Deductible expenses and non-deductible expenses

4-410 Deductions

Under the previous *Law on CIT 2003* and supplemental regulations, all expenses incurred for the purpose of earning taxable profits were only deductible if they fell within specified categories. Deductible expenses also had to be "reasonable and valid". The tax authorities were empowered to consider the reasonableness and validity of the revenue and expenditure.

Unlike the old regulations, the *Law on CIT 2008* does not specifically determine deductible expenses, but broadly stipulates principles to determine deductibility of expenses, in particular:

- that the expenses actually arose;
- that the expenses relate to the activities of production and/or business of the enterprise;
- that the expenses are accompanied by complete invoices and source vouchers as stipulated by law; and
- that the expenses are not specifically identified as non-deductible expenses.

The general deductibility provisions above are one of the key changes introduced in the new regulations.

Law: *Law on Corporate Income Tax Law, No 09-2003-QH1*; *Law on Corporate Income Tax IT No 14-2008-QH12*; and *Decree 124/2008/ND-CP and Circular 130/2008/TT/BTC.*

4-415 Deductible expenses

The old regulations provided detailed guidelines on what was allowable as a deductible expense. Deductions had to be substantiated with proper invoices and vouchers. However, other documents could be provided as evidence of expenses being incurred, but these were generally not sufficient to support the deductibility of expenses to the tax authorities

Illustrated below were the major deductible items for CIT purposes according to the old regulations.

- *Depreciation*

  Depreciation of fixed assets used for production and business activities is a deductible expense. Entities wishing to allocate the cost of assets over a different period from the standard recoverable periods must obtain approval from the Ministry of Finance.

  The depreciable periods for CIT purposes of selected fixed assets are as follows:

Table 4: Depreciation periods

Assets	*Years*
Building	6 – 50
Warehouse	5 – 20
Vehicle	6 – 30
Machinery and equipment	3 – 15

- *Amortisation of expenditure*

  Purchased intangible fixed assets or expenses can generally be amortised over no more than 20 years.

  Pre-operating expenses, including research, preparation of feasibility studies, evaluation fees, etc, are not considered intangible fixed assets. However, the pre-operating expenses must be capitalised and amortised over not more than three years starting from the commencement of business operation.

- *Provisions*

  Contingency provisions, eg provisions for inventory devaluation, bad debts and devaluation of securities, subject to certain conditions, are deductible.

- *Cost of raw materials*

  Costs of raw materials, fuel, power and goods used for production, business and service activities relating to the taxable income of the relevant period are deductible.

- *Cost of salaries and wages*

  Salaries, wages, mid-shift meal allowances, and other expenditures in the nature of salaries and wages, as stated in the employment contract and/or collective labour agreement are deductible.

- *Other expenses relating to employees*

  Expenditures especially reserved for female labourers, labour protection expenses, costs for uniforms, facilities protection expenses, social and health insurance contributions, trade union fees, actual severance allowances paid to employees are deductible.

- *Patents, trademarks and technology licensing fees*

  Costs of purchases and use of technical documents, patents, technology transfer licences, trademarks etc, which are not regarded as fixed assets, shall be amortised as business expenses.

- *Tax expenses, fines and penalties*

  Expenditure on taxes (excluding value added tax under the credit method, corporate income tax, and personal income tax) and fines and penalties for late payment/ breaches of commercial contracts are deductible.

Tax exempt income

4-510 Tax exempt income

The fundamental principles of tax exempt income stipulated under the new regulations are consistent with those stipulated under the old regulations. Accordingly, the following types of income earned by domestic entities are exempt from CIT:

- income earned from the performance of contracts for scientific and technological research and development of science and technology;
- income earned from the sale of products during their period of test production in accordance with the correct production process, but only for a maximum of six months from the date of commencement of the test production;
- income earned from the sale of products made from new technology applied for the first time in Vietnam, but only for a maximum of one year from the date of application of the new technology to produce the products;
- income earned from the performance of technical service contracts directly serving agricultural production;
- income earned from vocational training specially reserved for ethnic minority people;
- income earned from the production and trading of goods and services by business establishments specially reserved for employees being disabled people; and
- income earned from vocational training specially reserved for disabled people, for children living in particularly difficult conditions and for persons involved in social evils.

Receipts from patents, technical know-how, technological processes and technical services used as a legal contribution by a foreign investor to an approved investment project can also be exempt from CIT.

Loss carried forward

4-610 Loss carried forward

Under the old and new regulations, a tax loss is entitled to be carried forward to offset the profits of subsequent years for a maximum of five years from the year in which the loss arose. Carry back of tax losses is not allowed.

An enterprise which suffers a loss from activities from real property transfers shall only be entitled to carry forward the loss to assessable income from those activities.

Tax rates

4-710 Tax rates

Generally, business entities carrying on business in Vietnam are liable to the standard CIT rate, with relief being available under certain circumstances. The preferential CIT rates are applicable for business entities granted investment incentives, subject to various conditions such as location of investment, line of business, etc.

The following schedule provides the applicable rates for the taxable income of corporations.

Table 5 Corporate income tax rates

CIT rates	*Old Regulations*	*New Regulations*
Standard tax rate	28%	25%
Preferential tax rates (Applicable for new business establishments in an industry, sector or area in which investment is encouraged)	10%, 15% and 20%	10% and 20%
Other tax rates (Applicable to enterprises conducting, prospecting, exploration and exploitation of petroleum and gas and other rare and precious national resources)	28%-50%, depending on each specific project and business establishment	32%-50%, depending on each specific project and business establishment
Surtax (Applicable to enterprises in real estate sector and income from land use right transfer)	Progressive tax rates of 0%-25% on remaining profit	Abolished

Standard tax rate — 28% (2008); 25% (2009)

The standard CIT rate applicable to all business entities, including foreign-invested enterprises and foreign partners to business co-operation contracts is as follows:

- 28% from 1 January 2004 to 31 December 2008
- 25% from 1 January 2009 onwards

- *Law on Corporate Income Tax No 14/2008/QH12* dated 1 June 2008 issued by the National Assembly;
- *Decree No 124/2008/ND-CP* providing detailed guidelines on the *Law on Corporate Income Tax* dated 11 December 2008; and
- *Circular No 03/2009/TT-BTC* providing guidelines on the implementation of the Corporate Income Tax reduction and payment extension dated 13 January 2009 issued by the Ministry of Finance.

Law: *Law on Investment ("LOI") No 59/2005/QH11*; *Decree No 108/2006/ND-CP* providing guidelines for implementation of *Law on Investment*; *Decree No 24/2007/ND-CP* of the Government on Corporate Income Tax; *Circular No 134-2007-TT-BTC* providing guidelines for the implementation of *Decree No 24/2007/ND-CP* of the Government; *Law on Corporate Income Tax No 14/2008/QH12*; *Decree No 124/2008/ND-CP* providing detailed guidelines on the *Law on Corporate Income Tax*; and *Circular No 03/2009/TT-BTC* providing guidelines on the implementation of the Corporate Income Tax reduction and payment extension.

Corporate income tax incentives

6-110 General provisions

Until 31 December 2008, the standard corporate income tax ("CIT") rate was 28%. Preferential rates of 10%, 15% and 20% applied when certain conditions were satisfied. Investment incentives would be granted to newly-established firms and investment projects for expansion of scale, or firms that moved primarily to "encouraged" or "especially encouraged" sectors or geographical locations. After the expiry of the preferential rates (ie 10%, 15% or 20%), the statutory CIT rate at the given time applicable would apply for the remainder of the project licensed period.

From 1 January 2009 (hereby referred to as "post-2008"), the statutory CIT rate is 25%, and the preferential CIT rate of 15% has been abolished. Investment incentives will no longer be granted to investment projects for expansion, and the list of eligible sectors has been significantly reduced. Furthermore, industrial zones and export processing zones are not listed as regions with difficult or especially difficult socio-economic conditions, and thus, are no longer eligible for CIT incentives.

6-160 Investors that qualify for CIT incentives

CIT incentives pre-2009 applied to the following types of investors:

- Newly-established investors with investment projects in the investment-encouraged sectors and/or encouraged-geographical areas or manufacturing activities.
- Investors with expansion investment projects such as:
  - — expanding scale;

  - — raising capacity or raising business capacity;
  - — renewing technologies;
  - — raising product quality; and
  - — reducing environmental pollution in the investment-encouraged sectors or encouraged-geographical areas.

Post-2008, the CIT incentives are applicable to only newly-established entities with the following investment projects:

- in encouraged geographical areas, economic zones, or in hi-tech zones;
- technology sector;
- scientific research and technological development;
- development of special infrastructure for the State;
- software development;
- training and education sector;
- health care; and
- social activities sector involving culture, sports and/or environment.

6-210 Qualifications of tax incentives

General provisions

In order to qualify for the CIT incentives pre-2009, an investment project must have been an investment in one of the following:

- an encouraged industry and/or sector;
- a special encouraged industry and/or sector;
- a geographical region with difficult socio-economic condition; or
- a geographical region with especially difficult socio-economic condition.

However, under the new law post-2008, CIT incentives are applicable to geographical regions classified as difficult or especially difficult socio-economic conditions and certain specific sectors as mentioned in 6-160.

Encouraged sectors

The grade of tax incentives varies depending on whether the investment projects are in the encouraged sectors or the specially-encouraged sectors.

Refer to the following lists for details of the encouraged sectors:

- List A: List of sectors entitled to special investment incentives at 6-610;
- List B: List of sectors of common investment incentives at 6-660.

earned from investment project. This applies retroactively for enterprises granted with tax incentive pre-2009 rules.

The following examples illustrate the points above and how tax incentives apply to investors if they qualify for *Group BB* incentives:

Generally, where an investor has the new investment project in a special geographical area, it will be entitled to the following incentives:

- CIT rate of 10% for 15 years from the first year with revenue from incentive business activity, and 25% thereafter;
- Four year exemption from the earlier of either the first year with taxable income generated from the investment project or the fourth year after the first year revenue earned from investment project, and subsequently nine years at 50% reduction of its applicable CIT rate.

Scenario 1: Where the enterprise incurs losses during its first four years and is profitable from Year 5, the following tax rates apply.

Years 1 to 3 loss:	0%
Years 4 to 6:	0% (tax exemption period is calculated from Year 4)
Years 7 to 15:	5% (50% of 10% CIT incentive rate)
Year 16 to 17:	10% (for the remainder two years of the 15 years)
Years 18 onward:	25%

Scenario 2: Where the enterprise earns profit from Year 1, the following tax rates will apply:

Years 1 to 4:	0% (tax exemption period)
Years 5 to 13:	5% (50% of 10% CIT incentive rate)
Years 14 to 15:	10% (CIT incentive rate)
Year 16 onward:	25%

Expansion of business scale on current operation

Operating business establishments that invest in the following are eligible for CIT exemption and reduction on the marginal increase in income generated by such investments:

- construction of new production lines;
- expansion of production capacity and/or its business of scale; and
- updating its technology; and
- improvement of its technology and its environmental performance.

The duration of exemption ranges from one to four years. The 50% CIT reduction is given for two to seven years depending on whether the projects are in "encouraged" or "especially encouraged" sectors or locations.

Table 8 Summary of the exemptions and reductions of CIT which apply to business establishments investing in expansion of its business scale pre-2009

		First conditions			
		Encouraged sectors	*Special encouraged sectors*	*Encouraged geographic regions*	*Special encouraged geographic regions*
Second conditions	Encouraged sectors	Group G 1 year exemption from first profit-making year 4 years – 50% reduction Onwards – standard rate	Group H 4 years exemption from first profit-making year 9 years – 50% reduction Onwards – standard rate	Group I 3 years exemption from first profit-making year 5 years – 50% reduction Onwards – standard rate	Group J 4 years exemption from first profit-making year 7 years – 50% reduction Onwards – standard rate
	Special encouraged sectors	Group H 2 years exemption from first profit-making year 3 years – 50% reduction Onwards – standard rate	Group H 4 years exemption from first profit-making year 9 years – 50% reduction Onwards – standard rate	Group K 3 years exemption from first profit-making year 7 years – 50% reduction Onwards – standard rate	Group J 4 years exemption from first profit-making year 7 years – 50% reduction Onwards – standard rate
	Encouraged geographic regions	Group I 3 years exemption from first profit-making year 5 years – 50% reduction Onwards – standard rate	Group K 3 years exemption from first profit-making year 7 years – 50% reduction Onwards – standard rate	Group G 1 year exemption from first profit-making year 4 years – 50% reduction Onwards – standard rate	Group H 4 years exemption from first profit-making year 9 years – 50% reduction Onwards – standard rate
	Special encouraged geographic region	Group J 4 years exemption from first profit-making year 7 years – 50% reduction Onwards – standard rate	Group J 4 years exemption from first profit-making year 7 years – 50% reduction Onwards – standard rate	Group H 4 years exemption from first profit-making year 9 years – 50% reduction Onwards – standard rate	Group H 4 years exemption from first profit-making year 9 years – 50% reduction Onwards – standard rate

Tax credit method

The tax credit method shall apply to business establishments which fully implement VAS and which register to pay VAT by the tax credit method.

The formula to calculate VAT payable under the credit method is as follows:

Amount of VAT payable = output VAT less – creditable input VAT

In which:

- Output VAT is the total VAT on goods and services sold as recorded on VAT invoices; and
- Creditable input VAT is the total VAT as recorded on VAT invoices for the purchase of such goods and services and on the receipt for payment of VAT on imported goods, which satisfies the other conditions prescribed in the VAT Law.

Direct method

The direct method of tax calculation based on added value applies to the following:

- foreign contractors, such as foreign organisations and individuals, conducting business without having a resident establishment in Vietnam which have income arising in Vietnam and which have not implemented the regime on accounting, invoices and source documents; and
- gold, silver, precious stones and foreign currency trading establishments.

Determination of VAT payable:

- the amount of VAT payable is the added value of goods and services sold multiplied by the appropriate VAT rate;
- the added value is the output sale price of goods and services less the input purchase price.

Example

Company A processes gold products. In a particular month it sells 150 products, its total sales turnover being VND25 million.

The total cost of raw materials and supplies purchased externally to produce these 150 products is VND19 million, comprising:

- main materials (gold): VND14 million; and
- other materials and services purchased externally: VND5 million.

At the applicable VAT rate of 10%, the VAT payable by Company A shall be calculated as follows:

- Taxable added value: VND25 million – 19 million = VND6 million;
- VAT payable: VND6 million x 10% = VND0.6 million.

A deemed rate instead of the sales price is used to calculate the added value for VAT purposes on goods/services provided by foreign contractors using the direct method. Refer to Chapter 8 for details on taxation of foreign contractors.

Private or home businesses without proper maintenance of accounting books, invoices and vouchers must pay VAT at a deemed rate as specified by local tax authorities.

7-230 Claiming of input VAT

Input VAT can only be claimed by business establishments which register to pay VAT in accordance with the tax credit method and meet the following conditions:

- There is a legal VAT invoice for the purchase of the goods and services or a receipt for the payment of VAT at the import stage.
- There is evidence of payment via a bank for the purchased goods and services, except in the case of the purchase of goods and services with an aggregate value below VND20 million.
- In order to claim input VAT on exported goods or services, the following documents must be available:
  - (i) invoice for sale of the goods or services;
  - (ii) proof of payment via a bank transfer;
  - (iii) contract signed with the foreign party regarding the sale of the goods or provision of services; and
  - (iv) customs declaration in the case of exported goods.

The beneficial importer is responsible to pay import VAT and is, subject to general conditions, entitled to claim the refund. Where goods are imported by an agent such as a forwarder, import VAT may be paid by the forwarder but should be charged back to the beneficial importer, who can then claim the input VAT.

Business establishments which pay VAT in accordance with the tax credit method are permitted a credit of input VAT as follows:

- Input VAT levied on goods and services used in manufacture or trading of value added taxable goods and services is fully creditable.
- Input VAT levied on goods and services used in manufacturing of and business in both the value added taxable goods and services and non-taxable goods and services, only the amount of input VAT levied on the goods and services used in manufacturing of and business in taxable goods and services is creditable.
- Input VAT levied on fixed assets used in the manufacturing of and the business in both value added taxable goods and services and non-taxable goods and services is fully creditable. For vehicles with nine or fewer seats (except for those used in specific transportation cases), input VAT can be claimed only up to the vehicle value of VND1.6 billion. VAT on the value exceeding this amount cannot be claimed.
- Input VAT on goods and services sold to organisations and individuals or to international organisations as humanitarian aid or non-refundable aid are fully creditable.

- foreign business organisations, whether having a permanent establishment or not in Vietnam, and foreign business individuals, whether they are residents or non-residents of Vietnam, doing business in Vietnam or having income arising in Vietnam under the form of a contract, or agreement between such foreign sub-contractor and a foreign contractor to perform part of the work of the latter contractor's contract.

The term "Vietnamese organisation or individual" includes enterprises established under the *Law on Enterprises*, *Law on Investment* and *Law on Cooperatives*, branches of foreign companies and lawful representatives of foreign organisations located in Vietnam.

Sub-contractors are organisations or individuals providing independent professional services and signing written agreements with foreign contractors to perform part of the work under the contracts. Sub-contractors include foreign sub-contractors and Vietnamese sub-contractors. Foreign contractors and foreign sub-contractors have to pay tax in accordance with guidelines provided in *Circular 134*.

Circular 134 does not apply to:

- foreign organisations or individuals conducting business activities in Vietnam in accordance with the *Law on Investment*, the *Law on Petroleum* or the *Law on Credit Institutions of Vietnam*;
- foreign organisations or individuals supplying goods to Vietnamese organisations or individuals not associated with services provided in Vietnam, through the delivery of goods at a foreign border gate or the Vietnamese border gate; and the purchaser bears all liability, costs and risks relating to receipt and transportation of the goods from the foreign border gate to Vietnam or from the Vietnamese border gate to the in-land delivery location;
- foreign organisations and individuals having income from services performed and consumed outside of Vietnam;
- foreign organisations or individuals providing the following services for Vietnamese organisations or individuals when such services are performed overseas:
  - — repair of means of transportation and machinery and equipment;
  - — advertising and marketing services;
  - — investment and commercial promotion services;
  - — brokerage services for the sale of goods;
  - — training services; and
  - — sharing fees paid for international post or telecommunications services.

Law: *Law on Enterprises*; *Law on Investment*; *Law on Cooperatives*; and *Law on Petroleum*; *Law on Credit Institutions of Vietnam*; *Circular 134/2008/TT-BTC*.

Applicable taxes

8-110 Applicable taxes

Circular 134 provides that foreign organisations or individuals doing business or having income in Vietnam are liable to perform their obligations with respect to other taxes, charges and fees in accordance with the applicable current law. Specific guidelines under *Circular 134* are only given with respect to CIT and VAT.

Foreign contractors and foreign sub-contractors who are business individuals should perform VAT obligations in accordance with *Circular 134* and personal income tax obligations in accordance with the *Law on Personal Income Tax*.

Law: *Circular 134/2008/TT-BT*; *Law on Personal Income Tax*.

Basis of tax calculation

8-210 Methods of FCWT calculation

Under *Circular 134*, there are two tax computation and filing methods as follows:

(1) *Direct tax filing method*

This method applies if the following conditions are satisfied:

- — the foreign contractor or foreign subcontractor has a permanent establishment in Vietnam or is a resident of Vietnam;
- — the period of conducting business in Vietnam under the contract is 183 days or more from the contract's effective date; and
- — the foreign contractor or foreign subcontractor adopts VAS.

Where FCs satisfy the above conditions they will be, generally, treated similarly to a Vietnamese legal entity. Thus, they pay VAT in accordance with the tax credit method and CIT according to the declaration of turnover and expenses. For detailed information refer to Chapter 7 on Value Added Tax and Chapter 4 on Corporate Income Tax for more information.

In the case an FC has registered and paid taxes in accordance with this method, if it signs other contracts and conducts services in other locations, it must continue registering and paying VAT and CIT by this method.

Corporate income tax (CIT)

If FCs do not apply VAS, under *Circular 134*, CIT will be withheld based on deemed income calculated as a percentage of the taxable turnover.

$$\text{Amount of CIT payable} = \text{CIT taxable turnover} \times \text{CIT rate as percentage (\%) of taxable turnover}$$

The CIT taxable turnover is the total turnover without any deduction of taxes payable (if any), excluding VAT, and including all costs paid by the Vietnamese party on behalf of FCs.

Where foreign contractors or foreign sub-contractors receive turnover excluding CIT payable, the CIT-taxable turnover shall be calculated according to the formula:

$$\text{CIT taxable turnover} = \frac{\text{Turnover excluding CIT}}{1 - \text{CIT rate as percentage (\%) of taxable turnover}}$$

Deemed CIT is calculated as follows:

Table 10 Deemed CIT rates based on CIT calculated as a percentage of turnover

No	*Business type*	*CIT calculated on turnover (%)*
1	Trading: distribution and supply of goods, raw materials, supplies, machinery and equipment in Vietnam	1
2	Service, leasing of machinery and equipment, and insurance	5
3	Construction	2
4	Other production or business activities; transportation (including air-transport and sea-transport)	2
5	Lease of aircraft, aircraft engines, aircraft, spare parts and sea going vessels	2
6	Reinsurance	2
7	Transfer of securities	0.1
8	Interest	10
9	Income from royalties	10

Example

Based on the above, FCs that do not apply VAT, assuming turnover of 100 (including all taxes), will be taxed as followed:

No	*Business type*	*CIT*	*VAT (assuming 10% VAT)*	*Total*
1	Trading: distribution and supply of goods, raw materials, supplies, machinery and equipment with services in Vietnam	1	0	1
2	Services, leasing of machinery and equipment, and insurance	4.75	5	9.75
3	Construction and installation including supply of materials and/or machinery and equipment attached to construction work	1.94	3	4.94
4	Construction and installation excluding supply of materials and/or machinery and equipment attached to construction work	1.94	5	6.94

8-310 Tax calculation for some specific cases under the withholding method

A part of contract value is not subject to VAT

Where the whole or part of the contractual value is not subject to VAT (ie value of goods or services not subject to VAT under VAT law), the VAT amount will be calculated on the remaining portion (if any) and the CIT will be calculated on the whole contractual value.

Supply of machinery and equipment with associated services

For contracts for supply of machinery and equipment accompanied with installation instruction, training and trial operation services, if the value of machinery and equipment and that of services can be separated, then taxes will be calculated at separate tax rates applicable to the value of each contract component. If the value of machinery and equipment and that of services cannot be separated, then the relevant VAT rate will apply to 30% of the taxable turnover and the CIT rate of 2% (for other production and business activities) will apply to the whole contract value.

VAT on the supply of goods together with services generally under Circular 134

Where goods are supplied and the receipt and delivery point for the goods is within the territory of Vietnam or the supply of goods is accompanied by services provided in Vietnam such as installation, commissioning, warranty,

- forest products;
- fish;
- scrap metal; and
- crude oil.

Rates range from 0% to 40%.

10-360 Methods of calculation of duty

Goods subject to the application of ad valorem duty rates

On the basis of the actual imported or exported quantity of each goods item stated in the customs declaration, the dutiable value and the duty rate of the goods item concerned, the payable duty amount is determined according to the following formula:

Payable import/export duty amount	=	Actual imported/ exported quantity of units of each goods item specified in the customs declaration	X	Dutiable price of each unit of goods	X	Duty rate of the goods item concerned

Goods subject to fixed duty rate

The amount of fixed duty payable for goods subject to specific duty shall be determined according to the following formula:

Payable import/export duty amount	=	Actual imported/exported quantity of units of each goods item written in the customs declaration	X	Level of specific duty per unit of goods

Payment of import-export duty

10-410 General provision

The time limit for payment of duty for exports is 30 days from the date taxpayers register their customs declarations.

Import duty must be paid before receipt of goods except for some special cases stipulated in *Circular 59* which are as follows:

- Where the taxpayers are evaluated as having good tax compliance records or the time limit for import duty payment is 275 days from the date the taxpayers register their customs declarations for supplies or raw materials are imported for direct use in the production for exports (including also consumer goods on the list of consumer goods published by the Trade Ministry).

- For goods traded by the mode of temporary export for re-import or temporary import for re-export, the duty payment time limit is 15 days from the date of expiration of the time limit for re-import or re-export (applicable also to cases of permitted extension).
- For other cases of imports (including those on the list of consumer goods published by the Ministry of Trade but used as supplies or raw materials directly for production) other than the two cases specified above, the duty payment time limit is 30 days from the date the taxpayers register their customs declarations.

Exemption from export and import duty

10-510 Objects eligible for duty exemption

Exemptions are generally granted on goods imported for creation of fixed assets of projects eligible for investment promotion specified in List A or B in Appendix I or II to the Government's *Decree No 108/2006/ND-CP of 22 September 2006*, detailing and guiding the implementation of a number of articles of the Investment Law, or ODA-funded investment projects.

Currently, export enterprises do not pay import duties on raw materials where the products are destined for export. However, where the enterprise does not, or is not expected to, export the finished product within 275 days, the Customs Department will charge temporary import duty on the raw materials. When the enterprise actually exports the finished product, a refund will be provided in proportion to the raw materials contained in the export. However, depending on the particular type of business such as ship building, mechanical equipment and machinery production etc, the Ministry of Finance has the power to determine the timing of import duty payments. Enterprises that import materials and process them to be sold to export-producing enterprises will also be allowed to claim a refund of import tax paid on the imported material.

Law: *Decree No 108/2006/ND-CP of 22 September 2006*; *Law on Investment No 59/2005/QH11*.

10-560 Application procedures for exemptions

Application procedures for exemptions have been promulgated under the *Circular 59/2007/TT-BTC* issued by the MOF dated 14 June 2007.

The duty exemption consideration dossier includes customs dossier defined by the customs law and other papers required on a case-by-case basis.

The application materials consist of the following documents:

- an application for exemption from payment of import duty; and
- customs dossier such as:

adjustment in accordance with the most appropriate value, but not lower than the average value obtained from the benchmarking exercise.

A combination of the methods or concurrent use of two methods to support the examination of the accuracy and objectiveness of the price is allowed.

Based on the above and in line with the Vietnamese tax system, which is based on self-assessment, the burden of proof is on the business establishments to ensure related party transactions are carried out at arm's length. Otherwise, business establishments are obliged to make transfer pricing adjustments.

11-520 Using data from prior years

Business establishments may use equivalent arm's-length prices or arm's-length margins developed in previous years, in accordance with *Circular 117*. The data used should not be more than five years old.

If previous years' data is to be used, a comparable analysis should be carried out and an adjustment be made for significant differences based on the four criteria mentioned in the paragraph on "Comparative analysis" above (see 11-410). The economic values from the original transaction should be adjusted for time, ie average rate of increase in prices, rate of interest, and rate of inflation and economic growth.

Documentation requirements

11-610 Documentation requirements

Business establishments are required to keep contemporaneous documentation (information, documents and source documents) containing description of the transactions, product description, transaction terms, transfer price and other relevant documentation to support the transfer prices.

The important points in relation to keeping the data are:

- the origin of the data and source document must be kept in the event the tax office wants to carry out an examination and verification. Data and source documents from unofficial and ambiguous sources can only be used as reference and cannot be used to support the transfer price;
- the following sources can be used:
  - — information and data from government bodies and branches, institutes, associations and specialised international organisations which are recognised by the government;
  - — information and data certified or published by organisations and individuals licensed to operate in an independent professional service sector (for example, independent auditing body, registry, quality registration agency, credit rating agency);

  - — annual or periodical financial statements and reports on investments of companies listed on the securities market, which are announced publicly in accordance with the regulations and charter for the operation of the stock market;
  - — data, source documents and documents on business transactions used for the declaration and payment of tax;
- data used for comparable analysis must be for a period of at least three consecutive fiscal years. If the business establishment has existed for less than three years or carries out seasonal operations, the period for comparison can be on a monthly, quarterly or seasonal basis; and
- where applicable, the calculation of the relative figures should be rounded up to three decimal points.

In practice, foreign comparatives or benchmarking data would be acceptable if no or limited domestic comparable data are available.

Documentation must be produced upon request by the tax office for examination and inspection and must be prepared at the time the transaction is carried out and updated as and when there are changes to the transfer prices. Business establishments are currently required to produce transfer pricing documentation within 30 working days from the date of receipt of the request in writing from the tax office (under proposed draft regulations this period may be reduced). The deadline can be extended once for another 30 days or less, if valid reasons are provided.

The documentation to be provided to the tax office must be in the Vietnamese language, in writing and must be the original copies, or photocopies as stipulated in the laws on notarisation and authentication. Documentation in a foreign language must be translated into Vietnamese and the translation must be notarised or authenticated. Where notarisation is not required by law, the business establishment shall be responsible for the translation.

Electronic documents used will be subject to the *Law on Accounting* and applicable legal instruments providing guidelines on electronic documents.

Business establishments are required to prepare a declaration of related transactions in a specific form (Form GCN-01/TNDN) which is to be submitted together with the declaration for annual CIT finalisation.

The transfer pricing documentation must be kept in accordance with the regulations governing the keeping of source documents and books of account set out in the laws on accounting, statistics and taxation. Such documentation must be kept for at least ten years.

Law: *Law on Accounting*

14-060 Production sharing contracts

The Vietnamese Government vests ownership of all petroleum resources in the people of Vietnam under the exclusive control of the State. With the introduction of the *Petroleum Law* in 1993, the Government authorised the national oil company, PetroVietnam ("PV"), to enter into petroleum contracts with foreign oil companies to conduct petroleum operations, subject to the Government's approval.

Although the petroleum legislation makes provisions for the award of petroleum contracts under a number of different contractual arrangements, to date, petroleum contracts have taken the form of production sharing contracts ("PSC").

Negotiable terms under a PSC

The Vietnamese Government generally issues the model petroleum contract, including the PSCs.

Most of the terms stated in a PSC are generally non-negotiable, but the parties may negotiate on the terms and conditions below for the current model PSCs:

- term of the contract;
- minimum work commitment;
- allocation for cost recovery oil;
- allocation for profit oil;
- allocation for cost recovery gas;
- allocation for profit gas;
- bonus and data fee;
- training cost;
- participation of PV and assignment; and
- operator.

PetroVietnam usually specifies the PSC royalty rate and corporate income tax ("CIT") rate but the profit oil rate is usually open for negotiation. The royalties and CIT rates are specified in the bidding documents relating to an offshore petroleum block.

At the time of negotiating with PV, it may be appropriate to seek to have specified in a PSC precisely what rates of Vietnamese taxes, across the range of such taxes, will apply.

Statutory requirements of petroleum contractors

A petroleum contractor is the party with whom the Government negotiates. The PSC specifies the obligations of the contractor. The contractor is responsible for fulfilling these obligations notwithstanding that other parties may have "farm-in" the petroleum block specified in such PSC. Usually, the contractor

named in the PSC is strictly responsible for all of the Vietnamese taxation obligations under a PSC.

Legal entity establishment

Offshore petroleum companies operating in Vietnam under a PSC are not required to establish a Vietnamese incorporated legal entity. Instead, the Government issues an Investment Certificate to the PSC's parties, which certifies their legal presence. A joint-operating company, however, can be established under the *Petroleum Law*, if a local legal entity is preferred.

Role of operator in the PSC

Generally, the parties to a PSC appoint an operator to carry out the PSC's obligations on behalf of the parties to the PSC. The scope of authorisation under which the operator will act on behalf of the contract parties is subject to negotiation and agreement under the PSC.

The parties to a PSC are required to pay Vietnamese taxes under the current Vietnamese tax regulations as well as the provisions of the PSC. Subject to the provisions of the PSC, the operator may undertake the tax filing and payment obligations on behalf of the parties.

Financial reporting system

Under a non-negotiable provision of the model PSC, the operator must maintain accounting records in accordance with both the Vietnamese Accounting System and international accounting standards. An operator can maintain its financial records in foreign currency.

The financial statements and other accounting reports prepared by the operator must be audited by independent auditors approved by the management committee of the PSC, in which PV will be represented.

Interaction between a PSC and the Vietnamese petroleum taxation legislation

All of the key taxation obligations are governed by the Vietnamese *Law on Petroleum*, a guiding Decree and Circular on Petroleum Taxation. These obligations include:

- natural resource tax, which is also referred to as royalty oil/gas;
- corporate income tax; and
- import and export duties relating to petroleum operations.

However, the general provisions of Vietnamese tax laws also have a reference to petroleum operations.

The tax provision terms contained in a PSC may refer to both the current *Law on Petroleum* and other relevant tax regulations.

Inconsistencies exist between the general tax law, the Circular and obligations under a PSC. The widely held view is that the general taxation law, to the extent that is appropriate, will override the petroleum taxation legislation.

Payment

Royalty is payable in money or in kind, or both, at the option of the Vietnamese Government based on actual volume of crude oil/gas production after commercial production has commenced but is not payable until sold if a royalty is payable in the form of money. If the royalty is in kind, the Vietnamese Government will notify the contractor six months in advance; which then absolves a contractor from a monetary obligation.

Royalty is due provisionally on a monthly basis, with the reconciliation to actual on a quarterly basis.

14-210 Cost recovery

Eligible cost recovery expenditure is a defined term under each PSC and generally includes all of the costs of:

- undertaking exploration;
- feasibility evaluation;
- development expenditures; and
- production and abandonment costs.

Usually, no time limitation exists on the recovery of the eligible recoverable costs.

All eligible recoverable costs form part of a pool of costs that are carried forward until commercial production of oil or gas commences. Those costs are then deducted from that commercial production of oil or gas as remains after commitments to pay royalty oil and gas have been met. The deductible amount, in any year, is usually capped. If a PSC does not specify a cap, then the maximum offset is 35% of that commercial production as remains after royalty oil. If specified in a PSC, a common rate is a cap of 50% of the commercial production for a tax year that remains after royalty but a cap of 70% for petroleum encouraged projects (mainly, deep water projects) can apply.

The amount of eligible cost recovery expenditures as remains after recovering all such costs are carried forward for recovery against subsequent commercial production as remains after royalty oil and gas which are, again, subject to the applicable annual cap.

Vietnam applies "ring fencing" to each PSC. Thus, eligible cost recovery expenditures not recovered under a PSC cannot be recovered under any other PSC entered into by the same parties. Thus, each PSC is separately taxed so that any losses including failed exploration on one PSC cannot be offset against another PSC.

For Vietnamese tax purposes, there is no distinction between eligible cost recovery expenditures that, for accounting purposes, create long or short life assets.

14-260 Profit oil and gas

Net quarterly commercial production after the payment of royalty oil and gas and the recovery of eligible recoverable costs is generally shared between the Government (generally represented by PV) and the contractors in accordance with a sliding scale specified in a PSC.

Profit oil/gas is calculated on a preliminary basis at the time of lifting, using the estimated quantity of production available for that quarter and adjusted on an annual basis after the end of each quarter.

14-310 Petroleum corporate income tax (CIT)

The bases of calculating Petroleum CIT are net taxable profit and tax rates.

Net taxable profit

Net taxable profit is based on the market price obtained from the sale of net oil and production, less deductible expenses fully supported with legitimate vouchers and invoices, but only up to the cap of recoverable costs specified under the PSC or 35% of taxable revenue.

The below are specifically listed as CIT non-deductible expenses:

- over-capped recoverable expenses;
- non-recoverable expenses; and
- non-deductible expenses under the CIT general provisions

This new rules applicable from 1 January 2009 give rise to uncertainty over the deductibility of some of the items that the Vietnamese PSCs usually require foreign parties to pay without being included in recoverable costs such as petroleum bonuses or training expenses or charitable donations.

As mentioned, Vietnam applies "ring fencing" to each PSC. Thus, losses incurred under one PSC are not available to be utilised by any other PSC's against taxable profits.

CIT rates

The *2009 Law on Corporate Income Tax* provides that CIT rates applicable to a PSC may range from 32% to 50% and no CIT incentives will apply for income from oil and gas production.

CIT rates for carbon emission reduction projects

A carbon emission reduction ("CER") project that utilises advanced and environmentally-friendly technology for gas production may qualify for CIT incentive tax rates being:

- four years of CIT exemption;
- nine years of a 5% CIT rate; and
- two years of a 10% CIT rate.

- must not have committed a serious breach of the law on insurance business or of other laws of the foreign country for a period of three consecutive years up to the year of lodging the application for the insurance license in Vietnam.

Conditions for a foreign insurance broking enterprise establishing a 100% foreign-owned insurance broking company or joint-venture insurance broking company

The foreign insurance company must fulfil the following conditions in order to have an investment in a Vietnamese insurance broking company:

- have a business licence issued by the competent body of the foreign country to conduct insurance broking business;
- have been legally operating for at least 10 years in the foreign country as at the date of lodging the application for the insurance license in Vietnam;
- have business profits for a period of three consecutive years up to the year of lodging the application for the insurance licence in Vietnam;
- have not committed a serious breach of the law on insurance business or of other laws of the foreign country for a period of three consecutive years up to the year of lodging the application for the insurance licence in Vietnam.

Permitted activities of insurance companies

The areas of operation of insurers comprise the following activities:

- insurance business and reinsurance business;
- underwriting insurance and underwriting reinsurance;
- risk management, prevention and limitation of loss;
- loss assessment;
- loss assessment agency, agency for consideration and resolution of indemnity, and agency for third party recovery claims;
- management of funds and investments; and
- other operations in accordance with law.

Insurers are not permitted to conduct simultaneously life and non-life insurance business, unless a life insurer conducts personal accident and health care insurance as a supplement to life insurance.

Legal capital

The Vietnamese government stipulates that the companies operating in the insurance sector are required to satisfy the minimum condition on the level of legal capital as follows:

- Insurance companies:
  - — Non-life insurance business: VND300,000,000,000; and

  - — Life insurance business: VND600,000,000,000.
- Insurance broking companies: VND4,000,000,000.

Besides the level of legal capital, during the course of their operations, the members of the insurer or insurance broker are required to contribute additional capital based on:

- the extent of its insurance business; or
- if the number of branches exceed 20.

The quantum of additional capital is determined by the Vietnamese licensing authorities. This additional capital is treated as charter capital and recorded in the charter capital account of the insurance company. Charter capital cannot be less than the legal capital level stipulated by law.

Investment of capital

As required by law, investments made by insurance companies must be safe and effective. The insurance companies must ensure that their investments provide frequent payouts so that they are able to meet their obligations under the insurance policies. Hence, the regulations provide guidelines as to the type of investments permitted to be made by insurance companies.

Insurance companies are only permitted to invest their idle capital in:

- buying government bonds;
- buying enterprises' stocks and bonds;
- trading real property;
- making capital contributions to other enterprises;
- extending loans in accordance with the provisions of the *Law on Credit Institutions*; and
- depositing money with credit institutions.

Law: *Law on Enterprise*; *Law on Insurance Business*, Art 63; *Law on Credit Institutions*.

15-160 Licences for the establishment of an insurance company

Under Art 63, the conditions that must be met for the issuance of a licence for the establishment and operation of an insurance company include:

- the amount of paid-up charter capital is not less than the level of legal capital required by the regulations of the Government;
- there is an application requesting issuance of a licence for establishment and operation as regulated by law;
- the form of the enterprise and its charter comply with the provisions of this Law and the provisions of other relevant laws;
- the management personnel have managerial skills and have expertise and professional qualifications in insurance.

- For an insurance contract whereby the premium is received by instalments, turnover shall be the actual amount of instalment received during the taxable period.
- Revenue from financial activities shall consist of revenue from trading securities, interest received on the amount of the security deposit, revenue earned from leasing out assets.
- Revenue from other activities includes the sale or liquidation of fixed assets, bad debts which had been written off, but are recovered, etc.

The deductible expenditure relating to the generation of taxable income includes some of the following key items:

- compensation payments in accordance with the insurance contract after deducting amounts receivable reducing expenditure such as compensation third party recoveries, recoveries from reinsurers;
- expense for ceding reinsurance;
- expense for insurance reserves in accordance with relevant regulations;
- expenses for commission not exceeding 15% of the premium received;
- expense of loss assessment upon occurrence of insured event for which the insurer must pay compensation to the beneficiary;
- expenses for agency fees for provision of services for loss assessment, evaluation of compensation or making claims on third parties;
- expenses for salvage recovery in total loss cases;
- expenses relating to the management of insurance agents, ie training, recruiting, bonuses and rewards to agents and other payments as agreed in contracts with the insurance agents;
- expenses for prevention and limitation of losses, but not exceeding 2% of the premiums actually received in a fiscal year;
- expenses for risk assessment, including expenses for tasks of gathering information, surveying and assessing items to be insured; and
- other expenses and allocations as stipulated by law.

Expenses should be reduced by recoveries arising from the operations of the business including compensation from re-insurers, compensation from third parties and proceeds from salvage recoveries.

In addition to the above the following financing expenses are deductible from taxable income:

- expenses incurred for investment activities;
- investment income payable to life insurance policy holders in accordance with commitments in the insurance policies;
- cost of leasing out assets;
- bank charges and interest on loans;

- other expenses of investment operations as stipulated by law;
- other deductible expenses;
- expenses from the sale or liquidation of assets; and
- expenses for the recovery of debts.

All expenses and income of an insurance company must also comply with the requirements of other relevant laws.

Non-tax deductible expenses include those stipulated in the CIT law, unreasonable expense and expenses incurred without supporting documents.

Refer to Chapter 4 on CIT law for further information.

15-810 Tax rate

The standard tax rate applicable for insurance enterprises is the standard CIT rate, ie 25% from 1 January 2009. However, any business enterprise which is entitled to tax incentives due to meeting specific conditions should take into consideration its tax incentives to determine the appropriate tax rate.

15-860 Tax incentives

It should be noted that under current regulations, there is no specific investment incentive for the insurance industry. A tax exemption and reduction may be considered for business establishment operating in some specific regions.

15-910 Declaration and payment

The declaration and payment of tax should be made in accordance with the *Law of Tax Management* (see Chapter 18).

Law: *Law of Tax Management*

15-960 Value added tax

The following insurance products and services for the purpose of production, trading and consumption in Vietnam set out below are subject to VAT:

- non-life insurance;
- insurance related services; ie survey agency, evaluation of compensation, making claims on third parties; and
- insurance brokerage service.

The value used for calculation of VAT on insurance premium is the amount of the premium including, surcharges and additional fees, excluding fees due to the State Budget. The applicable VAT rate is 10%.

For insurance related services, if these services are provided to enterprises in export processing zones, the applicable VAT rate is 0%.

Circular 100/2004/TT/BTC is a guiding regulation issued under laws that have now been repealed although *Circular 100* itself has not specifically been repealed. Taxable turnover and reasonable expenses for a securities company must overall be consistent with the current regulations on CIT.

Law: *Circular 100-2004-TT-BTC. Circular 130-2008-TT-BTC.*

16-210 Tax rates, exemptions and incentives

The applicable CIT rate for a securities company or a fund management company is 25% commencing from 1 January 2009.

In the past, to encourage the growth of Vietnam's securities sector, incentives had been granted to securities and fund management companies. The incentive package granted at the time included a tax rate of 20% for 10 years; further, such companies would enjoy two years of exemption and three years of a 50% tax rate reduction of the CIT rate in force. However, these incentives were abolished from 22 September 2006.

A securities company established prior to the abolishment of the incentives, and granted such incentives, is permitted to continue to enjoy its incentives and tax holiday for the remaining time of its investment licence. Once the incentives lapse, the company must apply the CIT rate that is applicable at that time.

16-260 Organisations investing in securities

Business organisations that are registered in Vietnam and conduct independent economic accounting

Securities investment by business entities is considered as a financial activity, and thus, any income from this type of activity is taxable under normal CIT regulations.

Specifically, the taxable income from securities investment is determined based on the transfer price of securities less the sum of the cost base plus other expenses directly related to the sale of securities. Any operating losses that be used to offset against taxable income from securities. From 1 January 2009, taxable income from securities investment may not enjoy any tax incentives that the business entity enjoyed previously.

Certain government bonds are treated as tax-free bonds according to current regulations, and interest income from such bonds is not subject to CIT. However, a list of bonds entitled to tax exemption for interest income is currently unavailable. In practice, upon the issuance of government bonds, the Government will generally issue an attached decision which provides details of the tax exemption or tax incentives for the holders of these bonds.

Law: *Law on Foreign Investment.*

Other organisations

Under *Circular 100* "Other organisations" refer to foreign investment funds and foreign organisations, established under foreign laws, without a legal person status in Vietnam, opening and maintaining a securities investment account in Vietnam and organisations established under Vietnamese law (except for companies, organisations mentioned in 16-160 under the heading "*Securities companies and fund management companies*" and investing organisations that are registered in Vietnam and conduct independent economic accounting

Under *Circular 100* such organisations pay tax at a presumptive CIT rate of 0.1% on the total value of securities sold at the time of transfer of securities, or on the total value of bonds (including bond par value and receivable interests) at the time of receipt of interest.

On the basis that *Circular 134* is issued under the current *Law on Corporate Income Tax Circular 134* rather than *Circular 100* now governs the taxation of the transfer of securities by foreign organisations not operating under the *Law on Investment* having income from the transfer of securities. Under *Circular 134* the transfer of securities by such organisations is subject to CIT at 0.1% of turnover.

Dividend income derived by non-resident enterprises is not subject to Vietnam tax. *Circular 100* as amended by *Circular 72* provides that bond interest income (except from tax-free bonds) derived by such "other organisations" is taxed at a deemed 0.1% of the face value of the bond plus interest at the time of receipt of the interest. The continued application of *Circular 100* in this regard remains to be clarified.

Securities investment funds

A securities investment fund is a fund established from the capital of many investors in order to derive profits through securities investment. Securities investment funds are not independent legal entities and are not themselves liable to CIT. However, under *Circular 100* CIT of 20% is required to be withheld from distributions to fund investors other than distributions of after-tax profit or dividends received by the fund from investments in stocks and investment funds. A domestic organisation may notify the fund manager that it does not wish the tax to be withheld in which case the income will be included in its annual CIT return.

Law: *Circular 134/2008/TT-BTC.*

- non-metallic minerals, including minerals used as common construction materials; exploited soil used for the purpose of levelling and construction or used as raw materials and for other purposes; mineral water and natural thermal water as provided for in the Mineral Law;
- petroleum and crude oil as provided for in the *Petroleum Law*;
- gas, meaning natural gas, as provided for in the *Petroleum Law*;
- natural forest products, meaning flora and fauna of all kinds and other kinds of natural forest products;
- natural marine products, meaning natural flora and fauna of all kinds in sea, rivers, canals, lakes, and so forth;
- natural water, including surface water and underground water, except for mineral water and natural thermal water; and
- other natural resources.

17-110 Calculation basis and royalty rates

The basis for calculation of royalties is the quantity of commercial resources actually exploited times the taxable value and the royalty rate.

The amount of royalties to be paid in a tax period is, under the declaration method, determined as:

Royalties to be paid in tax period	=	Quantity of commercial resource actually mined	x	Taxable value of each unit of resource, if any	x	Rate	–	Exempt/reduced amounts of royalties, if any

Where the taxable value of each unit cannot be reliably determined, which is usually the case where individuals or household taxpayers have not kept full accounting records, then the royalties to be paid in a tax period is, under the *presumption method*, determined as:

Royalties to be paid in tax period	=	Quantity of commercial resources mined in a period	x	An amount fixed by the tax office on each unit of resource

In which:

- the quantity of commercial resources actually exploited is the amount, weight or volume of commercial resources actually exploited in the tax period.
- the taxable value is:
  - the selling price of each unit of production of resource at the place of exploitation; or
  - when sale price is not available, taxable value is:
    (i) selling price of other type of resources having equivalent value;

(ii) selling price of pure products and the content of substances/each compound in the resource exploited; or

(iii) selling price of goods made from the exploited resource less (–) expenses up to the stage of selection and processing of such goods.

Current royalty rates range from 0% to 40% depending on the natural resources being exploited.

Registration, Declaration and Payment

17-160 Registration

A natural resource exploiter must obtain a tax code for the purpose of declaration and payment of any taxes, including royalties.

17-210 Declaration and payment

For taxpayers using declaration method

Royalty returns must be submitted and payments must be made to the local tax authorities at the location where the natural resources are exploited.

Declaration and payment is on a monthly basis and must be made no later than the 20th day of the following month.

Annual finalisation is required and must be made no later than 90 days after date of taxable year end.

For taxpayers using presumption method

The tax declaration documentation must be submitted and the tax paid to local tax authorities where the natural resource trading or extraction activities are conducted.

Tax declaration is made on an annual basis. The deadline for submission of tax declaration documentation for a year is 30 December of the preceding year.

For those newly engaged in business activities, including natural resource and mineral exploitation, the time limit for submission of the tax declaration documentation, under the presumption method, is 10 days from the date of commencement of business or natural resource or mineral exploitation activities.

The tax authorities may issue tax payment notices on a seasonal basis. Those authorities will determine the tax payment deadline in tax notices and send those notices to those taxpayers paying presumptive tax, at least, 10 days before the tax payment deadline.