and

(vi) The employee is retrenched due to redundancy (a job loss allowance is paid instead).

b. Unilateral Termination by Employers

Generally, an employer may only unilaterally terminate an employment contract where:[78]

(i) The employee regularly fails to perform the work as agreed;

(ii) The employee is ill and unable to work for 12 months in the case of an indefinite-term contract, six months in the case of a definite-term contract with a term from 12 months to 36 months, or more than one-half of the definite-term contract with a term of less than 12 months;

(iii) The employer must cut back on employment because of a natural disaster, fire, dangerous pandemic, enemy danger, or relocation or downsizing as requested by a competent authority;

(iv) The employee has not come back to work after 15 days from expiration of the suspension period of the employment contract as specified by law, unless otherwise agreed by the parties;

(v) The employee has reached retirement age;

(vi) The employee is absent from work without a legitimate reason for five consecutive working days or more; or

(vii) The employee provides false information that affects the recruitment of the employee.

In terms of prior notice upon unilateral termination, the employer must provide advance notice of at least:

(i) 45 days for indefinite-term contracts;

(ii) 30 days for definite-term contracts with a term from 12 months to 36 months;

(iii) Three working days for definite-term contracts with a term of less than 12 months and employment contracts terminated due to long illness; or

(iv) 120 days for employees holding managerial positions or who are performing special jobs as provided by the law.[79]

The parties can practically agree for a payment in lieu of notice.

c. Dismissal

An employer may dismiss an employee for serious misconduct. This is the only situation in which the law allows an employer to terminate an employee's contract unilaterally without giving notice and being liable for any type of severance or compensation payment.

Serious misconduct as a basis for dismissal includes the following circumstances:[80]

(i) Where an employee steals, embezzles, gambles, deliberately causes injury, uses drugs at workplaces;

(ii) Where an employee discloses technology or business secrets or infringes intellectual property rights of the employer, commits any other act which causes serious loss and damage or which threatens to cause particularly serious loss and damage to property or interests of the employer, or in case of sexual harassment at the workplace;

(iii) Where an employee who has previously been disciplined by an extension of wage increase timing or a demotion due to an offense recommits the same offense during the trial period or recommits the same offense after being demoted during the trial period; or

(iv) Where an employee fails to go to work for five accumulated days in 30 days or for 20 accumulated days in 365 days without a proper reason.

To dismiss an employee, the misconduct and its applicable disciplinary dismissal must be specified in the employer's Internal Labor Regulations or employment contract, or the law.[81] Regarding procedures, the employer must conduct a disciplinary hearing, and prove the misconduct by compelling evidence before it can dismiss the employee.[82]

d. Retrenchment

An employer may conduct a mass layoff of employees based on redundancy due to: (i) changes of organizational restructuring and of technology; (ii) economic reasons; (iii) merger, consolidation, division or separation of the enterprise; (iv) sale or lease of enterprises, or change in the form of enterprise; or (v) transfer of ownership of enterprises/collectives, or

[76] Labor Code, Art. 46(2). In such cases, the employee will receive unemployment insurance payable by the social insurance agency rather than a severance allowance payable by the employer.

[77] Labor Code, Arts 34, 40, and 46.

[78] Labor Code, Art. 36(1).

[79] Labor Code, Art. 36(2) and Decree No. 145/2020/ND-CP of the Government dated Dec. 14, 2020 guiding the implementation of the Labor Code on working conditions and Labor relations ("Decree No. 145"), Art. 7.

[80] Labor Code, Art. 125.

[81] Labor Code, Art. 127(3).

[82] Labor Code, Art. 122(1).

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transfer of use rights over assets.[83] The employer is responsible for consulting with the employee representative organizations to formulate a labor usage plan. While retrenchment of employees in cases mentioned in items (i) and (ii) requires the employer to notify the local labor authority at least 30 days before the termination date, the retrenchment of employees in the cases mentioned in items (iii), (iv) and (v) do not require the employer to notify the local labor authority.[84] However, a mass layoff is often subject to great scrutiny to ensure the employer is not fabricating such reasons to lay off an unwanted employee.

When terminating any employee based on redundancy who has worked for 12 months or more, the employer is liable to pay a job-loss allowance equal to one month's salary for each year of the employee's employment, with a minimum of two months' salary, subject to an unemployment insurance contribution. The service duration for job-loss allowance pay calculation is the total duration that the employee has actually worked for the employer, excluding the time during which the employee has made contributions to the unemployment insurance fund.[85]

e. Illegal Termination

If a labor court declares a termination illegal, the court will request the employer to reinstate the employee and pay the salary, make social/heath/unemployment insurance contributions for the period during which the employee was unable to work, and pay at least two months' salary as specified in the employment contract as compensation.[86]

If the employee does not wish to continue to work, the employer must pay the employee a severance allowance.

If the employer does not wish to receive the employee back at work and can obtain the employee's consent to the termination, the employer must pay the employee, in addition to the above-mentioned amounts, compensation of at least two months' salary as specified in the employment contract.[87]

3. Working Hours, Rest Breaks, Overtime, Remuneration

a. Working Hours

If working time is scheduled on per day, working hours may not exceed eight hours in a day and 48 hours in a week.[88] If working time is scheduled per week, it must not exceed 10 hours per day and 48 hours per week.[89]

b. Rest Breaks

Employees who work six hours or more a day are entitled to at least 30 consecutive minutes of break for daytime shifts and 45 minutes of break for night shifts. If the employee works in consecutive shifts of six hours or more, the break time is considered to be working time. An employee who works in shifts is entitled to a break of at least 12 hours between each shift.[90] Special rest breaks apply to pregnant employees, female employees in certain situations (e.g., menstruation, nursing a child less than 12 months old), and elderly employees.[91]

Employees are entitled to at least one day off (24 consecutive hours) each week. If the employee cannot have a weekly day off due to the labor cycle, the employer must ensure that the employee has an average of four days off per month.[92]

An employee who has worked for an employer for 12 months is entitled to one of the following types of annual leave:

(i) 12 days of annual leave with pay for employees working under normal working conditions;

(ii) 14 days of annual leave with pay for employees working in heavy, toxic, or dangerous jobs, for employees working in areas with harsh living conditions, and for minor and disabled employees; and

(iii) 16 days of annual leave with pay for employees working in extremely heavy, toxic, or dangerous jobs.[93]

The annual leave of an employee is increased one day for each five years of service.[94]

Employees are given 11 days of paid leave for statutory holidays, including Calendar New Year (one day), Lunar New Year (five days), Hung Kings Commemoration Day (one day), Victory Day (one day), International Labor Day (one day), and National Day (two days).[95]

c. Overtime

An employer and employees may agree on overtime, provided that:

(i) The number of overtime hours do not exceed 50% of the normal working hours in a day if the normal working time is provided per day;

(ii) The number of normal working hours and overtime hours do not exceed 12 hours per day if the normal working time is provided per week;

(iii) The number of overtime hours cannot exceed 12 hours in public holidays or weekly days off;

(iv) The number of overtime hours do not exceed 40 hours per month, and 200 hours per year. In special cases, the law increases this limitation on overtime work to 300 hours of overtime per year. This special rule will be applied to businesses as follows:

a. Manufacturing and processing of textiles, garments, footwear as well as electric and electronic products; and the processing of agricultural, forestry, aquaculture, and salt products;

b. Manufacturing or processing for electricity, telecommunications, refinery operation; water supply and drainage;

[83] Labor Code, Arts. 31(11), 44, 42 and 43.
[84] Labor Code, Arts. 42 and 43.
[85] Labor Code, Art. 47.
[86] Labor Code, Art. 41(1).
[87] Labor Code, Arts. 41(2), 41(3).
[88] Labor Code, Art. 105(1).
[89] Labor Code, Art. 105(2).
[90] Labor Code, Arts. 109, 110.
[91] Labor Code, Art. 137(4) and 148(2).
[92] Labor Code, Art. 111.
[93] Labor Code, Art. 113(1).
[94] Labor Code, Art. 114.
[95] Labor Code, Art. 112.

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c. Works that require highly skilled workers that are not available on the labor market at the time; and

d. In other cases, to deal with urgent work which cannot be postponed.[96]

However, employers cannot request the following employees to work overtime:

(i) Employees who are under 15 years old;[97]

(ii) Employees who are between 15 and 18 years old, except for certain jobs determined by the MOLISA;[98]

(iii) Employees who are mildly disabled with working capacity of over 51%; a severely disabled person; or a person with extreme severe disability, unless otherwise agreed with the employees;[99]

(iv) Female employees who are in the seventh or a later month of pregnancy, or in the sixth or a later month of pregnancy if they work in a highland, deep-lying, remote, border or island area;[100] and

(v) Female employees who are raising a child under 12 months old, unless otherwise agreed with the female employees.[101]

Employers are required to notify the local Department of Labor, Invalids and Social Affairs in writing when they require their employees to work overtime for more than 200 hours but not exceeding 300 hours in a year. This notification must be filed within 15 days from the date of requesting the overtime work.[102]

Pay for overtime work must be at least:

(i) 150% of the actually paid salary of the current job if the employee works overtime on normal working days;

(ii) 200% of the actually paid salary of the current job if the employee works overtime on weekly days off; and

(iii) 300% of the actually paid salary of the current job if the employee works overtime on public holidays and paid leave (however, if the employee is entitled to the daily salary for such days, in addition to the above payment, he/she is also entitled to the salary for such holidays or paid leave days).[103]

If the employee works at night, the employee is entitled to additional compensation of at least 30% of the actually paid salary for the current job at daytime on a normal working day ("night shift allowance").[104] If the employee works overtime during a night shift, in addition to all the above payments (i.e., normal overtime rate and the night shift allowance), the employee is entitled to an additional compensation of 20% of the daytime salary of such daywork.[105]

d. Remuneration

The Government divides the country into four regions based on the level of development and then applies different minimum wages to the different regions ("regional minimum wage" or RMW). Effective from July 1, 2024, the monthly RMW for Vietnamese employees are as follows:[106]

(i) Region I: VND 4.96 million;

(ii) Region II: VND 4.41 million;

(iii) Region III: VND 3.86 million; and

(iv) Region IV: VND 3.45 million.

In addition, Decree No. 74 also adds hourly RMW as follows:[107]

(i) Region I: VND 23.80 thousand;

(ii) Region II: VND 21.20 thousand;

(iii) Region III: VND 18.60 thousand; and

(iv) Region IV: VND 16.60 thousand.

The newly-added hourly RMW along with the monthly RMW will act as the basis for calculation of weekly RMW, daily RMW, RMW per product, or RMW per fixed job.

4. Social Insurance, Health Insurance, and Unemployment Insurance

a. Social Insurance

Vietnamese employees working under an employment contract with the term of one month or more, or for an indefinite term must participate in the State social insurance scheme.

However, the new law expanded the categories of subjects who are subject to compulsory social insurance. Specifically, as of January 1, 2018, certain foreign employees working in Vietnam and holding valid work permits/practicing licenses are also required to contribute to the compulsory social insurance scheme.[108]

On October 15, 2018, the Government issued Decree No. 143/2018/ND-CP providing detailed guidance on compulsory social insurance applicable to foreign employees, which came into force on December 1, 2018 ("Decree No. 143"). Accordingly, foreign employees who satisfy the following conditions are subject to compulsory social insurance:

(i) Working in Vietnam under indefinite-term employment contracts or definite-term employment contracts with a term of at least one full year with employers based in Vietnam; and

(ii) Having been granted either a work permit (*giay phep lao dong*), a practicing certificate (*chung chi hanh nghe*), or a practicing license (*giay phep hanh nghe*).

Notwithstanding the above conditions, the following employees are not subject to compulsory social insurance:

[96] Labor Code, Art. 107(3).
[97] Labor Code, Art. 146(1).
[98] Labor Code, Art. 146(2).
[99] Labor Code, Art. 160(1).
[100] Labor Code, Art. 137.1(a).
[101] Labor Code, Art. 137.1(b).
[102] Labor Code, Art. 107(4).
[103] Labor Code, Art. 98(1).
[104] Labor Code, Art. 98(2).
[105] Labor Code, Art. 98(3).
[106] Decree No. 74/2024/ND-CP of the Government, dated June 30, 2024, on regional minimum wage rates applied to employees working under labor contracts ("Decree No. 74"), Art. 3.
[107] Decree No. 38, Art. 3.
[108] Law on Social Insurance, Arts. 2(1) and 124(1).

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(i) Foreign employees who are intra-corporate transferees; and

(ii) Employees who have reached the statutory retirement age.[109]

The social insurance scheme provides the following benefits: payments for sick leave, maternity leave, work-related accidents, occupational diseases, rehabilitation leave and retirement, and survivor benefits.[110] Foreign employees are covered for all five regimes which are currently applicable to Vietnamese employees. However, not all five regimes are effective at the same time for foreign employees. The short-term benefit regimes (illness, maternity and labor accidents and occupational diseases) apply from December 1, 2018, while the long-term benefit regime (retirement and survivorship) took effect from January 1, 2022.

Accordingly, the rates of contributions by employers and employees are as follows (applicable to both Vietnamese and foreign employees):[111]

Party	Contribution Rate
Employee Contribution	8%
Employer Contribution	Up to 18%

The Government caps the monthly salary used as the basis for calculating social insurance at 20 times the basic salary, which the Government updates from time to time.[112]

The current basic salary is VND 2.34 million ($92.90) with effect from July 1, 2024, which means that the salary used to calculate the social insurance contribution from July 1, 2024 is capped at VND 46.8 million ($1,859).[113]

b. Unemployment Insurance

The unemployment insurance was first introduced by the Law on Social Insurance and was applicable from January 1, 2009.[114] However, from January 1, 2015, unemployment insurance regulations under the Law on Social Insurance were replaced by those specified under the Law on Employment. Under the Law on Employment, contribution to unemployment insurance is compulsory for employees having either employment contracts with a term of at least three months or employment contracts of indefinite term regardless of the number of employees recruited by the employer.[115] Employers and employees each contribute 1% of monthly salary. The monthly salary used for the calculation of unemployment insurance is the monthly salary as provided in the employment contract. In case the monthly salary used for calculation of unemployment insurance is higher than 20 times the regional minimum salary, it will be capped at 20 times the regional minimum salary.[116] The unemployment insurance fund covers unemployment allowance, vocational training and support, job search support, health insurance, and job training support.[117]

Foreign employees are not subject to unemployment insurance.

c. Health Insurance

Health insurance is mandatory for employees, whether local or foreign, with an employment contract term of three months or more.[118] The employer and the employee are required to contribute a combined maximum of 6% of the employee's monthly salary to the Social Insurance Fund. The employer contributes a maximum of 4% and the employee contributes a maximum of 2%.[119]

The current rates of contribution to the health insurance fund are 3% for the employer and 1.5% for the employee.[120] The monthly salary for purposes of calculating health insurance premiums is based on the actual salary. In case the monthly salary used for calculation of health insurance is higher than 20 times the basic salary, it will be capped at 20 times the basic salary (VND 1.8 million × 20 = VND 36 million).[121] Since the Law on Health Insurance and its implementing decrees and circulars do not exclude foreign employees from the obligation to contribute to the health insurance fund, since October 1, 2009, foreign employees have fallen within the purview of the health insurance contribution scheme if they have employment terms of three months or more.[122]

d. Employees Not Subject to Compulsory Insurance

For employees who are not subject to the various compulsory insurance, employers are required to pay an amount equal to the premiums of such insurance in addition to their salaries.[123]

5. Employees' Representative Organizations

Labor unions in Vietnam are organized in accordance with the following top-down system:[124]

(i) The Vietnam General Confederation of Labor;

(ii) The provincial labor union federations and industry labor union bodies at the central level;

(iii) Above-grassroots labor union bodies; and

[109] Decree No. 143, Art. 2(2).

[110] Law on Social Insurance, Art. 4(1).

[111] Law on Social Insurance No. 58/2014/QH13 passed by the National Assembly on November 20, 2014 ("Law on Social Insurance"), Arts. 85 and 86) and Decree No. 143. Arts. 12(1) and 13(1).

[112] Law on Social Insurance, Art. 89(3); Law on Health Insurance No. 25/2008/QH12 passed by the National Assembly on Nov. 14, 2008, as amended by Law No. 46/2014/QH13 ("Law on Health Insurance"), Art. 14(5).

[113] Decree No. 73/2024/ND-CP of the Government, dated June 30, 2024, on the base salary applied to officers, public officials, public employees and armed forces' personnel (Decree No. 73), Art. 3.

[114] Law on Social Insurance, Art. 140.

[115] Law on Employment No. 38/2013/QH13 adopted on Nov. 16, 2013, in effect as of Jan. 1, 2015 ("Law on Employment"), Art. 43(1).

[116] Law on Employment, Art. 58(1).

[117] Law on Employment, Art. 42.

[118] Law on Health Insurance, Art. 12(1).

[119] Law on Health Insurance, Art. 13.

[120] Decree No. 146/2018/ND-CP of the Government, dated Oct. 17, 2018, providing details and directives on the implementation of several articles of the Law on Health Insurance, Art. 7.

[121] Law on Health Insurance, Art. 14(5).

[122] Law on Health Insurance, Art. 1.2.

[123] Labor Code, Art. 168(3).

[124] Union Charter, issued under Decision No. 174/QD-TLD by Vietnam General Confederation of Labor dated Feb. 3, 2020, Art. 7.

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(iv) Grassroots labor union bodies (i.e., the labor union at the company level) and/or trade union bodies.

The current Labor Code recognizes employees' representative organizations at the enterprise (ERO) level, in addition to the traditional trade unions mentioned above. Each trade union and ERO only represent employees that are members of that specific trade union/ERO.

Employees have the right to establish a corporate trade union/ERO after an enterprise is established. An employer is obligated to create favorable conditions for corporate trade union/ERO establishment, although the employer does not have the right to set up or the responsibility of setting up a corporate trade union/ERO.[125] As of the time of writing, no guidance has been issued on the procedure to register the establishment of an ERO.

The establishment of a corporate trade union or a Temporary Trade Union Executive Committee requires at least five employees who are trade union members (who usually gained membership from their previous employment).[126] An employee becomes a labor union member when he/she participates in and is admitted by a corporate trade union.[127] In practice, this can be resolved in one combined step. The local trade union organization will consider admission based on employees' voluntary applications and then issue a decision to establish a corporate trade union. A company must contribute 2% of the employer's total payroll used to determine social insurance contribution for the employer, whether domestic or foreign, and even if the enterprise has no corporate trade union.[128]

6. Collective Labor Agreements

An employer and its employees may enter into a collective labor agreement ("CLA"), which is an agreement between the parties stipulating working conditions, the rights and obligations of both parties, etc.[129] A CLA is negotiated and entered into based on the principles of voluntariness, equality and openness. The lawful representatives of the parties negotiate and sign the CLA.[130] A CLA becomes effective as of the date agreed by both parties and recorded in the agreement.[131] In the absence of such an agreement, the CLA will become effective as of the date of signature.[132] Within 10 days from the signing of a CLA, the employer must send a copy of the agreement to the local labor authority.[133]

7. Settlement of Labor Disputes

The Labor Code distinguishes between individual and collective labor disputes.[134] The parties in dispute should solve their dispute through reconciliation and arbitration, except in some circumstances as provided by the law.[135] The Labor Code provides for several different third-party dispute resolution mechanisms.

For both individual or collective disputes, the first level of settlement is the labor reconciler. Labor reconcilers are appointed by the Chairperson of the provincial-city-level People's Committee.[136] Labor reconcilers have initial jurisdiction in all labor disputes, except disputes that can be resolved by the labor court without having to go through the reconciliation.[137] Labor reconcilers are required to reach a resolution within five working days of receiving a request for dispute resolution.[138] If the parties are not satisfied with the result, or a resolution is not reached within five working days, they have several different options.

In an individual labor dispute, after the settlement of labor reconcilers, either party has the option of appealing to the labor court or labor arbitration council.[139] Parties can also directly request the labor court to settle certain labor disputes, bypassing the reconciliation process in certain cases.[140]

Collective labor disputes are divided between disputes over rights and disputes over interests, with each type subject to different dispute resolution methods:

(i) In a collective labor dispute over rights (i.e., collective labor disputes over compliance with labor laws, performance of collective labor agreements, registration of internal labor regulations and other agreements), after the settlement of labor reconcilers or if the labor reconciler fails to achieve a resolution, either party has the option of appealing to the labor arbitration council before going to a labor court.[141]

(ii) In a collective labor dispute about interests (i.e., labor disputes over requests by employees for new labor conditions or benefits), after the settlement of labor reconcilers or, if the labor reconciler fails to achieve a resolution, the parties can only appeal to the labor arbitration council before a strike[142] or the labor collective has the right to initiate procedures to go on strike.[143]

F. Financing the Business

1. Investor Financing

Under current regulations, legal capital is the minimum capital required to establish an enterprise, and it is only applicable for certain lines of business.

The members or shareholders' equity contribution, as stated in the company's charter, is referred to as the "charter capital."

Interest expense incurred to fund contributions to charter capital (if any) is not deductible for tax purposes. Interest expense incurred with respect to debt capital (i.e., the difference between the investment capital and the charter capital as stated

[125] Labor Code, Art. 189(3).
[126] Union Charter, Art. 13(1).
[127] Union Charter, Arts. 1 and 2.
[128] Law on Trade Union No. 12/2012/QH13, adopted on June 20, 2012 ("Law on Trade Union"), Art. 26(2).
[129] Labor Code, Art. 75(1).
[130] Labor Code, Art. 76(4).
[131] Labor Code, Art. 78(1).
[132] Labor Code, Art. 78(1).
[133] Labor Code, Art. 77.
[134] Labor Code, Art. 179(1).
[135] Labor Code, Arts. 188 and 191(2).
[136] Labor Code, Art. 184.
[137] Labor Code, Art. 188.
[138] Labor Code, Art. 188(2).
[139] Labor Code, Art. 188(7).
[140] Labor Code, Art. 188(1).
[141] Labor Code, Art. 191.
[142] Labor Code, Art. 195(1).
[143] Labor Code, Art. 195(2).

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in the investment certificate) is generally deductible if the investors have contributed the registered charter capital in compliance with the agreed schedule, and the loan agreements with lenders and offshore loan agreements are properly supported and registered with the State Bank of Vietnam. For interest to be tax deductible, the interest rates charged by lenders other than credit institutions and corporate lenders (i.e., the rates charged by individual lenders) must not be 1.5 times or more higher than the basic interest rate announced by the State Bank of Vietnam at the time the borrower obtains the loan.

According to Decree No. 132/2020/ND-CP (in effect from December 20, 2020) ("Decree No. 132"), the total deductible loan interest expense of an enterprise which has related transactions within a tax period (after offsetting interest income) is capped at 30% of earnings before interest, tax, depreciation and amortization ("EBITDA").

2. External Financing

Major international banks have set up branches or subsidiaries as another source of financing. Borrowers may source loans offshore and must meet the requirements provided by law.[144] Certain foreign loans are subject to prior registration with the State Bank of Vietnam, including:[145]

(i) Medium and long-term foreign loans;

(ii) Short-term foreign loans that are extended for a total duration of over one year; and

(iii) Short-term foreign loans not subject to an extension contract but with outstanding debt at the end of one full year from the date of first withdrawal of capital, unless the borrower completes repayment of the loan within 30 working days thereof.

An FIE can seek foreign loans for implementing business plans or investment projects, or for restructuring the foreign debts of the FIE without increasing borrowing costs, or for implementing business plans or investment projects of any company to which the borrowing FIE makes a direct capital contribution.[146] The borrowing FIE must also ensure that it will not take short-term loans to serve mid-term and long-term purposes.[147]

Medium-term and long-term loans (including both domestic and offshore loans) obtained by FIEs are subject to the loan capital limit. If such loans result in an increase of the investment capital stipulated in the investment certificate, the investors must register to amend the investment certificate accordingly.

[144] Circular 08/2023/TT-NHNN providing requirements for companies taking foreign loans not guaranteed by the Government, Arts. 19.1 and 19.2.

[145] Circular 12/2022/TT-NHNN providing requirements on taking foreign loans by companies, Art. 11.

[146] Circular No. 12/2014/TT-NHNN providing requirements on taking foreign loans by companies not guaranteed by the Government, Art. 5.

[147] Circular No. 12/2014/TT-NHNN providing requirements on taking foreign loans by companies not guaranteed by the Government Art. 11.1(a).

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III. Forms of Doing Business in Vietnam

A. General Introduction on Forms of Business Entity

On June 17, 2020, the National Assembly passed the Law on Enterprises Law No. 59/2020/QH14 (the "Enterprise Law 2020") and the Law on Investment Law No. 61/2020/QH14 (the "Investment Law 2020"), which superseded the previous Enterprise Law 2014 and Investment Law 2014 as from January 1, 2021. These laws mostly adopt the same approach as the previous laws, and add some changes and clarifications to these legislations.

The forms of doing business are governed by the Enterprise Law 2020 and Investment Law 2020. Special rules govern the status of branches and representative offices (ROs) of foreign companies under the Commercial Law.

B. Principal Business Entities

1. Limited Liability Companies Under the Enterprise Law 2020

a. Formation

LLCs may take one of two forms: an LLC with two or more members (a "multi-member LLC") and an LLC with one member (a "single-member LLC"). A multi-member LLC may have up to 50 members that can be either individuals or organizations. Each member is responsible for the debts and obligations of the LLC to the extent of his/her/its contribution to the capital of the LLC. On the other hand, only one organization or individual may own a single-member LLC.

b. Licensing

Under Investment Law 2020, foreign investors of all foreign investment projects will be required to submit necessary documents in the form of an investment registration dossier to obtain an investment registration certificate. The licensing process will be done within the statutory period of 15 days, except for certain foreign investment projects that are subject to "in-principle" approval by any one of the National Assembly, the Prime Minister or the People's Committee of a local province or central city. Upon the issuance of the investment registration certificate, foreign investors with an investment project to establish a new economic entity in Vietnam will separately apply for an enterprise registration certificate. Foreign investors also have the option to establish a new investment project subject to a new investment registration certificate under an existing legal entity established in Vietnam, in which case the existing entity will apply only for a branch operation registration certificate or a business location registration certificate.

c. Charter

Member(s) of an LLC and the legal representative must execute the LLC's charter, which includes statutory stipulations, and submit the charter to the business registration authority.

d. Capitalization

LLCs cannot issue shares. Instead, an LLC will issue a certificate of capital contribution to each member who has fully contributed the committed capital.

Under the Enterprise Law 2020, the members of an LLC must contribute the initial charter capital within 90 days from the date of issuance of the enterprise registration certificate. Following registration, the members can increase or decrease their charter capital and will be required to update the enterprise registration certificate within 10 days of the implementation of the capital change.

An LLC can increase its charter capital by asking existing members to contribute more capital or by accepting new members. An LLC is also allowed to decrease its charter capital in two cases: (i) when the LLC returns part of its contributed charter capital to the LLC owner(s), provided that the LLC is continuously operating for more than two years from the date of the enterprise registration and the LLC ensures that it is able to pay all debts and other liabilities after returning the capital to the LLC owner; and (ii) when the LLC owner fails to contribute the charter capital as committed by the deadline.

e. Foreign Participation

The Enterprise Law 2020 and Investment Law 2020 unified the basic laws governing foreign and Vietnamese businesses. Under Enterprise Law 2020, a control committee is compulsory for only State-owned-enterprises and their subsidiaries. To that end, foreign investors may establish the same corporate entities as domestic investors, subject to restrictions in certain business sectors.

The foreign ownership restriction follows Investment Law 2020 from January 1, 2021.

f. Management and Control

(1) Multiple-Member LLC

A multi-member LLC is organized with a board of members and a director or general director at the top. Under Enterprise Law 2020, a controller committee is compulsory for only State-owned-enterprises and their subsidiaries. The company charter stipulates the functions of the control committee and the chief controller.

The board of members passes resolutions via a vote either at a meeting or in writing. The attendees at a meeting adopt a resolution of the board of members in either of the following circumstances:

(i) When the resolution receives a number of affirmative votes from the members in attendance representing at least 65% of the capital contribution represented by all of the attendees.[148]

(ii) When the resolution receives a number of affirmative votes from the members in attendance representing at least 75% of the capital contribution represented by all of the attendees where the resolution concerns: the sale of assets/property with a value equal to or greater than 50% of the

[148] Enterprise Law 2020, Art. 59.

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total value of the assets as stated in the most recent financial statements of the company (or such other smaller proportion or value as may be stipulated in the company charter); an amendment of the company charter; or the reorganization or dissolution of the company. The company charter stipulates the specific proportion.

LLC members may adopt a resolution through written opinions when approved by members representing at least 65% of the charter capital. The company charter stipulates the specific proportion.

Enterprise Law 2020 allows the company to have multiple legal representatives. The charter of the company must provide the number, management title, rights and obligations of each representative at law. Otherwise, each of the legal representatives will be deemed to be the competent legal representative of the company vis-a-vis third parties and will have joint responsibility for any damage caused to the enterprise pursuant to civil or other laws. There must be at least one legal representative who resides in Vietnam and holds the position of either the chairperson of the board of members, general director or director of the company.

(2) Single-Member LLC

A single-member LLC that has an individual as its owner must have a company president, a director or a general director. The company owner is the company president. The legal representative of the company may be the company president, the director or the general director, as stipulated in the company charter. The company president may concurrently hold the position of, or hire another person to act as, director or general director.

A single member LLC that has an organization as its owner must appoint one or more authorized representatives to exercise its rights and obligations. Where three to seven people are appointed as authorized representatives with a term of office not exceeding five years, the management structure of the company must be organized as a board of members with a director or general director. In such a case, the board of members is comprised of all the authorized representatives.

Where one person is appointed as the authorized representative, that person must be the company president. In such a case, the management structure of the company consists of a company president and a director or general director. The company charter must stipulate whether the chairperson of the board of members, the company president, or the director or general director serves as the legal representative of the company.

Under Enterprise Law 2020, controllers are not compulsory for single-member LLCs, except for State-owned-enterprises or their subsidiaries.

g. Restructuring and Transfer of Ownership

An LLC may be reorganized by way of division, separation, merger, consolidation or conversion of the corporate form.

A member may ask the company to purchase its share of the contributed capital if the member votes against the decision of the board of members on any of the following matters:

(i) The amendment of the charter in relation to the rights and obligations of the members and the board of members;

(ii) The restructuring of the company; or

(iii) Other matters stipulated in the charter.

Members may assign their contributed capital to others but the existing members have preemptive rights to purchase the assigned capital.

h. Profit Distribution

An LLC may distribute profits to its members after it has fulfilled tax and other financial obligations, if it is able to pay its debts and other obligations after the distribution.

i. Term and Termination

Theoretically, an LLC has perpetual existence since there is no statutory limitation on its operational term. However, the investment certificate of a foreign invested project stipulates the term, which may not exceed 50 years; however, where necessary, the term may be up to 70 years, subject to Government approval. The project term may be renewable, subject to conditions, and the total term after renewal may not exceed 50 years (or 70 years in specific cases). An LLC terminates its operations where:

(i) The term provided in the charter expires and there is no extension;

(ii) The board of members so decides;

(iii) It does not have the required minimum number of members for six consecutive months; or

(iv) The government revokes its enterprise registration certificate.

2. Joint Stock Companies Under the Enterprise Law

a. Formation

The charter capital of a JSC is divided into equal shares. The charter capital of a JSC includes only the shares already paid up by shareholders and does not includes the value of shares offered for sale.[149]

The shareholders of a JSC may be organizations or individuals. The minimum number of shareholders is three; there is no limitation on the maximum number of shareholders. Shareholders are responsible for the debts and obligations of a JSC to the extent of their capital contributions to the JSC.

b. Licensing

The business registration procedure for a JSC is the same as that for the establishment of an LLC.

c. Charter

The requirements for the charter are the same as those for an LLC.

d. Capitalization

A JSC may issue securities to the public. The charter capital of a JSC must comprise common stocks and may include preferred stocks. Shareholders may convert preferred stocks in-

[149] Enterprise Law 2020, Art. 112.1.

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to common stocks pursuant to a decision of the general meeting of shareholders.

In addition, pursuant to Decree No. 155, the foreign ownership limitation is capped at 50% and is applied only in the case of a public company conducting business activities in which foreign investors need to meet certain investment conditions and where there are no regulations specifying a foreign ownership ratio.[150]

With respect to bonds, bond issuers may determine the maximum foreign ownership ratio of circulated bonds. Foreign investors for purposes of this rule include organizations established and operating in accordance with foreign laws doing business in Vietnam, and an economic organization incorporated in Vietnam with foreign investors holding more than 50% of its charter capital and individuals holding foreign citizenship.[151]

e. Foreign Participation

Enterprise Law 2020 and Investment Law 2020 unified the basic laws governing foreign and Vietnamese businesses. Consequently, foreign investors may establish the same corporate entities as domestic investors, subject to restrictions in certain business sectors.

The foreign ownership restriction follows Investment Law 2020 from January 1, 2021.

f. Management

A JSC has a board of management, a director or general director, and a general meeting of shareholders. The general meeting of shareholders has the highest decision-making power and includes all shareholders with voting rights. A JSC must hold a general meeting of shareholders at least once a year.

A JSC has two options in terms of which management body will be adopted for its organizational structure:

(i) General meeting of shareholders, board of management, board of control, and general director (or director). The board of control will be optional if the JSC has fewer than 11 shareholders and the institutional shareholders together hold less than 50% of the total shares; or

(ii) General meeting of shareholders, board of management, and general director (or director). In this case, at least 20% of the members of the board of management must be independent members,[152] and there must be an internal audit committee under the board of management.

The board of management represents a JSC in all matters except those reserved for the general meeting of shareholders. The board of management must hold a meeting at least once a quarter. The board of management appoints one of its members or it may hire another person to serve as the director or general director. If the company charter does not stipulate that the chairperson of the board of management is the legal representative, the director or general director is deemed to be the legal representative of a JSC. If the company has more than one legal representative, the chairperson of the board of management and the director (or general director) are the legal representatives of the company.

Enterprise Law 2020 provides that the company secretary can be appointed by the board of management to assist the board in carrying out its duties.

g. Restructuring and Transfer of Ownership

A JSC may be reorganized through division, separation, merger, consolidation or conversion of the corporate form.

A shareholder may ask the company to purchase its shares if the shareholder votes against a decision on:

(i) The amendment of the charter in relation to the rights and obligations of the shareholders; or

(ii) The restructuring of the company.

In general, shareholders may freely transfer their shares to others except in the following cases:

(i) Shareholders holding preferred stocks with a voting right preference may not transfer such shares to others; and

(ii) Within a period of three years from the date on which the JSC receives its enterprise registration certificate, a founding shareholder has the right to freely transfer common shares to another founding shareholder of the company. The general meeting of shareholders, however, must approve the transfer of the founding shareholder's common shares to a person that is not a founding shareholder of the company. In this case, the shareholder intending to transfer shares does not have the right to vote on the transfer. The three-year lock up is not applied to common shares transferred from a founding shareholder to a non-founding shareholder.

h. Profit Distribution

A JSC may distribute dividends to its shareholders after it has fulfilled its tax and other financial obligations and if it can still fully meet its debt and other obligations after the dividend distribution.

i. Term and Termination

A JSC theoretically has perpetual existence since no statutory limitations apply. However, the investment certificate indicates the term of a foreign invested project, which usually may not exceed 50 years, although, where necessary, the term may be up to 70 years, subject to Government approval. The project term may be renewable, subject to conditions, and the total term after renewal may not exceed 50 years (or 70 years in specific cases). A JSC terminates its operations when:

(i) The term provided in the charter expires and there is no extension;

(ii) The general meeting of shareholders so decides;

[150] Decree No. 155/2020/ND-CP dated Dec. 31, 2020, of the Government Stipulating Detailed Provisions of the Law on Securities ("Decree No. 155").

[151] Decree No. 155, Art. 3.38.

[152] "Independent members" of the board of management are defined under Art. 155.2 of Enterprise Law 2020. In general, they are board members who are not the current employees of the company, the parent company or subsidiary of that company, or who were not employees of the company, the parent company or subsidiary of that company for at least the previous three executive years; not currently under the company's payroll, except the allowance that such member is entitled to receive; unrelated to the company's officers or its subsidiary's officers or the company's major shareholders, not directly or indirectly holding at least 1% of the total voting shares, and not the members of the board of management or the board of control of the company for at least the previous five executive years.

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(iii) It does not have the required minimum number of members for six consecutive months; or

(iv) The authorities revoke its enterprise registration certificate.

3. Branches of Foreign Companies Under the Commercial Law

a. Formation

Branch offices are dependent units of foreign companies licensed to do business directly in Vietnam. A branch is also the common form of presence in Vietnam for foreign companies in certain specific industries and under industry-specific conditions, such as law firms and banks.

In accordance with Decree No. 07,[153] foreign companies may set up branches in Vietnam according to Vietnam's commitments under its international agreements to conduct trading activities related to goods and other activities directly related to trading in goods.

Pursuant to its World Trade Organization (WTO) commitment, Vietnam allows a branch of a foreign company to operate in the following sectors:

(i) Legal services;

(ii) Computer and related services;

(iii) Management consultant services (Central Product Code (CPC) 865);

(iv) Services related to management consulting (CPC 866);

(v) Construction and related engineering services;

(vi) Franchising services;

(vii) Nonlife insurance (as of January 11, 2012);

(viii) Banking; and

(ix) Some securities services.

b. Licensing

The MOIT has the authority to issue branch licenses for all foreign companies, except those in some specific sectors, such as: banks and credit institutions, which fall under the authority of the State Bank of Vietnam; securities companies under the authority of the State Securities Commission; and insurance companies under the authority of the Ministry of Finance (MOF).

4. Representative Offices Under the Commercial Law

a. Formation

A foreign entity interested in having a limited presence in Vietnam may establish a representative office (RO). ROs do not constitute independent legal entities and are allowed to act as a liaison office, carry out market research activities, and promote the business investment opportunities of the ROs' parent company.[154] The law prohibits ROs from engaging in direct profit-making activities or receiving any form of revenue.

b. Licensing

The local Departments of Industry and Trade have the authority to issue RO licenses for ROs located outside industrial zones, export processing zones, economic zones or hi-technology zones. The Board of Management of an Industrial Zone, Export Processing Zone, Economic Zone or Hi-Technology Zone has the authority to issue RO licenses for ROs located in the corresponding zone. ROs of some specific sectors are subject to relevant specific regulations and authority, such as banks and credit institutions, which fall under the authority of the State Bank of Vietnam.

c. Management and Operation

An RO's scope of activity is rather narrow. An RO may exercise the function of a liaison office, conduct market research, and promote business investment opportunities for the foreign merchant that the RO represents. The law does not permit an RO to engage in direct business activities, provide services, receive payments on behalf of affiliated offices, purchase goods and commodities for export, or sell goods imported into Vietnam.

An RO's chief representative and other staff members may not enter into any type of commercial contracts on behalf of the parent company with a Vietnamese entity, except where the head of the parent company grants a valid power of attorney for each contract. However, a parent company should consider permanent establishment (PE) exposure and the tax consequences if the RO personnel sign commercial contracts with a Vietnamese entity on its behalf (see VIII., below).

5. Partnerships Under the Enterprise Law

a. Formation

A partnership must have at least two unlimited liability partners. There may be additional limited liability partners. Unlimited liability partners are individuals and are liable for the obligations of the partnership to the extent of all their assets. Limited liability partners are liable for the debts of the partnership to the extent of the capital they have contributed to the partnership. Partnerships may not issue any type of securities.

b. Licensing

The enterprise registration certificate is the legal document establishing a partnership.

c. Charter

All unlimited liability partners must sign the charter, which they then submit to the business registration authority.

d. Foreign Participation

Enterprise Law 2020 and Investment Law 2020 unified the basic laws governing foreign and Vietnamese businesses. To that end, foreign investors may establish the same corporate

[153] Decree No. 07/2016/ND-CP dated Jan. 25, 2016, of the Government Stipulating Detailed Provisions of the Commercial Law on Representative Offices and Branches of Foreign Merchants in Vietnam ("Decree No. 07").

[154] Decree No. 07, Art. 30.

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entities as domestic investors, subject to restrictions in certain business sectors.

The foreign ownership restriction follows Investment Law 2020 from January 1, 2021.

e. Management

All members of a partnership constitute its board of members. The board of members elects one unlimited liability member to act as chairperson and to hold concurrently the position of director or general director, unless the partnership charter provides otherwise. The board of members has the authority to decide on all of a partnership's business affairs. A partnership member has the right to act as the legal representative of the partnership and to organize the administration of the partnership's daily business activities.

f. Restructuring

Consolidation and merger are the mechanisms used to reorganize a partnership in accordance with the procedures set forth in Enterprise Law 2020.

g. Term and Termination

A partnership has perpetual existence since no statutory limitations apply. However, the investment certificate of a foreign invested project indicates the durational term, which may not exceed 50 years, although, where necessary, the term may be up to 70 years, subject to government approval. The project term may be renewable, subject to conditions, and the total term after renewal may not exceed 50 years (or 70 years in specific cases). A partnership terminates its operations where:

(i) The term provided in the charter expires and there is no extension;

(ii) All the unlimited liability partners so decide;

(iii) It does not have the required minimum number of members for six consecutive months; or

(iv) The authorities revoke its enterprise registration certificate.

6. Private Enterprises Under the Enterprise Law

a. Formation

A private enterprise is an enterprise owned by one individual who is liable for all activities of the enterprise to the extent of all his or her assets.

b. Licensing

The enterprise registration certificate is the legal document that establishes a private enterprise.

c. Foreign Participation

Foreign investors may purchase part of the contributed capital from an owner of a private enterprise or contribute more capital in order to convert the private enterprise into a multi-member LLC.

The foreign ownership restriction follows Investment Law 2020 from January 1, 2021.

d. Management

The owner of a private enterprise has total discretion in making all business decisions of the enterprise.

e. Sale of a Private Enterprise

The owner of a private enterprise may sell his or her enterprise to another person.

f. Term and Termination

The Enterprise Law 2020 does not stipulate the maximum term of a private enterprise. A private enterprise terminates its operations:

(i) Pursuant to a decision of the owner;

(ii) Where the authorities revoke its enterprise registration certificate; or

(iii) Upon the death of the owner.

7. Foreign Contractors

a. Formation

Foreign individuals and organizations may carry on business activities in Vietnam as foreign contractors on a contractual basis without establishing a presence in Vietnam. This arrangement is common in the fields of services, construction, technology transfer and finance.

b. Licensing

The Vietnamese authorities do not generally require a foreign contractor to obtain a license to conduct business except in the case of a foreign contractor engaged in design and construction, who will need to apply for a construction activity permit from the provincial Department of Construction.[155] In addition, it should be noted that the parties to some technology transfer agreements and loan agreements signed between foreign entities and domestic entities must register such agreements with the Ministry of Science and Technology (MOST) and the State Bank of Vietnam, respectively, before the agreements take effect.

See VII., below, for the tax registration requirements for foreign contractors.

[155] Decree No. 35/2023/ND-CP, Art. 12.33 (Before June 20, 2023, the construction activity permit will be issued by either the provincial Department of Construction or Ministry of Construction, subject to the type of project. From June 20, 2023, the authority to issue the construction activity permit is the provincial Department of Construction).

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IV. Principal Taxes

A. Enterprise Income Tax

Enterprise income tax (EIT) is levied on the income of business organizations. The standard EIT rate is 20%.[156]

Preferential tax rates of 10%, 15% or 17% may be granted if a project fulfills incentive conditions regarding industry and location.[157]

Since January 1, 2014, tax incentives are granted to large-scale manufacturing projects. Specifically, manufacturing projects (except for production of goods subject to special consumption tax and exploitation of mineral resources) are eligible for a 10% tax rate for 15 years, four-year tax exemption and nine-year 50% tax reduction, if it meets one of the following conditions:

(i) Investment capital is at least VND 6,000 billion and the investment capital will be contributed within three years from the issuance date of the investment certificate and the annual revenue is at least VND 10,000 billion after three years at the latest from the year generating revenue; or

(ii) Investment capital is at least VND 6,000 billion and the investment capital will be contributed within three years from the issuance date of the investment certificate and the project has more than 3,000 employees.[158]

Enterprises engaged in development of social policy housing for sale, lease, or lease-purchase according to Article 53 of the Housing Law, can enjoy the 10% tax rate from July 1, 2013.[159]

Since January 1, 2015, the following investment projects are eligible for tax incentives of EIT at a 10% rate for 15 years, a four-year tax exemption, and a nine-year 50% tax reduction, including:[160]

(i) Industrial products supporting high-technology;

(ii) Industrial products supporting production in the textile, garment, and leather-footwear, electronic-information, production and assembly of automobiles, and mechanic sectors, provided that these products were not manufactured domestically prior to January 1, 2015, or the products are manufactured domestically and the quality meets EU technical standards or equivalent;

Notwithstanding the above, with effect from June 4, 2021, pursuant to Decree 57/2021/ND-CP ("Decree 57") (amending and supplementing Decree 218/2013/ND-CP on EIT), enterprises manufacturing supporting industry products before 2015, meeting conditions for projects manufacturing supporting industry products according to Law No. 71/2014/QH13 and possessing a Certificate of Supporting Industry incentives can retroactively apply the applicable highest EIT incentives for income generated from such investment projects for the remaining periods counting from the issuance year of the Certificate. The remaining incentive period is determined by the Incentive period (EIT exemption, EIT reduction, and preferential EIT rate) applicable to the supporting industry less the Incentives period (EIT exemption, EIT reduction, and preferential EIT rate) enjoyed under other EIT incentives conditions (if any).

(iii) Investment capital of manufacturing projects (except for projects that produce items subject to special consumption tax or mining projects) provided that the investment capital is at least VND 12,000 billion disbursed within five years from the issuance date of the investment certificate and the project applies the technology evaluated in accordance with the Law on High Technology or Law on Science and Technology.

Since March 20, 2019, science and technology enterprises are entitled to a four-year tax exemption and a nine-year 50% tax reduction if they are granted a science and technology enterprise certificate and their turnover of products derived from scientific and technological activities account for at least 30% of total annual turnover.[161]

Details on the conditions for qualifying for tax incentives are set out in Worksheet 1.

According to Investment Law 2020,[162] the following new projects/expanded projects will be entitled to special investment incentives:

(i) New investment projects (including expansion of such newly established projects) of innovation centers and research and development (R&D) centers with total investment capital of VND 3,000 billion or more, of which at least VND 1,000 billion is disbursed within three years from the date of the investment registration certificate (IRC) or approval of investment policy; national innovation centers established under the prime minister's decision (and all affiliated units located outside these centers' head offices); and

(ii) Investment projects in investment-incentivized industries as prescribed in Appendix 2 of Decree 31[163] with investment capital of VND 30,000 billion or more, of which at least VND 10,000 billion is disbursed within three years from the date of the IRC or approval of investment policy.

[156] Law No. 32/2013/QH13 adopted by the National Assembly on June 19, 2013, amending and supplementing a number of articles of EIT Law (the "Amended Law on EIT 2013"), Arts. 1.6 and 2; Decree No. 218/2013/ND-CP dated Dec. 26, 2013, of the Government ("Decree No. 218"), Art. 10.

[157] The Amended Law on EIT 2013, Art. 1.7; Law No. 71/2014/QH13 adopted by the National Assembly on Nov. 26, 2014, amending and supplementing a number of articles of the Laws on Tax ("Law No. 71"), Art. 1.7; Decree No. 218, Art. 15.3 b).

[158] The Amended Law on EIT 2013, Art. 1.7; Decree No. 218, Art. 15.1 d).

[159] The Amended Law on EIT 2013, Arts. 1.7 and 2; Decree No. 218, Art. 15.2 d).

[160] Law No. 71/2014/QH13 adopted by the National Assembly on Nov. 26, 2014, amending and supplementing a number of articles of laws on EIT, VAT, PIT, and tax administration ("Law No. 71").

[161] Decree No. 13/2019/ND-CP dated Feb. 1, 2019, on science and technology enterprises (in effect from March 20, 2019) ("Decree 13"), Art. 12.1 and Circular 03/2021/TT-BTC dated Jan. 11, 2021, providing guidance on EIT incentives applicable for science and technology enterprises (in effect from March 1, 2021) ("Circular 03"), Art. 3.1.a.

[162] Law No. 61/2020/QH14 adopted by the National Assembly on June 17, 2020, on Investment, Art. 20.2.

[163] Decree No. 31/2021/NĐ-CP dated March 26, 2021, guiding the implementation of a number of articles of Law on Investment.

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As provided in Decree 31/2021/ND-CP,[164] the special investment incentives will be determined by certain criteria, including whether the activities include high technology, technology transfer, Vietnamese enterprises participating in the value chain, and the added value of domestic production projects.

On October 6, 2021, the Prime Minister issued Decision No. 29/2021/QD-TTg ("Decision No. 29") to clarify the additional criteria for eligibility of the special investment incentive and details of the special incentive package. According to Decision No. 29, the criteria include:

High Technology

High-technology projects are those projects that apply, research and develop high technology, manufacture high-technology products and simultaneously fulfill three conditions:

(i) At least 70% of total annual net revenues derive from high-technology products;

(ii) At least 0.5% of total annual net revenues minus input values (including materials and manufacturing components derive from annual R&D costs); and

(iii) At least 1% of the total employees directly perform R&D activities.

Vietnamese Enterprises Participating in the Value Chain

The two conditions below are required to be simultaneously met:

(i) At least 30%–40% of total companies participating in contracts for the assembly, supply of components, materials, and services are Vietnamese companies; and

(ii) At least 30% of unit costs are generated by Vietnamese enterprises participating in the value chain.

Added Values

Added values are total production costs, service costs minus expenses paid to foreign entities including materials; depreciation; imported tools and equipment; royalties; technology transfers; seller expenses, general and administrative expenses, financial expenses; and other expenses paid to overseas entities;

Technology Transfer

Projects are granted certificates of encouraged technology transfer in accordance with the law on technology transfer, and technology is transferred to Vietnamese enterprises within five years from the issuance date of the IRC and approval of the investment policy or written agreements with the competent state agencies.

If taxpayers meet certain criteria, the special incentive packages are:

Package 1: Preferential EIT rate of 9% over a period of 30 years, five-year EIT exemption, and 50% EIT reduction for the subsequent 10 years; land and water surface lease exemption for 18 years and 55% reduction for the remaining years;

Package 2: Preferential EIT rate of 7% over a period of 33 years, six-year EIT exemption and 50% EIT reduction for the subsequent 12 years; land and water surface lease exemption for 20 years and 65% reduction for the remaining years; and

Package 3: Preferential EIT rate of 5% over a period of 37 years, six-year EIT exemption and 50% EIT reduction for the subsequent 13 years; land and water surface lease exemption for 22 years and 75% reduction for the remaining years.

EIT levied on foreign entities (foreign contractors) is normally collected at source through a withholding scheme, although foreign contractors may register to pay tax directly if they are qualified to do so. The withholding tax rate depends on the type of income received by the foreign contractor. The double taxation agreements that Vietnam has signed with other countries may offer tax exemption or reduced rates where applicable.

Offshore institutional investors in securities not establishing a presence in Vietnam pay EIT at a rate of 0.1% of the total value of securities (stocks, fund certificates, bonds) sold in each transfer transaction. Securities investment funds established and operating in Vietnam are not subject to EIT but the fund management companies must withhold EIT at 20% on dividends distributed to institutional investors (except on distributed dividends subject to EIT at source).

B. Personal Income Tax

Personal income tax (PIT) is levied on the income of residents and nonresident individuals. Resident individuals are subject to tax on worldwide income at progressive rates ranging from 5% to 35% in the case of employment income. Nonresident individuals are subject to tax on Vietnam-sourced income at the flat rate of 20% in the case of employment income. A major overhaul of the PIT regulations took effect from 2009 in accordance with the Personal Income Tax Law, which extends the tax to capital gains on land and securities, among other things.

C. Value Added Tax

The value added tax (VAT) came into force on January 1, 1999, and replaced the turnover tax. The standard VAT rate is 10%, though certain goods and services may be subject to 5% VAT or may be exempt from VAT altogether. Exports are zero-rated. From January 1, 2024 to December 31, 2024, the standard VAT rate is reduced to 8% for qualifying goods and services subject to 10% VAT.

D. Special Consumption Tax

Special consumption tax (SCT) is imposed on the production or import of certain "luxury" products and the supply of certain services. Goods subject to the tax include cigarettes, cigars, alcohol, beer, cars with less than 24 seats, motorcycles with a capacity of over 125 cm^3, aircraft and yachts not used for transportation or tourism business or national defense or security, gasoline of all kinds, air conditioners with a capacity of 90,000 BTU or less, playing cards, and votive paper.[165] Services subject to the tax include the operation of dance halls,

[164] Decree No. 31/2021/NĐ-CP, Art. 20.6.d.

[165] Law No. 106/2016/QH13 adopted by the National Assembly on Apr. 6, 2016, amending and supplementing a number of articles of the Law on VAT, Law on SCT and Law on Tax Administration ("Law No. 106"), Art. 2.

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massage lounges, karaoke parlors, casinos, electronic prize-games, betting businesses, golf and lotteries. SCT is charged on these goods and services in addition to VAT. SCT rates on certain commodities, including cigarettes, cigars, alcohol and beer, will be adjusted upward annually until 2019.

Note: The National Assembly is currently consulting on draft legislation that would amend the current Law on Special Consumption Tax to expand the scope of commodities subject to Special Consumption Tax to include sugary drinks among other items. The current draft legislation is scheduled to be promulgated in May, 2025, and proposes that this would take effect from 2026.

From January 1, 2016, imported goods except for gasoline are subject to SCT at the importation stage based on the import price (import SCT) and at the distribution stage based on the distribution price (distribution SCT). Import SCT can be deducted against distribution SCT for purpose of calculating distribution SCT payable. As a result, the SCT amount payable for imported goods will be higher from 2016 since SCT is eventually calculated based on the distribution price rather than based on import price.

E. Land Rental and Nonagricultural Land Use Tax

Individuals and organizations, and in particular foreign-invested companies, are subject to land rental for leasing land to implement investment projects. Land rental can be paid on an up-front lump sum basis or on an annual basis. Land rental varies depending on the lease term and land use fee (in the case of up-front lump sum payments) or the lease term and the unit land rental price (in the case of annual payments), which is from 1% to 3%[166] of the land price as stipulated by the provincial people's committee of the province in which the land is located.

From January 1, 2012, under the law on Nonagricultural Land Use Tax,[167] the following types of land are subject to the nonagricultural land use tax (the "NALU tax"):

(i) Residential land in rural and urban areas;

(ii) Nonagricultural land used for business purposes, such as industrial, commercial, mining purposes, etc.; and

(iii) Other types of nonagricultural land that are not used for business purposes (such as land for cemetery, public interest, heritage site purposes, etc.) but are later converted to business purposes.

Entities, households and individuals that have land use rights or are using the land are required to pay NALU tax. The law does not yet impose a tax on buildings.

As an attempt to curb land speculation and illegal encroachment on land, progressive tax tariffs are provided as follows:

(i) 0.03% applicable to land areas that are within the land use limit, as promulgated by the relevant authority for certain kinds of land (for example, the provincial people's committee promulgates the land use limit for residential use);

(ii) 0.07% applicable to land areas that are beyond the land use limits, but not over three times such limits;

(iii) 0.15% applicable to land areas that exceed three times the land use limits or are not used in compliance with the specified use; and

(iv) 0.2% — applicable to land areas that are illegally encroached on (i.e., not duly allocated) where the collection and/or payment of nonagricultural land use tax does not qualify the land for legal use recognition by the government.

Generally, the person that has the land use rights is responsible for paying the tax. If land users lease land from the State for implementation of investment projects, the lessees (i.e., the land users) are liable for the tax. If an entity with land use rights leases land to other entities under contracts, the parties must specify who will be liable for the tax; however, if this is not specified in the contract, the entity that has the land use rights will be liable for the tax. Accordingly, while land lessees that pay land rental are currently not subject to land tax in accordance with the Ordinance on housing and land tax, they are subject to land tax with effect from 2012.

F. Registration Fee

Ownership of the following assets is subject to a registration fee: houses and land; ships; boats; aircraft; automobiles; motorcycles; and hunting rifles and sports guns.

[166] Decree No. 46/2014/ND-CP dated May 15, 2014, of the Government, as amended by Decree No. 118/2015/ND-CP dated Nov. 12, 2015, Decree No. 135/2016/ND-CP, dated Sept. 9, 2016, Decree No. 35/2017/ND-CP, dated April 3, 2017, and Decree No. 123/2017/ND-CP, dated Nov. 14, 2017 ("Decree No. 46").

[167] Law No. 48/2010/QH12 passed by the National Assembly on June 17, 2010, on Nonagricultural Land Use Tax (the "Law on NALU Tax"). This law repealed the Ordinance on House and Land Tax as of January 1, 2012.

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V. Enterprise Income Tax

A. *Scope of Taxation: Worldwide Income*

Taxable income is the income resulting from business operations and other income, including income from business operations abroad.[168]

B. *Who Is the Taxpayer?*

All Vietnamese and offshore organizations that carry on business or generate income in Vietnam are subject to enterprise income tax (EIT) in Vietnam.

C. *Accounting*

1. General

Accounting and tax regulations may provide for the different treatment of certain items. Some expenses that are not treated as tax-deductible costs or are subject to limitation for tax deduction purposes are treated as costs for accounting purposes. Therefore, taxpayers must adjust their accounting income in accordance with EIT rules to arrive at taxable income. In addition, accounting records for tax purposes are document-intensive.

2. Accounting Period

The tax year is usually the calendar year. If taxpayers opt to choose a tax year different from the calendar year, the tax year must start on the first day of a quarter and last 12 months; in this case, the taxpayer is required to notify the licensing and tax authorities about such tax year. In the event the first accounting year or the last accounting year is less than 90 days, this period may be included in the accounting period of the subsequent year or the previous year, respectively. In this case, however, the accounting year cannot exceed 15 months.

Where tax incentives (tax exemption or reduction) are granted, the tax incentive period commences from the first tax year in which the company concerned generates taxable profits. If there is no taxable income in the first three years as from the first year of generating revenue, the tax exemption or reduction period will be triggered from the fourth year. When the first profitable tax year is less than 12 months, the company may register with the tax authorities to count the incentive period from that first profitable tax year (less than 12 months) or from the subsequent tax year.

3. Accounting Method

Taxable income is based on the amounts that a business establishment is entitled to receive regardless of whether the taxpayer received those amounts. The law recognizes sales revenue as taxable income at the point when title or the right to use the goods passes to the buyer or the provision of the services is completed, or at the point when an invoice for the provision of services is issued.[169] The accrual method, therefore, is used for recognizing taxable revenue.

[168] Enterprise Income Tax Law, Art. 3.2.

[169] Decree No. 218, Art. 8.2.

4. Reserves

The law allows enterprises to establish reserves to hedge against a decline in the price of inventory, for the loss of financial investments, for bad debts and for warranty purposes (see further at E.8., below).

5. International Financial Accounting Standards

Currently, enterprises established under Vietnamese laws are required to apply Vietnam Accounting Standards (VAS). VAS includes 26 accounting standards that were developed based on IFRS. Under Decision No. 345/QD-BTC of the Ministry of Finance, Vietnam will officially adopt and implement IFRS in three phases:

(i) Preparatory phase (2020-2021): The Ministry of Finance translates the IFRS into Vietnamese and circulates the regulations guiding the implementation of IFRS in Vietnam.

(ii) Phase 1 — voluntary phase (2022–2025): Under this phase, wholly foreign-owned enterprises which are subsidiaries of offshore entities can notify the Ministry of Finance in advance before adopting IFRS to prepare their standalone financial statements and consolidated financial statements (if any). Enterprises that adopt IFRS are responsible for the provision of information and explanation to tax authorities and competent authorities upon requests regarding the obligations with the State Budget.

(iii) Phase 2 — mandatory phase (post-2025): Based on the assessment of Phase 1, the Ministry of Finance will decide the commencement date of the mandatory application of IFRS in Vietnam.

D. *Calculation of Income*

1. General

Article 3 of the Enterprise Income Tax Law defines taxable income as income derived from business operations and other income, including income derived from business operations abroad. Taxable turnover is the turnover before value added tax (VAT). Taxable turnover in certain specific cases is determined as follows:

(i) With respect to installment sales, taxable turnover is the selling price calculated as a one-time payment excluding interest; and

(ii) With respect to an asset leasing business, taxable turnover is the periodic lease payment under the lease contract. If the lease is paid in advance for several years, the taxable turnover is the amount allocated annually or the whole lease payment.

2. Capital Gains

Capital gains from the transfer of capital by a foreign party in a foreign-invested enterprise are subject to tax at the rate of 20%. The taxable capital gain is the difference between the proceeds from the transfer of the capital and the cost of the transferred capital after deducting expenses related to the transfer.

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Where the local target company is allowed to use foreign currency for accounting purposes (subject to the MOF's approval), the proceeds and costs of the transferred capital may be determined in a foreign currency for purposes of calculating the taxable gain. Otherwise, if the local target company uses VND for its accounting, the proceeds and cost of the transferred capital in foreign currency must be converted into VND using the exchange rates at the time of transfer and capital contribution, respectively. Consequently, in the latter case, differences in the gains from the foreign exchange will be taxable.

Certain amendments, effective as of January 1, 2015, have enabled local tax authorities to be more aggressive in assessing capital gains on indirect transfers (transfers of shares at an offshore level). In particular, Decree No. 12/2015/ND-CP dated February 12, 2015, of the Government provides that taxable income derived by a foreign company (whether or not it has a PE) in Vietnam, is considered Vietnamese sourced income for the following activities: provision of services; supplying and distributing goods; funding capital; collecting royalties from Vietnamese entities or foreign entities doing business in Vietnam; assigning contributed capital; assigning investment projects, rights to contribute capital, rights to participate in investment projects, and rights to explore, exploit, and process natural resources in Vietnam, irrespective of the location where they conduct business.

Prior to January 1, 2015, although the law did not specify whether an indirect transfer was subject to tax in Vietnam, the General Department of Taxation[170] advised that such a transaction may not be taxed in Vietnam if all the following conditions were fulfilled:

(i) Transferor/seller has no permanent establishment in Vietnam;

(ii) The transfer is entirely performed outside Vietnam between offshore parties;

(iii) There is no change in ownership in the local company;

(iv) The local company and its direct parent company generate no income from such transaction; and

(v) There is no change to the license of the local company in Vietnam.

Nevertheless, the tax authorities have been challenging capital gains tax related to indirect transfers which occurred even before 2015.

A different tax regime applies to offshore institutional investors that transfer shares of public joint stock companies (see IV.C., above).

3. Dividend Income

If the income/dividend is distributed from net of tax income (i.e., the income/dividend has been subject to EIT at source), it will not be further subject to EIT upon being distributed to a corporate/institutional investor (i.e., an investor other than an individual investor). This rule will also apply if the company distributing the income/dividend enjoys a tax exemption or reduction.

4. Income from Foreign Sources

Income from sources outside of Vietnam is subject to tax in Vietnam.

5. Interest Income and Royalty Income

Interest income and royalty income are taxable.

E. Business Expenses

1. General

Expenses are generally tax deductible if they are incurred for business purposes and supported by appropriate documents and invoices, except for certain expenses subject to limitations on deduction.

According to Decree No. 218 and MOF Circular No. 78,[171] expenses incurred for purchase of VND 20 million or more (including VAT) are eligible for tax deductible expenses if there are documents proving that payments were made on a non-cash basis (i.e., payments made via banks).

2. Nondeductible Expenses

The following expenses are nondeductible:[172]

(i) Expenses incurred for nonbusiness purposes or not supported by appropriate documents and invoices, except for losses due to natural disasters, epidemics and *force majeure* that are not compensated;

(ii) Damaged goods due to use expiration or natural biochemical changes that are not compensated and not substantiated with supporting documents as required by laws;

(iii) Depreciation expense with respect to fixed assets that are not used for business activities; depreciation expense with respect to fixed assets the ownership of which cannot be proven (except for financial leased assets); depreciation expense with respect to fixed assets that are not properly recorded in the accounting books; depreciation expense in excess of the statutory rate; depreciation expense of the cost in excess of VND 1.6 billion of automobiles with nine seats or less (except for vehicles used for transportation, tourism and hotel business); depreciation expense with respect to aircraft and yachts not used for transportation and tourism business; depreciation expense with respect to fixed assets that have been fully depreciated; and depreciation expense with respect to works on land not used for business purposes;

(iv) The expense of raw materials, materials, fuel, energy and goods in excess of reasonable consumption levels;

(v) The expense of certain purchases (such as agricultural, forestry and sea products) that, because of a lack of supplier invoices, are subject to declaration of purchases and

[170] Official Letter No. 2268/TCT-CS issued by the General Department of Taxation on June 28, 2012.

[171] Decree No. 218, Art. 9.1.c and Art. 20.1; Circular No. 78/2014/TT-BTC dated June 18, 2014, of the MOF Guiding the Implementation of the Enterprise Income Tax Law ("Circular No. 78"), Art. 6.1.c, as amended by Circular No. 119/2014/TT-BTC, Circular No. 151/2014/TT-BTC, and Circular No. 96/2015/TT-BTC.

[172] The Amended Law on EIT 2013, Art. 1.5.; Decree No. 218, Art. 9.2.g. and Art. 9.2.o; Circular No. 78, Art. 6.2, Art. 6.2.11 and Art 6.2.21.

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payment receipts but no such declaration is made or receipts are produced;

(vi) Salaries, wages and allowances that are not actually paid to employees; bonuses for which the eligibility conditions and eligible amounts are not specifically agreed to in employment contracts or collective labor agreements or the internal financial rules of the enterprise; salaries, wages and allowances that are not actually paid to employees by the filing date of the annual finalized tax return; salaries and wages for owners of private enterprises, individual owners of single member limited liability enterprises, founding members of enterprises, or members of Boards of Members or Boards of Management who do not directly participate in the management of the business;

(vii) Clothes allowances in cash for employees exceeding VND 5 million per person per year or clothes allowances in kind for employees which are not properly documented;

(viii) Rewards for initiatives or improvements for which the business entity does not have specific rules or does not have a council with discretion to review their issuance;

(ix) Transportation allowances for employees on vacation leave not in accordance with the Labor Code;

(x) Payments for female employees and employees of minority ethnic groups not in accordance with the relevant regulations;

(xi) Contributions of social insurance, health insurance, and trade union dues in excess of the statutory levels;

(xii) Contributions of voluntary pension funds, voluntary pension premiums or life insurance premiums for employees in excess of VND 3 million per person per month;[173]

(xiii) Payments for electricity and water costs in cases where landlords settle bills directly with the service providers without proper supporting documents;

(xiv) Leases of fixed assets in excess of the allocated amount corresponding with the number of prepayment years;

(xv) Loan interest incurred on loans used to contribute charter capital or loan interest incurred on loans corresponding to the shortfall of the registered charter capital in accordance with the schedule of capital contribution stated in the enterprise's charter. In addition, loan interest (after offsetting interest income, if any) exceeding 30% of EBITDA is not deductible if the taxpayer has any related party transaction. The 30% cap is applied from fiscal year 2019 and can be retroactive to fiscal years 2017 and 2018;[174]

(xvi) The setting up and use of reserves for a decline in the price of inventory, reserves for loss of financial investments, reserves for bad debts, and reserves for warranty not in accordance with the MOF guidelines;

(xvii) The setting up and use of the reserve fund for job loss allowances and severance pay not in accordance with the regulations;

(xviii) Accrued expenses that are not actually paid;

(xix) Foreign exchange loss from the revaluation of foreign currency-based transactions at the end of the financial year, except for foreign exchange loss from the revaluation of foreign currency debts at the end of the financial year; foreign exchange loss incurred for capital construction;

(xx) Support for educational purposes that is not provided to qualified entities or not supported by appropriate documentation;

(xxi) Support for medical purposes that is not provided to qualified entities or not supported by appropriate documentation;

(xxii) Support for the consequences of natural disasters that is not provided to qualified entities or not supported by appropriate documentation;

(xxiii) Support for houses for the poor that is not provided to qualified entities or not supported by appropriate documentation;

(xxiv) Disbursements covered by other funds; disbursements covered by the fund for scientific and technological development;

(xxv) Disbursements not corresponding to taxable turnover;

(xxvi) Expenses of insurance, lottery and securities businesses, and other businesses not in accordance with MOF guidance;

(xxvii) Fines and late tax payment interest for administrative violations;

(xxviii) Disbursements for fixed asset investments during the pre-operating period; support to organizations; charitable contributions except those for educational purposes, medical purposes, the consequences of natural disasters and low-income housing; golf membership and playing fees;

(xxix) Creditable or refundable VAT, EIT and personal income tax (PIT);

(xxx) Expenditures on staff welfares including certain benefits provided to employees and their family members exceeding the cap of one month's average salary of a company in a relevant tax year (excluding contributions of voluntary pension funds, voluntary pension premiums or life insurance premiums); and

(xxxi) Overhead expenses allocated to a permanent establishment ("PE") in Vietnam by the foreign company's head office exceeding the threshold provided by law.

In addition, an enterprise which has related party transactions will be further subject to the following nondeductible expenses:

[173] Decree No. 146/2017/ND-CP dated Dec. 15, 2017, of the Government, amending Decree No. 100/2016/ND-CP dated July 1, 2016, and Decree No. 12/2015/ND-CP dated Feb. 12, 2015 ("Decree No. 146"), Art. 2.

[174] Decree No. 68, Art. 1 and Decree No. 132, Art. 16.3.

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(i) Expenses of related party transactions which are not appropriate to the nature of an independent transaction or do not contribute to the revenue of the taxpayer; and

(ii) Net interest expense (after offsetting interest income) exceeding the cap of 30% of earnings before interest, tax, depreciation and amortization (EBITDA) if the taxpayer has any related party transaction as per Decree No. 132/2020/ND-CP of the Government dated November 5, 2020, regarding Tax Administration for Enterprises Engaging in Related Party Transactions.

3. Organizational Expenses

Expenses for the establishment of an enterprise, training expenses and advertising expenses incurred before establishment of an enterprise are not intangible fixed assets but are amortized as business expenses over a maximum period of three years upon the establishment of an enterprise.

4. Interest and Royalties

Interest expenses paid to banks, credit institutions and other economic organizations are deductible based on the actual interest rate in the loan agreement. Interest payments to other entities are deductible based on the actual interest rate but that rate may not exceed 1.5 times the State Bank of Vietnam's basic interest rate published at the same time. Borrowers must register medium-term and long-term offshore loans with the State Bank of Vietnam. Failure to register may result in the interest expenses being nondeductible.

Interest expenses associated with a loan used to contribute the charter capital (owner's equity) of an enterprise are not deductible.

Example: According to the investment certificate, the charter capital of a company is US$4 million and the loan capital is US$8 million. In the application documents for the investment certificate, the investor stated the schedule of charter capital contribution as follows:

(i) First year upon obtaining the investment certificate: US$3 million; and

(ii) Second year upon obtaining the investment certificate: US$1 million.

During the first year, the investor actually contributed only US$2 million as charter capital and the company took a loan of US$5 million. Based on these facts, the tax authorities would deem the company to have used US$1 million of the US$5 million loan to make up the shortage in the charter capital contribution according to the committed schedule. Therefore, only the interest expense relating to the remaining US$4 million of the loan is deductible; the interest expense relating to US$1 million of the loan would not be deductible.

Royalties are deductible to the extent agreed in the contract registered with the Ministry of Science and Technology (MOST).

5. Depreciation and Amortization

Depreciation calculated in accordance with the MOF guidelines is tax deductible. Tax depreciation and amortization may be taken with respect to both tangible and intangible assets.

Tangible assets eligible for depreciation include working tools that meet all of the following three conditions:[175]

(i) Economic interest will be attained in the future from the use of the assets;

(ii) The useful life of the assets must be one year or more; and

(iii) The original cost of the assets must be identified reliably and must amount to VND 30 million or more (see F., below.)

Actual costs incurred that meet all three conditions above but that are not the costs of tangible assets will be considered intangible assets for depreciation purposes. Any costs that do not meet all three conditions above will be accounted for directly as expenses or amortized into the enterprise's business expense.[176]

Enterprises have the discretion to determine the useful life of intangible fixed assets, which may not, however, exceed 20 years. The useful life of a land use right with a definite term is the period listed for the use of the land. The useful life of intangible fixed assets, such as copyright, intellectual property rights and rights to plant varieties is the protection term of such rights.

Depreciation or amortization is calculated on the gross value of a tangible or intangible asset, which includes, among other things, the following:

(i) The purchase price, if the asset is purchased;

(ii) Taxes (excluding refundable taxes);

(iii) Interest expense incurred for purposes of investing in the asset;

(iv) Transportation costs;

(v) Installation cost and test run cost; and

(vi) Registration cost.

An enterprise may choose the following methods of depreciation depending on the type of asset concerned:

(i) The straight-line depreciation method is applicable to assets used for business activities. Efficient businesses may accelerate depreciation to a maximum of two times the stipulated straight-line depreciation rates for machinery and equipment, measurement and laboratory equipment, means of transportation, management tools, animals and orchards. Accelerated depreciation must ensure the business' profitability.

(ii) Under the modified declining balance depreciation method, an accelerated depreciation rate applied to the undepreciated balance rather than the original cost. Organizations may apply this method to depreciate only new machinery, equipment, and measurement and laboratory equipment. This method is available to businesses with fast-developing technology.

[175] Circular No. 45/2013/TT-BTC guiding the Regime on Management, Use and Depreciation of Fixed Assets, issued by the MOF on Apr. 25, 2013 ("Circular No. 45"), Art. 3.1.

[176] Circular No. 45, Art. 3.2.

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(iii) Depreciation based on production output may be used for machinery or equipment meeting all of the following conditions:

a. The machinery or equipment must be directly related to production;

b. It must be possible to identify total production output based on the designed capacity of the asset; and

c. The average monthly capacity in use may not be lower than 100%[177] of the designed capacity.

The organization must register the method of depreciation with the local tax authorities in advance and must apply the method consistently throughout the useful life of the asset.

6. Charitable Contributions

Charitable contributions, except those in support of qualified educational purposes, medical purposes, consequences of natural disasters and low-income housing, etc. as provided by law, are not deductible expenses under the EIT rules.

7. Casualty Losses

Uncompensated losses due to natural disasters, epidemics and other kinds of *force majeure* are tax deductible provided that they are supported with proper documents as required by law.

8. Reserves

The following reserves are tax deductible: reserves for declines in the price of inventory; reserves for losses with respect to financial investments; reserves for bad debts; and reserves for warranties. Organizations must establish these reserves pursuant to MOF guidelines.[178] At year-end, any balance in reserves for a decline in the price of inventory, a decline in the price of securities, bad debts, goods warranties and construction works that exceeds the required reserves will be reversed by reducing expenses accordingly.

a. Reserve for a Decline in the Price of Inventory

The amount of the reserve is calculated according to the following formula:

Quantity of inventory at time of preparation of annual financial statements × (Accounting book price − Net realizable value)

According to Circular 48, the level of reserve for the Decline in the Price of Inventory should be calculated based on each inventory item which has been declined and aggregated in the detailed list. As such, the detailed list is the basis for the accounting record into the cost of goods sold.

b. Reserve for a Decline in the Price of Investments

The reserve for a decline in the price of investments in securities is calculated under Circular 48 as follows:

Accounting book price of securities at time of preparation of annual financial statements − (Amount of securities which have their price declined at time of preparation of annual financial statements × Actual market price)

The amount of the reserve for losses with respect to long-term financial investments is calculated according to the following formula:

(Actual capital contributed − Actual owner's equity) × Investment capital/Total actual contributed capital

Circular 48 clearly provides that the establishment of risk reserves for overseas investment is prohibited.

c. Reserve for Bad Debts

The reserve for bad debts is tax deductible, where the bad debts concerned meet the following criteria:

(i) They are properly supported by documentation (such as contracts, loan agreements); and

(ii) They are overdue, or the debt repayment is not yet due, but the debtor is bankrupt, in the process of liquidation, has fled, is subject to prosecution or has been arrested, is on trial, or has died.

In addition, Circular 48 provides that, for receivables that are not yet due but for which an enterprise has gathered evidence to prove that: the debtor has gone bankrupt, has commenced bankruptcy proceedings, and has fled; the debtor is being prosecuted, arrested, serving a sentence, suffering from serious illness (certified by the hospital) or has died; that debts have been requested for enforcement by the enterprise but the enforcement cannot be done due to the debtor having fled from his or her place of residence; or that a lawsuit was launched by the enterprise with respect to a debt but the case was suspended, the enterprise may self-estimate the amount of irrecoverable loss to set up a reserve.

The bad debt reserve for each bad debt is: 30% for bad debts overdue for more than six months but less than one year; 50% for bad debts overdue for one year or more but less than two years; 70% for bad debts overdue for two years or more but less than three years; and 100% for bad debts overdue for three years or more. If the debt repayment is not yet due in the circumstances set out above, the company that is owed the debt estimates the loss to establish the reserve.

The reserve for bad debts covers the loss of irrecoverable debts. The financial reserve fund (if any) and any remaining loss can be recorded as management expense of the company that is owed the debt. The company must monitor irrecoverable debts as an off balance sheet account for a minimum period of 10 years and a maximum period of 15 years. If the company that is owed the debt is able to recover the debt, the net proceeds will be recorded as other income.

Circular 48 also provides that, where an enterprise incurs both payables and receivables with the same organization, the enterprise is allowed to make a reserve for bad debts based on the net receivable balance, after offsetting amounts payable.

In addition, Circular 48 provides new regulations applicable to telecommunications service providers and commodity retailers. In particular, debt receivables from telecommunications services, information technology, post-paid television and information, and receivables from the retail sale of goods in the form of deferred payments/installment payments of debtors

[177] Circular No. 45, Art. 13.2.

[178] Circular 48/2019/TT-BTC dated August 8, 2019, of the MOF ("Circular 48").

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who are individuals and who have overdue payments, may give rise to a reserve at the following levels, depending on how long the debt is overdue: 30% of value for debts overdue from three to less than six months; 50% of value for debts overdue from six to less than nine months; 70% of value for debts overdue from nine to less than 12 months; and 100% of the value of debts receivable overdue for 12 months or more.

9. Salaries and Wages

Salaries and wages paid to employees under employment agreements are deductible. However, remuneration paid to members of the board of a limited liability company (LLC) or a joint stock company (JSC) who do not directly manage the business is not a deductible expense.

In principle, a bonus that is not in the nature of a salary or not specifically stated in terms of the eligibility conditions in employment agreements or collective labor agreements is not a deductible expense. However, a payment in the form of a 13th or 14th month salary or other fixed payment, as agreed in an employment agreement, is deductible.

10. Social Insurance, Health Insurance, and Unemployment Insurance

Employer's contributions with respect to compulsory social insurance, health insurance and unemployment insurance for Vietnamese employees and compulsory health insurance and social insurance for foreign employees are fully tax deductible.

Employer's contributions with respect to social insurance, health insurance and unemployment insurance in a foreign employee's home jurisdiction are tax deductible for the employer if such contributions are mandatory in the foreign employee's home jurisdiction. In this case, the employment contract must clearly state the mandatory contributions and supporting payment documents must be available.[179]

11. Other Business Expenses

Before January 1, 2015, advertising, marketing, promotion, reception and entertainment expenses, brokerage commissions, conference expenses, and marketing support expenses in excess of 15% of other deductible expenses were not deductible. With regard to trading businesses, other deductible expenses used as the basis for calculating the cap did not include the cost of goods sold.

Law No. 71, in effect from January 1, 2015, abolishes the deductibility cap on advertising, marketing and promotional expenses. Removal of the cap will help businesses avoid significant tax losses due to non-deductibility of over-the-cap expenses. This result is achieved after many years of debate and incremental reform.

12. Taxes and Fees

Taxes and fees that are deductible expenses include import and export duties, input VAT not qualifying for credit or refund, SCT, registration tax, natural resources tax, land tax, and fees payable to the authorities.

[179] Official Dispatch No. 1982 TCT/NV5 of the General Department of Taxation dated July 26, 2001.

F. Capital Expenditures

Expenditure of more than VND 30 million on the purchase or construction of a fixed asset is deductible by way of depreciation (see E.5., above.)

G. Loss Carryforward

Loss incurred in a fiscal year (if any) is allowed to be carried forward continuously for a maximum of five years. This requirement would imply that losses must be carried forward "consecutively" to tax holiday or tax reduction years (if any).

The current EIT regulations allow losses incurred on the transfer of immovable property to be carried forward and set off against business income during a tax period.

H. Foreign Tax Credits

The EIT Law allows a foreign tax credit to the extent of EIT assessed (before application of the credit) attributable to foreign-source income. Foreign tax credits take account of any tax exemption or reduction granted in foreign countries (tax sparing). In addition, eligible entities may avoid double taxation under the terms of double taxation agreements that Vietnam has signed with other countries.

Example 1: A company generates foreign-source income of VND 1,000 million (after tax) and the tax imposed on this income by the foreign jurisdiction concerned is VND 200 million but there is a 50% tax reduction in the foreign jurisdiction. The foreign tax payable after the reduction is, therefore, equivalent to VND 100 million. The income is subject to EIT in Vietnam as follows:

(VND 1,000 million + VND 200 million) × 20% = VND 240 million

The tax payable in Vietnam after deducting the foreign tax credit is:

VND 240 million − VND 200 million = VND 40 million

Example 2: A company generates foreign-source income of VND 660 million (after tax) and the tax paid on this income in the foreign jurisdiction is VND 340 million. The income is subject to EIT in Vietnam as follows:

(VND 660 million + VND 340 million) × 20% = VND 200 million

The company will get a tax credit of VND 200 million in Vietnam with respect to the foreign-source income, which is less than the tax paid in the foreign jurisdiction. In other words, the company will not pay further tax in Vietnam on the foreign-source income but will not be able to claim a credit for the amount of the actual tax paid abroad that exceeds the tax imposed on the same income in Vietnam.

I. Calculation of Taxable Income and Tax Rates

1. Taxable Income

Taxable income is equal to taxable turnover minus tax-deductible expenses plus other taxable income.

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2. Assessable Income

Assessable income is the difference remaining after tax-exempt income and losses carried forward have been subtracted from taxable income. A company calculates its tax payable by multiplying its assessable income by the applicable tax rate. In addition, a company that sets up a fund for scientific and technological development may deduct the amount of the fund from assessable income to arrive at the amount to which the tax rate is applied to calculate the tax payable.

3. Fund for Scientific and Technological Development (Research and Development Fund)

The EIT Law introduced a type of research and development (R&D) tax break in the form of a "fund for scientific and technological development." Enterprises established in accordance with Vietnamese law may use up to 10% of their annual assessable income for such a fund. If, in a period of five years, the enterprise uses less than 70% of the fund, or the fund is not used for appropriate purposes, then the enterprise must pay back the tax on the unused or misused fund, together with a late interest payment.

4. Tax-Exempt Income

Tax-exempt income includes, among other things, distributed income from capital contributions, share purchases, or joint ventures or business cooperation with locally established entities when income is distributed out of after-tax profits, even when the distributing entity is enjoying tax incentives. A tax exemption also applies to income from the first-time transfers of Certified Emission Reductions (CERs) by an enterprise granted CERs; from the second time onward, the enterprise must pay the normal EIT, in accordance with the regulations.[180]

5. Tax Rates

The current standard EIT rate is 20%.

Tax incentives are granted based on the taxpayer's line of business and location. The current incentives include a reduced tax rate of 10%, 15% or 17%, tax exemption for two to four years, and a 50% tax reduction for four to nine years for eligible taxpayers. (See Worksheet 1 for details of the available tax incentives).

The Amended Law on EIT 2013, effective from January 1, 2014, grants tax incentives to large-scale manufacturing projects. Specifically, new manufacturing projects (except for production of goods subject to special consumption tax and exploitation of mineral resources) will be eligible for a 10% tax rate for 15 years, four-year tax exemption, and nine-year 50% tax reduction, if it meets one of the following conditions:

(i) Investment capital is at least VND 6,000 billion and the investment capital will be contributed within three years from the issuance date of the investment certificate and the annual revenue is at least VND 10,000 billion after three years at the latest from the year generating revenue; or

(ii) Investment capital is at least VND 6,000 billion and the investment capital will be contributed within three years from the issuance date of the investment certificate and the project has more than 3,000 employees.

Enterprises engaged in development of social policy housing for sale, lease, or lease-purchase according to Article 53 of the Housing Law, may enjoy the 10% tax rate from July 1, 2013.

As discussed under IV.C., above, as of January 1, 2015, a number of investment projects are eligible for tax incentives of 10% EIT rate for 15 years, a four-year tax exemption, and a nine-year 50% tax reduction.

Under Decision No. 29[181] issued by the Prime Minister on October 6, 2021, investment projects in preferential industries may enjoy special incentives, including reduced EIT rates of 5%, 7% or 9% if they meet certain conditions in terms of investment capital, high technology, share of Vietnamese businesses participating in the value chain, added value, or technology transfer as discussed in IV.C. In addition, the number of years for tax exemption and reduction is also longer for such projects. EIT exemptions are from five years to six years and the 50% EIT reduction lasts for the subsequent 10, 12 and 13 years.

J. Assessment and Filing

Enterprises must pay provisional quarterly tax by the 30th day after the end of each quarter. An enterprise must file an annual final tax return and pay any tax deficit by the last day of the third month of the following fiscal year.

On October 30, 2022, the Government issued Decree No. 91/2022/ND-CP (Decree 91), amending a number of provisions of Decree No. 126/2020/ND-CP and regulating the Law on Tax Administration. According to Decree 91. If the provisional quarterly paid EIT is less than the final EIT payable, taxpayers have to pay late payment interest on the amount exceeding 20% of the final EIT payable (if any), counting from the day after the deadline for the payment of quarter four EIT liability. This rule applies retrospectively from the tax year 2021 onwards. As for the year 2021, if taxpayers paid the provisional EIT payment of the first three quarters and the amount was less than 75% of the final EIT payable, they can apply the guidance in Decree 91 provided the late payment interest did not increase.

On September 29, 2021, the MOF issued Circular No. 80/2021/TT-BTC implementing a number of provisions of the Law on Tax Administration and Decree No. 126 ("Circular No. 80"). Circular No. 80 took effect on January 1, 2022.

On June 17, 2024, the Government issued Decree No. 64/2024/ND-CP ("Decree No. 64"), granting a three-month deferral of the provisional EIT payments for quarter two of 2024 to eligible taxpayers. Decree No. 64 is applicable from June 17, 2024 through December 31, 2024.

Eligible taxpayers or businesses include the four groups below:

(i) Group 1 includes enterprises, organizations, households, business households and individuals conducting: production activities in agriculture, forestry and fisheries; foodstuff production or processing; textiles; the produc-

[180] Circular No. 78, Art. 8.8.

[181] Decision No. 29, Arts. 5, 6, 7.

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tion of apparel; the production of leather and related products; wood processing and the production of wood products, bamboo or neohouzeaua (except beds, wardrobes, tables and chairs); the production of products from straw, thatch and plaiting materials; the production of paper and paper products; the production of products from rubber and plastics; the production of products from other non-metallic minerals; metal production; mechanical processing; metal treatment and coating; the manufacture of electronic products, computers and optical products; the manufacture of automobiles and other motorized vehicles; the production of beds, wardrobes, tables and chairs; construction; publication activities; cinematographic activities, the production of television programs, the recording and publishing of music; the exploitation of crude oil and natural gas (the time limits for the payment of corporate income tax with respect to crude oil, condensate and natural gas collected according to an agreement or contract); the manufacture of beverages; printing and the copying of records of all kinds; the production of coke coal and refined petroleum products; the production of chemicals and chemical products; the manufacture of products from prefabricated metal (except for machinery and equipment); motorbike and motorcycle manufacture; the repair, maintenance and installation of machines and equipment; and drainage and the treatment of waste water;

(ii) Group 2 includes enterprises, organizations, households, business households and individuals conducting: business activities in transportation and warehousing; accommodation and catering services; education and training; medical and social assistance activities; real estate business; labor and employment service activities; travel agency and tour business activities and auxiliary services related to tour promotion and organization; creative, artistic and recreational activities; library operations, archives, museums and other cultural activities; sports, entertainment and recreation; cinema; radio and television activities; computer programming, consulting services and other activities related to computers; information service activities; and services supporting mineral exploitation;

(iii) Group 3 includes enterprises, organizations, households, business households and individuals engaged in the production of supporting industry products prioritized for development and key mechanical products; and

(iv) Group 4 includes small and ultra-small enterprises.

Eligible taxpayers must submit an application to the tax authority for the deferral of tax and land rent payments once they have submitted their monthly (or quarterly) tax returns and no later than September 30, 2024.

K. Official Dispatches

It is common for business entities to ask the local tax authorities or the General Department of Taxation to clarify specific tax issues that are vague or are not addressed in the tax rules. It would be prudent to obtain the tax authorities' comments in the form of official dispatches in advance before implementing any transaction or taking any steps involving unaddressed tax treatment. While one company may use an official dispatch issued to another company as a reference, such dispatch would not have precedential value if not specifically addressed to the particular party relying on it. A company should seek clarification and comments from the tax authorities in the form of official dispatches to resolve its tax issues.

There is no specific procedure under the law for filing requests for official dispatches. The period for receiving a reply ranges from one to two months. The tax authorities are generally willing to issue replies. However, the replies do not always satisfactorily address the issues presented.

L. Temporary Tax Relief Measures

The government may from time to time provide temporary tax relief measures in an effort to assist companies to recover their businesses from natural disaster, conflagration, or accidents that affect the businesses.

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VI. Taxation of a Branch of a Foreign Company

The law subjects a branch of a foreign company to the same tax treatment as applies to an enterprise established in Vietnam (for example, the subsidiary of a foreign company) except for the fact that a branch, as a permanent establishment (PE), may claim deductibility of the business administrative expense the foreign company of which it is a branch allocates to it. The allocated business administrative expense is deductible to the extent of the foreign company's total business administrative expense multiplied by the ratio of the turnover of the branch to the worldwide turnover of the foreign company. To claim this expense, the branch is required to submit to the tax authorities the foreign company's audited annual financial statements.

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VII. Taxation of a Foreign Contractor

A. What Is a Foreign Contractor?

A foreign contractor is an offshore business organization with or without a permanent establishment (PE) in Vietnam, or a foreign individual, whether a Vietnamese tax resident or a non-Vietnamese tax resident, conducting business in Vietnam or deriving income in Vietnam under contracts or agreements with organizations or individuals in Vietnam. Foreign contractors include foreign subcontractors that are offshore business organizations with or without a PE in Vietnam and foreign resident or nonresident individuals who conduct business in Vietnam or derive income in Vietnam under contracts or agreements with foreign contractors to perform part of their work.[182]

B. Methods of Taxation and Registration Requirement

Foreign contractors that are legal entities are subject to value added tax (VAT) and enterprise income tax (EIT) (herein referred to as foreign contractor tax — "FCT"). There are three methods of tax calculation (see further at VII.B.1. to VII.B.3., below). Individual foreign contractors are subject to VAT and personal income tax (PIT). The discussion below will focus only on the taxation of foreign contractors that are legal entities or organizations. The following cross-border transactions are not subject to VAT and EIT in accordance with Circular No. 103:

(i) The supply of goods to Vietnamese entities without the performance of any associated services in Vietnam where: the delivery is made to a foreign border gateway, the seller bears all the responsibilities, costs and risks in relation to the exportation and delivery of the goods to the foreign border gateway, and the buyer bears all the responsibilities, costs and risks in relation to the importation and transportation of the goods to Vietnam; or the delivery is made to a border gateway in Vietnam and the seller bears all the responsibilities, costs, and risks in relation to the goods until delivery at the border gateway in Vietnam, and the buyer takes all the responsibilities, costs and risks in relation to the receipt and transportation of the goods after their delivery at the border gateway.

(ii) Offshore organizations or foreign individuals that derive income from services provided and consumed outside Vietnam. It should be noted that the requirements for services consumed outside Vietnam are often subject to discretionary interpretation.

(iii) Offshore organizations or foreign individuals that provide Vietnamese entities with the following services performed offshore: the repair of means of transportation, machinery and equipment, whether or not including the supply of replacement materials and equipment; advertising and marketing; investment and trade promotion; brokerage for selling goods; training; the sharing of post and telecommunication service charges; and leases of transmission lines and satellite channels. However, this tax exemption does not apply to advertising or marketing on the internet and on-line training, which are now taxable.

Accordingly, foreign suppliers of goods will be subject to FCT in Vietnam if they bear risks for such goods in the territory of Vietnam. The tax exposure of foreign suppliers, therefore, will be expanded and will not be assessed based simply on sales under the Incoterm DDP, DAT and DAP as per the previous regulation under Circular No. 60/2012/TT-BTC. Pursuant to Circular No. 103, foreign suppliers of goods and service providers will be exposed to FCT in Vietnam in the following cases:

(i) The foreign supplier retains title to the goods delivered to local distributors;

(ii) The foreign supplier bears the cost for distribution, marketing, promotion, or is responsible for quality of goods or service delivered to local distributors;

(iii) The foreign supplier determines the selling price of goods or services to third parties; or

(iv) The foreign supplier authorizes or hires local organizations to perform a part of the distribution service or other services relating to the sale of goods in Vietnam.

A foreign organization would be subject to FCT if it conducts negotiations and signs contracts in the name of the foreign organization through local organizations or individuals. FCT will also apply to foreign entities engaged in export, import, distribution activities in the Vietnam market, buying goods for export, or selling goods to Vietnamese merchants.

1. Method 1: VAT Payment Calculated by Offsetting Input VAT Against Output VAT and Enterprise Income Tax Payment Based on Actual Assessable Income

A foreign contractor must meet all of the following conditions to be able to opt for Method 1:

(i) The foreign contractor must have a PE in Vietnam;

(ii) The period of business operation in Vietnam under the contract concerned must be 183 days or more from the effective date of the contract; and

(iii) The foreign contractor must adopt the Vietnamese accounting system, is tax registered and has a tax code.

Under this method, the foreign contractor may charge output VAT to clients in Vietnam and, if applicable, offset input VAT incurred from output VAT to arrive at the VAT amount payable. The EIT will be assessed at 20% of assessable income, arrived at after making eligible expense deductions. The foreign contractor will make tax filings and tax payments directly to the tax authorities.

2. Method 2: Tax Withholding by the Vietnamese Contracting Party at Deemed Rates

If the foreign contractor does not meet all of the conditions enumerated in 1., above, the Vietnamese contracting party will be responsible for withholding and paying VAT and EIT on behalf of the foreign contractor. To adopt this method, the Vietnamese contracting party must lodge a tax registration with the tax authorities within 10 working days from the date on which

[182] Circular No. 103/2014/TT-BTC Providing Guidelines on the Tax Obligation Applicable to Foreign Organizations or Individuals who Carry on Business or Generate Income in Vietnam, issued by the MOF on Aug. 6, 2014 ("Circular No. 103").

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the first obligation to withhold and pay FCT on behalf of the foreign contractor (i.e., the date of the first payment made to the foreign contractor) arises.

a. VAT Calculation

The VAT amount payable is equal to the taxable turnover multiplied by the deemed VAT rate. Taxable turnover is total turnover including taxes and costs paid by the Vietnamese contracting party for the provision of taxable services or services associated with the supply of goods.

When the contract fails to split the value of each business activity, the applicable highest deemed VAT rate will be applied to the whole contract value. In the case of a contract supplying machinery and equipment associated with installation services, training, operation and testing, if the contract does not split the value of the machinery and equipment from the value of services, the 3% deemed VAT rate will be imposed on the whole contract value.

With respect to construction and installation work including the supply of materials, machinery or equipment, a deemed VAT withholding rate of 3% will apply to the whole contract value if the contract does not split the value of each activity. When a foreign contractor subcontracts the supply of materials, machinery or equipment, performing only the remaining service work, the VAT withholding rate of 5% applicable to services will apply to the foreign contractor.

Foreign contractors applying this method may not claim a deduction for input VAT incurred in Vietnam.

b. Enterprise Income Tax Calculation

The EIT payable is arrived at by multiplying taxable turnover by the deemed EIT rate. Taxable turnover is total turnover including taxes (except for VAT) and costs paid by the Vietnamese contracting party. When the contract fails to split the value of each business activity, the highest applicable deemed EIT rate will be applied to the entire contract value. With regard to a contract for the supply of machinery and equipment associated with installation services, training, operation, and testing, if the contract does not split the value of the machinery and equipment from the value of services, the deemed EIT rate of 2% will be applied to the entire contract value.

Example: A foreign contractor provides services in Vietnam. The contract price is VND 120 million, inclusive of all taxes. The company in Vietnam must calculate and withhold the foreign contractor tax on the payment to the foreign contractor as follows:

VAT = VND 120 million × 5% = VND 6 million

EIT = (VND 120 million − VND 6 million) × 5% = VND 5.7 million.

The net payment to the foreign contractor is VND 108.3 million.

With respect to construction and installation work inclusive of the supply of materials, machinery or equipment, the deemed EIT withholding rate of 2% will apply to the whole contract value if the contract does not split the value of each activity. When a foreign contractor subcontracts the supply of materials, machinery or equipment, performing only the remaining service work, the EIT withholding rate of 5% applicable to services will apply to the foreign contractor.

Where a foreign contractor signs contracts with Vietnamese subcontractors to subcontract part of the contracted work, the VAT taxable turnover and EIT taxable turnover of the foreign contractor does not include the value of the work performed by the Vietnamese subcontractors. However, this treatment does not apply to contracts signed with local suppliers for the supply of goods and services for performance of the main contract.

Within ten days from each payment it makes to a foreign contractor, a Vietnamese contracting party must, declare, withhold and pay VAT and EIT on behalf of the foreign contractor. The VAT paid on behalf of the foreign contractor is input VAT of the Vietnamese contracting party and is creditable, where applicable.

3. Method 3: Hybrid Method

Under the hybrid method, a foreign contractor may elect to register for and pay VAT under the credit method (output VAT less input VAT, as described in 1., above), but pay EIT on the deemed basis (as described in 2., above), if the following requirements are met:

(i) The foreign contractor has a PE in Vietnam;

(ii) The business operation in Vietnam, pursuant to a contract, lasts for 183 days or more from the effective date of the contract; and

(iii) The foreign contractor organizes accounting matters in accordance with the accounting laws and regulations and MOF's guidance, is tax registered, and has a tax code.

The hybrid method will benefit foreign contractors that incur significant amounts of input VAT in Vietnam because it allows them to claim credit for such input VAT, while avoiding the compliance burden of having to account for deductible expenses for purpose of the assessment of EIT, as is required under Method 1. In most cases, it may be impractical for foreign contractors to maintain acceptable records locally for the deductibility of all expenses, particularly offshore expenses or allocated management costs.

C. Deemed Percentage Rates Used in Methods 2 and 3

1. Deemed Taxable Turnover Percentage Rate for Calculating Added Value

The applicable deemed VAT rate used for calculating VAT payable differs depending on the business line, as follows:

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Business line	Deemed VAT Rate
Services, lease of machinery and equipment, insurance; construction, installation excluding supply of materials or associated machineries and equipment	5%
Production, transportation, services associated with goods; construction, installation including supply of materials or associated machineries and equipment	3%
Other businesses	2%

2. Deemed Enterprise Income Tax Rates

No.	Lines of business	Deemed EIT Rate
1	Commerce: distribution and supply of goods, raw materials, materials, machinery and equipment associated with services in Vietnam (including supply of goods under the mode of on-the-spot export and import (except for toll manufacturing for foreign entities), and supply of goods under the Incoterms)	1%
2	Services, leasing of machinery, equipment and oil platforms, and insurance	5%
3	Restaurant, hotel or casino management services	10%
4	Leasing of aircraft (including engines and parts) and sea vessels	2%
5	Construction or installation, with or without supply of materials, machinery and equipment	2%
6	Other businesses and transportation (sea or air)	2%
7	Securities transfers, transfers of certificates of deposit, offshore reinsurance and commissions for ceding reinsurance	0.1%
8	Derivative finance services	2%
9	Loan interest	5%
10	Royalty income	10%

3. Foreign Contractor Tax Implication Related to the Transfer of Cryptocurrencies and Other Digital Assets

Under Vietnam law, it is unclear if cryptocurrencies and other digital goods, such as non-fungible tokens (NFT), can be recognized as assets. Therefore, the treatment of foreign contractor tax (FCT) payments, made from Vietnam to foreign organizations or individuals for the income derived from trading cryptocurrencies and other digital objects, remains uncertain.

In the absence of regulations, Vietnamese tax authorities tend to take an aggressive approach. Since these sources of income derive from within Vietnam and do not fall within the list of non-taxable income, they consider them to be subject to tax in Vietnam. In terms of withholding tax rates, the practice indicates that where the nature of the income received by foreign organizations or individuals is unclear, the tax authorities would typically consider such income as payments of service fees and, accordingly, apply a 5% VAT withholding and a 5% EIT withholding.

Notwithstanding the above, according to the Official Letter No. 14756/BTC-UBCK issued by the MOF on December 27, 2021, the MOF will continue to liaise with ministries and divisions in researching and proposing regulations related to virtual objects and virtual currencies. In particular, they will liaise with the Ministry of Justice in order to clarify civil law provisions related to virtual assets and with the State Bank to research and enact guidance on matters related to virtual currency. In addition, on February 23, 2024, the Prime Minister issued Decision No. 194/QD-TTg regarding the issuance of the national action plan to implement Vietnam's commitment to preventing and countering money laundering, terrorist financing and the proliferation of weapons of mass destruction ("Decision No. 194"). Under Decision No. 194, the Prime Minister assigns the Ministry of Finance and relevant ministries and sectors based on assigned functions and duties with the task of developing a comprehensive legal framework either to prohibit or to regulate virtual assets (VAs) and virtual asset service providers (VASPs) by May 2025.

D. Taxation of Foreign E-Commerce Business

Tax Administration Law 2019, effective from July 1, 2020, introduces a new taxation regime for foreign service providers including e-commerce business. In particular, under Articles 27.3, 35.6, and 42.4, banks, local contracting parties and foreign suppliers (having no permanent establishment in Vietnam) are required to file and pay tax in Vietnam. These articles provide in part as follows:

(i) Article 27.3 Commercial banks' obligations, rights and liabilities in relation to tax administration:

> "3. Withholding and paying tax on behalf of offshore organizations, individuals doing e-commerce business and deriving income from Vietnam."

(ii) Article 35.6 regarding the use of tax codes:

> "6. Where a Vietnamese party makes payment to organizations or individuals conducting cross-border business activities on a digital platform and having no presence in Vietnam, such Vietnamese party must use a tax code issued to these organizations or individuals to withhold and pay tax on behalf of these organizations or individuals."

(iii) Article 42.4 regarding the principles for the declaration and calculation of tax:

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> "4. Regarding e-commerce business activities, business conducted on a digital platform and other services provided by offshore suppliers having no permanent establishment in Vietnam, offshore suppliers shall directly or authorize [a third party] to conduct tax registration, tax declaration and payment in Vietnam as guided by the Ministry of Finance."

Comment: Based on these provisions, there would seem to be three types of entities held liable for tax declaration and payment with respect to typical e-commerce transactions or transactions on a digital platform. However, the Law does not specify under which circumstances a particular entity (bank, foreign service provider without permanent establishment or local customer/client) is responsible for tax declaration and payment. The Law is also silent as to whether the tax registration, filing and payment requirements are also applicable to foreign service providers having a permanent establishment. These questions will be addressed by the forthcoming guidelines.

As regards the responsibilities of commercial banks and intermediary payment service providers (IPSPs) with respect to e-commerce business, the Government has issued Decree No. 126/2020/ND-CP providing guidance on some provisions of the Law on Tax Administration ("Decree No. 126"), in effect from December 5, 2020. In addition to other obligations in reporting information on accounts, account balances and transaction data to tax authorities upon request, commercial banks and IPSPs are required to withhold and pay tax on behalf of foreign suppliers having no permanent establishment in Vietnam. In particular, Article 30.3 of Decree 126 provides as follows:

> (i) Commercial banks and IPSPs will withhold and pay tax on behalf of foreign suppliers without a permanent establishment that conduct e-commerce business, business on digital platforms with individual buyers in Vietnam and have not registered for tax declaration and payment;
>
> (ii) The General Department of Taxation will collect names and website addresses of foreign suppliers that have not registered and inform banks and IPSPs of such information for identifying transaction accounts of foreign suppliers and withholding tax;
>
> (iii) In case individuals buy goods and services from foreign suppliers and make payments by card or other forms of payment for which banks and IPSPs cannot withhold tax, banks and IPSPs will be responsible for monitoring amounts remitted to foreign suppliers and reporting them monthly to the General Department of Taxation; and
>
> (iv) Banks and IPSPs will declare and pay tax on behalf of foreign suppliers on a monthly basis.

On September 29, 2021, Circular No. 80 was issued to address the taxation of e-commerce activities and digital-based business. Circular No. 80 took effect on January 1, 2022. The regulations of the taxation of E-commerce business and digital-based activities are provided under Chapter IX, from Article 73 to Article 81.

Circular No. 80 defines "e-commerce activity" and "digital-based business" and sets out certain other rules regarding such activities as follows:

(i) "E-commerce activity" is the conduct of part or the entire process of commercial activity by electronic means connected to the internet, mobile telecommunications networks or other open networks in accordance with Decree No. 52/2013/ND-CP; and

(ii) "Digital-based business" is the provision of services through the internet or an electronic network, and the nature of the provision is basically automated with little or no human intervention and cannot be done without using information technology.

The relevant entities for tax registration, declaration and payment purposes are:

- Overseas suppliers that do not have a PE in Vietnam and conduct e-commerce business, digital-based business or other services with organizations and individuals in Vietnam; or tax agents authorized by overseas suppliers;
- Vietnamese organizations that purchase goods and services from overseas suppliers if the overseas suppliers do not register, declare, and pay tax; and
- Commercial banks or IPSPs if local purchasers are individuals and overseas suppliers do not register, declare, and pay tax.

(iii) Tax registration, declaration and payment of overseas suppliers:

- Overseas suppliers will register for tax on an electronic portal of the GDT and start declaring and paying taxes after the announcement of the GDT that the electronic portal system goes into operation. Overseas suppliers declare and pay VAT and EIT on a quarterly basis at deemed rates on the revenues they receive; and
- Overseas suppliers can authorize organizations or tax agents in Vietnam to conduct tax registration, declaration and payment on their behalf.

(iv) Where overseas suppliers do not register, declare and pay taxes in Vietnam:

- If overseas suppliers do not register to pay taxes in Vietnam, Vietnamese organizations that purchase goods or services from overseas suppliers or distribute goods or provide services on behalf of overseas suppliers will be responsible for declaring, withholding and paying VAT and EIT at the deemed rates on revenues on behalf of overseas suppliers (i.e., the current foreign contractor tax withholding regime); and
- If overseas suppliers do not register to pay taxes in Vietnam with respect to the sale of goods or the provision of services to individuals, commercial banks and IPSPs will be responsible for withholding and paying VAT and EIT on a monthly basis at the deemed rates on revenues on behalf of overseas suppliers. The tax withholding and declaration will start only when the GDT sends a notice to commercial banks and IPSPs.

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(v) Claiming tax relief under a tax treaty: overseas suppliers that are residents of a country or territory with a tax treaty in force with Vietnam may seek tax relief under the relevant treaty, subject to certain administrative procedures.

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VIII. Taxation of Representative Offices

The law does not allow a representative office (RO) to carry on business activities. In principle, therefore, an RO is not a taxpayer in Vietnam. If an RO's activities create a permanent establishment (PE) in Vietnam, the parent company of the RO may be subject to tax obligations in Vietnam. The Enterprise Income Tax Law (the "EIT Law") defines a PE as a place of business through which a foreign company partly or wholly carries on its business in Vietnam and generates income, including:

(i) A branch, management office, factory, workshop, means of transportation, mine, oil or gas well, or any other place of extraction of natural resources;

(ii) A building site, construction or installation project;

(iii) An establishment that provides services, including consultancy services, through any of its employees or another entity;

(iv) An agency of a company located abroad; and

(v) A representative in Vietnam in the following instances:

- Where the representative has the authority to enter into contracts in the name of the company located abroad; or
- Where the representative does not have the authority to enter into contracts in the name of the company located abroad, but regularly makes deliveries of goods or provides services in Vietnam.

A foreign company resident in a country that has a tax treaty with Vietnam will have to look to the definition of a PE under the tax treaty concerned.

As discussed at VII., above, a foreign company that conducts business activities in Vietnam and receives payments from Vietnam will be subject to a foreign contractor tax comprising VAT and EIT if there is no tax treaty protection, regardless of whether the foreign company has a PE in Vietnam. As a matter of current practice, in these circumstances, any PE exposure arising from the RO's activities would not give rise to any tax liability for the foreign company beyond the foreign contractor tax. If there is no payment from Vietnam to the foreign company (for example, sourcing goods and services from Vietnam) or trading activities are conducted on a cross-border basis, the foreign company would not be subject to the foreign contractor tax on such activities; however, any PE exposure created by its RO could potentially expose the foreign company to Vietnamese taxes.

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IX. Taxation of Individuals

The Personal Income Tax Law in effect from January 1, 2009, as amended, and supplemented by Law No. 26/2012/QH13 and Law No. 71 (the "PIT Law") governs PIT. It is implemented by Decree No. 65, Circular No. 111/2013/TT-BTC, and Circular 92/2015/TT-BTC.[183]

A. Who Is the Taxpayer?

The PIT Law classifies taxpayers as either residents or nonresidents and subjects each class to different tax rates.

A resident is an individual who fulfill one of the following conditions:

(i) He or she is present in Vietnam for 183 days or more in a calendar year or in 12 consecutive months from the first day of presence in Vietnam;

(ii) He or she has a registered regular residence (for example, a foreigner having a Permanent Residence Card or a Temporary Residence Card); or

(iii) He or she has a lease contract in Vietnam (including a hotel stay) with a term of 183 days or more in a tax year. However, if an individual (who has a lease contract in Vietnam with a term of 183 days or more) is present in Vietnam for fewer than 183 days in a tax year and cannot prove that he or she is a tax resident of another country, such individual is a tax resident of Vietnam.[184]

An individual who does not fulfill any of the above conditions is a nonresident.

B. Taxable Income

The following ten types of income are taxable:

(i) Business income: income from production, trading and service activities, and independent business;

(ii) Salaries, wages, allowances, remuneration, benefits in cash or in kind, and bonuses (collectively referred to as "salaries and wages");

(iii) Income from capital investment such as loan interest, dividends and income from capital investment in other forms except for Government bond interest;

(iv) Income from the transfer of capital: income from the transfer of capital contributions of economic organizations, income from the transfer of securities and income from the transfer of capital in other forms;

(v) Income from the transfer of immovable property: income from the transfer of land use rights and assets attached to land, income from the transfer of the right to ownership or use of houses, income from the transfer of the right to land lease or water surface lease, and other income from the transfer of immovable property;

(vi) Prizes: lottery prizes, promotion prizes, prizes from games or contests, and other forms of prizes;[185]

(vii) Income from copyright: income from the assignment or transfer of the right to use objects of intellectual property rights, income from technology transfers;

(viii) Income from franchising;

(ix) Inheritances, being securities, shares in the capital of economic and business organizations, immovable property, and other assets the ownership or use of which must be registered; and

(x) Gifts being securities, capital contributions of economic and business organizations, immovable property, and other assets the ownership or use of which must be registered.

C. Taxable Basis and Tax Rates for Residents

Residents are subject to tax on income derived inside and outside Vietnam (i.e., on their worldwide income). The tax rates for residents will depend on the source of the income.

The following progressive tax rates apply to residents' salaries and wages.

Level	Assessable Income per Year (VND million dong)	Assessable Income per Month (VND 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

In arriving at the assessable income in the form of employment income, the law permits residents to deduct from taxable income the following:

(i) Statutory insurance contributions (i.e., statutory social insurance, health insurance, unemployment insurance, statutory professional insurance). Foreign employees who are residents in Vietnam are permitted to deduct statutory insurance contributions, in accordance with the rules of the country of which they are citizens, against taxable income.

[183] Personal Income Tax Law adopted by the National Assembly on Nov. 21, 2007; the Amended Law on PIT No. 26/2012/QH13 and Law No. 71 adopted by the National Assembly on Nov. 22, 2012, and Nov. 26, 2014, respectively (the "PIT Law"); Decree No. 65/2013/ND-CP dated June 27, 2013, of the Government, as amended, and supplemented by Decree No. 91/2014/ND-CP dated Oct. 1, 2014, of the Government, and Decree No. 12/2015/ND-CP dated Feb. 12, 2015, of the Government ("Decree No. 65"); Circular No. 111/2013/TT-BTC dated Aug. 15, 2013, of the MOF, as amended by Circular No. 119/2014/TT-BTC dated Aug. 25, 2014, Circular No. 151/2014/TT-BTC dated Oct. 10, 2014, Circular No. 26/2015/TT-BTC dated Feb. 27, 2015, and Circular No. 92/2015/TT-BTC dated Jun. 15, 2015 ("Circular No. 111").

[184] Decree No. 65, Art. 2.

[185] According to Art. 2.2 of Law No. 71, prizes from betting and casinos are no longer subject to PIT from Jan. 1, 2015.

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(ii) Contributions to the voluntary pension fund up to the maximum amount of VND 1 million per month, equivalent to VND 12 million per year.

(iii) Personal deduction of VND 11 million per month for the taxpayer.[186]

(iv) Dependent deduction of VND 4.4 million per month for each eligible dependent.

Flat tax rates apply to income from capital investment, the transfer of capital, the transfer of real estate, prizes won, copyright royalties, commercial franchising, and inheritances or gifts of residents.[187]

Assessable Income	Tax Rate (%)
(a) Income from capital investments	5
(b) Income from royalties and franchises	5
(c) Income from prizes	10
(d) Income from inheritance and gifts	10
(e) Income from the transfer of capital	20
(f) Income from the transfer of securities	0.1
(g) Income from immovable property transfers	2

Business income of residents is imposed at deemed PIT rates, as follows:[188]

Scope of Business	Tax Rate (%)
Distribution, supply of goods	0.5
Services, construction without supply of materials	2
Leasing of assets, insurance agent, lottery agent, multi-level sales agent	5
Production, transportation, services associated with goods, construction with supply of materials	1.5
Other business activities	1

D. Taxable Basis and Tax Rates for Nonresidents

Nonresidents are subject to tax on income derived in Vietnam. The assessable income of a nonresident is gross income without any deductions.

Assessable Income	Tax Rate
Business income, being gross turnover from: (i) trading in goods: (ii) services business; and (iii) production, construction, transportation and other business activities	1%/5%/2%, respectively
Salaries and wages	20%
Income from capital investments	5%
Proceeds from the transfer of capital/securities	0.1%
Sales proceeds of immovable property	2%
Income from copyright or franchising	5%
Income from prizes, inheritances or gifts	10%

For the rates of source country taxation applying to investment income, services income and capital gains under Vietnam's domestic law and tax treaties and the context for the application of those rates, see the Withholding Tax Chart.

E. Exemptions

The tax law grants tax exemptions in certain limited cases, mainly for the following types of income:

(i) Income derived from the transfer of immovable property between family members and relatives;

(ii) Income derived from the transfer of a land use right or house of an individual when such is the only land use right or house of that individual;

(iii) Income as a land use right assigned by the State to an individual;

(iv) Inheritances and gifts in the form of immovable property between family members and relatives;

(v) Income of households or of individuals who are directly involved in the production of agricultural, forestry, salt or aquatic products;[189]

(vi) Income derived from the transfer between households or individuals of land use right for agriculture purposes, where the land was allocated by the State for agricultural production;[190]

(vii) Bank deposit interest and interest from life insurance policies;

(viii) Remittances from overseas Vietnamese;

(ix) Additional payments for working night shifts or overtime;

(x) Pension payments;

(xi) Scholarships;

(xii) Compensation under insurance policies, work-related accident compensation and other compensation from the State;

[186] Resolution No. 954/2020/UBTVQH14 dated June 2, 2020, of the Standing Committee of the National Assembly.
[187] Law No. 71, Art. 2.7.
[188] Law No. 71, Art. 2.4.
[189] Decree No. 65, Art. 4.
[190] Decree No. 65, Art. 4.

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(xiii) Income from licensed charitable funds for charitable, humanitarian and non-profit purposes;

(xiv) Income from approved foreign aid from governmental or non-governmental charitable or humanitarian purposes;

(xv) Employment income of Vietnamese crew working on foreign vessels or Vietnamese vessels operating in international transportation; and

(xvi) Income of boat owners, of individuals having the right to use boats, and of individuals working on boats that provide goods or services directly serving offshore fishing.

The tax-exempt benefits for an expatriate include a one-off relocation allowance, annual round trip airfare back to the expatriate's home country and children's tuition paid to schools in Vietnam.[191] Accommodation provided by employers is subject to tax on the lower of the actual rent or 15% of other taxable income.

Other employer benefits are taxable only when the individual enjoying the benefits can be identified. A benefit that is provided without the eligible individuals being identified (for example, a corporate membership that does not state specific individual members) is not taxable. Training must be appropriate to the level of the employees' expertise or the training plan of the employer to be tax exempt.

Example: Monthly taxation of income received by a Vietnamese employee (resident) in July 2023:

Monthly salary:	VND 20,000,000
Deduction of 8% social insurance, 1.5% health insurance and 1% unemployment insurance:	VND 2,100,000
Personal deduction (assuming there is no dependent):	VND 11,000,000
Monthly assessable income:	VND 6,900,000
Monthly tax payable:	
VND 440,000, including: tax on the first VND 5 million:	VND 250,000
tax on the remaining VND 1,900,000:	VND 190,000
Net payment to the employee:	
VND 20,000,000 − VND 2,100,000 − VND 640,000 =	VND 17,460,000

Example: Monthly taxation of income received by a foreign employee (resident) in July 2023:

Monthly salary:	VND 20,000,000
Monthly allowance:	VND 5,000,000
Monthly housing cost provided by the employer:	VND 8,000,000
Personal deduction (assuming there is no dependent):	VND 11,000,000
Monthly assessable income:	
VND 20,000,000 + VND 5,000,000 + (VND 25,000,000 × 15%) − VND 11,000,000 =	VND 17,750,000

In the above example, the housing cost subject to tax is VND 3,750,000, equal to 15% of the salary and allowance, which is lower than the actual housing cost. The remaining housing cost of VND 4,250,000 is not subject to tax.

Monthly tax payable: VND 1,912,500, specifically:

Tax on the first VND 5 million:	VND 250,000
Tax on the next VND 5 million:	VND 500,000
Tax on the next VND 7.75 million:	VND 1,162,500
Net payment to the employee: VND 20,000,000 + VND 5,000,000 − VND 1,912,500 =	VND 23,087,500

The tax law allows a resident a foreign tax credit to the extent of the tax assessed under domestic law (before application of the credit) attributable to the income taxed in other countries.

F. Taxation of Employee Stock Options and Bonus Stock

Since the introduction of the new PIT Law in 2009, it has been unclear whether income from employee stock options and bonus stock is taxed as employment income or income from the transfer of securities. Official Letter No. 14169/BTC-TCT of the MOF, dated October 7, 2009, sent to the Ho Chi Minh City Tax Department addresses the taxation of employee stock options and bonus stock offered by both domestic companies and offshore companies.

Under the Official Letter, the taxation of employee stock options or bonus stock will not be triggered until the sale of the shares. Upon the sale of the shares, PIT will be imposed on both employment income and income from the transfer of securities.

The taxable employment income will be the bonus amount recorded in the accounting books of the entity granting the stock option or stock bonus. Tax on employment income arising from employee stock options must be declared and paid with the year-end final tax return, which is due by March 31 of the year following the year in which the shares were sold. However, it will be impractical for employers to track the sale of shares with a view to knowing when to withhold tax if the sale

[191] Decree No. 65, Art. 3.2b and g.

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is not conducted concurrently with the exercise of stock options or shares are sold after the employee concerned resigns.

According to Official Letter No. 14169/BTC-TCT, the tax on income from the transfer of securities under stock option programs was 0.1% of the transfer price or 20% of the difference between the transfer price and the face value or non-preferential purchase price. With regard to stock bonuses, the tax on income from the transfer of securities was 0.1% of the transfer price or 20% of the difference between the transfer price and the face value or the bonus amount recorded in the accounting books of the bonus-paying entity. However, from January 1, 2015, there is only the deemed rate of 0.1% applicable to the transfer of securities in accordance with Law No. 71. Thus, it can be understood that the transfer of securities under stock option programs or stock bonuses would be imposed at the deemed rate of 0.1% on the transfer price.

Under the PIT Law, tax on income from the transfer of securities is withheld by the bank or securities company in cases where shareholders trade their listed stocks, or by the stock issuing company in the case of unlisted stocks. Official Letter No. 14169 does not address who is responsible for withholding the tax on income from the transfer of securities arising from stock options or bonus stock granted by offshore companies.

Note: Strictly speaking, under the law and recent guidance of the tax authorities, the local employer is not required to report and withhold PIT on income derived from stock options or bonus stock granted by offshore companies. Instead, the relevant taxes (i.e., the tax on employment income and income from the transfer of securities) must be declared and paid by the employees, regardless of whether the stock options or bonus stock are subject to SBV registration. However, in practice, such an approach would raise certain issues for the local employer who would need to monitor the compliance status of employees.

The implementation of offshore equity-based awards, including a purchase of shares with preferential conditions (stock option plans) or a receipt of bonus stock (restricted stock unit), is subject to registration with and the approval of the State Bank of Vietnam because it is considered an offshore indirect investment activity. Vietnamese employees[192] have the right to own/sell foreign shares and receive dividends and other lawful income from the share plan. Vietnamese employees can remit foreign currency abroad for this purpose. The implementation of share plans must be done through the local employing entity which is required to open a foreign currency transactional bank account for the purpose of the implementation of share plans. All incoming and outgoing transactions under the share plans must go through such bank account.

G. Assessment and Filing

The filing of PIT returns and tax payments with respect to employment income are done through the employer acting as an authorized tax withholding organization. An employer must file monthly or quarterly tax returns with the tax authorities and pay monthly taxes by the 20th day of the subsequent month or pay quarterly taxes by the end of the first month of the subsequent quarter. According to Decree 126, which is applicable from tax year 2021 and onwards, quarterly PIT filing and payment is only applicable to employers that conduct quarterly VAT filing and payment.[193] For other cases, monthly PIT filing and payment is applicable. The employer must file an annual finalization tax return with the tax authorities and pay any outstanding tax liability by the last day of the third month of the following calendar year (i.e., March 31).

According to Decree 91, if the deadline for the tax declaration, payment and other tax administrative work falls on a statutory holiday, the deadline will be extended to the subsequent working day.

Regulations provide certain circumstances where individuals must directly file the PIT finalization under his or her own tax codes. On March 22, 2023, the Ha Noi Tax Department issued Official Letter No. 13762/CTHN-HKDCN guiding the 2022 PIT finalization in detail. In terms of the timeline, the due date for direct PIT finalization filing and payment is April 30 of the subsequent year. In cases where the deadline falls on a statutory holiday, the due day for PIT filing will be the subsequent working day. In cases where an individual is entitled to a PIT refund but files the PIT finalization declaration after the due date as prescribed, no administrative penalty will be imposed.

As regards the residence status of a foreign taxpayer, the first tax year is the first 12 consecutive month period from the foreigner's first arrival in Vietnam and the following tax years are the calendar years.

H. Tax Declaration and Administration for Household Businesses and Individuals

The MOF issued Circular No. 40/2021/TT-BTC on June 1, 2021, providing guidance on the value added tax, personal income tax, and tax administration for business households and individuals (Circular 40). Circular 40 took effect on August 1, 2021, and replaces relevant content in Circular 92/2015/TT-BTC.

Under Circular 40, income-paying organizations must declare and pay tax on behalf of business households and individuals in the following cases:

(i) Organizations leasing an individual's property if the lease agreement provides that the lessee is the taxpayer;

(ii) Organizations entering into business relationships with individuals;

[192] Previously, according to the practice set out by the State Bank of Vietnam (SBV), both (i) Vietnamese employees and (ii) non-Vietnamese employees working in Vietnam regardless of their employment relationship (secondment or local hire) had to be registered with the SBV for the implementation of stock award plans for employees working in Vietnam. On June 29, 2016, the SBV issued Circular No. 10/2016/TT-NHNN (Circular No. 10), which took effect on August 13, 2016. Circular No. 10 is the first legislation providing detailed guidance on the implementation of stock award plans in Vietnam. However, Circular No. 10 only regulates the participation of Vietnamese employees into stock award plans and is silent on participation of foreign employees. Thus, currently, the law is unclear regarding participation of foreign employees to stock award plans (i.e., whether such participation is subject to any restriction/approval). Based on informal discussions, officials at the SBV have stated that foreign employees are not subject to the administration of the SBV (i.e., foreign employees can participate in stock award plans without any registration/approval). It should be noted, however, that this position is not an official opinion of the SBV.

[193] Decree No. 126, Arts. 8 and 9.

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(iii) Organizations that provide bonuses, sales support, sales promotions, trade discounts, payment discounts, cash or non-cash support, compensation for breach of contract, and other compensation to household businesses that adopt the deemed taxation method;

(iv) Organizations that partner with a foreign digital platform provider (having no permanent establishment in Vietnam) and make payment of income derived from digital content products or services to individuals based on agreements with a foreign digital platform provider;

(v) Organizations that are the owners of e-commerce platforms, on behalf of individual merchants according to schedules established by the tax authorities;

(vi) Organizations on behalf of individuals based on authorization provided under the civil code.

On November 15, 2021, the MOF issued Circular 100/2021/TT-BTC (Circular 100) to amend a number of Articles in Circular 40. Accordingly, tax declaration obligations under case (v) and (vi) above have been amended as follows:

(v) Organizations including owners of e-commerce platforms, on behalf of individual merchants to declare and pay taxes based on authorization provided under the civil code.

Circular 100 took effect on January 1, 2022.

Decree 91 issued by the Government on October 30, 2022, introduced the obligation to report local e-commerce trading platforms. Local e-commerce platforms, which are organizations established and operating under Vietnamese laws, are now required to provide tax authorities, on a quarterly basis, with information on merchants, organizations and individuals that conduct the sale and purchase of goods and/or the provision of services on e-commerce platforms including the seller's name, tax identification number or personal identification number, or identification card or passport number, address, telephone number and revenue generated through the online ordering function of e-commerce platforms.

According to Decree No. 64, eligible taxpayers — business households and individuals — may defer 2024 VAT and PIT payments to December 30, 2024. The details of eligible taxpayers are set out at V.J., above.

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X. Value Added Tax

A. Scope of Taxation

Value added tax (VAT) is imposed on the supply, including importation, of goods and services that are used for production, business and consumption in Vietnam. A number of goods and services are exempt from VAT.[194]

The final consumer ultimately pays the VAT because VAT charged at one stage in the production, importation and distribution chain ("input VAT") is recovered at the next stage (by crediting the input VAT against the "output VAT"). To recover input VAT, taxpayers must use the credit method for calculating VAT (see further at F.1., below) and obtain appropriate VAT invoices from their suppliers.

For more information on Vietnam's VAT system, see also the VAT Navigator.

B. Who Is the Taxpayer?

VAT taxpayers are organizations or individuals that carry on, in Vietnam, production or trading activities with respect to goods or services subject to VAT in Vietnam or import goods or services subject to VAT. Taxpayers also include business organizations and individuals that acquire services from foreign organizations not having a permanent establishment (PE) in Vietnam or nonresident individuals — in this case, the local payers are required to withhold and pay VAT on behalf of the foreign service suppliers.[195]

No VAT declaration and payment, among others, are required:[196]

(i) In the case of the collection of compensation, bonuses or support, or the transfer of Certified Emission Reductions (CERs), and other financial collections;

(ii) Where business organizations and individuals in Vietnam acquire certain services from foreign organizations not having a PE in Vietnam or nonresident individuals and such services are performed outside Vietnam, including the repair of means of transport and equipment, advertising and marketing, investment and trade promotion, brokerage for selling goods and services, training, and the sharing of international postal and telecommunication charges;

(iii) Where nonbusiness entities that are not VAT taxpayers sell their assets; and

(iv) Where organizations or individuals transfer an investment project for the production or trading of goods or services subject to VAT to enterprises or cooperatives.

C. Taxable Supplies

Supplies of taxable goods and services are subject to VAT at the standard 10% rate. Some taxable goods and services are subject to 5% VAT. Exports of goods and services are zero-rated.

Examples of goods and services subject to 5% VAT are water supply, medical equipment, medicines, children's toys, unprocessed fresh food, sugar, semi-processed cotton, and dredging services. Pursuant to the Amended Law on VAT, 5% VAT applies to the sale, lease, or lease-purchase of social policy housing from July 1, 2013.[197]

On November 9, 2023, the National Assembly of Vietnam adopted Resolution No. 110,[198] which reduced the standard rate of VAT for qualified goods and services from 10% to 8% from January 1, 2024 through June 30, 2024. Similarly, on June 29, 2024, the National Assembly of Vietnam adopted Resolution No. 142[199] to reduce the standard rate of VAT for qualified goods and services from 10% to 8% from July 1, 2024 through December 31, 2024.

To implement this policy and provide detailed guidance, the Government issued Decree No. 44[200] and Decree No. 72 on December 28, 2023 and June 30, 2024, respectively.[201] According to Decree No. 94 and Decree No. 72,[202] the following three groups of goods and services are not entitled to the VAT rate reduction:

(i) Group 1: telecommunications, financial activities, banking, securities, insurance, real estate business, metals and prefabricated products, mining products (excluding coal mining), coke coal, refined petroleum, chemical products (details of group 1 are listed in Appendix I, attached to Decree No. 94 and Decree No. 72);

(ii) Group 2: goods and services subject to special consumption tax (details of group 2 are listed in Appendix II, attached to Decree No. 94 and Decree No. 72); and

(iii) Group 3: Information technology under the Law on the information technology (details of group 3 are listed in Appendix III, attached to Decree No. 94 and Decree No. 72).

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[194] Circular No. 219/2013/TT-BTC Guiding the implementation of Law on VAT and Decree No. 209/2013/ND-CP dated Dec. 18, 2013, of the Government, issued by the Ministry of Finance on Dec. 31, 2012, as amended by Circular No. 119/2014/TT-BTC dated Aug. 25, 2014, Circular No. 151/2014/TT-BTC dated Oct. 10, 2014, Circular No. 26/2015/TT-BTC dated Feb. 27, 2015, Circular No. 193/2015/TT-BTC dated Nov. 24, 2015, Circular No. 130/2016/TT-BTC dated Aug. 12, 2016, Circular 173/2016/TT-BTC dated Oct. 28, 2016, Circular No. 20/2017/TT-BTC, dated March 6, 2017, Circular No. 93/2017/TT-BTC dated Sept. 19, 2017, Circular No. 25/2018/TT-BTC dated March 16, 2018, and Circular No. 82/2018/TT-BTC dated Aug. 30, 2018, effective on Jan. 1, 2014 ("Circular No. 219"), Art. 2.

[195] Circular No. 219, Art. 3.

[196] Circular No. 219, Art. 5.

[197] Law No. 31/2013/QH13 adopted by the National Assembly on Jun 19, 2013, amending and supplementing VAT Law No. 13/2008/QH12 dated Jun 3, 2008, and Law No. 71 (the "Amended Law on VAT"), Art. 1.3 and Art. 2; Decree No. 92/2013/ND-CP dated Aug. 13, 2013, of the Government ("Decree No. 92"), Art. 4, as amended by Decree No. 209; Circular No. 219, Art. 10.16.

[198] Resolution No. 110/2023/QH15 for the sixth Session of its 15th Legislature, adopted by the National Assembly on November 29, 2023.

[199] Resolution No. 142/2024/QH15 for the seventh Session of its 15th Legislature, adopted by the National Assembly on June 29, 2024.

[200] Decree No. 94/2023/ND-CP dated December 28, 2023, issued by the Government regulating the VAT reduction policy as stipulated under Resolution No. 110/2023/QH15 dated November 29, 2023, of the National Assembly.

[201] Decree No. 72/2024/ND-CP dated June 30, 2024, issued by the Government regulating the VAT reduction policy as stipulated under Resolution No. 142/2024/QH15 dated June 29, 2024, of the National Assembly.

[202] Decree No. 94 and Decree No. 72 provide that the same three groups of goods and services are not entitled to the VAT rate reduction.

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Any goods and services, that are subject to the 10% VAT rate and do not fall within the three aforementioned groups, qualify for the VAT reduction policy.

D. Zero-Rated Supplies

1. Exported Goods

The export of goods in the following cases is subject to 0% VAT:

(i) Goods exported abroad: including goods processed for export, goods sold to duty free shops and goods sold to tariff-free zones.

(ii) Processed goods for transitional export: processed goods are exported indirectly when a processor in Vietnam, at the request of a foreign processee, delivers the processed goods to another processor in Vietnam for further processing under a different processing contract or under a different processing stage. The delivery of processed goods from the first processor to the second processor in this situation is considered an export subject to 0% VAT.

(iii) Goods for on-the-spot export: a seller/exporter or toll manufacturer in Vietnam, at the request of a foreign purchaser or foreign principal, delivers goods to another entity in Vietnam. The local delivery of such goods is considered an export subject to 0% VAT.

(iv) Goods exported for sale at fairs and exhibitions abroad.

(v) Certain specific exported goods processed from minerals or natural resources with respect to which the value of minerals or natural resources plus energy expenses account for 51% or more of the manufacturing cost.[203]

2. Export Services

Export services eligible for 0% VAT include services provided directly to organizations or individuals in foreign countries and consumed outside Vietnam, or services provided directly to organizations or individuals based in tariff-free zones and consumed in tariff-free zones. Individuals in foreign countries are foreigners not residing in Vietnam, Vietnamese residing overseas, and Vietnamese not present in Vietnam during the provision of the services concerned.

The 0% VAT rate also applies to construction and installation works conducted overseas or in the tariff-free zones, international transportation of passengers and cargo, and certain aviation and maritime services.

The following supplies of goods and services are not eligible for 0% VAT:[204]

(i) Reinsurance to offshore entities; technology transfers and transfers of intellectual property rights to offshore entities; capital transfers, the granting of credit and securities investment abroad; derivative financial transactions, outbound postal and telecommunication services (including postal and telecommunication services provided to organizations or individuals in tariff-free zones, and provision of pre-paid phone cards with codes and with fixed prices to foreign countries or to tariff-free zones); the export of natural resources and minerals that are not yet processed into other products or processed into other products where but the value of natural resources plus energy expenses accounts for 51% or more of the total value; cigarettes, alcohol and beer imported for export; goods and services provided to individuals who do not have business registration in tariff-free zones.

Cigarettes, alcohol and beer imported for export will not be subject to output VAT upon export but the paid input VAT is not creditable.[205]

(ii) Gasoline for automobiles of business organizations in tariff-free zones.

(iii) The sale of automobiles sold to individuals and organizations in tariff-free zones.

(iv) The provision of services to individuals and organizations in tariff-free zones, such as leases of houses, halls, offices, hotels and warehouses, and transportation services for employees (except industrial catering services and catering services provided in tariff-free zones).

(v) The provision of services to offshore entities, including to sport competitions; performance of artistic, cultural and entertainment events; conferences; hotels; training; advertising; tourism; travel; payment services via the internet; and the supply of services related to the sale and distribution of products or goods in Vietnam.

E. Exemptions

Some 26 types of goods and services are VAT-exempt, including credit services by either credit institutions or non-credit institutions, capital transfers, derivative financial services, the issuing of credit cards, factoring services and debt selling, life insurance, medical services, including care services for the elderly and the disabled, goods for humanitarian aid purposes, technology transfers, transfers of intellectual property rights, transfers of investment projects for production of trading in goods or services subject to VAT enterprises or cooperatives, the import of gold in bars or sheets, the export of natural resources and minerals that are not yet processed into other products or processed into other products but where the value of natural resources plus energy expenses accounts for 51% or more of the total value, and goods sold at duty-free shops.[206]

According to Law No. 71, from January 1, 2015, fertilizers, feed for cattle, poultry and other livestock, and machinery and equipment specialized for agriculture production are VAT-exempt, instead of being subject to 5% VAT as applied previously.

As mentioned above at X.B., Circular No. 219 stipulates those cases that are not subject to VAT declaration and payment. The difference between the two categories — i.e., VAT exemption versus not being subject to VAT declaration and payment — is that the latter allows the taxpayer to claim input VAT credits while the former does not.

[203] Decree No. 146, Art. 1.
[204] Circular No. 219, Art. 9.3.
[205] Circular No. 130/2016/TT-BTC dated Aug. 12, 2016, Art. 1.2.
[206] Circular No. 219, Art. 4.

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F. Methods of Taxation

There are two methods of taxation: the tax credit method and the direct calculation method.

1. Tax Credit Method

a. General

Generally, businesses that fully comply with accounting, invoicing and voucher requirements apply this method for VAT calculation purposes. Under this method, a business charges output VAT to customers and deducts input VAT against output VAT to arrive at the VAT payable. Businesses that provide VAT-exempt supplies cannot claim credit for input VAT, except in special cases, but account for input VAT as a business expense. However, input VAT incurred for the supply of goods and services not subject to VAT declaration and payment is fully creditable.

Example: VAT calculation under the tax credit method:

A distributor pays a manufacturer VND 400,000 plus VND 40,000 (10% VAT) to buy a product. The distributor sells the product to a final consumer for VND 480,000 plus VND 48,000 (10% VAT).

The output VAT of the distributor is VND 48,000 and the input VAT of the distributor is VND 40,000. By charging the output VAT to the final consumer, the distributor can recover its input VAT and pay the VND 8,000 difference to the tax authorities.

b. Input Tax Credit

For a taxpayer to be able to claim the input tax on a VAT invoice, the VAT invoice must properly show the buyer's and seller's details, including name, address and tax code. Input VAT incurred in one month must be credited in the tax filing of the same month. Taxpayers are allowed to adjust the declaration of input VAT any time before the tax authority issues a decision to conduct a tax audit or investigation. From January 1, 2009, any purchase of VND 20 million or more (including VAT) must be paid via bank or bank transfer to be eligible for the input VAT credit.

In relation to the export of goods or services, the following conditions must be fulfilled to qualify for credit or refund of input VAT:

(i) There must be an export contract or service contract;

(ii) There must be a customs declaration certified by the customs authority with respect to the export of goods;

(iii) Payment must be made via bank transfer or other means deemed to be a bank transfer; and

(iv) There must be an invoice with respect to the export sale.

Only input tax incurred for a business subject to VAT is creditable, except that input tax incurred for the following two VAT-exempt activities is also fully creditable:

(i) Goods and services provided to foreign organizations and individuals for purposes of humanitarian aid and nonrefundable aid; and

(ii) Searching and exploration for, and the development of, oil and gas fields. It should be noted, however, that the export of unprocessed natural resources is VAT exempt.

In the event that a VAT-exempt business and a VAT-taxable business jointly use goods or services, and these therefore cannot be accounted for separately, the creditable VAT is calculated based on the percentage that taxable business turnover represents of total business turnover.

VAT-taxable businesses and VAT-exempt businesses may credit in full input tax incurred with respect to the joint use of fixed assets. However, input tax incurred with respect to fixed assets is noncreditable in the following cases: the use by credit institutions of offices and specialized equipment for credit activities, reinsurance companies, life insurance companies, securities companies, hospitals, schools, and aircraft and yachts that are not used for transportation, tourism or hotel business. An entity that uses fixed assets for the welfare of its employees, such as canteens and worker dormitories, may fully credit input tax incurred with respect to such use.

From January 1, 2009, input VAT corresponding to costs in excess of VND 1.6 billion of automobiles with nine or fewer seats (except for vehicles used for transportation, tourism and hotel business) is not creditable.

The law allows the crediting of input VAT with respect to damage to goods or fixed assets caused by natural disasters, fires or accidents.[207]

2. Direct Calculation Method

Taxpayers that apply the direct calculation method include:

(i) Vietnamese business individuals or households that do not fully comply with accounting, invoicing and voucher requirements;

(ii) Businesses engaged in the trading of gold, silver, and precious stones;

(iii) Newly established co-operatives or enterprises and co-operatives or enterprises having annual revenue under VND 1 billion that choose to apply the Direct Calculation Method; and

(iv) Foreign organizations and individuals that carry on business in Vietnam outside of the Investment Law and other organizations that do not fully comply with Vietnamese accounting, invoicing and voucher requirements (see VII., above).

For businesses engaged in the trading of gold, silver, and precious stones, the VAT payable under this method is calculated by multiplying the added value of the taxable supply by the applicable VAT rate of 10%. The added value is equal to the difference between the selling price and the cost of the taxable supply.

For other businesses, the VAT payable under this method is calculated by multiplying the turnover by the rate applicable to the following activities:

[207] Circular No. 219, Art. 14.1.

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Scope of Business	Deemed VAT Rate
Distribution, supply of goods	1%
Services, construction without supply of materials	5%
Production, transportation, services associated with goods, construction with supply of materials	3%
Other business activities	2%

Unlike under the tax credit method, under the direct calculation method, the taxpayer may not charge VAT in addition to the selling price to customers and claim credit for any input VAT that it incurred on purchases. Consequently, any input VAT incurred becomes the cost of the taxpayer.

Example: VAT calculation under the direct calculation method:

An individual furniture maker has sales volume of VND 50 million in one month. The furniture maker would calculate the VAT payable as follows: VND 50 million × 3% = VND 1.5 million.

G. Filing and Refund Procedures

1. Filing Procedure

Under the Law on Tax Administration No. 38/2019/QH14, businesses are required to file monthly tax returns and pay tax to the tax authorities on a monthly basis (by the 20th day of the subsequent month) or a quarterly basis (by the last day of the first month of the following quarter (i.e., April 30, July 31, October 31, and January 31 of the following year)).

According to Decree 91, if the deadline for the tax declaration, payment and other tax administrative work falls on a statutory holiday, the deadline will be extended to the subsequent working day.

Filing for the payment of VAT with respect to imported goods is made according to the import duty tax assessment notice.

According to Decree No. 64, eligible taxpayers are entitled to:

(i) A five-month deferral of VAT payments for May and June 2024 and quarter 2/2024;

(ii) A four-month deferral of VAT payments for July 2024;

(iii) A three-month deferral of VAT payments for August 2024; and

(iv) A two-month deferral of VAT payments for September 2024 and quarter 3/2024.

The details of eligible taxpayers are set out at V.J., above.

2. Refund Procedure

A business applying the tax credit method is eligible for a VAT refund in the following cases:[208]

(i) Where, in any given month, a business has export sales and the corresponding input VAT incurred (of VND 300 million or more) in the month or quarter is not yet creditable. This rule will not be applicable if the business does not carry out customs procedures for exporting goods or importing goods for export at designated customs operation areas (i.e., customs border gates).

(ii) Where a business has already registered to pay VAT under the tax credit method and has a new investment project, such business may apply for a VAT refund if the outstanding input tax incurred with respect to the new investment is VND 300 million or more (after the input VAT is offset against the output VAT incurred during the current business operation)

However, a business is not allowed a refund of input VAT and must carry over input VAT to subsequent tax periods in the following cases:

a. If a business's charter capital as registered with the authorities has not yet been fully contributed;

b. In the case of housing investment projects (whether the houses concerned are for sale or lease) that do not constitute fixed assets;[209]

c. If the business does not meet all the requirements laid down for its eligibility to operate;

d. If the business is engaged in a project for the exploitation of natural resources and minerals that is licensed on or after July 1, 2016;

e. If the business is engaged in a production project in which the value of natural resources, minerals and energy expenses constitutes 51% or more of the cost of its products;

(iii) If the business has overpaid taxes or has not fully credited input VAT on a merger, consolidation, separation, dissolution, bankruptcy or transfer of ownership;

(iv) In the case of non-refundable Official Development Assistance (ODA) funded projects, non-refundable aid and humanitarian aid;

(v) In the case of entities eligible for diplomatic immunity buying goods or services in Vietnam;

(vi) In other cases, where eligibility for tax refunds is determined in accordance with decisions of the competent authorities.

The taxpayer must submit an application for a tax refund to the tax authorities together with supporting documents. The approval process is time-consuming and under the law may take between six working days to 40 days.[210]

Generally, exporters are required to submit proof of payment via the bank for their export sales to claim refunds of in-

[208] Law No. 106, Art. 1.2.

[209] Circular No. 130/2016/TT-BTC, Art 1.3.

[210] Law No. 21/2012/QH13 adopted by the National Assembly on Nov. 20, 2012, amending and supplementing Law No. 78/2006/QH11 dated Nov. 29, 2006, on Tax Administration (the "Amended Law on Tax Administration"), Art. 1.18.

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put VAT, except when the contract clearly stipulates payment deferral.

On July 29, 2022, the Government issued Decree No. 49,[211] amending Decree No. 209/2013/ND-CP ("Decree No. 209"), which is designed to loosen the VAT refund rules for investment projects. According to Decree No. 49, a business that has already registered to pay VAT under the tax credit method and has a new investment project (including projects having many investment phases or having investment items) that is within the investment period, may apply for a VAT refund provided the VAT offset requirement mentioned above is met. In other words, Decree No. 49 has expanded the investment projects eligible for the VAT refund to include projects with multiple investment phases or investment items, and removed the requirement that the investment period must last at least one year for refunds to be available, as required under Decree No. 209.

In addition, investment projects which conduct conditional business activities are still eligible for applying for the VAT refund if, under investment laws and specialized laws, they have not yet been required to obtain the license, written confirmation and approval from the competent authorities during the investment period, or they are not required to obtain such documents.

[211] Decree No. 49/2022/ND-CP issued by the Government on July 29, 2022, amending Decree No. 209/2013/ND-CP as amended by Decree No. 12/2015/ND-CP, Decree No. 100/2016/ND-CP and Decree No. 146/2017/ND-CP regarding VAT.

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XI. Special Consumption Tax

A. Scope of Taxation

Special consumption tax (SCT) is imposed on the production or import of taxable goods and the supply of taxable services including cigarettes, cigars, spirits, beer, cars with less than 24 seats, motorcycles with a capacity of over 125 cm^3, aircraft and yachts (except those used for transportation or tourism business, and aircraft for national security or defense purposes), gasoline of all kinds, air conditioners with a capacity of 90,000 BTU or less, playing cards and votive paper, and operating dancehalls, massage lounges, karaoke parlors, casinos, electronic prize games, betting entertainment, golf and lotteries. SCT is charged on these goods and services in addition to value added tax (VAT).[212]

The goods listed above will not be subject to SCT where:[213]

(i) They are produced for export, including sales to export processing enterprises, except for sales of automobiles with less than 24 seats to export processing enterprises;

(ii) They are imported for aid purposes;

(iii) They are temporarily imported for re-export or temporarily exported for re-import during the tax payment grace period;

(iv) They are goods of foreign individuals and organizations that enjoy diplomatic immunity;

(v) They are personal belongings within the duty-free limit for immigration purposes;

(vi) They are imported for sale at duty free shops;

(vii) They are imported into tariff-free zones or purchased and sold between tariff-free zones, except where the goods concerned are automobiles with fewer than 24 seats;

(viii) They are aircraft or yachts used for transportation or tourism business, or aircraft for national security or defense purposes;

(ix) They are special types of vehicles such as ambulances and mobile television vans;

(x) They are air conditioners with a capacity of 90,000 BTU or less that are designed for installation in a means of transportation; or

(xi) They are in transit.

Pursuant to Law No. 70, effective January 1, 2015, various types of petrol continue to be subject to SCT. However, reformate component of petrol and other products used to mix in petrol are not subject to SCT.

B. Who Is the Taxpayer?

Taxpayers include organizations and individuals producing or importing goods and providing services subject to SCT.[214] SCT does not apply at subsequent stages in the distribution of goods.

C. Tax Rates

In compliance with World Trade Organization (WTO) commitments regarding the tax rates for spirits and beer and in a move to increase the tax rates in other areas such as automobile, casino and golf businesses, the tax rates are as follows:[215]

No.	Taxable Goods and Services	Tax Rate from January 1, 2015, to December 31, 2015 (%)	Tax Rate After 2015 (%)
I.	Goods:		
1.	Cigarettes, cigars and other tobacco products	65	
	(from January 1, 2016, to December 31, 2018)		70
	(from January 1, 2019)		75
2.	Spirits: (from January 1, 2010)		
	(a) Spirits of 20% alcohol content or more (from January 1, 2013, to December 31, 2015)	50	
	(from January 1, 2016, to December 31, 2016)		55
	(from January 1, 2017, to December 31, 2017)		60
	(from January 1, 2018)		65
	(b) Spirits of under 20% alcohol content	25	
	(from January 1, 2016, to December 31, 2017)		30
	(from January 1, 2018)		35
3.	Beer		
	(from January 1, 2013, to December 31, 2015)	50	
	(from January 1, 2016, to December 31, 2016)		55
	(from January 1, 2017, to December 31, 2017)		60
	(from January 1, 2018)		65

[212] Law on Special Consumption Tax adopted by the National Assembly on Nov. 14, 2008, as amended on Nov. 26, 2014, Arts. 2 and 3.

[213] Circular No. 195/2015/TT-BTC of the Ministry of Finance dated Nov. 24, 2015 ("Circular No. 195").

[214] Law on Special Consumption Tax, Art. 4.

[215] Law No. 70/2014/QH13 adopted by the National Assembly on Nov. 26, 2014, and effective on Jan. 1, 2016, amending Law on Special Consumption Tax.

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4.	Automobiles (*Note:* For rates starting from July 1, 2016, refer to table below):		
	(a) Automobiles for carrying persons with nine seats or fewer, except for those in 4e, 4f and 4g		
	With cylinders of 2,000 cm^3 or less	45	45
	With cylinders of over 2,000 cm^3 to 3,000 cm^3	50	50
	With cylinders of over 3,000 cm^3	60	60
	(b) Automobiles for carrying persons with 10 to fewer than 16 seats, except for those in 4e, 4f and 4g	30	30
	(c) Automobiles for carrying persons with 16 to fewer than 24 seats, except for those in 4e, 4f and 4g	15	15
	(d) Automobiles for carrying persons and commodities, except for those in 4e, 4f and 4g	15	15
	(e) Automobiles operated by gasoline in combination with electrical power and biological power in which the power from gasoline is not more than 70%	70% of the tax rate of the automobile of the same type in 4a, 4b, 4c and 4d	70% of the tax rate of the automobile of the same type in 4a, 4b, 4c and 4d
	(f) Automobiles operated by biological power	50% of the tax rate of the automobile of the same type in 4a, 4b, 4c and 4d	50% of the tax rate of the automobile of the same type in 4a, 4b, 4c and 4d
	(g) Automobiles operated by electrical power		
	For carrying persons with 9 seats or fewer	25	25
	For carrying persons with 10 to fewer than 16 seats	15	15
	For carrying persons with 16 to fewer than 24 seats	10	10
	Designed for carrying persons and commodities	10	10
5.	Motorcycles with cylinder of over 125 cm^3	20	20
6.	Aircraft	30	30
7.	Yachts	30	30
8.	Assorted gasoline, naphtha, reformate component, and other components to be mixed in gasoline	10	
	Gasoline of all types from January 1, 2016		
	(a) Gasoline		10
	(b) Gasoline E5		8
	(c) Gasoline E10		7
9.	Air conditioners with a capacity of 90,000 BTU or less	10	10
10.	Playing cards	40	40
11.	Votive paper	70	70
II.	Services:		
1.	Operating dancehalls	40	40
2.	Operating massage lounges, karaoke parlors	30	30
3.	Operating casinos, electronic prize games	30	35
4.	Operating betting entertainments	30	30
5.	Golf: business	20	20
6.	Lottery business	15	15

On April 6, 2016, the National Assembly passed a law that amends the Law on Value Added Tax, the Law on Special Consumption Tax, and the Law on Tax Administration, which took effect on July 1, 2016. The amended law slightly reduced the Special Consumption Tax rates applicable to cars having under 24 seats, as follows:

No.	Taxable Goods and Services	Tax Rate from July 1, 2016
4.	Automobiles for carrying persons with 24 seats or fewer	
	(a) Automobiles for carrying persons with nine seats or fewer, except for those in 4e, 4f and 4g	
	— With cylinders of 1,500 cm^3 or less	
	(from July 1, 2016, to December 31, 2017)	40
	(from January 1, 2018)	35
	— With cylinders from 1,500 cm^3 to 2,000 cm^3	
	(from July 1, 2016, to December 31, 2017)	45

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	(from January 1, 2018)	40
	— With cylinders from 2,000 cm^3 to 2,500 cm^3	50
	— With cylinders from 2,500 cm^3 to 3,000 cm^3	
	(from July 1, 2016, to December 31, 2017)	55
	(from January 1, 2018)	60
	— With cylinders from 3,000 cm^3 to 4,000 cm^3	90
	— With cylinders from 4,000 cm^3 to 5,000 cm^3	110
	— With cylinders from 5,000 cm^3 to 6,000 cm^3	130
	— With cylinders more than 6,000 cm^3	150
	(b) Automobiles for carrying persons with 10 to fewer than 16 seats, except for those in 4e, 4f and 4g	15
	(c) Automobiles for carrying persons with 16 to fewer than 24 seats, except for those in 4e, 4f and 4g	10
	(d) Automobiles for carrying persons and commodities, except for those in 4e, 4f and 4g	
	— With cylinders less than 2,500 cm^3 or less	15
	— With cylinders of over 2,500 cm^3 to 3,000 cm^3	20
	— With cylinders of over 3,000 cm^3	25
	(e) Automobiles operated by gasoline in combination with electrical power and biological power in which the power from gasoline is not more than 70%	70% of the tax rate of an automobile of the same type in 4a, 4b, 4c and 4d
	(f) Automobiles operated by biological power	50% of the tax rate of an automobile of the same type in 4a, 4b, 4c and 4d
	(g) Automobiles operated by electrical power	
	— For carrying persons with 9 seats or fewer	15
	— For carrying persons with 10 to fewer than 16 seats	10
	— For carrying persons with 16 to fewer than 24 seats	5
	— Designed for carrying persons and commodities	10
	(h) Motor home without the discrimination in cylinders	
	(from July 1, 2016, to December 31, 2017)	70
	(from January 1, 2018)	75

D. Taxable Value

Domestically produced goods and services are subject to SCT based on the manufacturer's or service provider's selling price excluding SCT, VAT and environmental protection tax. Before January 1, 2016, imported goods were subject to SCT based on the price for assessment of import duty plus import duty.

From January 1, 2016, however, imported goods, except for gasoline, are subject to SCT at two stages. When goods are imported, they will be subject to SCT at the import stage which is assessed based on dutiable price plus import duty ("import SCT"). When importers sell the imported goods, SCT will be assessed again based on the selling price before value added tax, environmental tax (if any) and SCT ("distribution SCT"). Importers can deduct import SCT already paid against distribution SCT to arrive at the SCT amount payable upon selling imported goods.[216]

From July 1, 2016,[217] imported gasoline is also subject to SCT at two stages.

Also, from January 1, 2016, the margin in selling prices between manufacturers/importers and distributors is also tightened, in particular for:

(i) Importers (except with respect to automobiles with less than 24 seats and gasoline) and manufacturers (except with respect to automobiles with less than 24 seats) selling imported goods via their distributors: the taxable price is the selling price, which may not be 7% or more lower than the average distributors' selling price. The previous margin was 10%.

(ii) Imported automobiles with less than 24 seats: the taxable price is the importers' selling price which may not be 105% or more lower than the import cost. The import cost includes the dutiable price, import duty and import SCT.

(iii) Automobiles with less than 24 seats manufactured or assembled locally: the taxable price is the manufacturers' selling price, which may not be 7% or more lower than the average distributors' selling price. The previous margin was 10%. The average distributors' selling price excludes the price of additional equipment or options as per customers' requests.

Nonetheless, as the above regulation did not follow the basic principle of the amended law on SCT in terms of margin requirements, the Government promulgated new margin requirements with effect from July 1, 2016, as follows:

(i) The margin requirement only applies when goods are traded between related parties; and

(ii) A single margin requirement applies with respect to all goods instead of three different margin requirements as set out above.

As such, for importers and manufacturers selling goods via their related distributors, the taxable price is the selling

[216] Circular No. 195/2015/TT-BTC dated Nov. 24, 2015 ("Circular No. 195"), as amended by Circular No. 20/2017/TT-BTC.

[217] Circular No. 130/2016/TT-BTC dated Aug. 12, 2016 ("Circular No. 130").

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price, which must not be 7% lower than the average monthly selling price of the related distributors.

Sellers and buyers will be considered as related parties when one party holds directly or indirectly at least 20% of the investment capital of the other.

If the selling price of manufacturers/importers is lower than the stipulated margins, the taxable price will be determined by the tax authorities.

With regard to goods manufactured contingent on business cooperation between a manufacturer and an owner of a trademark and production technology, the taxable price excluding VAT and environmental protection tax is the selling price of the owner or the user of the trademark and production technology.

The taxable price for casinos and electronic prize games is the revenue from the business minus prize payments.

E. Filing Procedures

Taxpayers are required to submit monthly SCT returns to the tax authorities and to pay SCT by the 20th day of the following month. Importers of goods subject to SCT must declare and pay SCT for each importation.[218]

[218] Circular No. 156/2013/TT-BTC dated Nov. 6, 2013, guiding Law on Tax Management, Art. 13.

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XII. Land Rental and Nonagricultural Land Use Tax

Businesses are subject to land rental for land areas leased from the State or from companies developing industrial zones and export processing zones. Individuals and organizations, including foreign-invested enterprises (FIEs), that pay land rental were not subject to land tax, but are subject to nonagricultural land use tax with effect from January 1, 2012 (see C., below).

A. Land Rental

FIEs that lease land from the State are subject to land rental. The State calculates land rental based on the land price and the area of the leased land, and enterprises may pay the land rental annually or on a lump sum basis for the entire lease term. The Central Government establishes methods to determine and to adjust land prices. The Provincial People's Committee where the land is located has the discretion to decide or provide annual ratios to adjust the land prices based on the methods regulated by the Government and the actual local situation. The land price is fixed for five years for each project. After the five-year period, the tax authorities will amend the land price for the next lease term based on the land prices and the ratios to adjust the land prices issued by the Provincial People's Committee. The new land price will not apply to a project where land rental is paid up-front and in a lump sum.[219]

Where payment is made in a lump sum for the whole lease term, the land rental is equivalent to the amount of the land use fee payable in the case of land allocation, which is calculated as follows:[220]

Payable land rental	=	Upfront land rental after deduction land rental exemption	×	land rental area	−	land rental reduction (if any)	−	expenses for compensation resettlement and other expenses for implementing the compensation and resettlement which are approved to be deducted from the land rental (if any)

Land users that make a lump sum payment of land rental for the entire lease term will have quasi-freehold rights in the land entitling them to:

(i) Assign and sublease the right to use the leased land and the assets attached to the land during the land lease term;

(ii) Mortgage or use as guarantee the land use right and the assets attached to the land during the land lease term with a credit institution authorized to operate in Vietnam; and

(iii) Make capital contributions using the land use right and the assets attached to the land to engage in business production or cooperation during the land lease term.

If the land user pays the land rental annually, the land user will only have leasehold rights in the land. The law does not allow the land user to transfer, sublease, mortgage or capitalize the land use right (i.e., the land) (except in the case of developers of industrial parks, export-processing zones, high-tech zones or economic zones), though it may still do so with its assets attached to the land (i.e., buildings or fixtures). The land user may make the annual rental payment two times per year, one before May 31 and one before October 31 each year.[221]

From December 2020, land users must make the first land rental payment within 30 days since the issuance date of the land rental notification issued by tax authorities. From second year onwards, land users may choose to make the annual land rental once per year no later than May 31 or two times per year, one before May 31 and one before October 31 each year.[222]

Under Decree No. 64, which covers the deferral of the second installment of land rent payable in 2024,[223] eligible businesses that lease land directly from the state can defer the payment of this second installment for 2024, which equates to 50% of the total land rent due for the year, by two months from October 31, 2024 to December 31, 2024. See V.J., above for the details of eligible businesses.

Land rental varies depending on the lease term and the unit land rental price (in case of annual payment) which is from 1% to 3% of the land price as stipulated by the Provincial People's Committee of the province where the land is located. Where the land is located in a remote area, a mountainous area, an offshore island, or an area with difficult or especially difficult socioeconomic conditions, the People's Committee will decide the unit land rental price, which may be lower than the stipulated unit land rental price, though it may not be 0.5 times lower than the unit land rental price mentioned above.[224]

B. Land Tax

Prior to January 1, 2012, land tax was imposed on the use of land for residential and construction purposes. Land tax was calculated based on the agricultural land tax. For example, land tax for urban areas could range from five to 32 times the agricultural land tax. The user paid the land tax semiannually or annually. FIEs that leased land and paid land rental were not subject to land tax. As of January 1, 2012, land tax was replaced by nonagricultural land use tax (see C., below).

[219] Decree No. 46, Arts. 4, 5, 11, 14 and 30.

[220] Circular No. 333/2016/TT-BTC of the Ministry of Finance dated Dec. 26, 2016, Art. 7.2.

[221] Law No. 45/2013/QH13 of the National Assembly of Vietnam dated Nov. 29, 2013 on Land; Decree No. 46; Decree No. 44/2014/ND-CP of the Government dated May 15, 2014; Decree No. 45/2014//ND-CP of the Government dated May 15, 2014; Circular No. 77/2014/TT-BTC of the Ministry of Finance dated June 16, 2014; Circular No. 156/2013/TT-BTC of the Ministry of Finance dated Nov. 6, 2013, Art. 18.3.

[222] Decree No. 126, Art. 18.3.

[223] Decree No. 64, Art. 4.4.

[224] Decree No. 46, Art. 4.1.

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C. Nonagricultural Land Use Tax

The National Assembly issued Law No. 48/2010/QH12 on nonagricultural land use tax on June 17, 2010. The Law took effect on January 1, 2012, and repealed the Ordinance on housing and land tax as well as the Ordinance on amending and supplementing several articles of housing and land tax.

Under this Law, the following types of land are subject to nonagricultural land use tax:

(i) Residential land in rural and urban areas;

(ii) Nonagricultural land used for business purposes such as industrial zone land, commercial land, mining land, etc.; and

(iii) Other types of nonagricultural land that were originally used for nonbusiness purposes (such as cemetery land, land for public interest purposes, heritage site land, etc.) but are subsequently used for business purposes.

Entities, households and individuals that have land use rights (evidenced by a land use rights certificates) or are using the land (if land use rights certificates have not yet been granted) are required to pay nonagricultural land use tax.

Law No. 48 provides for different tax rates in an attempt to curb land speculation and illegal encroachment on land. Specifically, there are four rates:

(i) 0.03% — applicable to land areas that are within the land use limits;

(ii) 0.07% — applicable to land areas that are over the land use limits but are no more than three times such limits;

(iii) 0.15% — applicable to land areas that exceed three times the land use limits or are not used in compliance with the specified use purpose; and

(iv) 0.2% — applicable to land areas that are illegally encroached on (i.e., not duly allocated) where the collection and/or payment of nonagricultural land use tax does not qualify the land for legal use recognition by the government.

Generally, the taxpayer is the person that has the land use right. Where a land user leases land from the State for the implementation of an investment project, the lessee (the land user) is the taxpayer. If an entity that has land use rights leases the land to another entity under a contract, the contract will generally determine which is the taxpayer; however, if this is not agreed in the contract, the entity that has the land use rights is the taxpayer. Accordingly, while land lessees that pay land rental are currently not subject to land tax in accordance with the Ordinance on Housing and Land Tax, they will be subject to nonagricultural land use tax beginning in 2012.

With respect to residential land of a multi-story building with many households or a condominium, including those with areas for both residential and commercial purposes, the taxable land area of each organization, household or individual will be equal to the allocation coefficient multiplied by the area of the respective apartment units or house used by such organizations, household or individual.[225]

[225] Decree No. 53/2011/ND-CP dated July 1, 2011, Art. 4.2, implements Law No. 48 on nonagricultural land use tax.

$$\text{Allocation coefficient applicable to a building or condominium without basement} = \frac{\text{Construction land area of the building or condominium}}{\text{Total area of apartments used by organizations, households and individuals}}$$

$$\text{Allocation coefficient applicable to a building or condominium with a basement} = \frac{\text{Construction land area of the building or condominium}}{\text{Total area of apartments used by organizations, households and individuals (ground sections)} + \text{50\% of the basement area used by organizations, households and individuals}}$$

$$\text{Allocation coefficient applicable to an underground construction work} = \frac{0.5 \times \text{Ground land area corresponding to underground construction work}}{\text{Total area of the underground construction work used by organizations, households and individuals}}$$

The area of the apartment units used by an organization, household or individual is the floor area actually used by such organization, household or individual stated in the sale/purchase contract or the certificate of the land use right, ownership of houses (residential property) or assets attached to land.

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XIII. Registration Fee

Registration of the ownership of the following assets, among others, is subject to a registration fee: houses and land, ships, boats, automobiles, motorcycles, hunting rifles, and sports guns. The registration fee rates are as follows:[226]

No.	Asset	Rate (%)
1.	Land, house	0.5
2.	Ship, boat, aircraft	1
3.	Hunting rifle, sports gun	2
4.	Automobile (except for electric automobiles) Electric automobiles are entitled to the initial registration fee of 0% for three years from March 1, 2022.	2, 6 to 9, 10 to 15 (According to Decree No. 41/2023/ND-CP of the Government, taking effect from July 1, 2023, through December 31, 2023, the first-time registration fee for automobiles, trailers or semi-trailers towed by automobiles and vehicles similar to automobiles manufactured and assembled in Vietnam will be equal to 50% of the prescribed rate for the period from July 1, 2023, through December 31, 2023). After this period, electric automobiles are subject to initial registration fee upon purchase equivalent to 50% of the registration fee charged for gasoline or diesel-powered automobiles with the same number of seats.
5.	Motorcycle	1, 2 or 5

Land leased from the State with annual rent payment, or from an individual or organization that holds the lawful land use right, is not subject to a registration fee.[227]

The value subject to the registration fee is the market price of the asset, including any import duty, special consumption tax (SCT) and value added tax (VAT) imposed on the asset, decided by the provincial Peoples Committee on the basis of the arm's-length principle.

[226] Decree No. 10/2022/ND-CP regarding Registration Fee, issued by the Government on Jan. 15, 2022 ("Decree No. 10"), takes effect from March 1, 2022, Art. 8.

[227] Decree No. 10, Art. 10.7.

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XIV. Transfer Pricing

A. Definition of Related Party

On November 5, 2020, the Government issued Decree No. 132[228] providing tax administration measures for enterprises with related party transactions. Decree No. 132 took effect and replaced Decree No. 20[229] and Decree No. 68[230] as from December 20, 2020. Decree No. 132 is applicable from fiscal year 2020 onwards.

Related party relationships are created under the following circumstances:

a. One enterprise holds directly or indirectly at least 25% of the contributed capital of the other enterprise;

b. A third party directly or indirectly holds at least 25% of the contributed capital of two other enterprises;

c. One enterprise holds the largest shareholding in contributed capital of the other enterprise and holding directly or indirectly at least 10% of the total shareholding of the other enterprise;

d. One enterprise guarantees another enterprise or provides it with loans in any form (including third party loans secured by financial sources of the related party and including financial transactions of a similar nature) on condition that such loans account for at least 25% of the contributed owner's equity of the borrowing enterprise and account for more than 50% of the total value of medium and long-term loans of the borrowing enterprise;

e. One enterprise appoints members of the executive board (management) of another enterprise or holds the controlling right in it (the second enterprise), on condition that the number of such members appointed by the first enterprise accounts for over 50% of the total number of members of the executive board or the first enterprise holds the controlling right in the second enterprise; or one of the members appointed by the first enterprise has the power to decide the financial policies or business activities of the second enterprise;

f. Two enterprises (A and B) have more than 50% of their executive board made up of the same members (management of A and B), or A and B have the same management member with power to decide the financial policies or business activities (of A and B) who is appointed by the same third party;

g. The executive management or control of two enterprises regarding personnel and, financial and business activities is carried out by individuals in the relationship of spouses; natural or foster father or mother, mother-in-law or father-in-law; natural or foster child, stepchild, daughter-in-law, son-in-law, natural sibling, brother or sister-in-law, maternal or paternal grandfather or grandmother, maternal or paternal grandchild, and maternal or paternal aunt, uncle or nephew or niece;

h. Two business establishments have the relationship of head office and permanent establishment, or are permanent establishments of the same foreign organization or individual;

i. One or more enterprises are under the control of one individual by his or her capital contribution to the enterprise(s) or by his or her direct participation in the executive management of the enterprise(s);

j. Other cases in which the executive operations and control over production and business activities of one enterprise are in reality carried out by another enterprise;

k. An enterprise that transfers or receives a capital contribution of at least 25% of owner's equity; an enterprise that offers/receives a loan of at least 10% at the time of conducting transactions in the tax year to/from an individual who manages or controls the enterprise or a relative of such individuals including a spouse; natural or foster father or mother, mother-in-law or father-in-law; natural or foster child, stepchild, daughter-in-law, son-in-law, natural sibling, brother or sister-in-law, maternal or paternal grandfather or grandmother, maternal or paternal grandchild, and maternal or paternal aunt, uncle or nephew or niece.

B. Determination of Arm's Length Price

Under Decree No. 132, market prices in transactions between related parties will be determined using one of the following five methods:

(i) Comparable uncontrolled price method;

(ii) Resale price method;

(iii) Cost plus method;

(iv) Comparable profit method; or

(v) Profit split method.

There is no priority among these methods. Each method is recommended based on the nature of the transaction and the availability of data and records (the "best method rule").

Decree No. 132 retains the substance over form principle which relies on data and actual transactions of related parties for comparison with independent transactions under similar conditions regardless of the form of the transactions presented in the agreements between related parties. The tax authorities' power to scrutinize related party transactions from a transfer pricing perspective will therefore go beyond the form of contracts and agreements.

Decree No. 132 provides the list of non-tax deductible expenses incurred in connection with related party transactions:

a. Related party transactions do conform with the substance of independent transactions but do not contribute to the generation of the taxpayers' revenue and/or income as described below:

[228] Decree No. 132/2020/ND-CP issued by the Government dated Nov. 5, 2020.

[229] Decree No. 20/2017/ND-CP issued by the Government dated Feb. 24, 2017.

[230] Decree No. 68/2020/ND-CP issued by the Government dated Jun. 24, 2020.

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i. Related parties do not conduct any business activities related to the taxpayers' business(es);

ii. Related parties conduct business but their assets, number of employees and business functions are not commensurate with transaction values;

iii. Related parties do not have rights and obligations related to assets, goods or services provided to the taxpayers; and

iv. Related parties are residents of countries or territories which do not impose enterprise income tax or related parties do not contribute to the generation of revenue or value added of the taxpayers.

b. Services provided by related parties include:

i. Services only serving to benefit or create value for other related parties;

ii. Services which benefit shareholders of related parties;

iii. The same type of service provided by many related parties is subject to duplicate charges and it is not possible to determine the value added for the taxpayers; and

iv. Services in the nature of benefits received by taxpayers due to being members of the group or additional charges by a related party for services provided by a third party through the intermediary of the related party, which does not create additional value for the services.

c. Interest expenses exceeding 30% of net profit before tax plus net interest expenses and depreciation/amortization expenses (EBITDA). Deductible interest expenses are net interest expenses after offsetting interest income. The 30% cap is applied from fiscal year 2019 and is retroactive for fiscal years 2017 and 2018. From fiscal year 2019, interest expenses incurred in a tax period that are not deducted in the same tax period may be carried forward for the subsequent five tax years.

C. Documentation Requirements

Taxpayers are required to prepare and file the following forms, which require extensive information and must be submitted together with the annual enterprise income tax final return:

(i) Form 01 on related parties and related parties' transactions;

(ii) Form 02 on required information and documentation in the local report;

(iii) Form 03 on required information and documentation in the group report; and

(iv) Form 04 on the declaration of transnational profit of the ultimate parent company. In the case of a taxpayer that is an ultimate parent company in Vietnam, Form 04 is required when the consolidated global revenue during the tax period is VND 18,000 billion (approximately US$ 714.94 million) or more. A taxpayer whose ultimate parent company is in a foreign country is required to provide a copy of the declaration of transnational profit of the ultimate parent company if the ultimate parent company is required to submit such a declaration to the tax authority of the jurisdiction in which it is incorporated. A taxpayer that is unable to provide such a declaration must explain in writing the reason, the legal basis and the rules of the foreign country that do not allow a taxpayer to provide such a declaration.

Companies are required to maintain contemporaneous documentation of related-party transactions and to file a declaration of related-party transactions at the same time as they file their annual enterprise income tax (EIT) returns.

Upon receiving a request from the tax authorities during a tax audit, the timeline for providing the TP documentation is stipulated under the Law on Inspection. During the consultation period before a tax audit, this time limit is 30 working days upon receiving a request from the tax authorities and it can be extended for an additional 15 working days.

Taxpayers are partly or fully exempt from preparing and/or maintaining transfer pricing reports or transfer pricing documentation in the following cases:

(i) In the case of related party transactions between local taxpayers that apply the same income tax rate and do not enjoy income tax incentives;

(ii) Where total revenue in a tax period is less than VND 50 billion and the total value of related party transactions in a tax period is less than VND 30 billion;

(iii) Where the taxpayer concerned has signed an advanced pricing agreement (APA); and

(iv) Where the taxpayer carries on business that involves only simple functions, has revenue of less than VND 200 billion, does not generate revenue or incur expenses related to the exploitation and use of intangible assets, and has a net profit margin before interest and tax over revenue as follows:

- Distribution: 5% or more;
- Production: 10% or more; and
- Toll manufacturing: 15% or more.

Decree No. 132 provides the reporting and documentation obligations of taxpayers, requiring them to provide extensive information and documentation. It is important that taxpayers review their business operations and related party transactions to assess issues and exposure and to identify their compliance requirements.

D. Advance Pricing Agreements

Taxpayers and the tax authority can agree on an appropriate transfer pricing methodology through unilateral, bilateral or multilateral Advance Pricing Agreements (APAs). Guidance was released on December 20, 2013, in Circular No. 201/2013/TT-BTC ("Circular No. 201") on Advanced Pricing Agreements (APAs) applicable since July 2013 (amended Law on Tax Administration No. 21/2013/QH13).

On June 18, 2021, the MOF issued Circular 45/2021/TT-BTC ("Circular No. 45") providing guidance on the application of Advance Pricing Arrangements and, in particular, the imple-

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mentation of Article 41 of Decree No. 126, replacing Circular 201/2013/TT-BTC with effect from August 3, 2021.

Pursuant to Circular 45 and Article 41 of Decree No. 126, the APA procedures consist of the following steps:

(i) Before submitting an official APA application dossier, the taxpayer can submit a consultation request to the GDT;

(ii) The taxpayer submits the official APA application dossier to the GDT. The GDT conducts the appraisal of the APA application dossier to check, compare, determine, and evaluate the completeness, accuracy, legality, reasonableness, and validity of the information provided;

(iii) The GDT and the taxpayer will negotiate the terms of the APA; and

(iv) If the GDT agrees to the terms discussed and negotiated with the transaction parties, the final draft will be sent to the MOF for approval. The maximum effective term of the APA is three years and may be extended upon the taxpayer's request and the tax authority's review.

The tax authorities, taxpayers, and relevant parties must ensure the confidentiality of the information provided.

For the implementation of the APA, taxpayers must keep the supporting documents used in the appraisal, negotiation, signing, and implementation phases. They must be able to provide them upon the tax authority's request and must also file an annual report on factors relevant to the APA. A breach of these obligations can lead to the termination of the agreement.

Factual and legal changes affecting the appropriateness of the terms agreed to may give cause not only for an adjustment of the APA, but also for its cancellation if the renegotiation fails.

E. Adoption of International Practices

As Vietnam has participated in the OECD's Inclusive Framework on Base Erosion and Profit Shifting (BEPS), Vietnam will continue its effort to address BEPS Actions, especially the "BEPS minimum standards," in its legislation. To that end, Vietnam is presently implementing its internal procedure to consider the possibility to enter the Multilateral Instrument that was released under BEPS Action 15 in October 2017.

The National Assembly of Vietnam has passed the Tax Administration Law 2019 on June 13, 2019, effective from July 1, 2020. The Law sets out the framework for transfer pricing principles, filing and reporting requirements. The Law also establishes various transfer pricing concepts such as the arm's length principle, the principle of substance over form, etc. In addition, it adopts and reflects international standards to be applied in Vietnam. As a member of the Inclusive Framework on BEPS, Vietnam must adopt at least four minimum BEPS standards. In particular, the requirement of Country by Country Reporting of Action 13 is reflected in the Tax Administration Law 2019.

On February 9, 2022, Vietnam signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the BEPS Convention or the MLI) and became the 99th jurisdiction to join the Convention. At the time of signature, Vietnam has declared that 75 tax treaties over the current 76 tax treaties in force would be covered by the Convention and designated as Covered Tax Agreements (CTAs). In addition to 4 tax treaties that are not yet in force (i.e. Algeria, Macedonia, Egypt, and the United States), the Vietnam tax treaty with The Taipei Economic And Cultural Office is also not included in the CTAs. When the MLI enters into force in Vietnam and the provisions have effect, some provisions of CTAs will be automatically modified in accordance with the MLI except for those mentioned under the List of Reservations and Notifications made by Vietnam pursuant to agreements in the Convention. The participation of Vietnam in the Convention is one of the actions to commit to 15 BEPS actions and to align its tax treaty network with global practices and developments.

On May 23, 2023, the OECD announced that Vietnam had deposited the MLI instrument of ratification. This entered into force in Vietnam on September 1, 2023.

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XV. Avoidance of Double Taxation

A. Foreign Tax Credit Under Domestic Law

The domestic enterprise income tax (EIT) and personal income tax (PIT) rules allow a foreign tax credit: foreign-source income is added to domestic income and tax is calculated on the aggregate amount according to the tax rates under domestic regulations; the tax authorities then credit the tax paid abroad against the tax so calculated. However, the tax credit may not exceed the portion of the Vietnamese tax (before application of the credit) that is attributable to the income derived from the foreign country.[231]

B. Tax Treaties

1. General

Vietnam currently has tax treaties in force with 76 countries and territories. In addition, four tax treaties have been signed but are not yet in force, including the tax treaty with the United States.

For the texts and status of Vietnam's tax treaties, see International Tax Treaties.

a. Creation of Income Tax Treaty Relationships

In Vietnam, the MOF is the agency that has the authority to propose the negotiation of tax treaties to the Prime Minister.[232] Based on the OECD Model Tax Convention on Income and on Capital (the Model), the MOF prepares and submits to the Prime Minister for his or her approval — under the name of the Government — the principles for negotiation according to the model agreements of Vietnam.[233]

Some of the fundamental provisions of these agreements include the definition of permanent establishment, the allocation of the taxing authority among the contracting parties to the agreement, information exchange systems and the prevention method of double taxation.

As part of the negotiation process for each tax treaty, Vietnam and the partner jurisdiction will discuss provisions related to the sharing of taxing rights between the two jurisdictions. Although Vietnam negotiates tax treaties in accordance with the Model, the specific provisions may differ since each partner jurisdiction can change its negotiating strategy from time to time depending on its objectives and positions, economic development and investment priorities.[234]

The International Taxation Department of the General Department of Taxation under the MOF is the main unit responsible for performing all the tasks relating to the negotiation and signing of tax treaties.[235]

After the tax treaty is negotiated and concluded, depending on the specific provisions of each agreement, it will have to be ratified or approved in accordance with the provisions of the Law on Treaties of Vietnam to become effective.[236]

b. Administrative Measures Dealing with Tax Treaty Provisions

The MOF issued Circular No. 205/2013/TT-BTC dated December 24, 2013, guiding the implementation of tax treaties ("Circular No. 205"). It took effect on February 6, 2014, and replaced Circular No. 133/2004/TT-BTC.

Circular No. 205 clarified and addressed:

(i) The interpretation of some tax treaty clauses and some changes regarding the non-deductibility of interest (except for banks), commissions and royalties in determining profits of a permanent establishment;

(ii) The method of determining the ratio of immovable assets/total assets with regard to capital gains tax;

(iii) The three-year time limit for claiming tax treaty benefits; and

(iv) The abuse of tax treaties providing examples of when a tax treaty resident fails the beneficial ownership test.

Under Circular No. 205, any agreement concluded with the main purpose of obtaining tax treaty benefits will give tax authorities the power to deny the application of the tax treaty provisions. Therefore, it is important for tax treaty residents to maintain detailed documentation evidencing and supporting the economic focus of their transactions.

The substance over form test determines — from an economic standpoint — who is the ultimate beneficiary of a payment. A "formal" tax treaty resident is not allowed to obtain tax treaty benefits on behalf of a non-treaty resident. The new circular identifies seven situations in which beneficial ownership is denied:

(i) At least 50% of the income received is distributed to a third party within 12 months of receipt;

(ii) The resident receiving the payment has only insignificant substance or business activities other than the ownership of assets or rights generating income;

(iii) Assets, business activities or staff are disproportionate to the income received;

(iv) The resident concerned does not have substantial control or risk in relation to its income;

(v) The resident concerned enters into a lending agreement, licensing agreement or technical services agreement with a local entity and with another third party from which it receives a loan, licensing or technical services with the same terms and conditions;

(vi) The person concerned is a resident of a tax treaty country and the income concerned is exempt or is subject to income tax at a rate below 10% for reasons other than investment promotion stipulated in the tax treaty; and

[231] Circular No. 78, Art. 3.1 and Circular No. 111, Art. 26.2.e.

[232] Article 2.19, Decree No. 14/2023/ND-CP issued by the Government dated April 20, 2023.

[233] Article 8.1 and Article 10.2, Law on Treaties No. 108/2016/QH13 dated April 9, 2016.

[234] See: https://mof.gov.vn/webcenter/portal/vclvcstc/pages_r/l/chi-tiet-tin?dDocName=MOFUCM269213.

[235] Article 8.3, Decision No. 1965/QD-BTC issued by the Ministry of Finance dated October 8, 2021.

[236] Article 28 and Article 37, Law on Treaties No. 108/2016/QH13 dated April 9, 2016.

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(vii) The resident concerned acts only as an agent or intermediary.

From January 1, 2022, according to Circular No. 80, tax exemptions or reductions in Vietnam provided by tax treaties are subject to prior approval by the tax authorities. By law, it can take up to 30 to 40 days for tax authorities to review an application and issue a written confirmation to approve it or reject it.

In cases where there is a discrepancy between tax treaty provisions and domestic law, the former prevails. Any technical terms that are not defined in a tax treaty will have the meaning given to them under Vietnamese legislation unless the context requires a different interpretation.

On March 22, 2023, Vietnam became the 147th jurisdiction to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC). On August 31, 2023, Vietnam deposited an instrument of ratification for the MAAC, as amended by the 2010 Protocol. According to Notification No. 08/2024/TB-LPQT of the Vietnam Ministry of Foreign Affairs, "Notice of Effectiveness of the Multilateral Convention on Administrative Assistance in Tax Matters" dated January 26, 2024, the MAAC entered into force for Vietnam on December 1, 2023 and generally applied from January 1, 2024. Vietnam will benefit from this effective global tool for multilateral cooperation in the exchange of information and other forms of tax administrative support, as it accelerates the exchange of information with other countries.

c. Treaty Interpretation

Vietnam has issued Circular 205 providing guidance for the interpretation and implementation of the tax treaties to which Vietnam is a party, for the cases where the applicable tax treaty is not clear enough.

The OECD Model Tax Convention on Income and on Capital, and its guidance and commentary, are not adopted into Vietnamese laws. Therefore, Vietnam generally does not interpret tax treaties based on the OECD Model and its guidance, rather, it only refers to the text of the relevant tax treaty, Circular 205 and the opinions of the tax authorities.

The official languages of tax treaties are Vietnamese and English being both equally and legally valid.

2. Taxation of Business Income

a. Permanent Establishment

All tax treaties entered into by Vietnam have a definition of activities that may constitute a permanent establishment (PE). These definitions generally conform with the definitions in the UN Model Tax Convention and the OECD Model Tax Convention.

b. Business Profits

Under the terms of an applicable Vietnamese tax treaty, the profits of an enterprise of a foreign country will be taxable only in that country unless the enterprise also carries on business in Vietnam through a PE situated in Vietnam. If the enterprise carries on business through a PE in Vietnam, the profits of the enterprise may be taxed in Vietnam, but only the amount of such profits as is attributable to that PE.

Under Vietnamese domestic law, foreign contractors are subject to tax in Vietnam regardless of whether they have a presence in Vietnam or constitute a PE in Vietnam.[237] Vietnam's tax treaties protect foreign contractors of tax treaty countries from being subject to enterprise income tax (EIT) under Circular No. 103 (see VII., above) if their activities do not constitute a PE in Vietnam. However, treaty protection for corporate entities requires a taxpayer to undergo a fairly cumbersome certification process to establish entitlement to treaty protection even in seemingly obvious cases.

3. Taxation of Other Income

a. Dividends

Profits from investments in foreign-invested enterprises (FIEs) and investments in securities are not subject to tax when they are distributed to foreign institutional investors and the distributed profits are net of EIT. From 2009, individual investors are subject to 5% personal income tax (PIT) on distributed profits or dividends in accordance with the PIT Law unless an applicable tax treaty provides otherwise.

b. Interest

Interest paid to a foreign entity is subject to 5% EIT withholding (10% prior to March 1, 2012), unless an applicable tax treaty provides otherwise. From 2009, individuals are subject to 5% PIT on loan interest income under the PIT Law, unless an applicable tax treaty provides otherwise.

c. Royalties

Royalties paid to a foreign entity are subject to 10% EIT withholding, unless an applicable tax treaty provides otherwise. Moreover, pursuant to a recent interpretation of the law by the tax authorities, such royalties are subject to an additional 5% VAT withholding if they are paid for the transfer of the right to use intellectual property instead of the transfer of ownership.[238] From 2009, individuals are subject to 5% PIT on royalty income, unless an applicable tax treaty provides otherwise.

d. Technical Services

Technical services paid to a foreign entity are subject to a 5% EIT withholding and a 5% VAT withholding, unless an applicable tax treaty provides otherwise.

4. OECD Multilateral Instrument

Vietnam officially became the 99th member of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the BEPS Convention or the MLI) on February 9, 2022, together with Lesotho and Thailand.

This Convention enters into force in Vietnam, as mentioned under Article 34 of the MLI, on the first day of the month following the expiration of a three-calendar-month period beginning on the date of the deposit of the instrument of ratification. However, as of July 2022, Vietnam has not yet ratified the MLI.

[237] Circular No. 103/2014/TT-BTC.

[238] Official Letter No. 15888/BTC-CST dated Nov. 7, 2016, of the Ministry of Finance.

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The MLI has made some significant changes to Vietnam's covered tax agreements (CTAs), such as with respect to the provisions concerning the avoidance of the permanent establishment status, capital gains, and the mutual agreement procedure. In addition, Vietnam reserves the right to not apply some of the provisions of the MLI to its CTAs.

On May 23, 2023, the OECD announced that Vietnam has deposited the MLI instrument of ratification. This entered into force in Vietnam on September 1, 2023.

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XVI. Vietnam and the Two-Pillar Solution

A. Background

On October 8, 2021, the OECD/G20 Inclusive Framework on BEPS published the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy (the "Two-Pillar Solution Statement"). On June 9, 2023, Vietnam, among 139 member jurisdictions, agreed to join the Two-Pillar Solution Statement, which includes the key terms of Pillar One and Pillar Two.

While Pillar One seeks to expand the taxing rights of market/user jurisdictions where there is an "active and sustained participation of a business in the economy of that jurisdiction through activities in, or remotely directed at, that jurisdiction," Pillar Two is designed to ensure large multinational enterprises pay a minimum level of tax on the income arising in each jurisdiction in which they operate.[239]

On November 29, 2023, the Vietnam National Assembly adopted Resolution No. 107/2023/QH15, regarding the application of top-up corporate income tax according to the Global Anti-Base Erosion (GloBE) rules ("Resolution 107").

Resolution 107 takes effect from January 1, 2024 and is applicable from fiscal year 2024. Resolution 107 covers both the Qualified Domestic Minimum Top-Up Tax (QDMTT) and the Income Inclusion Rule (IIR).

As of the date of this publication Vietnam had not yet announced any official information on the implementation of Pillar One.

B. Qualified Domestic Minimum Top-up Tax

1. Overview of the Qualified Domestic Minimum Top-up Tax

The QDMTT's aim is to apply an additional top-up tax to any constituent entity that:

(i) Operates in Vietnam;

(ii) Is a member of an in-scope multinational enterprise (MNE) group that has revenues of 750 million euros or more recorded in its ultimate parent entity's consolidated financial statements for two of four years preceding the concerned fiscal year; and

(iii) Pays tax in Vietnam at an effective tax rate (ETR) lower than 15%.

The calculations for determining the Vietnam effective tax rate and minimum top-up tax are aligned with those provided under the Model Rules of the Inclusive Framework on BEPs. However, further detail is still expected on aspects of the Vietnam domestic implementation in the anticipated forthcoming implementing regulations.

Tangible assets and payroll carveouts in determining the profits subject to top-up tax are allowed at the rate of 5%. A higher rate will apply during the period from 2024 to 2032.

The Vietnam QDMTT will be deemed to be zero if both of the following conditions are fulfilled:

(i) The average GloBE Revenue of the Vietnam constituent entities is less than 10 million euros; and

(ii) The average GloBE Income or Loss of the Vietnam constituent entities is a loss or is less than 1 million euros.

2. Filing and Payment Deadlines

In-scope enterprises must file a GloBE Information Return, a Top-up EIT Return and an Explanation Report addressing variations in accounting standards within 12 months after the fiscal year end. The timeline for payment is the same as the timeline for filing.[240]

C. Income Inclusion Rule

1. Overview of the Income Inclusion Rule

The IIR applies to a group entity that is an ultimate parent entity, a partially owned parent entity or an intermediate parent entity located in Vietnam and holding, directly or indirectly, ownership in a low-taxed constituent entity at any time in the fiscal year concerned. That parent entity must declare and pay tax under the IIR in an amount equal to its allocable share of the top-up tax of the low-taxed constituent entity for the fiscal year unless such top-up tax is paid under a qualified IIR in another jurisdiction according to the order of priority in the application of the IIR provided for under the GloBE rules.

The calculations for determining the Vietnam effective tax rate and minimum top-up tax are aligned with those provided under the Model Rules of the Inclusive Framework on BEPs. Tangible assets and payroll carveouts in determining the profits subject to top-up tax are allowed at the rate of 5%. A higher carveout rate will apply for the period from 2024 to 2032. However, further detail is still expected on aspects of the Vietnam domestic implementation in the forthcoming implementing regulations.

The Vietnam top-up tax for constituent entities located in a jurisdiction will be deemed to be zero if both of the following conditions are fulfilled:

(i) The average GloBE Revenue for the jurisdiction is less than 10 million euros; and

(ii) The average GloBE Income or Loss for the jurisdiction is a loss or is less than 1 million euros.

2. Filing and Payment Deadlines

In-scope enterprises must file a GloBE Information Return, a Top-up Corporate Income Tax Return and an Explanation Report addressing variations in accounting standards within 18 months after the fiscal year end with respect to the first year in which the MNE concerned is in-scope, and within 15 months after the fiscal year end for subsequent years. The timeline for payment is the same as the timeline for filing.

D. Under-Taxed Profits Rule

No provision has currently been made for the Under-Taxed Profits Rule (UTPR) in Resolution 107.

[239] "The Pillar Two Rules in a Nutshell". See: https://www.oecd.org/tax/beps/pillar-two-model-rules-in-a-nutshell.pdf.

[240] Resolution 107, Article 6.1.

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E. Safe Harbors

1. Transitional Safe Harbors

The transitional Country-by-country Report (CbCR) safe harbor[241] applies for fiscal years beginning on or before December 31, 2026 (i.e., FY 2024–FY 2026) but not including a fiscal year that ends after June 30, 2028 (the "Transition Period").

During the Transition Period, the amount of top-up tax in a jurisdiction for a fiscal year will be deemed zero if one of the following criteria is satisfied:

(i) Based on the qualified CbCR, the constituent entity concerned has total revenue in that jurisdiction of less than 10 million euros and a profit (loss) before income tax of less than 1 million euros in the relevant fiscal year;

(ii) The minimum simplified ETR in that jurisdiction is: 15% in FY 2023 and FY 2024, 16% in FY 2025 and 17% in FY 2026; or

(iii) The constituent entity's profit (loss) before income tax in that jurisdiction is equal to or less than the Substance-based Income Exclusion amount calculated under the GloBE Rules according to the CbCR.

2. Relaxation of Administrative Penalties During Transition Period

In addition, during the Transition Period, no tax-related administrative penalties will be imposed for violations of the requirements for filing and submitting the declaration and explanation forms discussed above. While Resolution 107 makes no mention of this, OECD guidance provides that above penalty relief is conditional on the MNE concerned having taken "reasonable measures," so that the MNE needs to prove that it has acted in good faith in relation to understanding and complying with the global minimum tax rules.

[241] Resolution 107, Article 6.6.

F. Investment Support Fund

In addition, Resolution No. 110/2023/QH15 of the 6th meeting of the XV National Assembly approving the establishment, management and use of the Investment Support Fund was passed on November 29, 2023.

Specifically, Vietnam is currently considering the introduction of a new investment support fund (the "Fund") with a view to reimbursing expenditure related to workforce development, investment in fixed assets, research and development (R&D) costs, the production of high-tech products and investment in social welfare infrastructure. The Fund would be financed out of top-up tax revenue and other state budget sources.

The Fund targets high-tech businesses, manufacturers of high-tech equipment, entities with high-tech applications and companies hosting R&D centers, aligning it with Vietnam's existing investment incentive policy focusing on high-tech industries. However, as this policy is being developed, it must adhere to Pillar Two rules, which require that any jurisdictional top-up tax must be "implemented and administered in a way that is consistent with the outcomes" provided for under Pillar Two.

G. Future Developments

Resolution 107 is brief, including only eight articles implementing the Global Anti-Base Erosion rules provided by the Inclusive Framework on BEPS. The government will issue implementing regulations to provide further details regarding the definition of terms, the determination of QDMTT and IIR payables, and other issues related to tax administration.

The government is charged with prescribing any updates/changes adopted after January 1, 2024 by the Inclusive Framework. This means that changes to the Pillar Two rules will be reflected in sub-statutory legal normative documents (such as the Government's decrees and the MOF's implementation guiding circulars). However, if such changes are contrary to the Resolution, the government will need to report to the National Assembly for further consideration.

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