

## VIETNAM

Vietnam has undertaken a significant rewrite of its tax legislation and 2009 marks the introduction of new/revised laws for all taxes.

### CORPORATE INCOME TAX (CIT)

The standard tax rate has been reduced from 28% to 25%. Enterprises operating in the oil and gas industry will be subject to CIT rates ranging from 32% to 50% depending on each project.



Vietnam's tax incentive regime has been scaled back. Incentives are available for a more selected group of industries and the 15% preferential rate has been removed. Examples of available tax incentives include:

Nature of investments	Preferential tax rate	Exemption/50% tax rate reduction period
<ul style="list-style-type: none"> <li>Investment in locations with especially difficult socio-economic conditions (*), economic zones and high-tech zones</li> <li>Investment in high technology, science research and technology development, certain infrastructural development and computer software manufacture</li> </ul>	10% for 15 years from the commencement of operations	4 years of exemption, 9 years of 50% reduction in tax rate
<ul style="list-style-type: none"> <li>Investment in education, health care, sport/culture, environment (conditions apply)</li> </ul>	10% for the life of the project	4 years of exemption, 5 to 9 years of 50% reduction in tax rate
<ul style="list-style-type: none"> <li>Investment in locations with difficult socio-economic conditions (*)</li> </ul>	20% for 10 years from the commencement of operations	2 years of exemption, 4 years of 50% reduction in tax rate

(\*) The list of localities with especially difficult socio-economic conditions and localities with difficult socio-economic conditions are provided in Decree 124/2008

In the past, the tax exemption period commenced from the first year of profit without consideration of prior year losses. Under the revised CIT regulations, this continues to be the case but with the added requirement that where a taxpayer has not derived profits for 3 years from the year in which revenue is first generated, the tax exemption will apply from the fourth year. For existing enterprises that have not yet derived a profit, the 3-year rule for application of the tax exemption starts from 1 January 2009.

Taxpayers are allowed to set up a research and development (R&D) fund amounting to a maximum of 10% of the annual profits before tax. The amount of profits appropriated to a R&D fund will not be subject to tax. However, if more than 70% of the fund has not been used within 5 years from the date the R&D fund is created, the taxpayer must pay CIT and interest on the remaining fund.

Various changes have been implemented with respect to real estate investments. The surtax applicable to the sale of land has been removed. New provisions have been introduced to tax taxpayers where they contribute land to a joint venture and the value of that contribution exceeds the original cost of the land. The regulations also provide that CIT (and value added tax (VAT)) are now payable when pre-sale income is received, rather than when title is passed.

The 10% cap on advertising and promotion (A&P) expenditure continues to exist. For taxpayers licenced from 1 January 2009, the A&P cap has been increased to 15% for the first 3 years from the establishment of the company.

Examples of expenses included in the list of those considered as non-deductible are:

1. Expenses without proper supporting documents (this is consistent with previous regulations)
2. Expenses unrelated to the generation of taxable income
3. Bonuses for employees, except for those that are in the nature of salary (no further details provided) and are clearly defined in the labour contract or collective labour agreement
4. Life insurance premium for employees
5. Charitable donations, except for those provided for certain educational purposes

Companies having branches in different provinces are required to allocate tax payments to the provincial tax authorities where the branches operate, based on the proportion of expenditure spent by each branch over the total expenditure of the company.

Below is a comparison of the key changes to the VAT rates:

Nature of supply	VAT rate	
	Old regulation	Circular 129
Machinery, equipment, construction materials, and specialised transportation vehicles that can not be produced domestically, and which are imported to form fixed assets of the importer	Exempt	10%
International transportation	Exempt	0%
Repair of ships and aircraft provided to foreign companies or individuals (conditions apply)	Exempt	0%
Goods and services provided directly to international transportation	Exempt	0% or 10%
Financial derivatives (noted in VAT circular for the first time)	Not specified	Exempt
Repair of certain machinery, equipment and means of transportation products	5%	10%
Transportation, registration of transportation vehicles	5%	10%
Coal, soil, stone, sand, gravel, basic chemical, and products from metallurgy, rolling and drawing of ferrous, non-ferrous or precious metals	5%	10%
Automatic data processors and parts and accessories	5%	10%
Mechanical engineering products, moulds, explosives, grindstone, artificial plywood, industrial concrete products, tyres, neutral glass tubes	5%	10%

### Foreign contractor withholding tax (FCWT)

FCWT set out the methods by which Vietnam collects CIT and VAT from foreign companies and individuals which carry out business in Vietnam without establishing a subsidiary/branch.

The “hybrid” filing method allowed under the old regime, whereby foreign contractors could elect to register for VAT but still pay CIT on a deemed basis has been removed. The hybrid method has been a popular and very effective filing method, allowing foreign contractors with significant local VAT costs to recover this VAT, but avoid having to implement the full Vietnamese accounting system (VAS)

### Value added tax

Services rendered to foreign companies, including companies in non-tariff areas, will now be zero rated if the foreign companies have no permanent establishment in Vietnam and are not a VAT registrant. The requirement that the services have to be consumed outside of Vietnam under the previous regulations has been removed. This will potentially allow a much broader application of the exported services rule.

The previous exemption for imported fixed assets has been removed. VAT will be payable at the time of import and a subsequent credit will need to be claimed.

A new condition for claiming input VAT is that payment of VND20 million or more must be made through a bank. Previously this requirement applied only to exported goods/services.

and calculate CIT on a net profits basis. Foreign contractors now wishing to register for VAT must meet various conditions, including having a permanent establishment and must implement the full VAS.

Freight tax is abolished and foreign shipping organisations providing transportation services will now be subject to FCWT.

Contracts signed before the effective date of the new regulation can continue to be taxed under the old FCWT regime (i.e. Circular 05). For air transportation and sea transportation contracts, these must be taxed under the new FCWT regime from 1 January 2009.

# Vietnam

Below is a comparison of the old and new FCWT rates:

Nature of supply	FCWT CIT rate (%)		FCWT VAT rate (%)	
	Old	New	Old	New
Trading (distribution, supply of goods)	1	1	1	Exempt
Services	5	5	5	5
Services together with provision of goods	5	2	5	3
Royalties	10	10	Exempt	Exempt
Leasing of machinery and equipment	10	5	Exempt	5
Leasing of aircraft, vessels (including components)	10	2	Exempt	Not specified
Interest	10	10	Exempt	Exempt
Construction without supply of material	2	2	5	5
Construction with supply of material	2	2	3	3
Transportation	2	2	2.5	3
Overseas reinsurance	Not specified	2	Exempt	Exempt
Transfer of securities	0.1	0.1	Exempt	Exempt
Manufacturing and other business activities	2	2	2.5	3

## Personal income tax (PIT)

The tax residency definition is expanded to include individuals having permanent residency in Vietnam or renting a premise (e.g. hotel, apartment, house) in Vietnam with a term of 90 days or more in a tax year. Tax residents will be subject to PIT on their world-wide employment income, regardless of where it is earned, paid, received or charged. Tax non-residents will be subject to PIT on income earned in Vietnam, even if they are not present in Vietnam in a tax year.

Benefits in kind are taxable. The exemptions that were contained in the old PIT regulations are not mentioned in the new PIT regime. Accordingly, benefits such as airfares, school fees and also the concessionary taxation of employer provided housing, are now not included as non-taxable benefits.

Reference is made to share/stock based remuneration being a taxable bonus in kind (consistent with the treatment outlined in various past official letters). The taxable value is as per the accounting treatment. Further guidance will be required before the PIT treatment of share/stock based remuneration can be fully understood.

Non-employment income, including rental income, investment income, gains on shares, gains on sale of real estate and inheritances will be taxable for the first time in Vietnam.

The PIT rate for non-resident foreigners has been reduced from 25% to 20%. The same PIT rates will be applied to both Vietnamese and resident foreigners as follows:

Yearly taxable income (million VND)	Monthly taxable income (million VND)	Tax rate (%)
Up to 60	Up to 5	5
Over 60 to 120	Over 5 to 10	10
Over 120 to 216	Over 10 to 18	15
Over 216 to 384	Over 18 to 32	20
Over 384 to 624	Over 32 to 52	25
Over 624 to 960	Over 52 to 80	30
Over 960	Over 80	35

Each taxpayer is automatically entitled to a personal relief of VND48 million per year. Further relief is available if the taxpayer has eligible family dependants.

## Special sales tax (SST)

The new law on SST has broadened the scope of taxable objects to include motorcycles, airplanes and boats. Various changes have been made to the SST rates:

Name	Tax rate (%)			
	2008	2009	2010-2012	2013 onwards
<b>Part 1: Goods</b>				
Cigar, cigarette				
• Cigar	65	65	65	65
• Cigarette	65	65	65	65
Spirit/ Wine				
• Spirit from 40° and above	65	65	45	50
• Spirit from 20° to below 40°	30	30	45	50
• Spirit below 20° and fermented juice, medicinal wine	20	20	25	25
Beer				
• Bottled beer, canned beer	75	75	45	50
• Draught beer	40	40	45	50
Automobiles (*)				
• Motorcycle with cylinder capacity of above 125cm <sup>3</sup>	0	20	20	20
Airplane	0	30	30	30
Boat	0	30	30	30
Petrol, naphtha, reformed components	10	10	10	10
Air-conditioners (not more than 90,000 BTU)	15	10	10	10
Playing cards	40	40	40	40
Votive paper	70	70	70	70
<b>Part 2: Services</b>				
Discotheques	30	40	40	40
Massage, karaoke	30	30	30	30
Casinos, jackpot games	25	30	30	30
Entertainment with betting	25	30	30	30
Golf	10	20	20	20
Lottery	15	15	15	15

(\*) SST applicable to automobiles is determined according to various criteria including number of seats, engine capacity and other attributes (e.g. fuel source). The tax rate varies from 15% to 60%.

## Economic stimulus incentives

As part of the Government's efforts to stimulate the economy and promote consumer spending, the Ministry of Finance issued various regulations in early 2009 announcing tax related incentives. These include:

1. For small and medium enterprises (which are defined to include any entity with less than 300 employees or less than VND 10 billion of chartered capital) and entities operating in a selected group of industries:

(1) a 30% CIT reduction for the 4th quarter of 2008 and all of 2009; and

(2) a nine-month delay of 2009 quarterly CIT payments.

2. A 50% VAT reduction for a selected group of VATable supplies
3. A temporary deferral of PIT payments for the period from January to May 2009 for certain income, (including employment income) paid to individuals.