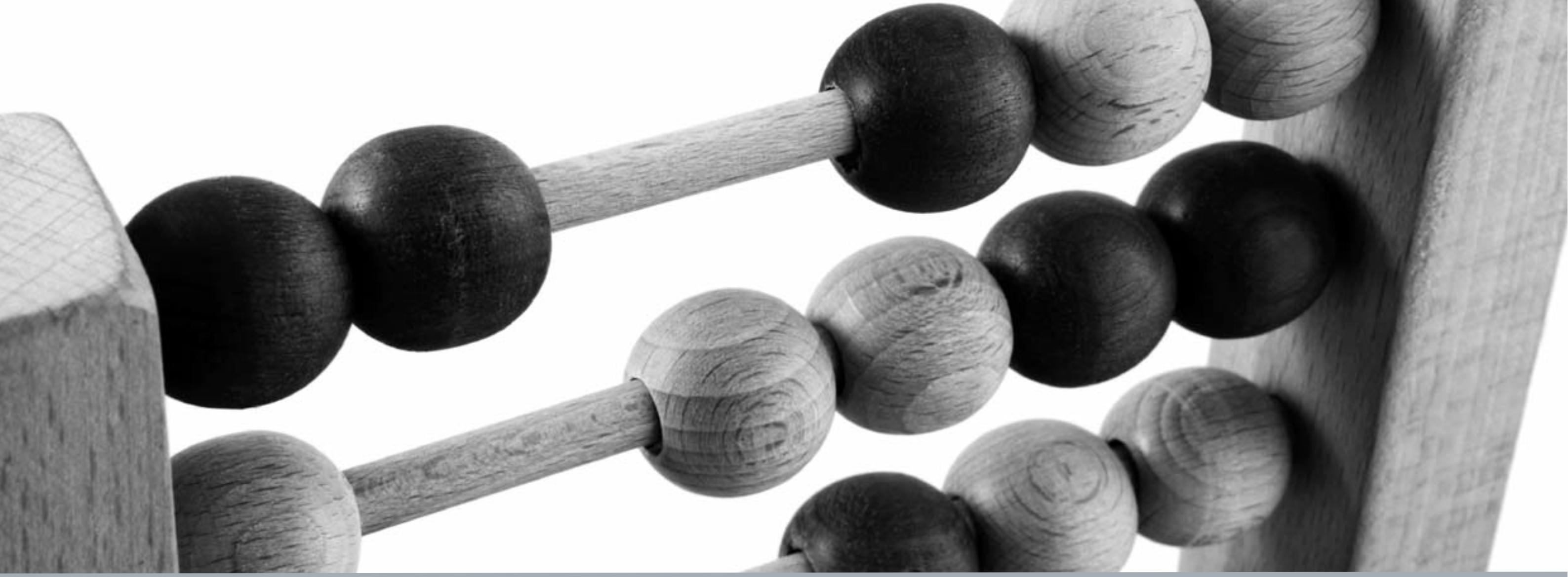

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Chapter 45

Vietnam

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1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in Vietnam?

Vietnam has entered into income tax treaties with 62 countries around the world, of which 55 tax treaties are currently in force.

1.2 Do they generally follow the OECD or another model?

Though Vietnam is not a member of the OECD, in general Vietnamese tax treaties follow the OECD model with some modifications. In particular, certain provisions (e.g. provisions relating to the definition of permanent establishment or the rights to tax "at source income" rather than "residence" criteria) conform with the United Nations model, which is appropriate for a developing country such as Vietnam.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

Yes. A tax treaty must be incorporated into domestic law before it takes effect. Under the Law on Conclusion of, Accession to, and Implementation of International Treaties, depending on the nature of the treaty, the Vietnamese competent authorities will decide whether to: (i) directly apply the whole or a part of the treaty in cases where the treaty is clear and specific enough for implementation; or (ii) revise, supplement or repeal existing domestic regulations or issue specific legal documents to implement the treaty. In respect of an agreement for the avoidance of double taxation, the Prime Minister must issue a decision to approve the executed agreement prior to its implementation.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation on benefits" articles)?

In general, there are no "limitation of benefits" articles applied to almost all double tax treaties which Vietnam signed with other countries. However, in some treaties, there are some provisions relating to this area. For instance, the treaty with the Philippines contains a clause which provides that the competent authorities of the Contracting States may deny the benefits of this treaty to any person, or with respect to any transaction, if, in their opinion, the granting of those benefits, under the circumstances, would constitute an abuse of the treaty according to its purpose. Similarly, the treaty with Hong Kong provides that nothing in the treaty shall prejudice the right of each Contracting Party to apply its domestic laws and measures concerning tax avoidance, whether or not it is described as such.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

Under Vietnamese regulations, in cases where there is discrepancy between an international treaty and Vietnamese laws in respect of an issue, the regulations of the international treaty shall prevail.

1.6 What is the test in domestic law for determining corporate residence?

Corporate residence is defined in the Vietnamese regulations on corporate income tax as "*enterprises established and operating in accordance with the Law on Enterprises, the Law on State Owned Enterprises, the Law on Foreign Investment in Vietnam, the Law on Investment, the Law on Credit Institutions, the Law on Insurance Business, the Law on Securities, the Law on Petroleum, the Commercial Law and other legal instrument, in the following forms: shareholding companies; limited liability companies; partnerships; private enterprises; State enterprises; law offices; notary offices; parties to business co-operation contracts; parties to petroleum production sharing contract; petroleum joint venture enterprises and general operation companies*".

2 Transaction Taxes

2.1 Are there any documentary taxes in Vietnam?

Stamp duty, which is formally referred to as a registration fee in Vietnam, is a tax on the acquisition of certain assets, where the registration of the ownership of that asset is compulsory, e.g. land use rights, boats/ships, aircrafts, cars, or motorcycles. Under current regulations, the stamp duty rates vary from 0.5% to 20%, but the duty is capped at VND500 million per asset (approximately US$25,000), except for passenger cars with less than ten seats, yachts and airplanes (where there is no such cap). By way of example, the rate of: 0.5% is applicable to house and land; 1% is applicable to boats/ships; and the rate ranging from 10% to 20% is applicable to passenger cars with less than 10 seats (to be determined at the discretion of the local province).

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

Vietnamese Value Added Tax ("VAT") is applied to all goods and services used for production, trading and consumption in Vietnam. VAT is charged on the selling price (exclusive of VAT) of the goods and services supplied. The standard VAT rate is 10%, and the preferential rates are 5% and 0% respectively. While the rate of 0% mainly applies to export goods and services, the rate of 5% applies generally to essential goods and services such as clean water, books, foodstuffs, medicine and medical equipment, as well as various agricultural products and services, etc. The 10% rate applies to the remaining goods and services.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

VAT exemption is applied to many categories of transactions, including transactions involving the following:

- Certain agricultural products.
- Transfers of land use rights.
- Certain securities activities: securities brokerage; securities self-trading; securities underwriting; securities investment consultancy; securities depository; securities investment fund management; portfolio management; services for market organisations provided by exchanges or securities trading centres; and any other trading activities pursuant to the law on securities.
- Services for market organisations provided by exchanges or securities trading centres comprising approval for listing, listing management, trading management, management of trading members, provision of information relating to listing or trading management and any other relevant services.
- The transfer of capital in limited liability companies, or the transfer of securities and transfer of capital in any other form (the definition of "other form" is not provided in the VAT regulations).
- Financial derivatives and credit services.
- A number of insurance services (e.g. life insurance, and non-commercial insurance).
- Medical services.
- Teaching and training.
- Certain public welfare services.
- Certain cultural, artistic, and sport services/products.
- The transfer of technology and software services, except exported software which is entitled to a 0% rate.
- The imports of machinery equipment and any special means of transport used in technology research and development activities and which cannot be produced in Vietnam.
- Imported goods and goods or services to be sold to organisations and individuals for humanitarian aid or non-refundable aid.
- Goods in transit or trans-shipment via the territory of Vietnam or goods temporarily imported and re-exported and *vice versa*.
- Exported products being unprocessed minerals or natural resources.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

Input VAT for services/goods purchased to be directly used for the making of VAT taxable supplies are fully creditable. If the output of an enterprise is VAT-exempt (i.e. an enterprise sells goods and services which are not subject to VAT), the relevant input VAT is non-creditable. Input VAT on fixed assets used in manufacturing and performing businesses for both VATable and non-VATable goods and services are, however, fully credited. As an exceptional case, when the value of a car with less than 10 seats is more than VND 1.6 billion, the input VAT corresponding to the proportion of value which exceeds VND 1.6 billion, is non-creditable.

Input VAT is creditable in the month when such VAT input is incurred or within six months. A valid tax invoice must generally be retained to support claims for input tax credits. The tax invoice must state the pre-tax price, the VAT and the total amount payable.

Input VAT is only creditable if:

- the claim is supported by proper invoices for the purchase of goods, services or vouchers;
- payments for goods or services in excess of VND 20 million (approx. US$1,200) must be made by, and supported with, bank transfer documentation; and
- goods and services are purchased for business-related purposes. In practice, if an expense is viewed as non-deductible for corporate income tax purposes, it is likely that related input VAT is also non-creditable.

2.5 Are there any other transaction taxes?

Prior to 2009, the transfer of land use rights was subject to a tax of 4% on the sale proceeds, which were chiefly calculated based on the land price promulgated by the local provincial People's Committee. This tax on transfer of land use rights, however, is not currently in force.

2.6 Are there any other indirect taxes of which we should be aware?

Special Sales Tax is a type of excise duty which applies to the production or importation of a number of goods and services which are considered as a luxury in relation to the economic conditions of the country and are therefore not encouraged to be consumed or carried out in Vietnam, such as cigarettes, liquor, beer, automobiles of less than 24 seats, airplanes, boats, playing cards, discotheques, massages, karaokes, casinos, and gambling.

Import and export duties generally apply on import and export goods, except for some exemptions. The import duty rates change frequently and are classified into three categories: ordinary rates; preferential rates; and special preferential rates. Exports are, however, generally encouraged. Therefore, zero rate export duty is applicable to almost all types of export goods, except crude oil and minerals.

Other indirect taxes include fuel surcharges, and from 1 January 2012, a new environmental protection tax, which is an indirect tax applicable to the production and importation of certain goods including petrol, oil, grease, coal, hydro-chlorofluorocarbon, plastic bags and certain limited usage chemicals.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

There is no withholding tax imposed on dividends paid by a locally resident company to a non-resident who is not an individual.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Royalties paid by a local company to a non-resident are currently subject to withholding tax which is normally referred to as foreign contractor withholding tax ("**FCWT**") in Vietnam. The FCWT regime applies to foreign contractors and foreign subcontractors doing business in Vietnam or having Vietnam-sourced income on the basis of contracts, agreements or commitments with Vietnamese organisations/individuals. FCWT includes two components: VAT; and corporate income tax ("**CIT**"). Royalties, however, are not subject to VAT, but are subject to CIT at 10% although this may be impacted by any relevant double tax treaties ("**DTTs**").

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Since March 2012, any interest paid by a Vietnamese entity to foreign lenders who are not individuals will be subject to withholding tax (under FCWT regime as discussed above) at 5% of CIT on the gross amount of interest paid, unless otherwise stipulated in DTTs. Prior to that date, the applicable rate was 10%. Since the Vietnamese Government has recently changed regulations on FCWT, it is likely that interest paid to non-credit institutions may be subject to VAT, although the practical implementation remains to be confirmed.

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Vietnam does not have thin capitalisation rules. It did previously have a maximum 70:30 debt to equity limit, but this was removed in 2006, and the debt to equity structure of the company is now subject to individual negotiations with, and approval of, the licensing authority. In practice, this ratio may still apply to foreign invested companies, and Vietnamese authorities may, in practice, refuse to grant a licence if the charter capital is less than 20% of the total amount of investment capital, depending on the nature and size of the project. If the relevant offshore loans are in line with the issued business registration certificate/investment certificate, there will be no restriction on claiming relief for the interest so-paid.

Notwithstanding the above discussion, interest expenses are not deductible for CIT purposes by a local borrower in the following cases:

- Interest expenses on loans corresponding to the portion of committed charter capital not yet contributed.
- Interest on loans from non-economic and non-credit organisations exceeding 1.5 times the interest rate set by the State Bank of Vietnam at the time the loan is granted.

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

There are no safe harbour rules under Vietnamese law.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

As discussed above, there are currently no such rules in Vietnam.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

There are no relevant regulations under Vietnamese law.

3.8 Does Vietnam have transfer pricing rules?

Yes. The first detailed transfer pricing guidelines of Vietnam were issued and made effective in 2006 and then were recently replaced by a new circular issued in April 2010.

The guidelines apply to transactions between related parties, both domestically and internationally, and to transactions between an offshore parent and its subsidiaries, and/or other brother-sister corporations.

There is a comprehensive definition of related parties. The control threshold is much lower than in many other countries (20%) and therefore this significantly increases the number of companies potentially subject to transfer pricing rules in Vietnam.

Although not a member of the OECD, the methodologies generally follow the principles put forward in the revised OECD transfer pricing guidelines and the internationally accepted "arm's length principle", but with additional prescriptive requirements. The acceptable methods of determining an arms length price are: (i) Comparable Uncontrolled Price ("CUP"); (ii) the Resale Price Method; (iii) Cost Plus; (iv) the Comparable Profits Method ("CPM"); and (v) Profit Split.

A declaration of transactions with related parties is required to be completed in a prescribed form, to be filed together with the CIT return, in which details of associated transactions and the methodologies adopted must be described.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

The headline rate of tax is currently 25%. However, recent regulations have granted a 30% reduction in the income tax payable for 2012 revenue by small and medium enterprises in productive sectors (subject to compliance with certain criteria).

The rate applicable to the activities of prospecting, exploration and mining of petroleum and gas ranges from 32% to 50%.

4.2 When is that tax generally payable?

CIT has to be provisionally paid on a quarterly basis no later than the 30th day of the subsequent quarter. The deadline for paying annual finalisation CIT is no later than the 90th day from the end of the fiscal year.

In view of the current economic situation, the Vietnamese government has continued to allow small and medium enterprises to defer the payment of 2011 CIT liabilities as follows:

- provisional CIT for the first quarter of 2011 must be paid by 30 July 2012;
- provisional CIT for the second quarter of 2011 must be paid by 30 October 2012;
- provisional CIT for the third quarter of 2011 must be paid by 30 July 2013; and
- provisional CIT for the fourth quarter and final CIT liabilities for 2011 must be paid by 31 December 2013.

4.3 Is the tax base accounting profit subject to adjustments, or something else?

Yes, the tax base accounting profit is subject to adjustments stipulated by the Law on CIT.

In particular, assessable income shall be equal to the taxable income less exempt income and losses carried forward from previous years. Taxable income is computed by starting with revenue/turnover and deducting allowable incurred expenses. Additional adjustments are made for expenses that are not deductible for income tax purposes. To be deductible for tax purposes, expenses must be supported by proper invoices or receipts.

Taxable income is the difference between total revenue, whether domestic or foreign sourced, and deductible expenditures, plus other additional income.

The following key adjustment items can be noted:

Items increasing the tax base

Generally, adjustments increasing taxable income are mostly related to the difference between accounting and CIT treatment and are typically related to expenses which are disallowed for tax deduction, including:

- incurred expenses not relating to business activities;
- expenses which are not supported by legitimate invoices and source vouchers;
- the depreciation of fixed assets which are not correctly calculated in accordance with CIT regulations;
- business management expenses allocated by a foreign parent company to its local branch that exceed permitted levels;
- accruals and provisions which are not actually and fully spent;
- advertisement and promotional expenditures which exceed the deductible cap of 10% of total other deductible expenses (15% for newly-established enterprises for the first 3 operating years) as provided by CIT regulations;
- employment costs which are non-deductible under CIT regulations (e.g. life/health insurance or any other kind of insurance which are not compulsory under Vietnamese regulations relating to employees);
- unrealised foreign exchange losses due to the revaluation of foreign currency items other than accounts payable at the end of a financial year; and
- interest payments on loans corresponding to the unpaid portion of committed charter capital.

Items decreasing the tax base

- losses carried forward incurred within five years;
- income earned from the performance of technical services directly serving agricultural production;
- after tax dividends;
- interest income from bonds which are tax exempt;
- foreign tax credit claims;
- differences in the recognition of accounting revenues and revenues for taxation purposes; and
- amounts related to science and technology development funding, which can be up to 10% of the pre-tax annual income.

4.4 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

The accounting profit in the annual financial statements should be used along with the adjustments required by CIT regulations (see question 4.3 above) for the determination of the tax base.

Income from the assignment of capital in a Limited Liability Company and the transfer of securities and income from real property transfers are subject to the following specific treatments:

- Assessable income from a capital assignment shall be the excess of the transfer price less the cost base, which is the initial value of the capital contribution portion and any assignment expenses.
- Assessable income from a transfer of securities shall be equal to the selling price less the purchase price of the transferred securities and less any expenses related to the transfer.
- Assessable income from a real property transfer shall be equal to the taxable income less any losses carried forward from real property transfer of previous years. Taxable income from a real property transfer shall be equal to revenues from the real property transfer less the initial cost of the real property and less any related deductible expenses.

4.5 Are there any tax grouping rules? Do these allow for relief in Vietnam for losses of overseas subsidiaries?

There are no tax grouping rules or tax group reliefs in Vietnamese law.

Although Vietnamese accounting law provides a possibility for a parent company to prepare consolidated financial statements at the end of annual accounting periods, Vietnamese tax law does not permit a group company to file a consolidated tax return.

There is no relief in Vietnam for losses of overseas subsidiaries. Losses arising from an offshore investment project of a Vietnamese company shall not be permitted to be offset against the Vietnamese taxable income generated by the company for CIT purposes.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

No, tax is not imposed at a different rate upon distributed, as opposed to retained, profits in Vietnam.

4.7 Are companies subject to any other national taxes (excluding those dealt with in "Transaction Taxes") - e.g. tax on the occupation of property?

The most relevant Vietnamese taxes (excluding the above-mentioned CIT and VAT) are the following:

- personal income tax (not applicable to companies);
- import and export tax;
- special sales tax;
- foreign contractor withholding tax;
- natural resource tax;
- registration fees (similar to stamp duty in other jurisdictions);
- business licence tax;
- environmental tax;
- property tax: from 2012 owners of homes and apartments have to pay land tax under the law on non-agricultural land tax. In addition, land use fees to be paid to the government by certain users such as foreign invested enterprises; and
- compulsory social insurance/health insurance and unemployment insurance contributions (which may be similar to payroll tax in other jurisdictions).

4.8 Are there any local taxes not dealt with in answers to other questions?

There are no other local taxes, although we would highlight that foreign contractor withholding tax applies to a variety of supply services from offshore, where a Vietnamese entity contracts with a foreign party (with no presence in Vietnam). Methods for tax payment can vary, but some current applicable rates are summarised as follows:

Business lines	VAT rate (%)	CIT rate (%)
Trading: distribution and supply of goods; raw materials; supplies; machinery and equipment associated with services in Vietnam; and supply of goods on DDP, DAT or DAP - delivery terms (Incoterms).		1
Services (except for petroleum drilling services), lease of machinery and equipment, insurance, lease of drilling platforms.	5	5
Petroleum drilling services.	7	5
Services of managing restaurants, hotels and casinos.	5	10
Construction and installation where the tender includes supply of raw materials or machinery and equipment associated with the construction work.	3	2
Construction and installation where the tender **excludes** supply of raw materials or machinery and equipment associated with the construction work.	5	2
Other production or business activities and transportation.	3	2

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Vietnam does not have a separate capital tax rule. Tax on capital gains is covered under general income tax (corporate income tax and/or personal income tax).

5.2 If so, is the rate of tax imposed upon capital gains different from the rate imposed upon business profits?

Subject to the discussion in question 4.4 above, the tax rate of 25% is commonly applicable to income from capital assignment and transfer of securities generated by residents who are not individuals. Income from capital assignment or securities transfer is not entitled to tax incentives (e.g. CIT preferential tax rate or CIT exemption/reduction).

The transfer of an interest or shares in a Vietnamese entity by non-resident investors who are not individuals shall be subject to tax as follows:

- 25% CIT on gains when transferring an interest in a limited liability company. The gains will be defined as the excess of the sale proceeds less the cost base (i.e. initial value of capital contribution for first sale) and transfer expenses.
- 0.1% CIT on the sale proceeds in the case of a transfer of securities, including bonds, listed shares or the transfer of shares in a public company registered for trading at a securities trading centre.

5.3 Is there a participation exemption for capital gains?

There is no participation exemption for capital gains in Vietnam.

5.4 Is there any special relief for reinvestment?

Since 2004, there has been no special relief for reinvestment in Vietnam.

5.5 Does Vietnam impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

In case of selling direct interest in local assets/shares, please refer to question 5.2.

In case of selling indirect interest in local assets/shares, if the transaction is carried out outside of the territory of Vietnam and there is no requirement under Vietnamese law to amend the current investment certificate of local company, as a matter of practice, the transaction may not be subject to CIT.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

There are no taxes imposed on the formation of a subsidiary.

However, registration fees must be paid for the establishment of a subsidiary in Vietnam in certain sectors, in particular, banking, securities or insurance.

6.2 Are there any other significant taxes or fees that would be incurred by a locally formed subsidiary but not by a branch of a non-resident company?

No, both a Vietnamese resident subsidiary and a Vietnamese branch of a non-resident company would pay CIT on taxable income generated in Vietnam, as well as on taxable income arising outside Vietnam (which relates to its operation, in case of a Vietnamese branch of a non-resident company).

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

The taxable profits of a local branch must be determined in the same way as other independent entities in Vietnam as discussed above. A local branch can, however, claim a tax deduction on the management expenses which are allocated to the branch by its overseas head office up to the level allowed by CIT regulations.

6.4 Would such a branch be subject to a branch profits tax (or other tax limited to branches of non-resident companies)?

There is no branch profits tax in Vietnam.

6.5 Would a branch benefit from double tax relief in its jurisdiction?

A branch registered in Vietnam is not a Vietnamese tax resident, and may not benefit from a corresponding tax treaty. Moreover, a branch of a non-resident company is considered a permanent establishment of such non-resident company in Vietnam, which may take away the treaty protection provided by a Vietnamese double tax treaty for such non-resident company.

6.6 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

No withholding tax or other tax would be imposed to the remittance of profits by the branch.

7 Overseas Profits

7.1 Does Vietnam tax profits earned in overseas branches?

Vietnam imposes 25% on income earned from overseas direct investment (including from overseas branches). Foreign tax credit (to the extent that the credit claimed is not in excess of the tax payable under Vietnamese regulations) and tax sparing against Vietnamese tax payable is allowed.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

Vietnam does not have tax regulations which solely govern the treatment of dividends received by a local company from a non-resident company, noting that Vietnamese investment offshore is currently very rare and also subject to regulatory approvals. The regulatory legal framework on indirect investment overseas, in general, and the tax treatment of income from indirect investment overseas (or passive income such as dividends), in particular, is unclear. Generally, income from overseas investment received by a local company shall be taxed at 25% as discussed in question 7.1 above.

7.3 Does Vietnam have "controlled foreign company" rules and, if so, when do these apply?

There are no CFC rules in Vietnam.

8 Anti-avoidance

8.1 Does Vietnam have a general anti-avoidance or anti-abuse rule?

There are neither general anti-avoidance rules, nor anti-abuse rules in Vietnam. In practice, there are ways for the tax authorities to deal with tax avoidance, such as regulations on transfer pricing, and the application of fixed prices issued by the authorities for a number of assets/goods/products such as land, imported goods, etc. to determine tax liabilities. In general, Vietnamese laws address the issue of preventing tax avoidance by applying heavy monetary penalties and other administrative measures to deal with violations on tax and, in serious cases, criminal liability.

8.2 Is there a requirement to make special disclosure of avoidance schemes?

There is no disclosure rule in Vietnam.

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