

Lorenzo Riccardi

Vietnam Tax Guide

Domestic Fiscal System and
International Treaties

 Springer

Vietnam Tax Guide

Lorenzo Riccardi

Vietnam Tax Guide

Domestic Fiscal System and International
Treaties

 Springer

Lorenzo Riccardi
Bergamo
Italy

ISBN 978-3-319-02137-9 ISBN 978-3-319-02138-6 (eBook)
DOI 10.1007/978-3-319-02138-6
Springer Cham Heidelberg New York Dordrecht London

© Springer International Publishing Switzerland 2014

This work is subject to copyright. All rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed. Exempted from this legal reservation are brief excerpts in connection with reviews or scholarly analysis or material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work. Duplication of this publication or parts thereof is permitted only under the provisions of the Copyright Law of the Publisher's location, in its current version, and permission for use must always be obtained from Springer. Permissions for use may be obtained through RightsLink at the Copyright Clearance Center. Violations are liable to prosecution under the respective Copyright Law.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

While the advice and information in this book are believed to be true and accurate at the date of publication, neither the authors nor the editors nor the publisher can accept any legal responsibility for any errors or omissions that may be made. The publisher makes no warranty, express or implied, with respect to the material contained herein.

Printed on acid-free paper

Springer is part of Springer Science+Business Media (www.springer.com)

For my mother.

Contents

Part I Vietnamese Tax System

1	Introduction to the Vietnamese Tax System	3
1.1	Legislative Background and Tax Reform	3
1.2	VAT Changes	4
1.3	Types of Taxes	4
2	Personal Income Tax	7
2.1	General Principles	7
2.2	Tax for Residents and Non-Residents	7
2.2.1	Tax Year	8
2.3	Taxable Income	8
2.4	Exempt Income	9
2.5	Deductions and Tax Breaks	9
2.6	Tax Rates	10
2.6.1	Resident Persons	10
2.7	Tax Administration	10
2.7.1	Tax Registration	10
2.8	Declaration and Payment of Taxes	10
2.9	Social Contributions	11
3	Income Tax on Enterprises	13
3.1	Rates and Tax Incentives	13
3.2	Determination of Taxable Income	14
3.2.1	Calculation Formula	14
3.2.2	Tax Administration	15
3.2.3	Deductible Expenses	15
3.2.4	Depreciation	16
3.2.5	Losses Carry Forward	16
3.3	Taxes on Income from the Sale of Shares	16

3.4	Withholding Tax	17
3.4.1	Methods of Payment	17
3.4.2	Agreements Against Double Taxation	19
3.4.3	Dividends	19
3.5	Anti-Avoidance Rules	19
3.5.1	Thin Capitalization and Anti-Avoidance Rules	19
3.5.2	Transfer Pricing	19
4	Turnover Taxes and Other Taxes	21
4.1	Value Added Tax	21
4.1.1	Scope of VAT	21
4.1.2	Goods and Services Exempted from VAT	21
4.1.3	VAT Rates	22
4.1.4	Calculation of VAT	22
4.2	Tax Administration	23
4.3	Special Sales Tax	23
4.3.1	Tax Rates	24
4.4	Capital Duty and Stamp Duty	24
4.5	Duties on Imports and Exports	24
4.5.1	Tax Rates	24
4.5.2	Calculation of Import Tariffs	25
4.5.3	Exemption from Duties on Imports	26
4.5.4	Reimbursement of Duties on Imports	26
4.5.5	Duties on Exports	26
5	Audit and Transfer Pricing Policies	27
5.1	Background of Tax Audits	27
5.2	Background of Accounting and Auditing	29
5.3	Definitions and Application in Vietnam	30
5.4	OECD Guidelines	31
5.4.1	Advance Pricing Arrangement (“APA”)	32
5.4.2	Arm’s Length Principle	32
5.4.3	Arm’s Length Range	32
5.4.4	Associated Enterprises	32
5.4.5	Balancing Payment	32
5.4.6	Buy-in Payment	33
5.4.7	Buy-Out Payment	33
5.4.8	Commercial Intangible	33
5.4.9	Comparability Analysis	33
5.4.10	Comparable Uncontrolled Transaction	33
5.4.11	Comparable Uncontrolled Price (CUP) Method	34
5.4.12	Compensating Adjustment	34
5.4.13	Contribution Analysis	34
5.4.14	Controlled Transactions	34
5.4.15	Corresponding Adjustment	34

5.4.16	Cost Contribution Arrangement (“CCA”)	35
5.4.17	Cost Plus Mark Up	35
5.4.18	Cost Plus Method	35
5.4.19	Direct-Charge Method	35
5.4.20	Direct Costs	35
5.4.21	Functional Analysis	35
5.4.22	Global Formulary Apportionment	36
5.4.23	Gross Profits	36
5.4.24	Independent Enterprises	36
5.4.25	Intra-Group Service	36
5.4.26	Intentional Set-Off	36
5.4.27	Marketing Intangible	36
5.4.28	Multinational Enterprise Group (MNE Group)	37
5.4.29	Multinational Enterprise (MNE)	37
5.4.30	Mutual Agreement Procedure	37
5.4.31	Net Profit Indicator	37
5.4.32	“On Call” Services	37
5.4.33	Primary Adjustment	37
5.4.34	Profit Potential	38
5.4.35	Profit Split Method	38
5.4.36	Resale Price Margin	38
5.4.37	Resale Price Method	38
5.4.38	Residual Analysis	38
5.4.39	Secondary Adjustment	39
5.4.40	Secondary Transaction	39
5.4.41	Shareholder Activity	39
5.4.42	Simultaneous Tax Examinations	39
5.4.43	Trade Intangible	39
5.4.44	Traditional Transaction Method	40
5.4.45	Transactional Net Margin Method	40
5.4.46	Transactional Profit Method	40
5.4.47	Uncontrolled Transactions	40
5.5	Transfer Pricing in Vietnam	40
5.6	Related Party Transactions	41
5.7	Documentation and Disclosure Requirements	41
5.8	Penalties	42
5.9	Transfer Pricing Methods	43
5.9.1	Comparable Uncontrolled Price Method (CUP)	43
5.9.2	Resale Price Method (Table 5.5)	44
5.9.3	Cost Plus Method (Table 5.5)	44
5.9.4	Profit Split Method	44
5.9.5	Note on Deductions	44
5.10	Transfer Pricing Audit and Adjustments	45
5.11	Advance Pricing Arrangements (APA)	46

Part II International Treaties

6 Introduction to International Taxation and Treaties	49
6.1 Conventions Against Double Taxation	49
7 American Area Treaties	51
7.1 Vietnam–American Area Bilateral Agreements’ History	51
7.1.1 Vietnam–USA Bilateral Agreement’s History and Evolution	51
7.1.2 Vietnam–Canada Bilateral Agreement’s History	52
7.2 Canada–Vietnam Treaty	55
8 Asian Area Treaties	71
8.1 Vietnam–Asian Area Bilateral Agreements’ History	71
8.1.1 Vietnam–India Bilateral Agreement’s History and Evolution	71
8.1.2 Vietnam–Singapore Bilateral Agreement’s History and Evolution	72
8.1.3 Vietnam–Korea Bilateral Agreement’s History and Evolution	73
8.1.4 Vietnam–Japan Bilateral Agreement’s History and Evolution	75
8.1.5 Vietnam–China Bilateral Agreement’s History and Evolution	76
8.1.6 Vietnam–Thailand Bilateral Agreement’s History and Evolution	77
8.1.7 Vietnam–Taiwan Bilateral Agreement’s History and Evolution	78
8.1.8 Vietnam–Hong Kong Bilateral Agreement’s History	80
8.2 Thailand–Vietnam Treaty	81
8.3 Korea–Vietnam Treaty	94
8.4 China–Vietnam Treaty	108
8.5 Hong Kong–Vietnam Treaty	122
9 European Area Treaties	139
9.1 Vietnam–European Union Bilateral Agreement’s History and Evolution	139
9.2 Italy–Vietnam Treaty	141
9.3 Sweden–Vietnam Treaty	156
9.4 Denmark–Vietnam Treaty	170
9.5 Germany–Vietnam Treaty	188
Bibliography	205

Part I
Vietnamese Tax System

Chapter 1

Introduction to the Vietnamese Tax System

1.1 Legislative Background and Tax Reform

In recent years, Vietnam has established itself as one of the most popular investment destinations in East Asia. Some of the characteristics of Vietnam that make it attractive to investors include a well-educated population, a strong potential labor market, mineral resources, proximity to other key markets in Southeast Asia, continued support from foreign aid, a strong potential consumer goods industry, a government committed to economic progress, and economic incentives for investment in certain types of businesses.

Vietnam, which started as a one-party state run by the collective leadership of the Communist Party General Secretary, Prime Minister, and President, has committed significant resources to promote its transition towards a market economy. It has also experimented with more flexible strategies and market-oriented policies aimed at promoting the growing private sector, as well as the achievement of macroeconomic stability.

However, despite Vietnam's economic progress, its banking system remains poorly developed—to combat this problem, the Vietnamese government has launched several reforms aimed at improving its financial system and strengthening the stability of its national banks, and those measures have allowed the country to guarantee loans made by lenders—thus, significantly enhancing the financial stability and transparency of the country.

Vietnam has also recently reformed its tax system in order to adapt its regulatory system to the country's economic development. The new *Enterprise Income Tax Law*, which replaced the previous legislation on the taxation of business income, has been in effect since January 1st, 2009. The *Personal Income Tax Law* was also introduced on January 1st, 2009—this law introduced major changes in the system of taxation on individual income and eliminated previously existing tax-treatment disparities between citizens and foreigners in Vietnam.

Several sources of law govern different types of taxes: the *Enterprise Income Tax Law* regulates taxation on business income, the *Personal Income Tax Law* sets

the framework for the taxation of individuals, and the VAT is governed by the *Law on Value Added Tax*. The General Department of Taxation, under the Ministry of Finance, constitutes the tax authorities in Vietnam. Circulars, rulings, and regulations further specify the implementation of the laws to which they refer.

1.2 VAT Changes

A VAT Decree was issued on December 27th, 2011, expanding the definition of VAT exempt supplies. Effective from March 1st, 2012, VAT exemptions include the following supplies:

- Export of goods and services with special conditions for international transportation,
- Certain financial transactions,
- Goods and services provided outside of Vietnam,
- Assets disposed of for liquidation purposes,
- Additional goods and services such as financing services, reinsurance, debt factoring, foreign currency trading, and securities trading services.

The new regulation included a change to the VAT taxable value of goods and services, subject to special sales tax (SST) and environment tax and certain land transfer transactions.

Such Decree introduced a disallowance of deduction of the input VAT incurred on the purchase of machinery and equipment by credit institutions and enterprises involved in reinsurance, life insurance, and securities trading.

1.3 Types of Taxes

Most foreign investments and foreign investors will be subject to the following taxes:

- Corporate Income Tax,
- Various withholding taxes,
- Capital Assignment Profits Tax,
- Value Added Tax,
- Import duties,
- Personal Income Tax of Vietnamese and expatriate employees, and
- Social insurance, unemployment insurance, and health insurance contributions.

There are various other taxes that may affect only certain investors:

- Special Sales Tax,
- Natural Resources Tax,

- Property taxes,
- Export duties, and
- Environment Protection Tax.

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

Chapter 2

Personal Income Tax

2.1 General Principles

The new law on personal income taxes (Personal Income Tax Law, or PIT Law) replaced Ordinance 35, which only taxed the income of individuals in the high-income sectors. This new tax law has features that represent a significant departure from the older system, including the extension of the scope of the Personal Income Tax to nearly all the income earned by individuals, as well as to income previously exempt from income tax. The new system also taxes residents and foreigners on similar criteria, in place of the older two-tier system that taxed them separately. Furthermore, the reform introduced deductions and allowances for individuals and families and implemented new administrative procedures and data storage useful to the monitoring, calculation, and payment of tribute.

2.2 Tax for Residents and Non-Residents

Personal Income Tax is applied based on the residence principle. Residents are taxed on their total income, while non-residents are taxed only on income earned in Vietnam. The existing law uses different tax rates for residents and non-residents, as well as for different types of income.

Taxpayers who are considered residents:

- Those who have lived in Vietnam for more than 183 consecutive days or for 12 months from first entry into the country,
- Those who have a domicile in Vietnam, which implies a place of permanent residence or a real estate lease for a period exceeding 90 days in a fiscal year.

Resident taxpayers are subject to progressive tax rates (Tables 2.1 and 2.2) based on their global income, meaning income earned regardless of its source. Non-resident taxpayers who do not meet the above conditions are subject to a

Table 2.1 Personal income tax rates in Vietnam, employment and service income for residents

Annual taxable income (million VND)	Monthly taxable income (million VND)	Tax rate (%)
0–60	0–5	5
60–120	5–10	10
120–216	10–18	15
216–384	18–32	20
384–624	32–52	25
624–960	52–80	30
>960	>80	35

fixed tax rate of 20 % on their income derived from work carried out in Vietnam and are subject to other various tax rates in reference to income not derived from work-related activities (Table 2.3).

2.2.1 Tax Year

The Vietnamese tax year is the calendar year. However, where in the first year of arrival, if an individual is present in Vietnam for less than 183 days, his/her first tax year is the first 12 consecutive months from the first month of arrival. Subsequently, the tax year is the calendar year.

2.3 Taxable Income

Taxable income includes income arising from conducting business activities and other sources of income. Compensation of employees comprises all income paid by the employer to the employee, either in cash or in kind, and includes:

- Wages, salaries, bonuses, allowances, and subsidies;
- Income earned from participation in professional and trade associations, boards of directors, and management of companies, etc.;
- Benefits in kind paid by the employer, including but not limited to rents, the cost of water and other services, non-compulsory insurance premiums, membership fees, and certain other benefits provided in accordance with current legislation.

Certain categories of income, not previously taxed, were recently included within the scope of the tax law—for example, investment income, transfers of real property, royalties, commercial franchises, inheritances, and gifts.

Table 2.2 Personal income tax rates in Vietnam, non-employment income for residents

Taxable income	Tax rate
Interests	5 %
Dividends	5 %
Royalties	5 %
Gain on sale of securities	20 %
Capital gain	20 %
Sale of real estate	25 % on gain, 2 % on proceed
Inheritances/prizes	10 %

Table 2.3 Personal income tax rates in Vietnam for non-residents

Taxable income	Tax rate
Interests	5 %
Dividends	5 %
Royalties	5 %
Business income	1–5 %
Gain on sale of securities	20 %
Capital gain	0.1 % on proceeds
Sale of real estate	2 % on proceed
Inheritances/prizes	10 %

2.4 Exempt Income

The following income is exempt from personal income tax:

- Interest on money deposited in banks and credit institutions in Vietnam, as well as interest on life insurance policies;
- Contribution payments on life insurance policies;
- Payments of social security contributions on pensions of individuals in accordance with the provisions contained in the applicable laws on social security;
- Income from certain officially approved charitable institutions;
- Expenditures on stationery, telephone calls, daily allowances, and clothing;
- Income from real estate transfers between spouses, parents, and children;
- Income from inheritance/gifts between spouses, parents, and children;
- Scholarships and other allowances recognized by colleges and training institutions in Vietnam and abroad.

2.5 Deductions and Tax Breaks

Certain fees and charges are deductible from business income and income from employment based on the following criteria:

- A personal deduction is granted amounting to VND 4 million/month or VND 48 million/year.

- Tax relief is granted with respect to dependents, amounting to VND 1.6 million/month or VND 19.2 million/year, for each dependent (appropriate documentation is required to substantiate this request).
- Compulsory contributions and health insurance benefits in accordance with regulations are deductible.
- Contributions to certain funds for the promotion of charitable, humanitarian, and educational causes are deductible.

2.6 Tax Rates

2.6.1 Resident Persons

The progressive tax rates for foreign residents and Vietnamese citizens are shown in Table 2.4.

Effective January 1st, 2009, the following income tax rates also apply (Table 2.5).

With regard to income from non-employment activities, see Table 2.6.

2.7 Tax Administration

2.7.1 Tax Registration

Tax registration is mandatory for all institutions and individuals whose taxable income is subject to the PIT Law. The entity designated to receive the registration form of the tax code is represented by the tax office directly and is also responsible for the receipt of the income from tax of entities and individual taxpayers.

2.8 Declaration and Payment of Taxes

Declaration of the Personal Income Tax must be submitted on a monthly basis by the 20th day of the month following the reporting period. The employer acts as a withholding agent of taxes by the 20th of the following month. Business income is declared on a quarterly basis, and the related tax returns must be submitted by the 30th of the month following the quarter of competence. Other income is taxed on a separate basis for each single transaction. In the event that the tax payment is made in excess, a tax credit will be recognized to offset the future periodic payments.

Table 2.4 Progressive tax rates for foreign residents and Vietnamese citizens

Bracket	Personal income (VND)	Tax rate (%)
1	0–5,000,000	5
2	5,000,001–10,000,000	10
3	10,000,001–18,000,000	15
4	18,000,001–32,000,000	20
5	32,000,001–52,000,000	25
6	52,000,001–80,000,000	30
7	>80,000,000	35

Table 2.5 Other income tax rates

Categories	Tax rate (%)
Income from capital gains	5
Income from commercials and royalties	5
Compensation from awards, winnings, inheritances, and gifts	10
Income from transfer of shares	0.1
Income from real estate transfers	25
Income from real estate transfers in the case that value cannot be determined	2

Table 2.6 Tax rates for income from non-employment activities

Categories	Tax rate (%)
Sale of goods	1
Provision of services	5
Manufacturing, construction, transportation, and other business activities	2

2.9 Social Contributions

The related contributions to social security (social insurance) and unemployment (unemployment insurance) are applicable only to Vietnamese employees, while the related contributions to health insurance (health insurance) are provided to both Vietnamese and foreigners.

Social security contributions are summarized in Table 2.7.

Such contributions by the employer do not constitute a taxable benefit to the employee and shall be regarded as deductible in calculating the Personal Income Tax.

Remuneration subject to social security contributions is considered on the basis of the salary indicated in the employment contract, limited to 20 times the minimum wage (Table 2.8), which varies by zones in the country.

Table 2.7 Social security contributions

Contributions and welfare			
	Social insurance (%)	Unemployment insurance (%)	Health insurance (%)
Employee	6	1	1.5
Employer	16	1	3

Table 2.8 Minimum wage in Vietnam (VND) for local and foreign companies by zone

Minimum wage in Vietnam (VND)		
Zone	Vietnamese company	Foreign company
1	980,000	1,340,000
2	880,000	1,190,000
3	810,000	1,040,000
4	730,000	1,000,000

Chapter 3

Income Tax on Enterprises

3.1 Rates and Tax Incentives

The Enterprise Income Tax Law (hereinafter EITL), approved in May 2008, changed the tax rate of legal persons (local and foreign) from 28 to 25 % starting from January 1st, 2009. This reform is similar to the situation in China a year earlier (January 1st, 2008), in which an equal level of tax was established for local and foreign companies via the definitive abolishment of the “tax holiday.” For oil and gas companies, as well as companies involved in the use of precious metals, varying rates are enforced—ranging from 32 to 50 %. The law grants tax incentives based on the location of investments, such as in areas with poor socioeconomic conditions, special economic zones, or areas affected by high-technology projects, and other specially regulated sectors.

The Vietnamese government has encouraged investment in a number of areas, including new technology, water plants, power plants, water supply systems, airports, seaports, and rivers, as well as other major infrastructure such as bridges, roads, and railways. This effort has stimulated culture, sport, education, scientific research, vocational training, medical care, and environmental protection. The incentives take the form of a preferential tax rate or a tax exemption period.

1. The preferential tax rate is 10 % for a term of 15 years or 20 % for a term of 10 years starting with the first profitable year.
2. The tax exemption is granted from the application of EIT for a period of 2–4 years starting from the first profitable year. It is then to grant a reduction of 50 % for a period ranging between 4 and 9 years. If the enterprise has been profitable for the first 3 years of its operations, the tax exemption will begin from the fourth year of operation.

The eligibility criteria for these incentives and the tax exemptions are set by the EIT regulations. Additional tax relief may be granted to those firms operating in manufacturing, construction, or transportation activities and employing a higher percentage of females and/or ethnic minorities. The duration of the preferential tax