

Rödl & Partner

MANAGING CHANGE

FORMS OF DOING BUSINESS IN
VIETNAM – CORPORATE AND TAX LAW



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1. Introduction

Over the past decade, Vietnam has grown impressively and emerged as a promising destination for many regional and international investors thanks to its strong annual economic growth (with a stable rate of around 6 to 7 per cent) and underlying factors that contribute to such progress, namely stable political system, young and dynamic workforce, low wage economy and growing middle class. Since its accession to the World Trade Organisation (WTO) in 2006, the borders of this Southeast Asian coastal country have continuously been further opened to foreign investors in many sectors. Simultaneously, the government has issued various policies easing business conditions and relaxing administrative burdens. Hence, Vietnam has progressively integrated itself into the international trade community with an increasing number of free trade agreements, creating attractive conditions for business ventures in Vietnam.

Nevertheless, several sectors are still subject to restrictions, for example financial services, logistics, telecommunications and utilities. Especially acquiring equity interests in an existing domestic or state-owned enterprise requires a close look at the restricted industrial sector.

For foreign investors looking to expand its presence to Vietnam, this booklet intends to provide an overview of forms of doing business in the country, either by establishing a new company (as a sole owner or together with a Vietnamese partner) as well as buying in an existing company. It is prepared based on the Law on Investment No. 61/2020/QH14 (LOI) and the Law on Enterprises No. 59/2020/QH14 (LOE), both of which will be effective on 1 January 2021.

This booklet is not a comprehensive guide of Vietnam's legal and tax system, but only to assist foreign investors in their Vietnam-related business and focus on areas where, in our experience, questions frequently arise. This booklet is meant to give you a first overview; it can never substitute individual counsel.

2. Forms of foreign investment in Vietnam

The LOI provides several forms of investments for foreign investors. The choice of investment vehicle depends on criteria such as the number of investors, the type of industry (related to ownership restrictions in single sectors), the size of the project and licensing and tax requirements and their implications. One of the most important investment decisions to be made beforehand is whether a local partner should be involved.

2.1. ESTABLISHING A NEW ENTERPRISE

Foreign investors may set up a 100% foreign owned enterprise (FOE) or a joint venture (JV) with Vietnamese partner(s).

A 100% FOE is the most common investment vehicle for foreign investors in Vietnam in relatively small projects with no involvement of Vietnamese partner(s). It usually takes a corporate form of a Limited Liability Company (LLC) or in some cases a Joint Stock Company (JSC). Foreign investors are in principle not subject to minimum investment capital restrictions.

2.2. ACQUIRING AN EXISTING ENTERPRISE

Foreign investors may also choose to invest in Vietnam by acquiring all or part of an existing enterprise. Regulatory approvals will be required if foreign investors acquire 50% or more of shares or equity in a Vietnamese company or acquire shares or equity in a business sector subject to conditions applicable to foreign investors.

2.3. BUSINESS COOPERATION CONTRACT

A business cooperation contract (BCC) is an agreement between one or more foreigners and one or more Vietnamese parties to cooperate and share the profits in a business field without establishing a company. The Vietnamese legal framework allows parties to decide freely on the subject, content, interests, obligations and responsibilities of and relations among the parties and to specify these in the contract.

To coordinate the daily operation of a BCC, a coordination board can be set up if necessary. However, for tax purposes, the business cooperation is treated as an entity on its own.

2.4. PUBLIC AND PRIVATE PARTNERSHIP CONTRACTS

Foreign investors can invest in public sector projects under public private partnership (PPP) arrangements. A new and long-awaited PPP Law which establishes an umbrella legal framework for all PPP projects will take effect from 1 January 2021 and will replace the previously issued PPP regulations under Decree No. 63/2018/ND-CP dated 4 May 2018. Depending on the terms of the contract and the specific PPP model, the investor is regularly entitled to receive income from the investment for a certain period of time.

The most important PPP forms are:

- BOT (Build-Operate-Transfer): The investor is fully in charge of construction and management of a project for a specific duration, after which the project is to be transferred to the State without any compensation.
- BTO (Build-Transfer-Operate): The title has to be transferred to the State immediately upon completion of construction. However, the State will allow the investor to operate the project over the period of time agreed by both parties in the contract so that the investor can recover capital and reasonable profits.

3. Forms of enterprises

Foreign investors are entitled to select one of the following enterprise forms or legal presences for their establishments in Vietnam:

- Limited liability company
- Joint-stock company
- Partnership company
- Branch office
- Representative office

The first three forms are legally independent companies and the main corporate forms for foreign business. Branch and representative office are legally but not independent organisations and assigned to the parent company.

3.1. LIMITED LIABILITY COMPANY

A LLC can be established by a single member or investor (SLLC) or several members or investors (MLLC) no matter if Vietnamese or foreign, individual or institutional.

A LLC cannot issue shares, but it can issue bonds to raise capital. The company is liable for all debts and other obligations within the amount of the charter capital. Generally, the members of a LLC are not legally liable. The investor(s) may incur liability in excess of their capital contribution for debts and other property obligations of the company in the following cases:

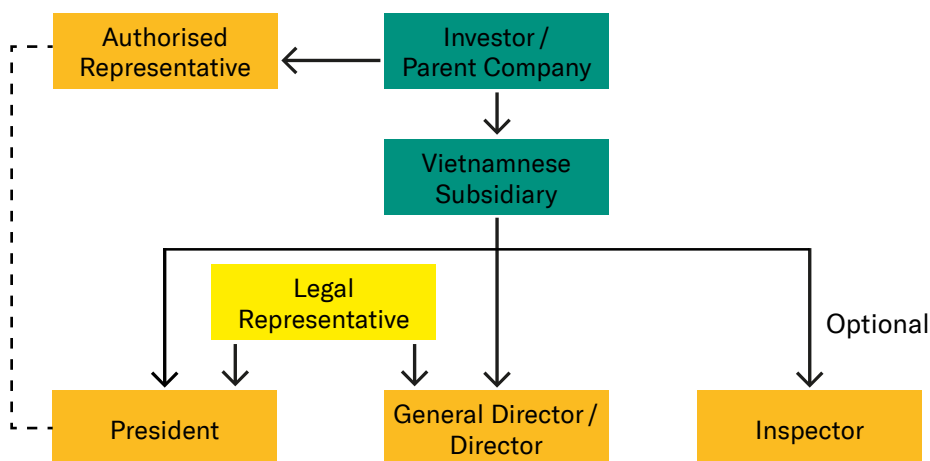
- In a SLLC: Withdrawal of all or part of its contributed charter capital from the company in another form not being assignment of all or part of its contributed charter capital to other organisation(s) or individual(s)
- In a SLLC: the investor's failure to contribute, failure to contribute in full, or failure to contribute in time to the charter capital;

- In a MLLC: The investors perform the following acts in the name of the company: violating the laws; conducting business or other transactions not in the interest of the company and causing damage to other persons; and paying off undue debts when there is a financial danger facing the company
- In a LLC: the investor(s) enter into transactions with the Company without complying with approval procedures for related party transactions under the LoE.
- In a LLC: Where the parent company interferes beyond the authority of the owner or the member and compels a subsidiary company to conduct business operations inconsistently with normal business practices or conduct unprofitable activities without reasonable compensation in a relevant fiscal year, causing damage to the subsidiary company,

3.1.1. Personnel structure in a SLLC

A SLLC can have one or multiple authorised representatives:

One authorised representative model



AUTHORISED REPRESENTATIVE:

Representing the investor in the Vietnamese subsidiary.

LEGAL REPRESENTATIVE:

The legal representative represents the company and signs on behalf of the company. At least one legal representative to be appointed who must also simultaneously hold the position of President or General Director / Director; and at least one representative must maintain residence in Vietnam.

The company charter should especially determine the number of legal representatives and their rights and obligations.

PRESIDENT (ONE-PERSON-BOARD):

The President is appointed by the owner of the mother company.

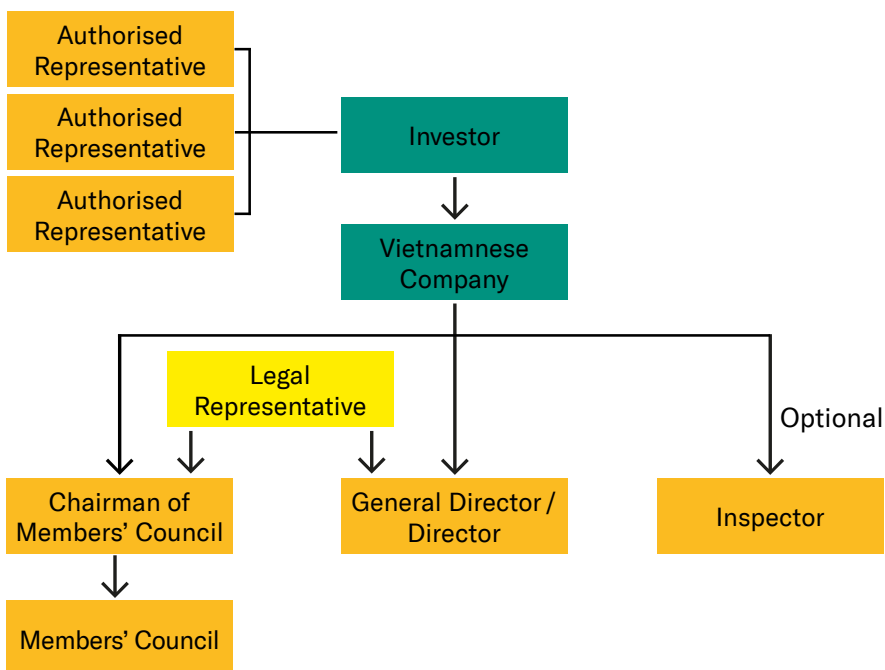
GENERAL DIRECTOR:

The General Director or Director takes care of the daily business but can be limited in his/her authorisation. In principle, the General Director has executive powers similar to that of a chief executive officer in other jurisdictions. The President of the company can simultaneously act as General Director.

INSPECTION COMMITTEE / INSPECTOR:

The inspection committee (supervisory board)/inspector is not a statutory governance body in SLLC, except for State-owned enterprises under the LOE.

Multiple authorised representatives model



AUTHORISED REPRESENTATIVE:

Representing the investor in the Vietnamese subsidiary; 3-7 authorised representatives.

LEGAL REPRESENTATIVE:

The legal representative represents the company and signs on behalf of the company. At least one legal representative to be appointed who must also simultaneously hold the position of Chairman of Members' Council or General Director/Director; and at least one representative must maintain residence in Vietnam.

The company charter should especially determine the number of legal representatives and their rights and obligations.

MEMBERS' COUNCIL:

If the investor decides to appoint multiple authorised representatives, the Members' Council should be formed. The members are appointed and discharged by the owner of the parent company. The Members' Council consists of 3 to 7 members with a term of office of maximum five years. It is the highest authority in the Company.

CHAIRMAN OF MEMBERS' COUNCIL:

Appointed by the owner of the company or elected by the members of the Members' Council by simple majority. The Chairman of Members' Council may concurrently act as a General Director of the company.

GENERAL DIRECTOR:

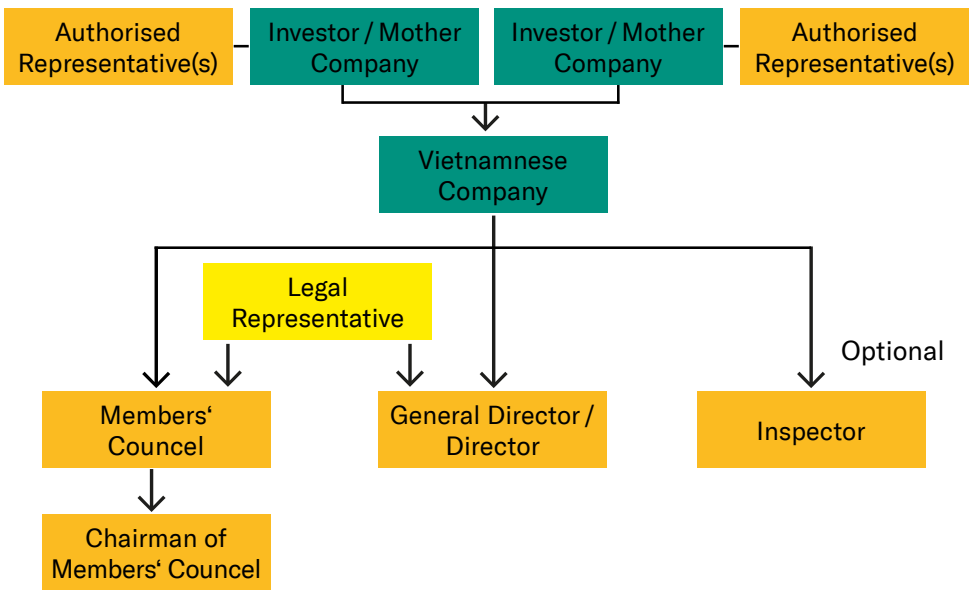
The General Director takes care of the daily business but can be limited in his/her authorisation. The General Director can simultaneously act as the Chairman of the Member's Council or a member of the Members' Council. The Members' Council appoints a General Director for a time of maximum five years.

INSPECTION COMMITTEE:

The inspection committee (supervisory board) / inspector is not a statutory governance body in SLLC, except for State-owned enterprises under the LOE.

3.1.2. Personnel structure in a MLLC

A MLLC must have at least 2 members or investors and may not have more than 50 members or investors. The main difference to an SLLC is that an MLLC must always have a Members' Council.



A MLLC must have a Members' Council, a Chairman of the Members Council and a General Director. The exact assignment of the position of the legal representative shall be specified in the charter of the company. The inspection committee (supervisory board) is not a statutory governance body in MLLC, except for State-owned enterprises and subsidiary companies of State-owned enterprises under the LOE.

3.2. JOINT STOCK COMPANY

A JSC is a company in which the charter capital is divided into shares. The company is formed by subscription of the shares. The JSC is the only form of company under Vietnamese law that can issue shares. The reason for choosing the legal form of a JSC is often the possibility of raising additional capital at a later date by selling shares. With regard to the organisational structure, a JSC generally has the following bodies: General Meeting of Shareholders, Board of Directors, Supervisory Board and General Director. The chairperson of the Board of Directors may simultaneously be the General Director in a JSC. The Supervisory Board has 3 to 5 members. In case a JSC has fewer than 11 shareholders and the institutional shareholders own less than 50% of the total number of shares of the company, a Supervisory Board is not mandatory. Compulsory is an annual meeting of the Shareholders within four months of the end of the financial year.

A JSC is a legal entity established by at least three investors, with no maximum requirement, regardless individual or institutional, local or foreign. A JSC protects their shareholders from liabilities incurred by the JSC. Shareholders are not liable with personal assets for the debts of the JSC, except for the cases as mentioned regarding the LLC.

3.3. PARTNERSHIPS

A partnership is required to have at least two general members (only individuals). The general partners are unlimitedly liable with their private assets for debts incurred by the partnership. In addition to the general partners, the partner company may have members who only pay money into the capital. Their liability is limited to the extent of the amount of capital they have contributed.

3.4. BRANCH

Another possible form of organisation is establishing branches. However, a branch is not an independent legal entity. The operating license of the branch expires after five years, but is extendable. Unlike a representative office (see Section 3.5 below), a branch may make profits. A prerequisite for the establishment of a branch is that the parent company has been operating in its home country for at least five years. Branch is an interesting organisational form but may only be established in a limited number of sectors, such as insurance, education, banking and legal services.

3.5. REPRESENTATIVE OFFICE

A Representative Office (RO) is quite often the entry vehicle for establishing a presence in Vietnam. The rights of a RO are very limited. ROs are permitted to engage only in certain activities, without the aim to generate revenue. RO is only representing the parent company in Vietnam. Liabilities of the RO have to be borne by the foreign parent company. As a RO is prohibited from generating taxable income, it is not subject to corporate income taxation.

Despite these limitations, a RO may play an important role in facilitating operations and business objectives on behalf of the foreign parent company. The most relevant benefit of a RO is to manage contractual relations between the mother company and the partner in Vietnam as well as providing a certain level of control and act as a liaison office. Furthermore, a RO may undertake

market research and promote tasks for the parent company. A RO may not engage in any direct activities to earn profits.

RO is the easiest way of establishing a presence in Vietnam. Generally, the only relevant tax scheme is the personal income tax of employees working in the RO. There is no obligation for the chief representative to reside permanently in Vietnam.

The approval for establishment of a RO of a foreign company is granted in the form of a license issued by the provincial Department of Industry and Trade. Procedures for setting up a RO are quite simple and it normally takes 2 to 4 weeks to obtain a RO license from the date of submission of a complete application dossier

4. Setting up a business in Vietnam

4.1. APPROVAL PROCESS FOR ESTABLISHING A NEW ENTERPRISE

The LOI and the LOE have indeed made it easier for foreign and Vietnamese investors to invest. The LOI allows any business investment that is not explicitly prohibited or restricted. Prohibited businesses are for instance trading in chemicals and minerals specified in LOI or activities related to human cloning.

When establishing a new enterprise, foreign investors must prepare an investment project and apply for both an Investment Registration Certificate (IRC), and an Enterprise Registration Certificate (ERC). In some specific cases, the investors also need to carry out certain procedures in advance in connection with in-principle approval process from the National Assembly, the Prime Minister or the provincial People's Committee and / or selection of investors. The Department of Planning and Investment (DPI) or Management boards of industrial parks, export-processing zones, hi-tech zones and economic zones is in principle the relevant authority to grant the licenses. The duration for the process is 15 working days for the IRC and 5 working days for the ERC. In practice, however, there are major regional differences regarding the processing time of registrations by the various provincial DPIs.

4.1.1. Investment registration certificate

Only foreign investors need an IRC. However, an IRC is not necessary, if the foreign investor invests via an existing company in which the foreign ownership is below legally defined thresholds (of below 50% of shares or equity in a Vietnamese company).

The registration procedure to obtain the IRC depends on the size and type of project. In a first step, foreign investors must obtain an IRC from the licensing authorities, which may be either:

- The provincial DPI (for projects located outside of industrial zones, export processing zones, high-tech zones and economic zones); or
- The provincial industrial zone management authority or economic zone management authority (for projects located inside industrial zones, export-processing zones, high-tech zones and economic zones); or

This process should take about 15 working days as from the date of obtaining necessary approval (for the investment project subject to the in-principle approval process and selection of the investor) or 05 working days as from the date of submission of valid IRC dossier (for the project not subject to the in-principle approval process and selection of the investor) by law but it might take longer depending on the complexity of the project. However, in cases where the deadline is not met, the authorities usually argue that the application is not complete.

The necessary application documents include in particular:

- Details of the planned investment project.
- Describing the land use permits and lease agreements required.
- Financial statements of the investor of the last two years.

4.1.2. Enterprise registration certificate

In a second step, foreign investors must conduct procedures with the licensing authorities to obtain an ERC.

The necessary application documents include, besides the application itself, the charter of the company and the list of authorised representatives and legal representatives. Documents issued outside of Vietnam (such as the business registration certificate or the articles of association or the audited financial statements of the parent company) have to be legalised. Legalisation is a procedure to certify the authenticity of foreign documents. In practice, most applicants make a copy of the original, have a notary in their home jurisdiction certify that the copy corresponds to the original, have a competent body certify that the notary acted within his or her powers and finally obtain a statement from a Vietnamese mission to their home country that the procedure was followed correctly. All documents in a foreign language must be translated into Vietnamese; the translation must be certified correctly by a Vietnamese notary. Sometimes, Vietnamese translation is completed by the Vietnamese diplomatic mission that has legalised the document.

Under the regulations, the licensing process for setting up a new business may take around 15 to 18 working days. In practice, it usually takes longer.

4.1.3. Investment capital

When applying for an IRC, the applicant must specify what is known as investment capital, which comprises the following items:

Charter capital	The amount actually contributed or will be contributed by the owner of a company (the subsidiary's registered equity).
Loan capital	Loans granted to the subsidiary by its parent company, group companies or third parties.
Legal capital	Minimum amount of capital required by law for the establishment of an enterprise engaging in certain conditional business; Fixed at a specific number;

In common practice, nevertheless, the authorities will review the viability of an investment project under the angle whether, in their opinion the subsidiary has sufficient funds. Problematic is the determination of how much money is needed to be "sufficient". There are no official guidelines. Generally the higher the investment capital, in particular regarding the charter capital, the easier it is to obtain the ERC.

Within 90 days after the issuance of the ERC, capital has to be contributed. Failing to do so will lead to a reduction of the capital and liquidation of the company if reduction leads to capitalisation of zero.

The charter capital is considered as working capital. The legal capital (required for only a few business scopes, see above) is not working capital and shall remain deposited in the capital account at all times.

4.2. POST-LICENSING PROCEDURES

Once the IRC and ERC have been issued, the following additional steps have to be taken to complete the procedure and start business operations, in particular:

- Seal engraving
- Bank account opening
- Tax filing
- Labor registration

The subsidiary company shall carry out procedures of tax registration at the provincial DPI at the same time of submission of ERC. Vietnamese law also requires foreign investor who invests to participate directly in the management of the company to set up a so-called direct investment capital account (DICA). Charter capital and loans provided by the parent company must be paid into a DICA of the subsidiary. DICA is governed by special foreign exchange control provisions aimed to enable the government to supervise the inflow and outflow of cash. DICA must be opened in a foreign currency with a bank licensed to do business in Vietnam.

5. Taxation

The major taxes, which are relevant for companies and foreign investors, are as follows:

- Corporate Income tax (CIT)
- Value-added tax (VAT)
- Foreign Contractor Withholding Tax (FCWT)
- Special consumption tax
- Business license tax
- Stamp duty
- Personal Income Tax (PIT)
- Transfer Pricing (TP)

As far as goods are imported or exported, customs duties must of course also be observed. All taxes in Vietnam are levied at national level. There are no local or provincial taxes. However, there are several other types of national tax that may be applicable to a particular business.

5.1. CORPORATE INCOME TAX

From 1 January 2016, the standard Corporate Income Tax (CIT) rate in Vietnam is 20%, which is levied on the taxable profit. Foreign-invested companies must adopt Vietnamese accounting standards.

The taxable income is the total proceeds from the sale of goods, remuneration for processing and charges for provided services, whether domestic or foreign sourced. CIT exempt income include income from cultivation, husbandry and aquaculture, income from the application of technical services directly for agriculture, transfer of Certified Emissions Reductions (CERs), dividends etc.

In general, expenses are tax deductible if they are related to business operations, sufficiently supported by supporting documentation (including but not limited to contracts, legitimate invoices, non-cash payment vouchers where the invoice value is VND20 million or above) and not specifically included in the statutory list of non-deductible expenses.

Taxpayers may carry forward tax losses fully and consecutively for a maximum of five years.

Vietnam has a self-assessment tax system where taxpayers self-assess their tax liabilities, declare and pay tax under relevant tax regulations. Tax authority shall check the tax compliance status of taxpayers by performing tax audits / tax inspection on risk-based mechanism.

Taxpayers are only required to make quarterly provisional CIT payments not later than the 30th day of the following quarter without filing the provisional tax returns. From tax year 2021, the new Decree on tax management mandates that the total CIT paid for the first 3 quarters of a tax year must not be less than 75% of the finalised CIT amount, otherwise, the shortfall amount shall be imposed a late payment interest at 0.03% / day. The finalised CIT return is filed on the basis of the company's audited financial statements. The annual CIT return must be filed and submitted not later than the last day of the first quarter in the following fiscal year and the outstanding tax payable (if any) must be paid by the same deadline.

5.2. TAX INCENTIVES

In certain areas, regions, sectors and at certain scales of a project it is possible to receive investment incentives for new investments, e.g. preferential tax rates, tax holidays, tax reductions or import tax exemptions. Business expansion projects which meet certain conditions are also entitled to CIT incentives. These possibilities should be carefully examined in advance to optimise the tax cost of the project.

The following investment incentives can be granted within the framework of CIT:

CIT incentives for Business sector:

Incentivised business sectors	Preferential tax rate	Tax holiday, tax reduction
Hi-tech fields, software production, renewable energy / biotechnology, certain infrastructure development, manufacture of certain materials.	10% for 15 year	Tax holiday, tax reduction <ul style="list-style-type: none"> - CIT exemption for 4 years; and - 50% CIT reduction for the subsequent 9 years
Environmental protection		
High-tech enterprises, agriculture enterprises applying high technologies		
Large-scale projects (initial capital is at least VND 6,000 billion being disbursed in 3 years and total revenue is at least VND 10,000 billion per year / more than 3,000 employees)		
Large-scale projects (initial capital is at least VND 12,000 billion being disbursed in 5 years and total revenue is at least VND 10,000 billion per year)		
Prioritised ancillary products		

Socialised enterprises (education – training, vocational training, healthcare, culture, sports, environment)	10% for the whole project life	Established in areas with particularly difficult or difficult socio-economic conditions <ul style="list-style-type: none"> - CIT exemption for 4 years; and - 50% CIT reduction for the subsequent 9 years
		Established in areas with favorable socio-economic conditions <ul style="list-style-type: none"> - CIT exemption for 4 years; and - 50% CIT reduction for the subsequent 5 years
Publishing houses from publication activities, press agencies, social houses, certain activities related to forest / agriculture in areas with difficult socio-economic conditions, salt production	10% for the whole project life	n / a
Farming, husbandry, processing of agriculture and aquaculture products in areas with favorable socio-economic conditions	15 % for the whole project life	n / a
People’s credit funds, cooperative banks and microfinance institutions	17 % for the whole project life	n / a
Production of hi-class steel, energy-conserving products, machinery and equipment for agriculture, forestry, fisheries and salt production, irrigation and drainage equipment, livestock and aquatic animal feed; and development of traditional crafts and trades.	17 % for 10 years	<ul style="list-style-type: none"> - CIT exemption for 2 years; and - 50% CIT reduction for the subsequent 4 years

CIT incentives for Location: the following locations are qualified as incentivised locations:

Incentivised areas	Tax rate	Tax holiday, tax reduction
Areas with particularly difficult socio-economic conditions, in economic zones and hi-tech zones	10% for 15 years	<ul style="list-style-type: none"> - CIT exemption for 4 years; and - 50% CIT reduction in subsequent 9 years.
Areas with difficult socio-economic conditions	17% for 10 years	<ul style="list-style-type: none"> - CIT exemption for 2 years; and - 50% CIT reduction in subsequent 4 years.
Industrial parks (excluding industrial parks in urban districts of special-grade or centrally run grade-I urban centers and those in provincial grade-I cities	Standard CIT rate	<ul style="list-style-type: none"> - CIT exemption for 2 years; and - 50% CIT reduction in subsequent 4 years.

TPreferential tax rate is applied from the first revenue generating year while tax exemption is counted from first profit making year and tax reduction in applied the subsequent years. It should be noted that CIT exemption will be kicked in from 4th year counting from the first revenue generating year if no profit is made after 3 years from the first revenue generating year.

In a tax period, if an income is eligible for different preferential CIT rates and tax holiday and reduction incentives, taxpayer is allowed to apply the most favorable incentive.

CIT incentives are not applicable for the following income: incomes from transfer of contributed capital or right to contribute capital; incomes from real estate transfer; Incomes from transfer of project of investment or the right to participate in project of investment, incomes from overseas business operation.

In addition, other incentives may be used in individual cases, for example:

- Exemption from import duty on goods imported to form fixed assets, raw materials, supplies and components for implementation of an investment project.
- Exemption from and reduction of land rent, land use fees and land use tax for specifically encouraged investment sectors.

5.3. VALUE ADDED TAX

The Value-added-tax (VAT) is imposed on the added value of goods or services arising in the process from production, circulation to consumption. Taxpayers include organisations and individuals producing or trading/importing of goods or services subject to VAT, while the cost of VAT is absorbed by the final consumers of goods and services.

In Vietnam, the common VAT rate is 10%, certain goods and services are entitled to 0% and 5% VAT. There are a number of goods and services not subject VAT or exempt from VAT declaration and payment.

VAT rate	Goods and Services
5%	Supply of certain Goods and Services being basic necessities (clean water, sugar, social houses, etc.), agriculture-related supplies, social welfares related (medical equipment, books, medicine, teaching equipment, etc...), technology supportive activities
0%	Exported of Goods and Services (with certain exceptions in relation to transfer of technology / intellectual properties, trading of imported wines / beer / cigarettes, services provided in relation to goods sold, distributed, consumed in Vietnam, etc..)
10%	Supply of the remaining Goods and Services, except for Goods and services not subject to VAT or not subject to VAT declaration and payment.

Goods and services not subject to VAT are mainly agricultural products or services provided directly to agricultural production, social welfares related (human-related insurance, medical services, educational services, publishing,...), certain financial services in accordance with international practices, transfer of land use right, technology transfer, machines and equipment not yet produced domestically imported for the purpose of scientific research and development.

Transactions not subject to VAT declaration and payment include non-commercial activities (compensation, bonus, unconditional supports, etc...), services performed outside of Vietnam by foreign service providers, sale of assets by non-business individuals and organisations, special transactions the must be specifically handled for the purpose of VAT management to minimise overall costs and tax evasions, intra-group assignment of assets,

capital contribution by assets, payment and collection on behalf, etc...

There are two VAT declaration methods including credit method and direct method, depending on the size, capability of keep track of expenses and revenues as well as the maintenance of relevant supporting documents. Specifically:

- VAT credit method applies to business establishments (except for business households and individuals) that comply with the regime for accounting and invoicing according to the laws on accounting and invoicing, who earn annual revenue of at least 1 billion VND from goods sale or voluntarily employ the tax credit method.
- Direct VAT declaration method is applicable to business households and individuals, companies of which the annual revenue is less than 1 billion VND, business organisations and individuals (including foreign business without Vietnam-based resident establishments but earning income in Vietnam) that fail to fully observe regulations on accounting, invoices and documents; and gold, silver and gem trading activities.

For taxpayers declaring VAT under credit method, input VAT of expenses is creditable provided that the requirements on supporting documents are qualified. Input VAT is refundable in certain cases, notably production of exported goods / services; investment projects; ODA projects; upon being converted, merged, amalgamated, divided, dissolved, bankrupt, terminated, etc... A tax audit for VAT refund will be performed by tax authority either before or after a VAT refund, depending on the tax risk assessed by tax authority.

Taxpayers must file VAT returns on a monthly basis by the 20th day of the subsequent month, or on a quarterly basis by the last day of the first month in the following quarter.

5.4. FOREIGN CONTRACTOR WITHHOLDING TAX

FCT is applicable to foreign business organisations doing business in Vietnam or earning income in Vietnam under contracts, agreements, or commitments between the foreign contractor (FC) and a Vietnamese entity. Payments to a FC by the Vietnamese party are subject to FCT which consists of VAT and CIT. VAT is generally creditable for Vietnamese party. CIT may be exempt under a relevant Double Tax Agreement if certain conditions are satisfied which is mainly if the foreign contractor does not have profits attributable to a PE in Vietnam. Other cases which are excluded from the scope of FCT such as pure supply of goods and services performed and consumed outside Vietnam.

There are three methods for calculating and paying the corporate income tax (CIT) and value-added-tax (VAT) for foreign contractors. Which concrete method has to be used depends on various conditions, e.g. on the status of the foreign contractual partner (permanent establishment or resident status) in Vietnam and the question of the application of the Vietnamese accounting system in the concrete company.

- (i) Withholding method, in which deemed VAT and CIT rates apply and all administration and tax payment responsibilities rest with the Vietnamese party. This is the most commonly adopted method.
- (ii) The credit method entails the FC registering for VAT and paying CIT based on actual net profits. There are certain requirements on the compliance to
- (iii) The third method is the hybrid method, which is a combination of the above two methods whereby the FC registers for VAT but is subject to CIT based on deemed rates. Generally, a FC applies this method where they will incur significant input VAT on local purchases which would not otherwise be claimable.

Under the Withholding method, the applicable deemed VAT and CIT rates would vary based on the nature of business activities performed, specifically:

No.	Trade	VAT
1.	Services, rental of machinery and equipment, insurance; construction, installation exclusive of raw materials, machinery and equipment.	5%
2.	Production, transportation, services attached to goods; construction, installation inclusive of raw materials, machinery and equipment	3%
3.	Others	2%
No.	Trade	CIT
1.	Distribution of goods, raw materials, supplies, machinery and equipment attached to services in Vietnam (including those provided in the form of domestic exports, except for goods processed under processing contracts with foreign entities); supply of goods into Vietnam under Incoterms DAP, DDU, DDP, etc.	1%

2.	Service, lease of machinery and equipment, insurance, lease of an oilrig.	5%
	Specifically:	10%
	- Restaurant, hotel, casino management services;	
	- Derivative financial services.	2%
3.	Lease of aircraft, aircraft engines, parts of aircrafts and ships	2%
4.	Construction, installation, whether or not inclusive of raw materials, machinery and equipment	2%
5.	Loan interest	5%
6.	Income from royalty	10%
7.	Transfer of securities, certificates of deposit, ceding reinsurance abroad, reinsurance commission	0.1%
8.	Other production or business activities and transportation (including sea and air transportation)	2%

Notably, under the new Laws on Tax management effective from July 2020, there is withholding tax imposed on income derived from e-commerce activities, including both B2B and B2C business conducted by foreign contractors in Vietnam. Detailed guidance on the tax declaration and payment in this regards is expected to be released in early 2021.

5.5. BUSINESS LICENSE TAX

Business license tax (BLT) is an indirect tax. The tax is paid on an annual basis by entities. The BLT-rates are fixed in Circular 302/2016/TT-BTC, in effect since 1 January 2017. The amount of the BLT-rate for companies is between 1 and 3 million depending on corporate structure and the amount of registered capital.

5.6. SPECIAL CONSUMPTION TAX

A special sales tax (special consumption tax or luxury tax) applies to the production, distribution or import of special/luxury goods and services in addition to VAT. These goods are particularly:

- Cigarettes, cigars and other tobacco preparations, cars and related products

- Liquor
- Beer
- Under-24 seat cars
- Two- and three-wheeled motorcycles of a cylinder capacity of over 125 cm³
- Aircraft and yachts
- Gasoline of all kinds, naphtha, reformed components and other components for mixing gasoline
- Air-conditioners of 90,000 BTU or less
- Playing cards
- Votive gilt papers and votive objects.

Special sales tax is also applicable to certain services, notably casinos, prize-winning video games, golf business, lottery business, massage parlors, karaoke bars, etc...

5.7. STAMP DUTY

This tax applies for the necessary registration of ownership of specified assets, e.g. buildings and transportation. The tax rate is between 0,5 and 15 %.

5.8. 5.8. COMPULSORY SOCIAL INSURANCE, HEALTH INSURANCE, UNEMPLOYMENT INSURANCE

Vietnam has a compulsory social, health and unemployment insurance scheme. Contributions are to be borne by both the employer and the employee. The basis for calculating the contributions is the monthly salary as stipulated in the labor contract. Salary level used for the calculation of social insurance is capped at VND 29.8 million (20 times of basic salary).

Compulsory unemployment insurance only applies to enterprises with 10 or more employees. Foreigners seconded to Vietnam by the parent company do not have to contribute to the compulsory insurance schemes. Foreigners with a local employment contract currently only have to pay contributions to the health insurance. Seasonal workers are not subject to social insurance contributions either.

An employer is obliged to withhold the employee's portion of the insurance contribution from the salary of the employee and transfer the amount together with the employer's portion to the insurer.

	Contribution level	
	Contribution level	Employee
Social Insurance	17%	8%
Health Insurance	3%	1.5%
Unemployment Insurance	1%	1%
Occupational accident and disease insurance	0.5%	-
Total	21.5%	10.5%

For foreign employees, the contribution level is as following:

	Contribution level	
	Contribution level	Employee
Social Insurance	3.5%	-
Health Insurance	3%	1.5%
Unemployment Insurance	-	-
Occupational accident and disease insurance	-	-
Total	6.5%	1.5%

For a more comprehensive overview of the labour law in Vietnam, see our brochure “Labour Law in Vietnam”.

5.9. PERSONAL INCOME TAX

Vietnamese and foreigners working in Vietnam are subject to personal income tax (PIT). The tax base depends on the residence status of the individual. Tax residents are those individuals meeting one of the following criteria:

- Residing in Vietnam for 183 days or more in either the calendar year or the period of 12 consecutive months from the date of first arrival; or
- Having a permanent residence in Vietnam and are unable to prove tax residence in another country in the case where the actual residing days in Vietnam is less than 183 days

Tax residents are subject to Vietnamese PIT on their worldwide income including both employment and non-employment income. Foreign tax credit is only applicable to income sourced from overseas, and is conditional upon satisfaction of supporting documents.

Individuals not meeting the conditions for being tax resident are considered tax non-residents. Tax non-residents are subject to PIT on the allocated income for the work relating to Vietnam, irrespective of presence in Vietnam. While the PIT rates vary for non-employment income, employment income is taxed at progressive PIT rate up to 35% for tax residents and flat rate of 20% for non-tax residents.

Double taxation agreements between Vietnam and the respective countries have to be observed.

5.10. TRANSFER PRICING

In recent years, the Vietnamese tax authorities have increased their scrutiny on Transfer Pricing (“TP”) matters. With the effort to tackle tax avoidance and ensure a more transparent tax environment, on 05 November 2020, the Vietnamese Government officially issued Decree No. 132/2020/ND-CP (“Decree 132”), which replaces Decree No. 20/2017/ND-CP (“Decree 20”), Circular 41/2017/TT-BTC (“Circular 41”) and Decree 68/2020/ND-CP (“Decree 68”), prescribes tax administration for enterprises engaging in related party transactions (“RPTs”).

The new guidance on TP - Decree 132 will take effect from 20 December 2020 and be applicable to the 2020 tax year. With the inheritance and revision compared to Decree 20, the new Decree is expected to be more aligned with Vietnam and international current practices. Decree 132 broadens the definition of related party relationships to cover more cases where companies are both under the management or control of individuals with close relationships in the same family.

The below table summarises the main points about the TP compliance requirements which shall be obliged by the taxpayers engaged in RPTs under the current Vietnamese TP regulations:

	Annual TP declaration forms	Annual TP documentation reports
TP compliance requirements	<ul style="list-style-type: none"> - Appendix I – Declaration of the taxpayer’s related party relations and transactions; - Appendix II – Declaration of the content of the taxpayer’s Local File; - Appendix III – Declaration of the content of the Group’s Master File; - Appendix IV – Country-by- country report (“CbCR”) for the taxpayer having the Vietnamese ultimate parent company. 	<ul style="list-style-type: none"> - Local File – including the taxpayer’s information about RPTs, TP policies and methodologies in the context of RPTs under review according to the checklist of Appendix II; - Master File – containing information about business activities of multinational groups, TP policies and methodologies of the global group, and policies on allocation of profits, decentralisation of operations and functions in value chains of the group according to the checklist of Appendix III; - The copy of CbCR of the global ultimate parent company.

Statutory deadlines	Submitted with CIT finalisation	<ul style="list-style-type: none"> - TP documentation reports must be prepared by the time of filing CIT finalisation returns each year, and submitted on the tax authorities' requests with deadlines as follows: - In tax audit / inspections: In accordance with Law on Inspection from the date of receiving request to provide information. - During the consultation period prior to tax audit / inspections: No later than 30 working days from the date of receiving written request to provide information of the tax authorities and can be extended once for no longer than 15 working days from the expiry date with valid reasons.
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It is important to note that taxpayers are subject to a deemed tax adjustment relating to TP as follows:

- Failure to determine, declare transfer prices in accordance with the TP regulations
- Failure to provide information, documentation in accordance with the TP regulations
- Engaging in transactions that do not truly reflect the economic substance and reality of transactions for the purpose of reducing the tax liability

The introduction of Decree 132 has demonstrated the expectation of Vietnamese government in terms of enhancing the Vietnamese legal system with regard to TP administration.

In light of this, companies are highly recommended to carefully review the new regulations on compliance obligations in Vietnam and to assess the possible impact of such changes on their business operations for effective planning and compliance. In addition, it is essential that companies must ensure to commit with the requirements (about the statutory deadlines, information and contents disclosed) of TP declaration and preparation of TP documentation reports, as well as maintain all the relevant supporting documents/evidences to appropriately conclude that companies' overall operation including the RPTs incurred are consistent with the arm's length principle set forth in the Vietnamese TP regulations.



About us

As attorneys, tax advisers, management and IT consultants and auditors, we are present with 109 own offices in 49 countries. Worldwide, our clients trust our 5,120 colleagues.

The history of Rödl & Partner goes back to its foundation as a solo practice in 1977 in Nuremberg. Our aspiration to be on hand wherever our internationally-active clients are led to the establishment of our first, own offices, commencing with Central and Eastern Europe in 1989. Alongside market entry in Asia in 1994, the opening of offices in further strategic locations followed, in Western and Northern Europe in 1998, USA in 2000, South America in 2005 and Africa in 2008.

Our success has always been based on the success of our German clients: Rödl & Partner is always there where its clients see the potential for their business engagement. Rather than create an artificial network of franchises or affiliates, we have chosen to set up our own offices and rely on close, multidisciplinary and cross-border collaboration among our colleagues. As a result, Rödl & Partner stands for international expertise from a single source.

Our conviction is driven by our entrepreneurial spirit that we share with many, but especially German family-owned companies. They appreciate personal service and value an advisor they see eye to eye with.

Our 'one face to the client' approach sets us apart from the rest. Our clients have a designated contact person who ensures that the complete range of Rödl & Partner services is optimally employed to the client's benefit. The 'caretaker' is always close at hand; they identify the client's needs and points to be resolved. The 'caretaker' is naturally also the main contact person in critical situations.

We also stand out through our corporate philosophy and client care, which is based on mutual trust and long-term orientation. We rely on renowned specialists who think in an interdisciplinary manner, since the needs and projects of our clients cannot be separated into individual professional disciplines. Our one-stop-shop concept is based on a balance of expertise across the individual service lines, combining them seamlessly in multidisciplinary teams.

Contact



HO-CHI-MINH-CITY

Stefan Ewers

5F, Friendship Tower
31 Le Duan, District 1,
Ho-Chi-Minh-City

T +84 28 7307 2788
M +84 9 3894 9451
stefan.ewers@roedl.com



HANOI

Jan-Volkert Schmitz

9/F, Daeha Business Center
360 Kim Ma, Ba Dinh District,
Hanoi

T +84 24 7300 0077
M +84 8 6610 3104
jan-volkert.schmitz@roedl.com



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