

Newsletter:

Foreign Investors Need to Pay Attention to Which Taxes When Investing in Vietnam



Author
Hoang Thi Lien
Managing Partner
(+84) 976 237 445
lien.hoang@cdlaf.vn

In Brief

Before deciding to invest in Vietnam, Investors are often interested in and research the appropriate investment and presence forms, related incentive policies, and obligations to be performed when investing in Vietnam. According to Decree No. 152/2020/ND-CP, depending on the investment form, Investors can have commercial presence forms in Vietnam such as foreign-invested economic organizations; representative offices, and branches of foreign traders in Vietnam; head offices of foreign investors in business cooperation contracts.

So, when these commercial presences operate in Vietnam, what tax policies should be considered?

Key Takeaways

1. Head offices of a foreign investor in a Business Cooperation Contract (BCC)

The Head Office of a foreign investor in a BCC is established to recruit employees, sign contracts, and perform business activities within the scope of rights and obligations specified in the BCC and the Certificate of Registration of the Head Office.

A Business Cooperation Contract (BCC) is a contract signed between investors to cooperate in business, share profits, and distribute products under the law without establishing an economic organization.

Point n, Clause 3 of Circular 78/2014/TT-BTC also regulates revenue determination for calculating taxable income in a BCC. According to the agreement in the contract, the parties will determine the responsibility for declaring and paying value-added tax, personal income tax, and corporate income tax. Therefore, depending on the case, the Head Office will perform the work related to the declaration of value-added tax, personal income tax, and corporate income tax for the foreign investor. In addition, to accurately determine the tax liability, the investor also needs to consider the Double Tax Avoidance Agreements between Vietnam and the relevant countries.

2. Foreign Representative Offices in Vietnam

- **Business Registration Fee**

According to Clause 2, Article 44 of the 2020 Enterprise Law: A representative office is a subsidiary of an enterprise, tasked with representing the interests of the enterprise under authorization and protecting those interests. The representative office does not perform the business functions of the enterprise.

Business is the continuous performance of one, some, or all stages of the process from investment, production, and consumption of products or provision of services on the market for profit.

According to Decree 139/2016/ND-CP and Decree 22/2020/ND-CP on business registration fees, representative offices that engage in the production or trading of goods and services are required to pay business registration fees. Therefore, if a representative office engages in business activities, it must declare and pay business registration fees. If there are no business activities, then no business registration fee is required.

- **Personal Income Tax**

According to Articles 17 and 18 of the Commercial Law, a representative office is allowed to rent a head office, rent or purchase necessary equipment and materials for the operation of the representative office; and Recruit Vietnamese and foreign employees to work at the representative office under Vietnamese law. Representative offices are not allowed to engage in direct profit-making activities in Vietnam. They are only allowed to carry out trade promotion activities within the scope permitted by the Commercial Law. They are not allowed to sign, amend or supplement contracts signed by foreign traders, except in cases where the Head of the Representative Office has a legal power of attorney from the foreign trader.

Therefore, representative offices must perform the obligation to withhold, declare, and pay personal income tax for employees and corporate income tax (contractor tax, if required by the parent company).

3. Foreign-invested Enterprises and Branches of Foreign Traders in Vietnam

A branch is a subsidiary of an enterprise that is responsible for performing all or part of the functions of the enterprise, including the function of representation under authorization. The business sectors of the branch must be consistent with the business sectors of the enterprise. Therefore, the taxes and fees that foreign-invested enterprises and their branches in Vietnam are subject to are similar. Except in cases where the scope of business activities of the branch is narrower, the tax and fee obligations will be reduced accordingly.

Enterprises/branches operating in Vietnam will incur the following taxes and fees:

- **Business registration fee**

Based on: Clause 2 of Decree 139/2016/ND-CP regulating the subjects of business registration fee payment:

" 1. Enterprises established in accordance with the law.

...

6. Branches, representative offices and business locations of the organizations specified in Clauses 1, 2, 3, 4 and 5 of this Article (if any)."

- **Value Added Tax (VAT)**

Based on: Clause 3 of Circular 219/2013/TT-BTC stipulating VAT taxpayers:

“Foreign-invested enterprises and foreign parties participating in business cooperation under the Foreign Investment Law in Vietnam (now the Investment Law); foreign organizations and individuals conducting business in Vietnam but not establishing a legal entity in Vietnam;”

Therefore, foreign-invested enterprises and branches of foreign companies are all VAT taxpayers.

- **Corporate Income Tax (CIT)**

Based on: Clause 1 of Article 2 of Circular 78/2014/TT-BTC stipulating CIT taxpayers:

“1. The taxpayer of corporate income tax is an organization engaged in the production and trading of goods and services with taxable income (hereinafter referred to as an enterprise), including:

a) Enterprises established and operating under the Law on Enterprises, the Law on Investment, ...

The permanent establishment of a foreign enterprise is a production or business establishment through which the foreign enterprise carries out part or all of its production and business activities in Vietnam, including:

- Branches, head offices, factories, workshops, means of transport, mines, oil and gas wells or other natural resource exploitation sites in Vietnam

- **Personal Income Tax (PIT) of Employees**

Based on: The Law on Personal Income Tax 2007, amended and supplemented in 2012, and guiding documents: Organizations and individuals are responsible for withholding tax when paying income to individuals (if any) and declaring and paying that tax under the law.

Conclusion

In addition to the basic taxes mentioned above, depending on the business activities, foreign-invested enterprises and branches of foreign companies will have to pay other taxes such as import and export tax, resource tax, special consumption tax, environmental protection tax, ...

The article contains general information, which is of reference value, in case you want to receive legal opinions on issues you need clarification on, please get in touch with our Lawyer at info@cdlaf.vn.