



Newsletter Nr. 31 (EN)

**Personal Income Tax
in consideration of the
Germany/Vietnam Double Taxation Agreement**

October 2011

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I. Introduction

This Newsletter explains how the Double Taxation Avoidance Agreement (“DTA”) between the Federal Republic of Germany and the Socialist Republic of Vietnam (27 December 1996) influences the taxation of income earned in Vietnam.

The German-Vietnamese Double Taxation Avoidance Agreement 1996 came into effect on January 1997 and is one of 57 Double Taxation Avoidance Agreements concluded by the Vietnamese Government to date. The avoiding of double taxation is just one of the ways by which the Vietnamese Government tries to create incentives for German investment in Vietnam.

Whilst the DTA covers both corporate income tax and personal income tax, our newsletter is limited to the topic of personal income tax (“PIT”).

II. Applicability and Definitions

The DTA is applicable to persons residing in Germany or Vietnam or both countries. The term “residing” is defined in the DTA, Art. 4 as follows: a person is considered as resident in a contractual state when he/she is, according to that state’s law, liable for taxation due to his/her domicile, his/her permanent place of abode or any other criteria which defines him/her as a resident.

According to Vietnamese Law a person is a resident for taxation purposes, if

- he/she stays 183 days or more in Vietnam within a western calendar year; or

- he/she stays 183 days or more in Vietnam within a consecutive 12 months period from his/her arrival date; or
- he/she holds a temporary or permanent Residency Card; or
- he/she has entered into a residential lease for a period of 90 days or more.

Such residency is determined on a year to year basis. The above time periods are counted from the arrival date in Vietnam. The first tax period is from the date of arrival to the end of the current tax year. The subsequent tax periods mirror the calendar year.

Under German tax law a person is a resident for tax purposes if he/she holds an apartment in Germany and the circumstances show that he/she intend to keep and use the apartment. For this purpose the term “apartment” means a site with the principle purpose of which is residential. The taxpayer’s domicile does not need to be stipulated in a Residency Card.

Under the above definitions a taxpayer can have unlimited tax liability in Germany and Vietnam at the same time. In this case art. 4 section 2 of the DTA regulates as follows:

- If a person holds a tax domicile in both countries, he/she will be considered to be a resident of that country which is his/her permanent home. His/her “permanent home” is that country where he/she maintains the closest personal or economic relations.
- If it is impossible to determine the person’s in question permanent home, then residence is defined under the DTA as the place of general habitation.
- If the person resides generally in both or neither countries then he/she will be as-

signed to the country of his/her citizenship.

- If the person has both German and the Vietnamese nationality or is exclusively a citizen of a third country, then the competent authorities of the two countries should settle the residency question by mutual agreement.

III. Taxation of income in Vietnam

Basically, individuals are obliged to pay PIT on income arising from Vietnam, regardless of whether they are a resident of Vietnam or not. PIT applies to both salary and non-salary income.

1. PIT on regular income

The taxation of income by the Vietnamese tax authorities depends on the residency status of the taxable person, i.e. whether he/she is classed as residing in Vietnam or not

(1) PIT for Vietnam residents

PIT on income of residents in Vietnam is charged on the basis of progressive tax rates irrespective of if the payment is made inside or outside of Vietnam. All kinds of income are taxable, i.e. business, employment, investment, capital gains, royalty, inheritance, gifts etc. The PIT rates do NOT differentiate between foreign and local residents. Normally the lowest tax band is five million Vietnamese Dong (VND) and under, which is the equivalent of approximately 170 EUR. However in August 2011 the Government introduced a series of tax cuts which exempted income under five million from PIT until 31 December 2011.

The current tax rates for Vietnam residents on income arising from employment (regular income) can be seen in the following chart:

(2) PIT for non-residents in Vietnam

Level	Average monthly taxable income	Tax rate (%)
1	Up to 5,000,000 (approx. 170 EUR)	0 until 31 December 2011 and 5 thereafter
2	Over 5,000,000 to 10,000,000 (Over 170 EUR to 340 EUR)	10
3	Over 10,000,000 to 18,000,000 (Over 340 EUR to 600 EUR)	15
4	Over 18,000,000 to 32,000,000 (Over 612 EUR to 1,100 EUR)	20
5	Over 32,000,000 to 52,000,000 (Over 1,090 EUR to 1,800 EUR)	25
6	Over 52,000,000 to 80,000,000 (Over 1,770 EUR to 2,700 EUR)	30
7	Over 80,000,000 (Over 2,700EUR)	35

The income of a non-resident which arises out of Vietnam is subject to PIT. The PIT rates which apply to this income differ from the rates for resident taxpayers (as listed above). Instead of a progressive tax rate system such non residents are taxed at a flat rate. The current flat rate for EMPLOYMENT income is 20%, non-employment income is taxed at various other rates depending on its exact nature (see chart below).

2. PIT on irregular income

According to Vietnamese tax law irregular income includes the irregular earnings of taxable persons e.g. dividends or royalties.

Such income is only taxable, if it exceeds 10 million VND in a given tax year (approximately EUR 340). The PIT rate for such income varies from 0.1 to 10%, depending upon the income's origin. Please note, however, that under the Government's recent tax cuts PIT on the sale proceeds from stock transfers has been reduced by 50% until the end of 2012 and there is a PIT exemption on stock dividends until further notice.

¹ This is the amount of income which remains after various deductions have been applied.

The current PIT rates for regular and irregular income for Vietnam non-residents can be seen in the following chart:

No.	Type of taxable income	Tax rate (%)
1.	Employment income	20
2.	Business income	1 – 5 depending on type of business income
3.	- Interest - Dividends	5 0 until further notice. Thereafter 5
4.	Sale of securities	0.05 (0.1 after 2011)
No.	Type of taxable income	Tax rate (%)
1.	Interest Dividends	5 0 until further notice. Than 5
2.	Sale of securities: Net gain; or Sale proceeds	10 (20 after 2011) 0.05 (0.1 after 2011)
3.	Sale of real estate: Net gain; or Sale proceeds	25 2
4.	Income from copyright	5
5.	Income from franchising/royalties	5
6.	Income from winning prizes	10
7.	Income from inheritance/gifts	10

Some kinds of irregular income, e.g. dividend payments, interests, licence fees or remunerations for technical services are liable for tax in both Vietnam and Germany. However, double taxation is prevented by the provisions of the DTA as described in Section IV below.

IV. Tax exemptions and reductions in Vietnam in accordance with the DTA

The DTA details tax exemptions and reductions which are available for income which is subject to tax in both Vietnam and Germany. These provisions make a distinction between resident and non-resident foreigners of Vietnam.

1. Tax exemptions for foreign residents in Vietnam

A PIT exemption on income earned in Vietnam is usually possible for foreigners who lived in Germany before their arrival in Vietnam and whose activities are limited to teaching, lecturing or research activities at universities, schools, museums or other cultural institutions.

In these cases a PIT exemption in Vietnam for income which is already taxed in Germany will be granted for a maximum of two years from the date of arrival in Vietnam. This is regulated by art. 20 of the DTA

A similar regulation applies to students, trainees or apprentices, who work in Vietnam but who are paid an allowance or similar income from a non-Vietnamese source. This exemption will apply as long as the income in question does not exceed EUR 4,602 per year.

2. Tax exemptions for resident and non-resident foreigners of Vietnam

Regardless of a person's residency status they will be exempt from PIT under art. 19 DTA, if his/her salary or pension is paid as a result of their prior employment in the German public service sector. This exemption does not include remunerations or pensions for services rendered in connection with a commercial activity in either Vietnam or Germany.

3. PIT reduction for non-resident foreigners in Vietnam

A person residing in Germany, who has a salary arising out of Vietnam, can be taxed in Vietnam for that said income. Equally tax on income in the form of dividends, interests or licence fees and remunerations for technical services will also be taxed according to Vietnamese tax law as long as the applicable PIT rate does **not exceed** the rates for such income which are set out in the DTA. For example, the maximum PIT rate applied in

Vietnam for technical services must not exceed 7.5% of the gross amount of the income.

Tax paid in Vietnam can normally be credited against the income tax which is payable in Germany by presenting a proper withholding tax certificate.

V. Practical examples

We would like to clarify how the DTA works in practice by presenting the following two examples:

Example 1:

(1 EUR = 29,000 VND)

Mr. A, a German residing in Vietnam is paid a total salary of EUR 36,000 per year in Vietnam and additionally receives a taxable salary in Germany of EUR 18,000. It is assumed that the tax payable in Germany amounts to EUR 3,600 per year or EUR 300 per month².

According to the Law on PIT, the payable income tax in Vietnam is calculated on the basis of progressive tax rates and average monthly income. Foreigners residing in Vietnam are taxed based on their worldwide income. Accordingly, Mr. A's total taxable income amounts to EUR 54,000 (EUR 36,000 earned in Vietnam and EUR 18,000 earned in Germany) per year or EUR 4,500 per month. This equates to 132.2 million VND taxable income per month.

Applying the progressive rates (see page 5), the PIT payable on the total income amounts to EUR 1,575 per month (46.3 million VND). To avoid double taxation, the income tax calculation under the DTA is as follows:

Income which is taxable in Vietnam per month before any crediting of income tax payable in Germany	1,575.00 EUR (1)
Income tax payable in Germany	300.00 EUR (2)
Tax credited against Vietnamese income tax (because already paid in Germany)	300.00 EUR (3)
Income tax to be paid in Vietnam after tax crediting	(1) – (3) = 1,275.00 EUR
Result:	
a) Income tax payable in Germany	300.00 EUR
b) Income tax payable in Vietnam	1,275.00 EUR

Example 2:

Our second example concerns the avoidance of double taxation in case of taxation of remuneration for technical services i.e. irregular income.

Mr. B, a German residing in Vietnam receives EUR 10,000 as remuneration for technical services performed in Germany. According to the current German tax laws, approximately 20% of the entire remuneration amount is eligible for income tax. However, due to the DTA this is reduced to 7.5%. Furthermore, under the current Vietnamese tax laws Mr. B should also pay a further 5% income tax on this remuneration to the Vietnamese tax authorities. To avoid double taxation, the following tax crediting will occur:

² This assumed taxable income amount is absolutely notional and subject to variations of the current tax laws in Germany. The above mentioned amount is for example purposes only.

Income which is taxable in Vietnam before any tax crediting of the income tax payable in Germany	10,000.00 EUR x 5 % = 500.00 EUR (1)
Tax payable in Germany	10,000.00 EUR x 7.5 % = 750.00 EUR (2)
Tax credited against Vietnamese Tax because already payable in Germany (max. total income tax payable in Vietnam)	500.00 EUR (3)
Tax liability in Vietnam after tax crediting	(1) – (3) = 0.00 EUR
Result:	
c) Tax payable in Germany	750.00 EUR
d) Tax payable in Vietnam	0.00 EUR

VI. Summary

Germany and Vietnam both have a relatively high tax burden. The existing DTA is therefore of great benefit to persons who might be liable for income tax in both states.

It should be noted that when the taxpayer is travelling between Vietnam and Germany, they are able to a certain extent to choose where his/her salary is taxed. In such cases it is advisable to survey the advantages and disadvantages of the respective tax legislation, and to analyse the determining factors for taxation in each country under the DTA before making a final choice. Furthermore, even when the taxpayer officially resides in one country, it is still advisable to analyse the regulations of the DTA in order to minimise the tax burden and to prevent any possible double taxation.

*We hope that the information provided in this brochure was helpful for you.
If you have any further questions please do not hesitate to contact us.*

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