

## COMMON QUESTIONS RELATED TO ESTABLISHMENT AND OPERATION OF FOREIGN-INVESTED COMPANY IN VIETNAM

When establishing a foreign-invested company in Vietnam ("**Foreign Invested Company**"), Foreign Investors realize the difference between the laws of Vietnam and the laws of their countries while they are running a business. Thus, there are numerous questions have taken into account and need to be analyzed in order to make Foreign Investors to be clear on Vietnamese legislation before investing.

Over the operation process, Apolat Legal has consulted a lot of Foreign Investors on relevant matters, we have listed the following questions on the matters which Foreign Investor should pay attention to implement a duly process, starting from the period of decision on establishing Foreign Invested Company to stable operation. In which, the following notable matters are: (i) Investment project and establishing a company; (ii) Investment Capital; (iii) Tax; (iv) Labor.

### III. TAX

#### 1. Is there a difference in tax obligations between the Foreign Invested Company and the Vietnamese Company?

Foreign Invested Company and Vietnamese Company are both registered enterprises and operate under the laws of Vietnam. Therefore, both the Foreign Invested Company and the Vietnamese Company must fulfill their tax obligations accurately in accordance with the law, with no difference in tax obligations between the Companies. However, the Foreign Invested Company annual financial statements must be audited by an independent auditor authorized to operate in Vietnam.

#### 2. What are the basic tax obligations that the Foreign Invested Company needs to fulfill?

Foreign Invested Companies are obliged to comply with all basic taxes such as License Tax, Company Income Tax, Value Added Tax. In addition, for specific business activities, Foreign Invested Companies may be subject to Excise Tax, Export Tax, Import Tax, ...

In case the Foreign Invested Company pays the salary to the Employee, it is obliged to declare and pay Personal Income Tax (PIT) on behalf of the Employee on a monthly, quarterly or each time basis.

#### 3. What types of tax reports need to be filed and reporting terms?

The types of tax reports and reporting terms are as follows:

No.	Declarations /Reports	Reporting terms		
		Monthly	Quarterly	Annually
1	License Tax			Jan 30 <sup>th</sup>
2	Value Added Tax	20 <sup>nd</sup> next month. Applied to Company has income in previous year over VND 50 billion.	30 <sup>nd</sup> or 31 <sup>st</sup> of the first month of next quarter. Applied to Company has income in previous year lower VND 50 billion and new established Company.	
3	Personal Income Tax	20 <sup>nd</sup> next month. Applied to the Company paying income with the deductible Personal Income Tax amount in the month from VND 50 million or more.	30 <sup>nd</sup> or 31 <sup>st</sup> of the first month of next quarter. Applied to the Company that is not subject to monthly reporting.	
4	Company Income Tax		Temporarily calculate and pay Company Income Tax in the quarter.	Finalize within 03 months from the end of the fiscal year.
5	Report on the use of invoices	20 <sup>nd</sup> next month. Applied to the Company that uses self-printed or pre-printed invoices with acts of violation not to use self-printed or ordered invoices, Company is subject to high tax risks and is eligible to buy invoices from tax authorities.	30 <sup>nd</sup> or 31 <sup>st</sup> of the first month of next quarter. Applied to the Company selling goods and services (except for those who are issued invoices by tax authorities and those who report monthly).	
6	Financial Report Company Income Tax,			30 <sup>nd</sup> or 31 <sup>st</sup> of last month of the quarter of the following year

	Personal Income Tax finalization			
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**4. Is a Foreign Invested Company entitled to tax incentives? What tax incentives are available?**

In order to attract Foreign Investors to invest in Vietnam, investment incentives in general and tax incentives in particular are constantly being updated from time to time, creating favorable conditions for Foreign Investors with different investment fields. Preferential taxes include Company Income Tax, Value Added Tax, Import Tax, and some others.

For example, for the CIT incentive, Companies, including Foreign Invested Company and Vietnamese Company, that meet the conditions for CIT incentives will be entitled to a lower tax rate. Usually, for a limited time or the entire implementation period of an investment project. Even CIT exemption or reduction is reduced to 10% for newly established Companies from investment projects in areas with extremely difficult socio-economic conditions, economic zones, hi-tech zones, newly established Company from investment projects in the fields of high technology, scientific research and technology development, investment in infrastructure development of special importance of the State, production software products or the Company operates in the fields of education - training, vocational training, health, culture, sports and environment, within 15 years from the first year of having taxable income from the project invest. However, in order for a Foreign Invested Company to be entitled to tax incentives, it must comply with all the procedures for investment registration, tax registration, ... in accordance with the law.

In addition, Foreign Invested Companies are also exempt from import tax on imported goods to create fixed assets, raw materials, supplies and components to carry out investment projects. At the same time, exemption or reduction of land rent, land use fee, land use tax.

**5. What are the requirements for tax incentives?**

In order to be entitled to the incentives, the Foreign Invested Company must meet the conditions prescribed by law. Specifically, implementing investment projects in Vietnam in industries and areas with difficult socio-economic conditions or areas with extremely difficult socio-economic conditions. Investment projects capitalized at VND 6,000 billion or more, with a minimum disbursement of VND 6,000 billion within 3 years from the date on which investment policy is issued for projects that are not required an Investment Registration Certificate. Investment projects in a rural area that employs 500 employee or more. High-tech Companies, Science and technology Companies, science and technology Organizations.

In addition, when qualified for investment tax incentives for foreign investment projects in Vietnam in accordance with the law, the Foreign Invested Company is required to comply with the following procedures to be applied tax incentives:

- For an investment project which required an Investment Registration Certificate or investment policy decision, the Foreign Invested Company shall base on the investment incentives specified in the Investment Registration Certificate or the investment policy decision before applying investment incentives. The basis for applying investment incentives to a science and technology company is the Certificate of a science and technology enterprise.
- For projects that not required to apply for an Investment Registration Certificate, the Foreign Invested Company shall base on the subject of investment incentives to determine investment incentives and procedures for enjoying investment incentives at the competent authority in applying investment incentives.

## **6. When transferring capital /shares, do Foreign Investors have any tax obligations?**

When transferring capital/shares, the Foreign Investor being an organization or individual will have to fulfill different tax obligations:

- For Foreign Investors who are organizations that are obliged to pay Contractor tax on income arising from the transfer of capital/shares in Foreign Invested Company.
- For Foreign Investor being an individual, when transferring capital/shares in a Foreign Invested Company, PIT must be paid.

In case of transferring the contributed capital in the limited company, the applicable tax rate is 20%, the tax calculation method is: "*PIT payable = Taxable income x Tax rate of 20%*" and "*Taxable income = Transfer price - Purchase price of the capital transferred - transfer cost*".

In case of transferring shares in a joint stock company / shares under the securities law, collectively referred to as securities transfer, the applicable tax rate is 0.1%, the tax calculation method is: "*PIT payable = Stock transfer price for each installment x Tax rate of 0.1%*"

## **IV. LABOR**

### **1. What are the labor regulations that the Foreign Invested Company needs to comply?**

The Foreign Invested Company should note and strictly comply with the following labor laws:

First, the general labor regulations in Vietnam, the Company needs to determine the use of employee of appropriate age according to the law. Strictly complying with the regulations on recruitment procedures, duration and salary for probation, signing labor contracts. Regulations on termination of labor contracts are also an important point that the Company should strictly comply with, especially in cases where the Company's right to unilaterally terminate labor contracts and the order procedures for unilateral termination of labor contracts. In addition, the regulations on social insurance, the minimum salary and the working and rest regime of employee are also clearly defined by law, the Company should check and comply with the regulations.

Secondly, for the employment of foreign employee in particular, the Foreign Invested Company needs to comply with the regulations on recruitment conditions of Foreign Employee in Vietnam, procedures at the competent authorities for the use of foreign employee and to issue work permits to foreigners working at the Company. If the Company's employment of foreign employee in accordance with the law, it will be punished for violations.

## **2. What are the conditions for foreigners to work in Vietnam?**

Foreigners wishing to work in Vietnam need to meet the following conditions:

- Having full civil act capacity;
  
- Having professional qualifications, skills and health suitable to the job requirements;
  
- Not being a criminal or prosecuted for criminal liability in accordance with the law of Vietnam and foreign law;
  
- Having a Work Permit issued by a competent authority of Vietnam, except cases in which the work permit is not required in accordance with the law.

In addition, Foreign Employee work in Vietnam must comply with Vietnamese labor law, international conventions to which Vietnam is a member have different provisions and are protected by Vietnamese law.

## **3. What procedures should a Foreign Invested Company want to recruit Foreign Workers follow?**

Foreign Invested Company is entitled to recruit Foreign Employee to work as manager, executive director, expert and technical worker that Vietnamese employee cannot meet according to production and business needs.

In order to recruit foreign employee, the Foreign Invested Company must carry out the procedures for explaining labor demand at least 30 days in advance from the expected date of employment of the Foreign Employee and obtain the written approval from a competent authority.

After obtaining the approval of the employment of the foreign employee from the competent authority, the Foreign Invested Company shall carry out the procedures for the new work permit or the procedure for the exemption of the work permit for the Foreign Employee at a competent authority.

Finally, after obtaining a work permit or the decision to exempt the work permit for the foreign employee, the Foreign Invested Company and the Foreign Employee enter into a Labor Contract and submit this Contract to the agency issuing the work permit for management.

#### **4. How to sign a labor contract?**

When employing employee, the Company needs to comply with the law on signing labor contracts with the Employee. The Company may enter into a probationary contract with the Employee before entering into a labor contract but must comply with the law on probationary contract on term, salary ....

First, the conclusion of a labor contract must be based on the principles of voluntariness, equality, goodwill, cooperation and honesty, freedom but not against the law, collective labor agreement and communal morality. Then, the parties have the obligation to provide honest information to enter into a contract, the enterprise provides information about the job, location and working conditions, working hours, and rest time, occupational safety and health, salary, form of payment, social insurance, health insurance, unemployment insurance, ... employee provide information about identity, education level, health status, ...

After that, the parties choose the form of the contract and the type of labor contract and enter into it with the content of the contract that is not contrary to law and social ethics.

Finally, the authority to enter into a contract is also an important point to note in order for the employment contract to take effect, the Company may enter into a labor contract by either a legal representative or an authorized person according to the law.

#### **5. After terminating contracts with employee, what procedures should the Company perform?**

After terminating the labor contract with the foreign worker, the Company should:

- Firstly, pay full amount of salary, benefits (if any) in accordance with the law or agreement within 7 days from the date of contract termination or another term as agreed by the parties.
- Secondly, complete the procedure to confirm and return the social insurance book and other related documents to the employee.

**6. How to pay social insurance for the Employee?**

Employers are responsible for paying social insurance, health insurance, compulsory unemployment insurance for Employees in accordance with the law with the following rate:

- **For Vietnamese Employee:**

<b>Insurance deducted from salary</b>	<b>Social insurance</b>	<b>Medical insurance</b>	<b>Accident insurance</b>	<b>Total</b>
Deducted from Company's expenditure	17.5%	3%	1%	21.5%
Deducted from Employee's salary	8%	1.5%	1%	10.5%
<b>Total</b>	<b>22.5%</b>	<b>4.5%</b>	<b>2%</b>	<b>32%</b>

- **For Foreign Employee:**

<b>Insurance deducted from salary</b>	<b>Sickness, maternity fund</b>	<b>Occupational accident and disease insurance fund</b>	<b>Retirement and death fund</b>	<b>Total</b>
Deducted from Company's expenditure	3%	0.5%	-	3.5%
Deducted from Employee's salary	-	-	-	-
<b>Total</b>	<b>3%</b>	<b>0.5%</b>	<b>-</b>	<b>3.5%</b>

**7. Does the Company have to establish labor union and how do we pay labor union fee?**



According to the law, labor union is a socio-political organization of employees established on a voluntary basis. Therefore, the Company is not required to establish an union.

However, the Company has to pay labor union fee in accordance with the law, regardless of whether the Company has or has not had a labor union. The rate of payment of the labor union fee is equal to 2% of the salary fund as a basis for paying social insurance premiums for the employees. The Company pays labor union fee once a month at the same time as payment for compulsory social insurance for employees.

## **8. Is it difficult to dismiss employees? What will be the liability if doing it wrongly?**

To dismiss an Employee, the Company should meet the following factors and conditions:

- (i) The Company is required to have a legally effective Labor Code that specifies violations that will result in disciplinary action;
- (ii) The employee violates one of the acts that is subject to the dismissal in accordance with the law and the Labor Code of the Company, and the Company is responsible for proving the fault of the employee;
- (iii) The labor discipline must comply with the principles and procedures of the law:
  - The Company proves the fault of the employee and conducts the notice of a disciplinary meeting to dismiss the employee within the statute of limitations.
  - Disciplinary dismissal must have the participation of the representative organization of the Employee, the employee and the parent, or the legal representative if the employee is under 18 years old, in case of one of these people does not attend the meeting must state the reason.
  - The meeting to handle the labor discipline must be notified in advance to all participants, and made in minutes.
  - Dismissal decisions must be issued by an authorized person of the Company, within the period of the statute of limitations for disciplinary action or an extended period of time for disciplinary action and must be sent to the employee, parent or legal representative of the person under 18 years old and the organization representing the labor at the grassroots level.



In case the Company dismiss or unilaterally terminat the labor contract with the employee against the law, it shall:

- (i) Reinstating the employee to work under the signed labor contract and paying the salary, social insurance, health insurance for the days the employee is not working plus at least 02 months salary under the labor contract;
- (ii) In case the employee does not want to continue working, in addition to the compensation specified in point (i), the Company must pay the severance allowance in accordance with the law;
- (iii) In case the Company does not want to continuously hire the employee and the employee agrees, in addition to the compensation specified in point (i) and the severance allowance, the two parties agree to the additional compensation but at least equal to 02 months salary under the labor contract to terminate the labor contract;
- (iv) In case the employee no longer has the position or job specified in the labor contract but the employee still wants to work, in addition to the compensation amount specified in point (i), the two parties negotiate to amend, additional labor contracts.

The above contents are the questions that Apolat Legal often answers to Clients to resolve problems in the process of researching investment into Vietnam, Foreign Investors can refer to when meeting the similar cases. However, for each specific case, there will be the most suitable and effective solutions for application, Apolat Legal recommends the Foreign Investors should consult lawyers in such cases to best protect their legal rights and interests.