

CHAPTER 3

MISCELLANEOUS

1. Profit Remittance

In general, the purpose of business activities is to make profits. Foreign investors, when implementing business in Vietnam, are especially interested in remitting profits to their home country. Under Vietnamese law, no tax applies to the profit remitted to the home country of foreign investors.

Foreign investors are only permitted to transfer after-tax profits abroad either at the end of the fiscal year or upon termination of the investment in Vietnam. Foreign investors shall fulfill their tax and financial obligations to the State of Vietnam and submit their audited financial statements. Foreign investors are required to submit a notification of remittance of profit abroad to the relevant tax authority seven working days in advance of the remittance date.

In short, foreign investors are permitted to remit their profits annually at the end of the fiscal year and after meeting the following conditions:

- a) having fulfilled financial obligations towards Vietnam; and
- b) having submitted audited financial statements and enterprise income tax finalization declarations of that fiscal year to direct-managing tax offices.

Although remitting profits may seem like a difficult task, but if foreign investors know how to seek legal advice and make an appropriate plan, the remittance of profits from their business abroad will be more seamless and easier.

2. Corporate Income Taxes (CIT) & Incentives

Income arising from the production activities and business operation in goods and services is taxable income. Some other types of income could be considered taxable income such as, but not limited to, income arising from capital transfer, real estate transfer, transfer of real estate investment projects. Enterprises had better note that the foreign enterprises whether having or not having a permanent business establishment in Vietnam are required to pay tax.

There are circumstances in which income is exempt from taxation. They are income in relation to agriculture, income arising from conducting technical services directly for agriculture, income arising from conducting scientific, income in enterprises having disabled employees and some other circumstances.

The common tax rate is 20 percent for the majority of enterprises. The higher and preferential tax rates are applied to enterprises in certain fields regulated in detail.

3. Personal Income Tax (PIT)

Individual income tax also known as Personal income tax or PIT applicable to residents with incomes generated inside and outside the territory of Vietnam and non-residents with statutory taxable incomes.

Currently, the PIT calculation is applied to three (3) different subjects as follows:

- a) for resident individuals signed a labor contract with a term of 3 months or more: calculated according to partially progressive tariffs;
- b) for individuals signed a labor contract with a term of less than 3 months or did not sign a labor contract: tax rate of 10%; and
- c) non-residents (commonly foreigners): tax rate of 10%.

Tax exemption cases are also regulated in specialized laws. However, tax declaration and payment can include many cumbersome procedures. Therefore, individuals, especially foreigners, should consider whether this should be done on their own or with a professional service provider.

4. Foreign Exchange Control & Cash Use

Except from some permitted circumstances, all transactions, payments, advertisements, and other similar forms conducted with foreign currencies are prohibited in Vietnam. The investors wishing to invest in Vietnam may open a direct or indirect investment capital account instead. Accordingly, direct investment capital, contribution of investment capital, transfer of original investment capital, profits and other legitimate revenues must be conducted via direct investment capital account (DICA). In case the revenues mentioned above are in Vietnamese currency and the investors demand to reinvest or transfer abroad, the investors must purchase foreign currencies in the permitted credit institutions. In respect to indirect investment capital account (IICA), investment capital in foreign currencies must be converted into Vietnamese currency to conduct investment via this account.

Any transaction that is worth more than twenty million Vietnam dong must be done by bank

transfer. Cash payment is admitted into legitimate business expenses if the amount is less than twenty million dong.

5. Security Interest in Personal Property and Real Property

In a market economy, businesses grow by reinvesting their profits, selling their ownership, or borrowing on credit. In small businesses, borrowing is often the only source of capital for growth. The ability to use personal property to secure a loan enhances the power to borrow.

The term “security interest” means an interest in personal property or fixtures and real property which secures payment or performance of an obligation.

Personal property refers to the interest of a consignor or a buyer of accounts, chattel paper, intangibles or promissory notes in a transaction. While real property refers to land and asset attached to land that can be used to secure a transaction.

Collateral is a general term for any tangible or intangible personal property or real property in which a secured party has a security interest.



Once conducting borrowings, there are two major credit risks: nonpayment, and bankruptcy. Under Vietnamese law, in managing major credit risks, there are a lot of securities for performance of obligations comprising:

- a) pledge of property;
- b) mortgage of property;
- c) performance bond;
- d) security deposit;
- e) escrow deposit;
- f) reserve of ownership rights;
- g) guarantee;
- h) fidelity guarantees; and
- i) retention of property.

Each of the above security measure implies different legal consequences. Consulting with professional advisors is recommended to avoid non-payment of intended transactions.

6. Insolvency

An insolvent enterprise is an enterprise failing to meet the debt liability within three months since the due date. Certain criteria used to assess payment ability of the enterprise are current ratio, quick ratio, cash ratio and the others. If an enterprise is unable to pay its due debt on demand, any unsecured or partially secured creditor, employees, members or partners or shareholders of the enterprise, the unions, legal representatives, may file a bankruptcy petition with the courts.

Under Article 64 of the Law on Bankruptcy, assets that can be liquidated include:

- a) assets and asset ownership of the insolvent entity at the time the People's Court decide to initiate the bankruptcy process;
- b) assets and asset ownership acquired after the People's Court decide to initiate the bankruptcy process;
- c) the difference between the value of the collateral and the secured debts that the entity must pay to the creditors of the secured debts;

- d) value of land use right of the entity that is determined according to the regulations of the law;
- e) dispersed and hidden assets that are confiscated;
- f) assets and asset ownership that are confiscated from the invalid deals; and
- g) other assets under the regulations of the law.

In addition to the above assets, assets of a private enterprise or partnership also include assets of the owner of a private enterprise or general partners not directly used in business activities.

7. Environment

Environmental pollution has become a major problem in recent years and Vietnam ranks 4th among the countries with the most plastic waste discharged into the sea. Only 27 percent of plastic in Vietnam is recycled while the amount of plastic waste is growing up to 200 percent per year. This situation leads to serious impacts not only on marine life but also on the economic development and livelihoods of coastal residents and is at risk of affecting food security. Facing this situation, on 17 November 2020, the National Assembly of Vietnam issued the Law on Environmental Protection No. 72/2020/QH14 with a series of important changes. This Law seems to express increasingly clear the notion of not trading the environment for economic gain. Corporate administrative procedures and environmental protection obligations are regulated in a more stringent direction. For example, instead of having only one environmental impact assessment procedure, in the near future, a new investment project must carry out 3 procedures including preliminary environmental impact assessment, environmental impact assessment, and paper environmental permit. This can help the environmental factors of investment projects to be considered more closely, but will also increase the risks and costs of compliance for enterprises.

8. Corruption and Money Laundering

Corruption

Enterprises are encouraged to promulgate rules of business ethnics, rules of professional ethnics for employees, members and partners to prevent corruption. Besides, enterprises are required to promulgate, implement internal codes of conduct, internal control mechanisms to prevent conflicts of interests, prevent corruption behaviors and build a non-corrupt business culture.

Money laundering

The Law on Anti-Money Laundering No. 07/2012/QH13 came into effect on January 1, 2013 but it has gone through several changes since then. Some entities are responsible to report, prevent, and fight against money laundering in selected industries.

Vietnam is not a member of the FATF but Vietnam became the 33rd member of the Asia Pacific Group on Money Laundering (APG) in May 2007. According to the FATF, Vietnam has established the legal and regulatory framework to meet its commitments in its action plan to overcome strategic deficiencies.

9. Anti-competitive Behaviors (Unfair Trade Practice)

Anti-competitive behavior is a negative act which likely affects competition, including anti-competitive agreements, abuse of a dominant position or abuse of monopoly, under Article 3.2 of Competitive Law 2018.

Characteristics of anti-competitive behaviors consist of the following:

- a) subject matters: including enterprises to the agreement in relevant markets. These Enterprises must operate independently from each other, not related persons according to the enterprise law; not in the same business group, not being a member of the same corporation. The unified actions of the corporation, of an economic group or of parent companies and subsidiaries, are not considered by the competition law to be agreed by the nature of the above economic groups, even though they include many the member is just a unifying subject;
- b) form of the agreement is a consensus of action between businesses that can be public or non-public; and
- c) content of anti-competitive agreements often focuses on basic elements of market relations in which businesses are competing, such as price, market, technical level, technology, and signing conditions.