

# Q&A

RELATED TO ESTABLISHMENT AND  
OPERATION OF FOREIGN-INVESTED  
COMPANIES IN VIETNAM



# CATEGORY

01

INVESTMENT PROJECT,  
COMPANY ESTABLISHMENT

02

INVESTMENT  
CAPITAL

03

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04

LABOR

# 01

**INVESTMENT PROJECT**

**AND COMPANY ESTABLISHMENT**



### **01. Can Foreign Investors set up a company with 100% foreign capital in Vietnam?**

Foreign Investors may establish a 100% foreign-invested company in Vietnam to conduct business activities such as manufacturing, import-export, wholesale and retail trade of goods, business management consultancy services, etc. However, in cases where the Foreign Invested Company operates in areas where the law requires a joint venture with a Vietnamese Investor, the Foreign Investor is limited in the capital contribution rate of the Foreign Invested Company. Depending on lines of business, this limit may change; for instance, with advertising the ownership limit is 99.99%, while for the waterway transport, the ownership limit is 49%. In case the Foreign Invested Company has many lines of business, the business line with the lowest capital contribution limit will be applied to Foreign Investors.

### **02. What type of enterprise can Foreign Investors choose?**

Under Vietnamese law, Foreign Investors may choose to establish any enterprise type such as a private enterprise, limited liability company, joint-stock company, or partnership. However, due to the advantages of limited liability and joint-stock companies, Foreign Investors frequently choose these two enterprise types.

### **03. Business Lines that a Foreign Invested Company is allowed to operate?**

Foreign Invested Company is allowed to operate in most business lines not banned from business investment in Vietnam. However, for business lines that Vietnam has not committed to opening markets or allowing Foreign Investors to invest in business such as machinery and equipment leasing services; labor subleasing services, etc., the licensing agency will consult the relevant Ministries to get approval for each specific case, if the Ministries approved, the licensing agency would issue a license/certificate of permission to the Foreign Invested Company to operate.

### **04. Must a Foreign Invested Company have a Legal Representative or a Director who is Vietnamese?**

Foreign Invested Companies do not need to have a Legal Representative or Director to be Vietnamese. However, it should be noted that the Foreign Invested Company must have at least one Legal Representative who is residing in Vietnam (foreigner included). If the Foreign Invested Company has only one legal representative, that person must reside in Vietnam and must authorize in writing another person to perform the legal representative's rights and obligations upon exit from Vietnam.

### **05. What licenses does a Foreign Invested Company need to do business in Vietnam?**

Unless the Foreign Investor contributes capital or purchases shares/stakes of an existing and operating Vietnamese Company, the Foreign Invested Company normally must have two basic licenses: Investment Registration Certificate and Enterprise Registration Certificate. Depending on the investment sector, the Foreign Invested Company must apply for one or several other licenses as prescribed by Vietnamese law. For example, if the Foreign Invested Company operates an e-commerce platform, the Foreign Invested Company must apply for a Business License and register a website/mobile app operating an e-commerce platform at Ministry of Industry and Trade. Please note that many licenses/certificates only apply to Foreign Invested Companies and do not apply to Vietnamese Companies (returning to the example above, Vietnamese Companies do not need to apply for the Business License issue by the Department of Industry and Trade, only needing to register on the website/app operating an e-commerce platform).

### **06. How long does it take to establish a Foreign Invested Company?**

In the case of establishment of a company doing business and investment activities in areas that Vietnam has opened its market for, and the Foreign investor has met all the legal requirements, the time to establish a Foreign Invested Company is usually 18 working days (excluding weekends and holidays) from the date of submitting the complete dossiers to licensing agencies. However, when establishing a company doing business and investment activities in areas that Vietnam has opened its market for, but the Foreign Investor does not meet the conditions or the business investment areas are not yet open to the market in Vietnam, the time to establish a Foreign Invested Company can be extended from 30 to 45 working days).

### **07. What should be noted about the operational address of the Foreign Invested Company?**

Vietnamese Companies are incorporated according to their self-declaration information and are accountable for such information, the licensing agency does not request to provide documents proving the right to use/own the address for the headquarters of the Vietnamese Company (except for when the address is an apartment building, or a place where business activities are not permitted). This is different from the Foreign Invested Company that they must prove the address is legally rented/owned and suitable for the business investment lines; the licensing agency may consult with some competent state agencies about the use of this place for incorporation. For example, when a Foreign Invested Company invests in a restaurant, they will ask for approval from the District People's Committee where the Foreign Invested Company is located before granting the license/certificate.

**08. What types of investment project report must be made and reporting deadlines?**

Foreign Invested Companies are implementing investment projects that are obliged to report on the implementation of investment projects must submit the types of reports according to the table below to the Investment Registration Authority and the State management agency on investment projects. For local statistics, the reporting is done through the National Investment Information System.

No.	Types	Contents	Terms
1	Monthly Report	The implementation of capital in case the investment project generates investment capital to be implemented in the month.	12 days from the end of the reporting month.
2	Quarterly Report	Realized investment capital, net revenue, exports, imports, labor, taxes and budget payments, land and water surface use.	Prior to the 10th of the first month of the quarter following the quarterly report.
3	Annual Report	The indicators of the quarterly reports and indicators for the revenue, employee incomes, expenditures and investments in scientific research and technological development, environmental protection and treatment, and the technological using origins.	Prior to the 31th March of the following year of the annual report.



020

**INVESTMENT CAPITAL**





## 01. What is the difference between charter capital and project investment capital?

The company's charter capital (shown on the Enterprise Registration Certificate) is understood as the total value of assets contributed or committed to contributing by members or shareholders in a certain period when the company is established and recorded in the company charter. The maximum time limit for charter capital contribution is within ninety (90) days from the date of issuance of the Enterprise Registration Certificate under Law on Enterprises.

Project investment capital (shown on the Investment Registration Certificate) is understood as total capital contributed to an investment project to implement that project. Investment capital can include contributed capital, and mobilized capital ...

*So the question is whether the capital contributed to implementing the project is the company's charter capital?*

When Foreign Investors establish a Foreign Invested Company through their first investment project, the Foreign Investors' capital contribution will be equal to the charter capital. Thus, it can be generally understood that the company's charter capital is also the capital contributed to implement the project.

However, in the case of establishing a new investment project separate from the original, Foreign Investors can also increase its charter capital to implement the new project without increasing the capital contribution to the project implemented before.



## 02. What is the minimum charter capital required to establish a Foreign Invested Company?

Currently, There is no regulation on the minimum charter capital required for Foreign Investors to contribute to establish a Foreign Invested Company, nor does it require a maximum charter capital, except for the business lines that must meet the legal capital requirements such as 10 billion VND for multi-level sales, 500 million VND for international travel, etc. The minimum charter capital must be equal to the capital level required by law.

However, in practice, depending on the field that Foreign Investors invest in Vietnam, the licensing authority will consider financial capacity conditions to approve Foreign Investors to do business. In addition, depending on the business strategy, target customers and strategic partners, Foreign Investors determine the amount of charter capital appropriate for the company's operations after its establishment.

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## 03. What assets can be used for capital contribution?

Under the Law on Enterprises, capital contributing assets include the following:

- Vietnamese Dong;
- Freely convertible foreign currencies;
- Gold;
- The value of land use right, the value of intellectual property rights (include copyrights and relevant rights, industrial property rights, plant variety rights, and other intellectual property rights under the regulations of the law on intellectual property);
- Technologies, technical know-how, and other assets which can be evaluated in Vietnamese Dong..



#### 04. How long the term for charter capital contribution?

Depending on the type of enterprise that the Foreign Investors are expected to establish in Vietnam, the duration for charter capital contribution varies as follows:

- For the type of limited liability company: Within 90 days from the date of issuance of Enterprise Registration Certificate, the capital contributor in a limited liability company with two or more members or the owner in a single-member limited liability company must make a contribution of capital to the company in full and in the type of assets as undertaken. After the members of a limited liability company with two or more members contribute their capital fully as committed, the Company must issue a Certificate of capital contribution corresponding to the contributed capital's value.

- For Joint Stock Company: Shareholders must pay in full for the number of shares that have been registered for subscription within ninety (90) days from the date of issuance of the Enterprise Registration Certificate, except where the company's charter or share subscription agreement stipulates a shorter time-limit. The Board of Management is responsible for supervising, and monitoring to ensure the shares that have been registered for subscription shall be paid in full and on time by the shareholders.

**Note:** The term of capital contribution of Foreign Investors is usually recorded in the Investment Registration Certificate. For a newly established project, this period is ordinarily equal to the charter capital contribution term limit of 90 days to the date of the issuance of the Enterprise Registration Certificate as mentioned above.



## 05. How can Foreign Investors contribute capital using money?

Foreign Investors must contribute capital in Vietnamese Dong or freely convertible foreign currency to establish a Foreign Invested Company in Vietnam through the investment capital account opened at a commercial bank. Such a capital account could be a Direct Investment Capital Account or Indirect Investment Capital Account because it depends on the Foreign Invested Company's proportion of Foreign Investors' charter capital. As follows:

- If the Foreign Invested Company opens the Direct Investment Capital Account: The contribution of charter capital through a Direct Investment Capital Account might be implemented in foreign currencies or Vietnamese Dong, and the ratio of charter capital to be contributed, and owned by the Foreign Investor shall be indicated in documents proving the investor's right to contribute capital such as Investment Registration Certificate; Enterprise Registration Certificate; Notice of meeting the conditions for capital contribution, purchase of shares, repurchase stakes... For each type of currency to be contributed (Vietnamese Dong, foreign currencies), the Foreign Invested Company must open a Direct Investment Capital Account for the corresponding type of currency and can open only one Direct Investment Capital Account for each type, except for when the Foreign Investors participate in many BCC Agreements or directly perform many PPP Agreements, such Investor has to open separate Direct Investment Capital Accounts for each BCC and PPP Agreement.
- If the Foreign Invested Company opens the Indirect Investment Capital Account: All the indirect investment activities of Foreign Investors in Vietnam must be performed in Vietnamese Dong and through the Indirect Investment Capital Account. Transactions relating to foreign indirect investment activities in Vietnam must be conducted through a indirect investment capital account opened at authorized banks.

## 06. When must the Foreign Invested Company open a Direct Investment Capital Account?

The Foreign Invested Company has to open a Direct Investment Capital Account in the following cases:

- To be established in the form of establishing an economic organization, in which the Foreign Investor is a member or shareholder and must carry out the procedure for issuance of an Investment Registration Certificate under the law on investment;
- Foreign Investor contributing capital, buying shares or capital contributions in a Company (operating in a conditional business lines or unconditional ones applied to Foreign Investors) resulting in Foreign Investors owning 51% or more of the Company's charter capital but not required to carry out the procedures for issuance of an Investment Registration Certificate under the law on investment;
- Established after the company split, merger, consolidation resulting in Foreign Investors holding 51% or more of the Company's charter capital and not required to carry out the procedures for issuance of an Investment Registration Certificate under the law on investment;

- Newly established in accordance with the specialized law having Foreign Investors owning 51% or more of the Company's charter capital and not required to carry out the procedures for issuance of an Investment Registration Certificate under the law on investment.

In case the Foreign Invested Company and Foreign Investors fail to comply with the law relating to the capital transaction conducted via the Direct Investment Capital Account, Foreign Investors can find it difficult to remit profits and possibly be sanctioned due to administrative violations.

For Foreign Invested Companies not required to open a Direct Investment Capital Account, Foreign Investors shall open an Indirect Investment Capital Account to perform capital transactions.





# OFFICE

**TAX**



## 01. Is there any distinction in tax obligations between a Foreign Invested Company and a Vietnamese Company?

Both Foreign Invested Companies and Vietnamese Companies are enterprises established and operate under Vietnamese laws. Therefore, both Foreign Invested Companies and Vietnamese Companies must fully and accurately fulfill their tax obligations according to the law, and there is no distinction in tax obligations between them. However, the annual financial reports of a Foreign Invested Company must be audited by an independent auditor authorized to operate in Vietnam.

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

The Foreign Invested Company is obliged to comply with basic taxes such as License Fee, Corporate Income Tax, Value Added Tax. Specifically:

**For License Fee**, the applicable fee of a Foreign Invested Company with charter capital or investment capital over 10,000,000,000 VND is 3,000,000 VND/year; The applicable fee for Foreign Invested Company with charter capital or investment capital of 10,000,000,000 VND or less is 2,000,000 VND/year.

**For Corporate Income Tax**, the tax rate is 20%. In case of operating in the field or area that enjoys incentives, a lower corporate income tax rate will be applied to the Foreign Invested Enterprise.

**For Value Added Tax**, a Foreign Invested Company dealing in goods and services will normally pay value added tax at the rate of 10%. Some special goods and services may be subject to a lower tax rate of 5% or 0%.

In addition, for specific business activities, a Foreign Invested Company may be subject to Excise Tax, Export Tax, Import Tax, etc.

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



### 03. What types of tax reports need to be filed and their deadline for submission?

STT	Application form	Submission deadline		
	Report	Monthly	Quarterly	Annually
1	License Fee			30/01
2	Value Added Tax	The 20th of the following month. Applicable to enterprises with previous year's revenue of over 50 billion VND.	The 30th or 31st of the first month of the following quarter. Applicable to enterprises with previous year's revenue of 50 billion VND or less, and new enterprises.	
3	Personal Income Tax (PIT)	The 20th of the following month. Applicable to the Company paying income arising from the withheld PIT amount in the month of VND 50 million or more.	The 30th or 31st of the first month of the following quarter. Applicable to enterprises that are not subject to monthly reporting.	<p>Tax finalization no later than the last day of the 4th month from the end of the calendar year for personal records that directly finalize tax.</p> <p>If the Employee authorizes the Enterprise to finalize PIT, the deadline is the last day of the 3rd month from the end of the calendar or fiscal year.</p>

4	Corporate Income Tax (CIT)		Temporarily calculate and pay CIT in the Quarter.	Tax finalization no later than last day of the 3rd month from the end of the calendar of fiscal year.
5	Report on the status of using invoices	The 20th of next month. Applicable to the Enterprises using self-printed or pre-printed invoices that commit violations and are not allow to use self-printed or pre-printed invoices; the Enterprises in the category of high tax risk and are eligible to purchase invoices from the tax authority.	The 30th of the first month of the following quarter. Applicable to enterprises selling goods and providing services (except for those who are issued the invoices by the tax authority and who are subject to monthly reports).	
6	Financial Report			The deadline for submitting annual financial reports is 90 days from the end of the annual accounting period.

#### **04. Does a Foreign Invested Company enjoy tax incentives? What tax incentives are available?**

To attract Foreign Investors to invest in Vietnam, investment incentive policies in general and tax incentives in particular are constantly being updated, creating favorable conditions for Foreign Investors in many different investment fields. Taxes that enjoy incentives are corporate income tax, import tax, and some other taxes. In detail:

CIT incentives : Enterprises, including Foreign Invested Companies and Vietnamese Companies, that meet the conditions for applying CIT incentives will enjoy a lower tax rate than the normal, for a limited time or the entire duration of the investment project; tax exemption, tax reduction, and other incentives in accordance with the law on corporate income tax.

Ex:

Incentive tax rate of 10% : Applied within 15 years from the first year of having taxable income from investment projects, for new enterprises established from investment projects in geographical areas with especially difficult socio-economic conditions, economic zones, high-tech zones, new enterprises from investment projects in the field of high technology, scientific research, and technology development, investment in developing the especially important infrastructure of the State, software production, etc. or applied during the operation period for the Enterprises in the education sector - training, vocational training, health, culture, sports, and the environment, etc.

CIT exemption : Tax exemption for 4 years, 50% reduction of payable tax for the next 9 years for CIT from implementing new investment projects that enjoy 10% tax incentives in the 15 years mentioned above..

However, for a Foreign Invested Company to enjoy tax incentives, it must complete all procedures regarding investment registration, tax registration, etc. in accordance with the law.

In addition, Foreign Invested Companies are also exempt from import tax on goods imported to create fixed assets, and to serve as raw materials, supplies, and components for the implementation of investment projects. Simultaneously, exemption and reduction of land rent, land use fee, and land use tax.



## 05. What are the conditions to enjoy tax incentives?

In order to enjoy incentives, a Foreign Invested Enterprise must meet the conditions prescribed by law . Specifically, implementing investment projects in Vietnam in industries and areas being eligible for investment incentives; Investment projects in areas with difficult or extremely difficult socio-economic; Investment projects with a capital scale of 6,000 billion VND or more, having disbursed at least 6,000 billion VND within 3 years from the date of the decision on investment policies, for projects that do not have to carry out procedures for granting Investment Registration Certificate, or having a total revenue of at least 10,000 billion VND per year within 03 years from the year of having revenue or employing more than 3,000 regular employees on average annually no later than 03 years from the year of revenue in accordance with the labor law; Investment projects on construction of social housing; investment projects in rural areas employing 500 regular employees on average annually or more in accordance with the labor law (excluding part-time workers and employees with labor contracts less than 12 months); Investment projects employing at least 30% of the annual average regular employees who are disabled according to Law on people with disabilities and law on labor; High-tech enterprises, science and technology enterprises, science and technology enterprises and organizations; Innovative start-up investment projects, innovation centers, research and development centers, etc.

In addition, upon meeting all conditions to enjoy investment incentives for foreign investment projects in Vietnam according to the law, based on the written approval of investment policy (if any), Investment Registration Certificate (if any), other relevant regulations, Foreign Invested Companies shall themselves determine their investment incentives and carries out procedures for enjoying such incentives at tax authorities, financial authorities, customs offices, and other competent authorities corresponding to each type of investment incentive. Example:

For investment projects subject to the issuance of an Investment Registration Certificate or a decision on investment policies, the Foreign Invested Company shall enjoy investment incentives based on the contents of investment incentives specified in the Investment Registration Certificate or decision on investment policies. The basis for applying investment incentives to science and technology enterprises is the certificate of science and technology enterprise; for agricultural enterprises using high technology is the Certificate of agricultural enterprise applying high technology; for hi-tech application projects is the certificate of high-tech application projects; for supporting industry projects, it is the Certificate of Incentives for the production of supporting industry products; for projects with technology transfer on the list of technologies encouraged for transfer, it is the Certificate of technology transfer encouraged for transfer according to the Prime Minister's regulations.

For projects in which Foreign Investors do not fall into the above cases, the Foreign Invested Companies shall determine the investment incentives which they can enjoy based on the beneficiaries of investment incentives and carry out the procedures for enjoying such incentives at the relevant agencies.

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

When transferring capital/shares, Foreign Investors who are organizations or individuals must fulfill different tax obligations:

### - Corporate Income Tax:

For a Foreign Investor being an organization that is obliged to pay foreign contractor tax on income arising from the transfer of capital/shares in a Foreign Invested Company, the applicable tax rate is 20%, the tax calculation method is as follows :

$$\text{CIT} = (\text{Transfer price} - \text{Purchase price of the transferred capital} - \text{Transfer cost}) \times 20\% \text{ Tax rate}$$

**Note:** If the transfer contract does not stipulate the transfer price or the tax authority has a basis for determining the transfer price is not suitable compared to market price, the tax authority has the right to inspect and set the transfer price. The basis for setting the transfer price is based on the investigation documents of the tax authority or the capital transfer price of other cases at the same time within the same economic organization or similar transfer contracts.

Deadline for CIT declaration : Foreign Investors make tax declarations for each incurrence of personal income. Organizations and individuals receiving transfer capital are responsible for determining, declaring, deducing, and paying CIT on behalf of Foreign Investors. In case the receiving party is also a foreign organization that does not operate under the Law on Investment or the Law on Enterprises, the Foreign Invested Companies established under the law of Vietnam in which the foreign organization invests its capital is responsible for declaring and paying CIT derived from capital transfer activities on behalf of Foreign Investors.

The deadline for tax declaration is the 10th (tenth) day from the date the competent authority approves the capital transfer or the 10th (tenth) day from the date the parties agree to transfer the capital in case the capital transfer does not need approval .

### - Personal Income Tax:

For Foreign Investors who are individuals, when transferring capital/shares in a Foreign Invested Enterprise, personal income tax must be paid , specifically:



**(i) In case of transfer of capital in a limited liability company:**

If the Foreign Investor is a resident individual, the applicable tax rate is 20%, the tax calculation is as follows:

$$\text{PIT} = (\text{Transfer price} - \text{Purchase price of the transferred capital} - \text{Transfer cost}) \times 20\% \text{ Tax rate}$$

If the Foreign Investor is a non-resident individual, the tax calculation is as follows:

$$\text{PIT} = \text{Transfer price (excluding any cost)} \times 0,1\% \text{ Tax rate}$$

**Note:** If the sale and purchase contract does not stipulate the transfer price or the transfer price is not suitable according to the market price, the tax authority has the right to set the transfer price in accordance with the law on tax administration.

**Deadline for PIT declaration:** Foreign investors are residents who transfer capital and declare tax on each transfer, regardless of whether or not income is generated. Foreign investors being non-resident individuals and earning income from the transfer of capital in Vietnam are not required to declare tax directly to the tax authority, but the organization and individual receiving the capital shall deduct tax and declare tax. The deadline for submitting tax declaration dossiers is the 10th (tenth) day from the effective date of the capital sale and purchase contract.

In addition, if the Foreign Invested Companies implement the procedure for changing the list of shareholders in the case of capital transfer without documents proving the fulfillment of tax obligations by the Foreign Investor transferring the capital, The Foreign Invested Company is responsible for declaring and paying taxes on behalf of the Foreign Investor .

**(ii) In case of transfer of shares in a joint-stock company/stocks according to the law on securities, collectively referred to as transfer of securities.**

If the Foreign Investor is a resident individual, the applicable tax rate is 0.1% and the tax calculation is as follows:

$$\text{PIT} = \text{Securities transfer price each transfer} \times 0,1\% \text{ Tax rate}$$

If the Foreign Investor is a non-resident individual, the tax calculation is as follows :

$$\text{PIT} = \text{Transfer price (excluding any cost)} \times 0,1\% \text{ Tax rate}$$

**Deadline for PIT declaration:** Foreign investors who transfer securities declare tax according to each incurrence of personal income. The deadline for declaring tax is the 10th (tenth) day from the effective date of the securities sale and purchase contract. In case the Foreign Invested Company pays tax on behalf of an individual, the time to submit the tax declaration dossiers is before the procedures for changing the list of shareholders as prescribed by law.

In addition, if the Foreign Invested Company carries out the procedures for changing the list of shareholders in case of securities transfer without documents proving fulfillment of tax obligations by the Foreign Investor transferring securities, The Foreign Invested Company is responsible for declaring and paying taxes on behalf of this Foreign Investor.

## 07. Obligations of Foreign Invested Companies when transferring real estate property

When there is a real estate transfer, the Foreign Invested Enterprise must declare and pay CIT each time it is incurred (in case the Enterprise does not have a real estate business function) . The deadline for submitting tax declaration dossiers is the 10th (tenth) day from the date of arising tax obligations . CIT is calculated as follows:

$$\text{CIT} = (\text{Revenue from real estate transfer} - \text{Purchase price of real estate} - \text{Transfer cost} - \text{Loss of real estate transfer in previous years (if any)}) \times 20\% \text{ Tax rate}$$

**Note:** In case the price of transferring land-use rights under the sale and purchase contract is lower than the land price on the land price list set by the Provincial People's Committee at the time of signing the contract, land price shall be calculated according to the price set by the Provincial People's Committee at the time of signing the sale and purchase contract.

In addition, the transfer of land use rights is not subject to VAT . However, when performing real estate transfer activities, including house and land use rights, the land price will be deducted when calculating VAT , the VAT rate for the rest when calculating VAT is 10% for normal goods and services that are subject to VAT of 0%, 5%. VAT is calculated as follows:

$$\text{VAT} = (\text{Transfer price} - \text{Deducted land price}) \times \text{Tax rate}$$



## 08. When transferring Real Estate Property, does the Foreign Investor as an individual have any tax obligations?

Foreign Investors being individuals, have an obligation to pay PIT when they generate income from real estate transfer transactions, except in cases where they are exempt from PIT as prescribed in Article 3 Circular 111/2013/ TT-BTC.

**(i) In case the Foreign Investor is a resident individual, Personal income tax is calculated as follows:**

$$\text{PIT} = \text{Transfer price of each occurrence} \times 2\% \text{ Tax rate}$$

**Note:** In case of transfer of real estate as joint ownership, the tax liability of each taxpayer is determined separately according to the percentage of real estate ownership. The basis for determining the ownership ratio is a legal document such as an initial capital contribution agreement, a will or a court's decision on division, etc. If there is no legal document, the tax liability of each taxpayer is determined according to the average rate.

**(ii) Where the Foreign Investor is a non-resident individual. Personal income tax is calculated as follows:**

$$\text{PIT} = \text{Transfer price (excluding any cost)} \times 2\% \text{ Tax rate}$$

Deadline for PIT declaration:

- If the transfer contract does not agree that the buyer is the taxpayer on behalf of the seller, the tax declaration shall be submitted no later than the 10th (tenth) day from the effective date of the transfer contract in accordance with the law.
- If the transfer contract has an agreement stating that the buyer is the taxpayer on behalf of the seller, the tax declaration shall be submitted no later than the time of carrying out registration of real estate ownership and use rights. In case an individual receives the transfer of a future house or construction work, the time for ownership is the time when the individual submits a tax declaration to the tax agency.



A construction worker wearing a yellow safety vest, blue jeans, and a yellow hard hat is working on a wooden frame. The worker is positioned on a horizontal beam, leaning forward. The background is a clear blue sky with some light clouds. The wooden frame consists of vertical studs and horizontal beams, forming a skeletal structure of a building. The overall scene is bright and clear, suggesting a sunny day.

# 040

**LABOR**



## 01. 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, probation duration and salary, 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 procedures for unilateral termination of such contracts. In addition, the regulations on social insurance, the minimum salary, and the working and rest regime of employees are also clearly defined by law, the Company should check and comply with the regulations.

Secondly, for the employment of Foreign Employees, the Foreign Invested Company needs to comply with the regulations on recruitment conditions of Foreign Employees in Vietnam, procedures at the competent authorities to explain the use of Foreign Employees and to issue work permits to foreigners working at the Company. If the Company's employment of Foreign Employees is not in accordance with the law, it will be punished for violations.

## 02. 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 foreign and Vietnamese law;
- Having a Work Permit issued by a competent authority of Vietnam, except in cases which the work permit is not required in accordance with the law.

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



### 03. What procedures must a Foreign Invested Company follow to recruit Foreign Employees?

Foreign Invested Company is entitled to recruit Foreign Employees to work as managers, executive directors, experts, and technical workers that Vietnamese Employees cannot meet according to production and business needs.

In order to recruit Foreign Employees, 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 Employees and must obtain the written approval from a competent authority.

After obtaining the approval of the employment of the Foreign Employees from the competent authority, the Foreign Invested Company shall carry out the procedure to be issued the new work permit or the procedure for the exemption of the work permit for the Foreign Employees at a competent authority.

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

### 04. 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 probation term, salary, etc.

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 hygiene, salary, form of payment, social insurance, health insurance, unemployment insurance, etc. The employee provides information about identity, education level, health status, etc.

After that, the parties choose the form 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 through either a legal representative or an authorized person according to the law.

**05. 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 salary and benefits (if any) in full in accordance with the law or agreements within 7 days from the date of contract termination or within 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.

**06. Does the Company have to establish labor union and how is labor union fee paid?**

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 a union.

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

## 07. Is it difficult to dismiss employees? The accountability for wrongful dismissal?

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

- (i) The Company is required to have a legally effective Internal Labor Regulations that specifies violations that will result in disciplinary action;
- (ii) The employee commits acts that are subject to the dismissal in accordance with the law and the Internal Labor Regulations of the Company, and the Company is responsible for proving the fault of the employee;
- (iii) The handling of 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 for disciplinary actions.
  - Disciplinary dismissal must have the participation of the representative organization of the labor collective, the employee and the parents, or the legal representative if the employee is under 18 years old. Any of these members who do not attend the meeting must clearly state the reason.
  - The disciplinary meeting 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 or an extended period of time for disciplinary action and must be sent to the employee, the parents or legal representative of the person that is under 18 years old and the organization representing the labor collective at the grassroots level.

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

- Reinstate the employee to work under the signed labor contract and pay the salary, social insurance, health insurance for the days the employee is not working plus at least 02 months salary under the labor contract;
- 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;
- In case the Company does not want to retake 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;
- 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, and add to the labor contract.

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 this document when meeting the similar cases. However, for each specific case, there will be applicable solutions which are the most suitable and bring the greatest results, Apolat Legal recommends the Foreign Investors to consult lawyers in such cases to best protect their legal rights and interests.



08. 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:

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

- For Foreign Employee:

Insurance contributions based on salary	Social Insurance, Health Insurance Contribution Rates				
	Social Insurance			Health Insurance	Total
	Pension and Survivorship Fund	Sickness and Maternity Fund	Occupational Accident and Disease Fund		
Deducted from the Company's expenses	14%	3%	0.5%	3%	20.5%
Deducted from the Employee’s salary	8%	-	-	1.5%	9.5%
Total					30.5%



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