

Vietnam NewsBrief*

An update on Corporate Income Tax and Value Added Tax developments in Vietnam

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New Laws on Corporate Income Tax and Value Added Tax

On 3 June 2008, the Vietnamese National Assembly passed the amended Law No. 14 on Corporate Income Tax ("CIT") and Law No. 13 on Value Added Tax ("VAT").

The new Laws will be effective 1 January 2009. As ever, each Law is quite brief and the exact details of how the new and amended provisions will be implemented will only be known once the implementing decrees and circulars are issued.

1. Corporate Income Tax

Scope of application

Consistent with the upcoming changes to the Personal income tax regime, the new CIT Law only applies to taxpayers operating in a corporate form. For individuals undertaking business activities, their income will be taxed via the Personal income tax system.

Permanent establishment (PE)

There are various new provisions dealing with foreign companies and their income which will be subject to CIT. Foreign companies will be taxed on their Vietnam-sourced profit irrespective of whether they have a PE in Vietnam or not. Despite this, a PE definition continues to be included in the Law.

Rate

In an effort to ensure that Vietnam remains regionally and globally competitive, the standard CIT 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 (amended from the current 28% to 50%).

Tax incentives

CIT incentives are less favourable and significantly narrower in their application than those under the current law.

- 10% tax rate for 15 years, 4 years of tax exemption and 9 years of 50% reduction shall be applied to newly-established enterprises which:

- Invest in education, health care, sport/ culture, high technology, environmental protection, science research and technology development, infrastructural development, computer software manufacture; or
- Operate in localities with especially difficult socio-economic conditions, in economic zones, and high tech zones.
- 20% tax rate for 10 years, 2 years of tax exemption and 4 years of 50% reduction shall be applied to newly-established enterprises operating in localities with difficult socio-economic conditions.
- CIT incentives will no longer be available based on the sector/industry of the investor (other than those noted above).

Consistent with existing legislation, the preferential tax rate will apply from the year in which revenue is first generated.

The tax exemption/ reduction will apply from the first profitable year. However, where a Company has not derived profits for 3 years from the date of operation, the tax exemption/ reduction will apply from the fourth year of operation. For existing enterprises that have not yet derived a profit, the 3 year rule for application of the tax exemption/ reduction must be applied from the effective date of the new Law (i.e. 1 January 2009). It is unclear how the Government will enforce the implementation of this provision given the protection from changes of law afforded by the Law on Investment.

The Law no longer provides tax incentives for business expansion.

Deductible expenses

Consistent with the changes effected in Circular 134, the Law contains a general deductibility clause that allows expenses to be deductible if:

- they are properly substantiated;
- they relate to the production or trading of the enterprise; and
- they are not specifically identified as being non-deductible.

Interest

Loan interest payable to organisations other than credit institutions or economic organisations not exceeding 150% (or 1.5 times) of the loan interest rates set by the State Bank shall be deductible.

Salary and Wages

The new Law specifically provides that wages and other bonuses will not be deductible where appropriate documents are not made available. This wording is slightly different from the current Law and would seem to indicate that provided such items are documented (not necessarily in a labour contract) then a tax deduction may be available.

Advertising and Promotion expenses

The 10% cap on advertising and promotion (A&P) expenditure continues to exist in the new CIT Law. However, newly-established enterprises will be allowed a 15% cap on A&P expenses for the first three years from establishment (not commencement of operations).

Other issues

- The new Law does not retain the surtax on gains on transfer of land use rights/ land lease rights.
- No detailed regulations on the taxation of capital assignment and securities are provided in the new Law.
- From tax year 2009, business entities in Vietnam will be allowed to set up a Research and Development Fund. Enterprises can appropriate up to 10% of annual profits before tax to the fund. Various conditions must be satisfied.
- Where a taxpayer has branches in different provinces, a single CIT return must be prepared. However, production enterprises or manufacturers are required to allocate tax payments to the various provincial tax authorities in the locations where it operates. The basis for allocation will be the proportion of expenditure spent by each branch over the total expenditure of the company.

2. Value Added Tax (“VAT”)

Notable changes include:

- Machinery and equipment which is not locally manufactured and imported to form fixed assets shall no longer be VAT exempt. This could result in major cost increases for businesses which make VAT exempt supplies, and potential cashflow issues for others.
- International transportation will now be zero-rated, instead of VAT exempt as currently.
- Capital transfers, derivatives and telecommunication/postal services (only for social and public use) are to be VAT exempt.
- Input VAT on fixed assets used for both VATable and non-VATable activities will be fully creditable.
- The 3 month time limit for claiming input VAT credits is removed. An incorrect input VAT declaration shall be allowed to be amended within 6 months from the date of discovery of the error.
- One of the conditions for claiming input VAT is that payment must be made through the banking system, except for purchases of less than VND20 million. Currently this requirement applies only to exported goods/services.
