

Vietnam News Brief*

A special update on Foreign Contractor Withholding Tax (FCWT) in Vietnam

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Circular 134 on Foreign Contractor Withholding Tax (FCWT)

As a result of the new Corporate Income Tax (CIT) and VAT laws which have been implemented effective 1 January, the Ministry of Finance has now revised the FCWT rules. These new rules are set out in Circular 134, which was issued on 31 December 2008, and this Circular replaces the existing FCWT Circular 05 and Circular 16. on freight tax.

By way of background, the FCWT Circulars 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 here. As such it is one of the most important tax regulations in Vietnam. And because contracts sometimes assign all or part of the foreign contractors' tax liabilities to the Vietnamese customer, it is a tax which impacts both foreign and domestic companies.

In fact, despite it commonly being referred to as FCWT, it is possible under these Circulars for foreign companies to pay CIT and VAT directly in some circumstances, although by far the most common method is for these taxes to be withheld by the Vietnamese customer from payments made to the foreign contractor.

Unusually, there are no grandfathering rules in Circular 134, so existing contracts which straddle the year end, and which are currently taxed under Circular 05, will immediately come under the new regime in Circular 134.

We set out below some of the more important changes contained in Circular 134:

- The "hybrid" filing method allowed under Circular 05, whereby foreign contractors could elect to register for VAT but still pay CIT on a deemed basis, is 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) and calculate CIT on a net profits basis. From now on, foreign contractors wishing to register for VAT must meet various conditions, including having a permanent establishment, and must implement the full VAS. This will create significant additional administrative burdens on such foreign contractors.
- Freight tax is abolished - foreign shipping organisations providing transportation services will now be subject to FCWT.
- There are new FCWT rates for cross border leases. Leases of equipment are subject to 5% CIT and 5% VAT, replacing the previous 10% CIT and VAT exemption. Leases of vessels and aircraft are now subject to 2% CIT and exempt from VAT, and the former separate treatment of dry and wet leases is removed.
- New rules are also set out for the FCWT to apply to securities trading, insurance, reinsurance services, airlines and express delivery business

This publication is intended for general guidance only and should not form the basis of specific decisions. Please contact us for further information and details of our services. In Ho Chi Minh City: contact David Fitzgerald, Richard Irwin, Jean Loi, Sira Intarakumthornchai (Tax), Phan Thi Thuy Duong (Legal), Kenji Murayama (Japanese Business), Ian Lydall (Audit), Steve Gaskill (Advisory) at phone (84-8) 38230796, fax (84-8) 38251947. In Ha Noi: contact Dinh Thi Quynh Van (Tax), Le Anh Tuan (Legal), Eisuke Kofugata (Japanese Business), Nguyen Phi Lan (Audit), at phone (84-4) 39462246, fax (84-4) 39460705.

- Where services are provided and consumed overseas, they are not now subject to FCWT. And certain other services provided overseas, including repairs to machinery and means of transportation, advertising, marketing, training and various postal and telecoms services are no longer subject to FCWT.
- Where under a contract for supply of good and services, the goods are subject to import VAT at the Customs gate, subject to certain conditions, they will not be subject to VAT under the FCWT regime.

The FCWT rates have been amended in certain cases and we compare the old and new rates below:

Nature of supply	FCWT CIT rate (%)		FCWT VAT rate (%)	
	Circular 05	Circular 134/2008	Circular 05	Circular 134/2008
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	Exempt
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
