

Vietnam

Country M&A team

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1. Introduction

1.1 General comments on M&A in Vietnam

In Vietnam, M&A transactions take the form of share or asset acquisitions. Corporate income tax (CIT), Value Added Tax (VAT) and Capital Assignment Profits Tax (CAPT) implications should be considered when structuring an M&A transaction.

The Vietnam tax environment is developing rapidly and new CIT and VAT laws were introduced effective 1 January 2009.

1.2 Corporate tax

1.2.1 General tax regime

Companies incorporated in Vietnam are subject to a standard CIT rate of 25%.

Oil and gas companies and companies which are involved in exploitation of precious minerals are subject to tax at rates ranging from 32% to 50% depending on the specific project.

Preferential rates of 10% and 20% are available where certain criteria are met. The criteria for receiving preferential rates are the scope of activities and location of the investment. Preferential rates are available for a period of 15 years and 10 years respectively, starting from the first year the company has turnover. When the preferential rate expires, the CIT rate generally reverts to the standard rate.

1.2.2 Taxation of dividends

Dividends received by a Vietnamese company from another Vietnamese company are exempted from tax.

1.2.3 Tax losses

Tax losses may be carried forward for a maximum period of five years from the year in which the loss arose. Carry back of losses is not permitted.

Each company's tax losses are dealt with separately; there is no group relief.

1.3 Withholding tax

Foreign companies performing business in Vietnam / having contracts with Vietnamese customers without establishing a legal entity in Vietnam are subject to “Foreign Contractor Withholding Tax” (FCWT), which includes a VAT and a CIT element. Withholding tax also applies to payments of interest, royalties, license fees, and cross border lease charges. Withholding tax applies on the income derived from Vietnam, regardless of where the services are performed, inside or outside Vietnam. From 2009, certain services performed outside Vietnam are exempted from FCWT. Tax rates for some typical business activities are as follows:

	Effective VAT rate	Deemed CIT rate
Royalties	Exempt	10%
Interest	Exempt	10%
General services	5%	5%

There is currently no withholding tax on dividends paid by a Vietnamese company.

1.4 Double tax agreements

The above withholding taxes may be affected by relevant double tax agreements (DTA)s. Vietnam currently has DTAs with numerous other countries.

1.5 Value Added Tax

VAT applies to goods and services used for production, trading and consumption in Vietnam (including goods and services purchased from abroad). In each case the business must charge VAT on the value of goods or services supplied. In addition, VAT applies on the duty paid value of imported goods. The importer must pay VAT at the same time that they pay import duties.

VAT rates are 0%, 5% and 10%. Certain goods and services are VAT exempt.

1.6 Capital Assignment Profits Tax

Gains on transfers of interests (as opposed to shares) in a Vietnamese limited liability company are subject to 25% CAPT. The taxable gain is determined as the excess of the sales proceeds less cost (or the initial value of contributed charter capital for the first transfer) less transfer expenses. The CAPT must be withheld by the purchaser, who must file a CAPT return with the Vietnamese tax authorities.

In the case of a transfer of shares held in a Vietnamese joint stock company by a foreigner, CIT payable is 0.1% of the gross sales proceeds.

DTAs may provide protection from the above taxes.

2. Acquisition alternatives

Acquisitions in Vietnam can be structured as a share or asset deal. In the case of an asset deal, a foreign purchaser would generally have to establish a new subsidiary in Vietnam.

2.1 Share acquisition

Share acquisitions by foreign purchasers are commonly structured as direct investments from offshore. In a share acquisition, tax attributes, such as unutilised losses and tax incentives, would generally remain with the target.

2.2 Asset acquisition

In an asset acquisition, tax losses cannot be transferred to the purchaser. The purchaser would generally be eligible for tax incentives based on its activities and location, but there are anti-avoidance rules to prevent the use of asset transfers to refresh tax incentives.

Tax depreciation can generally be claimed on the purchase price of the assets. However, the tax authorities may in practice challenge the tax depreciation of large goodwill balances.

Vietnam has transfer pricing regulations which require transactions between related parties (which are widely defined) to be effected at market value for tax purposes.

Where assets have been imported duty and VAT free, there may be a duty and VAT claw back upon sale of such assets.

2.3 Transactions costs

2.3.1 Value Added Tax

- Share deal
A transfer of shares is not subject to VAT.
- Asset deal
VAT would be payable on the assets transferred and recoverable if the purchaser makes VAT-able supplies.

2.3.2 Registration fees

- Share deal
No registration fees are imposed on the transfer of shares.

- Asset deal

In an asset deal, registration fees are only applicable to the transfers of certain assets, as below:

Assets	Registration fee rates
Land and housing	0.5%
Ships and boats	1%
Deep-sea fishing boats	0.5%
Motorcycles	1 – 5%
Automobiles	2 – 15%
Shotguns and sports guns	2%

3. Basis of taxation following share or asset acquisition

3.1 Share deal

The acquisition by a foreign investor of the shares of a domestic company has no tax consequences for the investor but, if the shares are subsequently sold, the investor would be liable to tax on any gains realised on the sale. The target would continue to be liable to CIT on the same basis as before the sale (i.e. there is no step up of the cost base in the assets owned by the Target).

The utilisation of tax losses is not affected by a change in shareholding.

Interest charges incurred by the foreign investor on borrowings for the share acquisition are not deductible against the income of the target.

3.2 Asset deal

Generally, the purchaser is entitled to depreciate assets acquired based on the acquisition price. The purchaser may therefore obtain a step-up in the cost basis of the asset. For brand-new assets, the tax depreciation is based on the useful life of the asset which is based on the regulations. For used assets, the useful life is determined based on the following formula:

$$\text{Useful life of fixed asset} = \frac{\text{Acquisition price}}{\text{Sale price of the brand-new fixed asset of the same or similar type}} \times \text{Useful life of the brand-new fixed asset of the same type based on the regulations}$$

Some examples of useful life for certain categories of assets are illustrated below:

Asset category	Useful life (new asset)
Buildings with a high durability	25 – 50 years
Other buildings	6 – 25 years
Machinery and equipment	5 – 15 years

Accepted tax depreciation methods are straight line method, reducing balance method and depreciation method based on quantity or volume of products (only if certain conditions are fulfilled).

4. Financing of acquisitions

4.1 Thin capitalisation

Vietnam currently has no thin capitalisation rules. The debt / equity ratio is specified in the business registration certificate, specifying the charter and loan capital.

4.2 Deductibility of interest

Interest on loans granted by lenders other than credit institutions and economic organizations is deductible for CIT purposes provided that the interest rate does not exceed 1.5 times the rate of State Bank of Vietnam. Interest on loans corresponding to the portion of charter capital not yet contributed is not tax deductible.

5. Merger

Under Vietnamese regulations, one or more companies of the same type can be merged into another company by way of transfer of all assets, rights, obligations and interests to the merged company and, at the same time, termination of the existence of the merging companies.

For tax purposes, if the assets are not revalued upon merger, the merging companies recognise no gain or loss on the transfer of assets.

6. Other structuring and post deal issues

6.1 Repatriation of profits

In addition to dividends, profits may potentially be extracted through the payment of royalties, service fees and interest, but each of these is subject to various limitations in terms of withholding taxes and / or transfer pricing rules.

6.2 Losses carried forward and unutilised tax depreciation carried forward

- Share deal

A change in ownership of a company does not affect its carry-forward of tax losses.

- Asset deal

Tax losses are not transferable on a sale of assets, even where the sale represents the transfer of an entire business.

6.3 Tax incentives

- Share deal

A change in ownership through a share deal will generally not affect the availability of tax incentives.

- Asset deal

Tax incentives would generally be lost when the business is transferred through an asset deal.

6.4 Group relief

There is no form of group relief or consolidated filing in Vietnam.

7. Disposal

7.1 Share sale

Capital gains derived by a Vietnamese company from the sale of interest in a Vietnamese limited liability company or sale of shares in a Vietnamese joint stock company are included in income and subject to 25% CIT. The taxable gain is determined as the excess of the sales proceeds less cost (or the initial value of contributed charter capital for the first transfer) less transfer expenses.

Gains derived by a foreign investor on the sale of interest in a Vietnamese Limited Liability Company are also subject to 25% CIT. The taxable gain is determined as the excess of the sales proceeds less cost (or the initial value of contributed charter capital for the first transfer) less transfer expenses. The CAPT must be withheld by the purchaser, which must file a CAPT return with the Vietnamese tax authorities.

Upon the sale of shares in a Vietnamese joint stock company, CIT payable is 0.1% of the gross sales proceeds.

DTAs may provide protection from the above taxes. Use of dual tier holding structures may also provide a method to mitigating CAPT costs.

7.2 Asset sale

A company that sells any assets, which may include its entire business, is liable to CIT on any gain derived on the sale. The company may offset its tax losses, if any, against the gain. The gain is calculated as the difference between the proceeds received less the tax book value of the assets.

8. Transaction cost for seller

8.1 VAT

See section 2.3.1.

8.2 Registration fees

See section 2.3.2.

9. Preparation of target for sale

One of the means of extracting surplus cash in a company that is identified for sale is through dividends. Dividends are not subject to withholding tax and dividends received by a Vietnamese company are CIT exempt. This also has the effect of reducing the value should any gain on sale be taxable.

10. De-mergers

There are no specific provisions in relation to de-mergers. A de-merger usually takes place through the sale of assets or business. It is important to note that any brought forward losses may not be transferable. The implications for a de-merger would be the same as an asset deal.

11. Listing / initial public offering (IPO)

After acquiring a target, a financial buyer generally looks for an exit route either through a sale or an IPO. There are no special tax laws or regulations applicable to capital gains derived by a corporate shareholder and arising from an IPO in Vietnam. The implications for profits derived from an IPO would be the same as a share deal as discussed in section 7.1.

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