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LEGAL AND TAX INSIGHTS FOR CONSTRUCTION PROJECTS *IN VIETNAM*

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LIST OF ABBREVIATIONS

BIT	Bilateral Investment Treaties
BOT	Build Operation Transfer
BT	Build and Transfer
BTO	Build Transfer Operation
CIT	Corporate Income Tax
CPC	Central Product Classification
Decree 37	Decree No. 37/2015/ND-CP dated 22 April 2015
DoC	Department of Construction
DTA	Double Taxation Agreement
EPC	Engineering Construction and Procurement
FCWT	Foreign Contractor Withholding Tax
FIDIC	International Federation of Consulting Engineers
LCA	Law on Commercial Arbitration
LLC	Limited Liability Company
MoC	Ministry of Construction
NEC	New Engineering Contract
OLC	Operation Licence for construction
PIT	Personal Income Tax
PMO	Project Management Office
PPP	Public-Private Partnership
Rep. Office	Representative Office
SOE	State-Owned Enterprise
TRC	Temporary Resident Card
VAT	Value Added Tax
WP	Work Permit
WTO	World Trade Organization
WV	Working Visa

1. EXECUTIVE SUMMARY

Construction in Vietnam is developing fast. The demand for construction work with a high level of technology is increasing in all fields of construction. For much of the work, the Vietnamese construction industry is well-qualified. However, for specialized work in the construction field, foreign experience and expertise are needed and contracted. This guide focuses on the legal, administrative, and taxation framework for foreign construction projects in Vietnam.

Compliance with the regulatory framework requires time and careful preparation at an early stage. There are several regulations that directly govern construction projects in Vietnam as follows:

- Law No. 62/2020/QH14 on amendment of the 2014 Law on construction (collectively, the “Law on Construction”);
- Decree No. 06/2021/ND-CP of the Government on quality control, construction and maintenance of construction works;
- Decree No. 175/2024/ND-CP of the Government on the management of investment projects for construction. This Decree No. 175 was issued on 30 December 2024 and comes into force on the same date.

2. LEGAL FRAMEWORK

2.1. Applicable law and contract types

2.1.1. Law governing construction projects

Construction projects are primarily governed by the Law on Construction, Civil Code¹, and depending on the case by specific laws, such as the Law on Environment Protection², and Law on Land³.

Besides, several specific decrees apply, notably:

- Decree No. 175/2024/ND-CP on management of investment projects for construction;
- Decree No. 06/2021/ND-CP on quality control, construction and maintenance of construction works;
- Decree No. 10/2021/ND-CP on management of construction investment costs;
- Decree No. 44/2015/ND-CP on construction planning;

¹ Civil Code No. 91/2015/QH13 dated 24 November 2015.

² Law on Environment Protection No. 72/2020/QH14 dated 17 November 2020

³ Law on Land No. 31/2024/QH15 dated 18 January 2024

- Decree No. 37/2015/ND-CP on construction contracts.

Construction contracts are civil contracts that must be made in written form⁴, therefore, construction contracts are also governed by the Civil Code. In case the construction project is financed from the State Budget, construction projects are also subject to Law No. 22/2023/QH15 on Bidding⁵ and to the Law on Public Investment⁶.

The legal framework for construction in the private sector does not impose restrictions on contractual agreements. However, in the case of contracts with State agencies or State-owned enterprises (SOE), special regulations on construction contracts will be applied.

In any case, the contracts must be drafted carefully to avoid misunderstandings and disputes between the parties. Special considerations are required for all potential issues and to ensure the contracts are enforceable.

2.1.2. Operating Licence for Construction

A foreign company working in the construction field must obtain an Operating License in Construction (OLC) and register its Project Management Office (PMO) prior to taking up the work. The Law on Construction defines:

"10. "Construction work" means a product constructed according to design, created by human labor and with building materials and equipment installed therein, and affixed to land, which possibly includes underground and surface components, underwater and water surface components"⁷.

"21. "Construction activities" cover construction planning, formulation of an investment project to construct a work, construction survey, construction design, construction, construction supervision, project management, selection of contractors, taking-over inspection, taking-over of the work for operation, its warranty and maintenance and other activities related to its construction."⁸

Whether a foreign company works as a foreign contractor for a Vietnamese company, or as a foreign sub-contractor for a foreign contractor or foreign sub-contractor does not matter.

The three main conditions for granting an OLC are:

⁴ Article 138 of the Law on Construction

⁵ Law on Tendering No. 22/2023/QH15 dated 23 June 2023

⁶ Law on Public Investment No. 58/2024/QH15 dated 29 November 2024, effective from 1 January 2025.

⁷ Article 3.10 of the Law on Construction

⁸ Article 3.21 of the Law on Construction

- A foreign contractor has been awarded the tendering or selected by the investor/contractor (or subcontractor).
- The foreign contractor must create a joint venture with a Vietnamese contractor or employ Vietnamese sub-contractors, unless the Vietnamese contractor is ineligible to execute any tasks of the bidding package. Upon the joint venture or employment of Vietnamese contractors, it is required to clarify contents, quantity and value of tasks performed by Vietnamese contractors in the joint venture or Vietnamese sub-contractors.
- The foreign contractor must commit to comply with regulations of Vietnamese law on contract execution in Vietnam.

Applications for OLC must be lodged with the Ministry of Construction (MoC) or Department of Construction (DoC). The timeline for a decision on the request is 20 days from the date of receipt of sufficient applications. The decision may include a request for additional documents, which would extend the timeline accordingly.

2.1.3. Project Management Office

After the issuance of the OLC, the PMO must be established. Normally, it must be established where the construction project is located. If the contract is on planning formulation, construction project formulation, construction survey, or construction design, the foreign contractor may establish its PMO in the area where the investor's head office is located. If the contract is on construction and supervision construction of work that is to be executed in multiple provinces, the foreign contractor may establish the PMO in any of these provinces⁹.

A notice on PMO establishment must be prepared and sent to the MoC or DoC, depending on the project. The PMO shall exist only during the duration of the project and must be formally closed after that. The PMO shall have its own seal and tax code, and it may open a bank account in Vietnam. The PMO can also directly recruit employees¹⁰ to perform the contract in Vietnam. After registering the PMO's information, the foreign contractor shall send a written notification to the DoC and other relevant agencies¹¹. The PMO must report periodically in accordance with the issued OLC.

⁹ Article 119 of Decree No. 175/2024/ND-CP

¹⁰ Including foreign employees but only experts and highly skilled persons are permitted. Vietnamese employees are given priority over foreigners in recruitment

¹¹ Article 119.2 Decree No. 175/2024/ND-CP

2.1.4. Use of international standard agreements

For a contract with a private company established in Vietnam, no restrictions exist on the use of contractual forms. If the Vietnamese partner is a SOE, or an organization of the State, or in case the private company is using State Capital, or if the project is implementing tender packages including special kinds of construction contracts (Build Operation Transfer (BOT), Build Transfer Operation (BTO), Build and Transfer (BT) and Public-Private Partnership (PPP)), specific regulations apply.

Decree No. 37/2015/ND-CP ("Decree 37")¹² provides regulations on the signing period, dispute resolution and other related issues. For contracts only involving private companies, applying Decree 37 is encouraged but is not mandatory.

Recently, the MoC of Vietnam issued Circular No. 02/2023/TT-BXD, which provides guidance on certain contents of construction contracts and several contract templates related to construction¹³. Like Decree 37, for non-State-funded projects, organizations and individuals may refer to these templates for establishing and managing construction contracts.

The use of sample contract conditions of the International Federation of Consulting Engineers (FIDIC) is legally encouraged and widely used in practice. The New Engineering Contract (NEC)¹⁴ form, is not so common in Vietnam but it can be used if the parties agree upon it. Every sample contract must be amended to match conditions of Vietnamese laws.

2.1.5. Government contracts

Selecting providers of services, goods, construction, and installation for projects financed by the state budget must follow the regulations on bidding.

The complicated decentralization of project management leads to several risks in the process of bidding, entering into contract, and managing the project. The investment decision-making institution¹⁵ shall establish a Management Board, and such Management Board shall act as the developer of the project. The Management Board can have its own separate seal and bank account. It will consist of the director, deputy director(s), staff and specialists. The Management Board has the full power to make decisions and must take responsibility for its decisions. However, the Management Board is subject to government administrative management and depends on other entities, especially investment decision-making

¹² Decree No. 37/2015/ND-CP dated 22 April 2015

¹³ Article 2, Circular No. 02/2023/TT-BXD

¹⁴ For further information on NEC, please see at: <http://www.neccontract.com>

¹⁵ Depending on the projects, the investment decision-maker may be the Prime Minister, a Minister (or equivalent), a Chairman of a provincial People's Committee, a Chairman of District People's Committee, a state economic group or a state corporation.

institutions. Therefore, the Management Board may act like a separate legal entity but may just be executing non-transparent administrative decisions. This is one reason why many state-funded projects are inefficient and costly.

2.1.6. Consortium

A consortium is usually used by contractors in Vietnam to join in construction projects. In a Consortium, two or more contractors are jointly and severally liable to perform construction contracts through a consortium agreement. The Law on Construction allows consortium members to agree whether all consortium members must sign the contract with the developer or that only one of the consortium members signs the contract on the other members' behalf. However, the Law on Bidding requires that all consortium members sign the construction contract.

2.1.7. Joint Venture

Parties might instead of agreeing on a Consortium agree on a Joint Venture structure. This may be under a special kind of cooperation agreement. It may also be a jointly owned Limited Liability Company (LLC) if the project allows such a structure to be established.

2.2. Taxation

2.2.1. Foreign Contractor Withholding Tax

Every contract a foreign company is performing in Vietnam is subject to the Foreign Contractor Withholding Tax (FCWT). One important exception are contracts which do not include any kind of services to be provided in Vietnam, except for warranty.

The FCWT is not a separate tax. It is a special way of calculating and paying the Value Added Tax (VAT) and the Corporate Income Tax (CIT) of the foreign contractor. Normally, a simple Withholding mechanism is applied, which allows the Foreign Contractor to avoid any kind of tax registration or declaration. Under this mechanism, tax work must be done by the Vietnamese contractual partner on behalf of the Foreign Contractor.

The FCWT is applied on the full contractual turnover. If the different services and sales are not clearly separated into the contract, the highest FCWT rates are applied to the entire contract. With clear separation, the FCWT rates will be applied specifically to each service and sale, which may considerably lower the taxes.

The FCWT-VAT is to be deducted first and is considered input VAT for the Vietnamese contractual partner. The FCWT-CIT may be offset against the CIT payable in the home country of the Foreign Contractor or

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the full contractual turnover may not be taxed again in the home country. This depends on the conditions and correct application of the respective DTA.

For illustration of the practical handling, a sample calculation is inserted below.

The facts:

The contract on construction work has a volume of 10 million USD. Within this volume, the price for goods without services and transportation is 6 million USD, the price for services is 4 million USD. The Vietnamese sub-contractor receives for services 2 million USD.

The FCWT calculation is, that from the turnover of 10 million USD, 8 million USD are subject to the FCWT (i.e., the taxable turnover excludes the Vietnamese sub-contractor's portion).

Contract Price		10,000,000 USD
Turnover Vietnamese sub-contractor	-2,000,000 USD	
Taxable turnover	8,000,000 USD	
FCWT-VAT on sale of goods (6 million USD)	0 %	-0 USD
FCWT-VAT on services (2 million USD)	3 %	-60,000 USD
Remaining before deduction of FCWT-CIT		7,940,000 USD
FCWT-CIT on sale of goods (6 million USD)	2 %	-120,000 USD
FCWT-CIT on services (1,940,000 USD, the VAT has been deducted from 2 million USD)	2 %	-38,800 USD
Remaining (not including the Vietnamese sub-contractor turnover)		7,781,200 USD

The 60,000 USD deducted is input VAT for the Vietnamese **customer**.

The total FCWT-CIT deducted is 158,800 USD.

With a clear tax clause, parties may agree that the contractual price is understood as either after deduction of FCWT-VAT only or after deduction of all FCWT. This needs to be detailed in the agreement.

The foreign contractor may file a dossier claiming exemption from FCWT-CIT under a relevant DTA. No exemption is possible for FCWT-VAT. The dossier is not easy to draft, and the tax authority will not issue a decision on exemption. One of the conditions for the exemption is, that the project has not constituted a Permanent Establishment (PE). Unfortunately, the PE will be constituted if the project has a duration exceeding 6 months.

Splitting the economically united business in 2 contracts and considering one of them as “offshore-contract” is according to our understanding of the legal requirements not reducing tax exposure (due to the substance over form principle).

2.2.2. Personal Income Tax

All persons earning income in Vietnam (no matter whether it is paid in Vietnam or abroad and regardless of nationality) are obliged to pay Personal Income Tax (PIT). The taxable income and the applicable tax rates are different for residents and non-residents of Vietnam. No threshold exists for short-term stays.

Non-residents are taxed at a 20% rate on their Vietnam-related income, and residents are taxed at progressive rates (up to 35%) on their world-wide income.

A resident is a person who is:

- (1) residing in Vietnam at least 183 days in a calendar year or within the period of 12 consecutive months since the date of arrival; or
- (2) having a regular residential location in Vietnam (location for which permanent residence has been registered or property has been leased for residential purposes)¹⁶; or
- (3) residing in Vietnam below 183 days within one year but being unable to prove tax- residence in another country.¹⁷

Non-residents may reduce or eliminate PIT liability under a relevant Personal Income Tax (DTA). However, the procedure is not easy and the tax authority will not issue a confirmation on exemption. After checking an application, the tax authority may reject the requested exemption or require additional documents.

¹⁶ A leasing for residential purposes is assumed, where the leasing contract has a term of 183 days or more within the tax calculation year (Decree 65/2013/ND-CP, Article 2, No. 2 (b)).

¹⁷ The residency in another country shall be proven by certificate of residence or by passport (only applicable to DTA-partner countries). Circular 111/2013/TT-BTC, Article 1, No. 2.

2.3. Establishing a legal presence in Vietnam

2.3.1. Representative Office

The establishment of a Representative Office (Rep. Office) is not recommended for most construction projects. The legal activities of a Rep. Office are limited to promotion, marketing and market research. It is a dependent unit of the company represented in Vietnam, and it is not allowed to generate profits within Vietnam.

Over the years, we have observed that several Rep. Offices made mistakenly engaged in activities beyond their authorized scope of operations. Local authorities remain vigilant and do not hesitate to impose fines accordingly.

2.3.2. Branch

A foreign entity which has been established and operating for 05 years in the country where it is registered is permitted to set up a Branch in Vietnam. Branches can engage in activities for profit-making purposes and directly enter contracts with clients. Branch offices are not subject to a branch tax, instead the branch is taxed like a company registered in Vietnam. In practice, establishing a branch in Vietnam is only possible for some specific industries.

2.3.3. Limited Liability Company

Establishing a LLC is the most common form of foreign investment. A 100% foreign-owned company is allowed to operate construction business if it registers the following business sectors:

- General construction work for building (CPC¹⁸ 512);
- General construction work for civil engineering (CPC 513);
- Installation and assembly work (CPC 514, 516);
- Building completion and finishing work (CPC 517);
- Other (CPC 511, 515, 518).

Several sub-licenses must be obtained by the company after its incorporation.

The investor must inject the Charter Capital, usually within 90 days from the issuance of the Enterprise Registration Certificate. Once injected, the Charter Capital may be used for business operations right away. The amount of Charter Capital depends on the intended scope of business and investment project, as the laws do not provide any minimum for construction business activities.

¹⁸ Central Product Classification: <https://unstats.un.org/unsd/statcom/doc02/cpc.pdf>

For certain construction activities, the organization involved in such activities is required to incorporate an enterprise in accordance with the Law on Construction of Vietnam.

2.4. Capability of entities for participating in construction activities

2.4.1. Capability certificate

Organizations participating in construction activities must hold the capability certificate as required by the Law on Construction, including project management consultancy; construction survey, design of a construction master plan; design and/or verification of design for construction; construction of work; consultancy supervision of construction of work¹⁹.

The Capability Certificate is classified into Class I, Class II or Class III. Class I certificate is issued by the MoC while the other classes are issued by the DoC or qualified socio-occupational organizations.

Pursuant to the new Decree No. 175, the Capability Certificate is valid for 10 years in case of the first issuance, or during the term as specified in the Incorporation Certificate of the organization, but not exceeding 10 years; or in accordance with the term of the Certificate in case of re-issuance.

2.4.2. Practicing certificate

Construction practicing certificates (the “practicing certificate”) will be issued to Vietnamese citizens, overseas Vietnamese, and foreigners lawfully engaged in construction activities in Vietnam to assume positions or practice independently²⁰.

Individuals holding certain titles or practicing independently in construction, as stipulated by law, must have the appropriate practicing certificate. This includes construction survey; design of a construction master plan; design for construction; supervision of execution of building works; construction pricing; management of construction-investment project²¹.

Similar to the Capability Certificate, the practicing certificate is classified into Class I, Class II and Class III.

If foreigners holding a practicing certificate issued by overseas authorities wish to be involved in construction activities in Vietnam for more than 6 months (the “foreign practicing certificate”), they are required to convert such foreign practicing certificate with the competent Vietnamese authority.

If foreigners holding a foreign practicing certificate (i) participate in construction activities in Vietnam for less than 6 months or (ii) stay abroad but provide construction consultancy services in Vietnam,

¹⁹ Article 94 of Decree 175

²⁰ Article 73.5 of Decree 175

²¹ Article 74 of Decree 175

conversion of the foreign practicing certificate is not required. Instead, they must consular legalize their diplomas and practicing certificates, before carrying out the certification of the Vietnamese translation, to be recognized as practicing in Vietnam.

Since 30 December 2024, the practicing certificate is valid for 10 years, as opposed to 5 years under the former regulations, in case of the first issuance. For foreigners, the validity term of the practicing certificate will be determined based on the term of the Work Permit (WP) or temporary residence card issued by the Vietnamese competent authorities, but it shall not exceed 10 years.

2.5. Labor, work permit and visa

2.5.1. Labor law

Vietnamese Labor Law applies to employment of Vietnamese and foreigners. It is important to note that all agreements must be made in writing. Non-written labor agreements are not accepted.

2.5.2. Work permit and visa

Work permit

Every foreigner working in Vietnam must obtain a WP before starting to work. The 3 important exemptions, are applicable in case the foreigner is:

- (1) entering Vietnam for a period under three (3) months in order to offer services;
- (2) entering Vietnam for a period under three (3) months in order to resolve an incident (breakdown) or a technically/technologically complex situation arising and affecting, or with the risk of affecting production or business with which Vietnamese experts or foreign experts currently in Vietnam are unable to deal;
- (3) coming to Vietnam to work as an expert, managing person²², executive director or technician under 30 days and no more than 90 days in total within a 1-year period;

Other exemptions might be applicable but will require a formal Confirmation of the WP exemption. For the 3 exemptions which do not require any approval by the authorities, we still recommend documenting the

²² "managing person" includes the owner of a private enterprise, an unlimited liability partner, the chairperson and members of a members' council, a company president, the chairperson and members of a board of management, a director or general director, and an individual holding another managing position having the right to enter into transactions in the name of the company stated in the company charter.

The head or deputy head of an agency or organization is also considered a managing person.

considerations on applying the exemption internally to be able to justify of the exemption in case of control.

Visa

For working in Vietnam, the foreigner must enter Vietnam on one of these options:

- Visa exemption (for example for holders of German passports: 15 days);
- Business Visa for cases of working without WP;
- WV for cases of working with WP;
- TRC, which may be obtained after having a relevant Visa.

The WP does not replace the Visa and the Visa does not replace the WP.

Working in Vietnam without a WP or with an expired WP is a violation of Vietnamese law. This is subject to administrative sanctions for the employee as well as for the employer. It might also be considered being a criminal offense in some cases.

The sanctions can be as follows:

- Monetary fines to be paid by the employer with an amount ranging from VND 30 to 75 million;
- Shutting down business operation of the employer for a period ranging from 1 to 3 months;
- Deportation of the non-compliant foreign employee.

2.6. Dispute resolution

2.6.1. *Complaints during implementation of construction contract*

If a party discovers that the other party has improperly performed or failed to perform its contractual obligations in strict accordance with the contract, the discovering party has the right to request the other party to properly implement the contents of the signed contract. In such cases, the discovering party has the right to lodge a complaint against the other party regarding the said issues within 56 days from the date of occurrence of the issue. Please note that evidence must be enclosed with the complaint²³.

The complaint is required to be solved within 28 days from the date of receipt. The receiving party must prove that the complaint is not appropriate to the contract; otherwise, it must accept the complaint of the discovering party; and if upon expiry of such time-limit, the complaint-receiving party gives no opinion, it shall be deemed to have accepted the said complaint.

²³ Article 44 of Decree 37

2.6.1. *Dispute resolution committee*

If the parties fail to resolve the complaint, the contract dispute shall be resolved through conciliation performed by an agency, organization or one or more expert individuals (the “Dispute Resolution Committee”), if the parties agree to this in the construction contract²⁴.

The Dispute Resolution Committee may be specified in the contract at the time of signing or established after the dispute arises.

Within 28 days from the date of receipt of a conciliation conclusion issued by the Dispute Resolution Committee, any party which does not agree with the conclusion has the right to object. The dispute shall then be resolved by arbitration or by a court in accordance with law. If neither party objects to the conciliation’s conclusion upon expiry of such period, the parties are deemed to have agreed to such conclusion. Accordingly, the parties must comply with the conciliation conclusion.

2.6.3. *State courts*

The Vietnamese court system consists of the Administrative Court, Economic Court, Civil Court, Labor Court and Criminal Court. Each court type has different jurisdiction depending on the nature of the dispute. The Economic Court has jurisdiction over most commercial and financial disputes.

The Vietnamese judicial court has 04 levels: Supreme Court, High-level Court, People’s Provincial Court and People’s District Court.

In civil cases, the selection of the appropriate court is quite important, as it may take time to transfer a case to another court. Accepting a case from a court that does not have jurisdiction is bureaucratic. However, selecting the correct court to handle a case can be complicated, as it requires determining the level, location and type of court based on the characteristics of the case, the parties and objects of the case.

Dispute resolution by courts in Vietnam follows the fundamental principles outlined in the Procedure Codes. Some key characteristics of the Vietnamese court system include the participation of lay assessors, the publicity of trials and the regime of two-level adjudication system. These principles are regulated to ensure the rights of the parties involved in the procedure. However, the process can be burdensome for most parties, as it requires significant time and costs.

²⁴ Article 45 of Decree 37

In dispute resolution by Vietnamese courts, after the first instance, the parties retain their rights to appeal against the judgment to a higher-level court if such judgment has not yet come into effect. The case may be reconsidered by the court of appeal after the application for appeal is approved. However, once the judgment becomes effective, it can only be reviewed by competent courts in some specific cases without being re-adjudicated.

The framework of substantive laws has greatly improved in the last few years, while the main legal documents adjusting the dispute resolution have been modified and supplemented. These changes aim to improve the mechanisms for dispute resolution and enforcement to be more comprehensive and sufficient, as well as increase transparency in the Vietnamese judicial system. One positive development is the recognition of case law in Vietnam. Judges are now required to research and apply the selected case law to ensure consistent rulings on similar cases. In cases not following case law, judges must analyze, specify, and explain their reasoning in the judgment. The goal is to create equality in the adjudication, help predict the outcome of disputes, save time and costs for the parties involved, and promote fairness in society.

However, the judicial system in Vietnam remains inefficient and costly. For this reason, arbitration is highly recommended for most commercial and construction cases. In some disputes, the courts retain their authority to handle certain cases. This includes disputes between goods/service providers and consumers where standard conditions on the supply of goods and services include an arbitration clause. In such cases, consumers have the right to proceed to court regardless of such an arbitration clause.

2.6.4. Arbitration

Arbitration shall be used to resolve commercial disputes, which are defined as disputes in which at least one party is a commercial individual or entity. A commercial dispute can only be settled by arbitration if the parties have agreed to it in writing, either before or after the dispute arose (the “Arbitration Agreement”). The Arbitration Agreement can be included as a clause within a larger contract or as a separate document. In case there is an Arbitration Agreement, the Court must refuse to handle the case unless such Arbitration Agreement is declared invalid or unenforceable.

DISCLAIMER

All information provided is nature and is not intended to address the circumstances of any individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future.



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