



# POCKET TAX BOOK 2018 FOREIGN CONTRACTOR TAX

Audit / Tax / Advisory

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## Foreign contractor tax (FCT)

Foreign contractors' tax is the adjusted tax for foreign organizations and individuals that do not operate under Vietnamese law and earn income from the providing services or services associated with goods in Vietnam.

Foreign contractors that are identified as foreign organizations with or without permanent establishments in Vietnam or individuals residing or not residing in Vietnam and conducting business activities in Vietnam.

[The definition of "permanent establishment of the foreign enterprise" see at point 1 \(Pocket Tax Book 2018 – Corporate Income Tax\)](#)

**Note:** In cases where the Agreements on Avoidance of Double Taxation signed by the Socialist Republic of Vietnam contain different terms on permanent establishment or resident, the provisions of that Agreements shall be complied.

### Legal Documents

- Circular 103/2014/TT-BTC on guidance for fulfillment of tax liability of foreign entities, individuals doing business in Vietnam or earning income in Vietnam.
- Circular No. 156/2013/TT-BTC guidance on implementation of Law on tax administration, Law on the amendments to the Law on tax administration, and Decree No. 83/2013/ND-CP.

### 1. Taxpayers

- Organizations established and operated under Vietnam's law or registers its operation under Vietnam law, other organizations and business individuals:
  - Purchasing services, services attached to goods, or paying income incurring in Vietnam under main contracts or subcontracts;
  - Purchasing goods in the form of on-spot ex-import or under Incoterms;
  - Distributing goods or providing services on behalf of foreign entities in Vietnam.
- Foreign contractors and foreign sub-contractors do business in Vietnam or earn income in Vietnam, and satisfy the following conditions:
  - [Having permanent establishment](#) <sup>(3)</sup> in Vietnam or [being resident](#) <sup>(4)</sup> in Vietnam.
  - The period of business operation in Vietnam under the main contract or subcontract is at least 183 days from the effective date of the contract or subcontract.
  - Applying Vietnam's accounting practice and tax registration, having tax code

<sup>(3)</sup> See details in the definition of "permanent establishment" in Part 1 (Pocket Tax Book 2018 – Corporate Income Tax).

<sup>(4)</sup> See details in the definition of "resident individual" in Part 1 (Pocket Tax Book 2018 – Personal Income Tax).

## 2. Basis for FCT determination

### 2.1. Applicable taxes

Foreign contractors, foreign sub-contractors are required to perform the following tax obligations:

- Value added tax (VAT) and corporate income tax (for business organizations);
- Value added tax (VAT) and personal income tax (for foreign individuals doing business).

#### **Objects subject to VAT:**

Services or services attached to goods subject to VAT that are provided by foreign contractors and foreign sub-contractors under main contracts and subcontracts and used for manufacture, sale, and consumption in Vietnam.

#### **CIT taxable income:**

- Incomes from provision of goods, services, and services attached to goods in Vietnam under main contracts and subcontracts (except for the case in Article 2 Circular 103/2014/TT-BTC).
- If goods is delivered to a location in Vietnam (except for the case in Clause 5 Article 2 Circular 103/2014/TT-BTC), or goods provision is attached to some services provided in Vietnam such as marketing, sale promotion, installation, test run, warranty, maintenance, replacement, and other services (including complimentary services), whether or not such services are part of the goods supply contract, then income subject to corporate income tax of foreign contractors and foreign sub-contractors is the total value of goods/services.

Incomes incurring in Vietnam in any form under main contracts or sub-contracts, regardless of the location where the contractor or subcontractor operate their business. Detail as following:

- Income from transfer of asset use right, ownership, transfer of the right to participate in business contracts/ projects in Vietnam, transfer of property right in Vietnam.
- Income from copyright means any income paid for the right to use, transfer of intellectual property rights and technology transfer, software copyright.
- Income from transfer and liquidation of assets.
- Income from securities transfer.
- Fines and compensations paid by parties breaching contracts.
- Income from loan interest means income from loans; income from deposit interest (except for deposit interest of foreigners and interest derived from deposit accounts meant to sustain operation in Vietnam of diplomatic missions, representative offices of international organizations and non-governmental organizations in Vietnam); income from interest on late payment under contracts; income from bond interest and bond discounts (except for tax-free bonds), treasury bills; income from deposit certificates.
- Other incomes defined by law.

**The personal income tax obligation shall be implemented in accordance with the law on personal income tax (see Section I. Personal Income Tax)**

### 3. FCT declaration and calculation method

#### 3.1. Declaration method

By this method, foreign contractors pay VAT by the deduction method and pay the foreign contractor tax on the basis of declaration of revenue, which is similar to that of an enterprise established in Vietnam (see sections II and III).

##### Applicants:

- Having [permanent establishment](#) <sup>(5)</sup> in Vietnam, or [being resident](#) <sup>(6)</sup> in Vietnam.
- The period of business operation in Vietnam under the main contract or subcontract is at least 183 days from the effective date of the contract or subcontract.
- Applying Vietnam's accounting practice, tax registration and issued with a tax code by tax authority.

<sup>(5)</sup> See details in the definition of "permanent establishment" in Part 1 (Pocket Tax Book 2018 – Corporate Income Tax).

<sup>(6)</sup> See details in the definition of "resident individual" in Part 1 (Pocket Tax Book 2018 – Personal Income Tax).

#### 3.2. Direct method

If the foreign contractors fail to meet one of the conditions for applying the tax payment by the declaration method, they shall pay tax according to this method. Accordingly, pay VAT and CIT according to the method of calculation on revenue.

##### Value-added tax:

$$\text{VAT payable} = \text{VAT taxable revenue} \times \text{VAT rate on taxable revenue}$$

Foreign contractors must not deduct VAT on goods/services purchased to execute contracts.

- Revenue subject to VAT is total revenue from provision of services and services attached to goods subject to VAT received by the foreign contractor or foreign sub-contractor inclusive of tax payables and any costs (if any) paid by the Vietnamese party on behalf of the foreign contractor or foreign sub-contractor. (See more detail in Clause 1, Article 12 of Circular 103/2014/TT-BTC)
- VAT rate on taxable revenue are detailed at Section IV, point 3.4.

Where foreign contractors supply goods or services for conducting oil and gas field prospecting, exploration, development and exploitation activities by direct method, the Vietnamese party shall have to withhold and pay VAT before payment.

$$\text{The amount of tax paid on behalf} = \text{The total payment exclusive of VAT} \times \text{VAT rate applied to the goods/services provided by the foreign contractor}$$

#### Corporate income tax:

$$\text{CIT payable} = \text{CIT taxable revenue} \times \text{CIT rate on taxable revenue}$$

- CIT taxable revenue is the total revenue exclusive of VAT received by the foreign contractor or foreign sub-contractor, inclusive of tax payables. Revenue subject to CIT includes the expenses paid by the Vietnamese party on behalf of the foreign contractor or foreign sub-contractor (if any). (See also detail in Clause 1, Article 13 of Circular 103/2014/TT-BTC).
- CIT rate on taxable revenue are detailed at Section IV, point 3.4.

### 3.3. Hybrid method

In this method, foreign contractors pay VAT by the deduction method, and pay CIT according to percentage of revenue.

#### Applicants:

Foreign contractors satisfy all of three following conditions:

- Having a permanent establishment in Vietnam or being resident in Vietnam.
- The period of business operation on Vietnam under the main contract or subcontract is at least 183 days from the effective date of the contract.
- Implementation of accounting in accordance with the law on accounting and guidance of the Ministry of Finance.

### 3.4. Tax rate on revenue in some cases:

Subjects	VAT rate	CIT rate
Trading: distribution, supply of goods, materials, machinery and equipment attached to services in Vietnam (including those provided in the form of on-spot ex-imports, except for goods processed under processing contracts with foreign organizations and individuals); supply of goods under Incoterms	Exemption	1%
Services, lease of machinery and equipment, insurance, lease of oilrig.	5%	5%
Restaurant, hotel, casino management services	5%	10%
Derivative financial services	Exemption	2%
Lease of aircraft, aircraft engines, spare parts of aircrafts and ships	Tax exemption for those	2%

	who cannot be produced in Vietnam	
Construction, installation, whether or not inclusive of materials, machinery and equipment	5%	2%
Other business and production activities, transport (including sea transport and air transport)	3% (international transport is imposed a tax rate of 0%)	2%
Transfer of securities, deposit certificates, reinsurance abroad, reinsurance commission	Exemption	0.1%
Loan interest	Exemption	5%
Income from copyright	Exemption	10%

## 4. FCT declaration and finalization

### Dossier for FCT declaration and finalization

- For the case where the contractor chooses the "declaration method", the manner of declaration and settlement shall be the same as that of Vietnamese enterprises, as specified in Sections I and III.
- For the case of contractor selection of "direct method" and "mixed method", follow the instructions below.

	<b>In case of paying VAT directly calculated on added value, CIT shall be calculated according to percentage of revenue (direct method)</b>	<b>In case of paying VAT by the deduction method, CIT shall be paid according to the percentage of revenue (mixed method)</b>
Dossier for FCT declaration	<ul style="list-style-type: none"> <li>Tax declaration form No. 01/NTNN (for Vietnamese parties withheld and paid on behalf of foreign contractors).</li> <li>A copy of the contract certified by the taxpayer.</li> <li>A copy of business license with certification of taxpayers.</li> </ul>	<ul style="list-style-type: none"> <li>Tax declaration form No. 03/NTNN (for foreign contractors directly paying CIT according to percentage of taxable revenue).</li> <li>A copy of the contract certified by the taxpayer.</li> <li>A copy of business license with certification of taxpayers.</li> </ul>
Dossier for FCT finalization	<ul style="list-style-type: none"> <li>Declaration of contractors tax finalization in accordance with Form No 02 / NTNN (for Vietnamese parties withholding and paying taxes on behalf of foreign contractors).</li> <li>A list of foreign contractors and subcontractors participating in the performance of contractor contracts in accordance with Form No 02-1 / NTNN, 02-2 / NTNN.</li> <li>A list of tax payment documents.</li> <li>The contractor's liquidation (if any).</li> </ul>	<ul style="list-style-type: none"> <li>Declaration of contractors' tax finalization in accordance with Form No 04/NTNN (for foreign contractors directly paying CIT according to percentage of revenue for tax calculation).</li> <li>A list of Vietnamese subcontractors participating in the performance of the contractor contract in accordance with Form No 02-2 / NTNN.</li> <li>A list of tax payment documents.</li> <li>The contractor's liquidation (if any).</li> </ul>

Tax declaration period	<ul style="list-style-type: none"> <li>On each occasion: within 10 days from the date of payment for foreign contractors.</li> <li>In cases where the Vietnamese party pays the foreign contractor several times a month, the tax declaration may be made on a monthly basis instead of the declaration made on each occasion of payment to the foreign contractor: no later than 20th of the following month.</li> </ul>	<ul style="list-style-type: none"> <li>Declaration of VAT by deduction method: the same as for Vietnamese enterprises.</li> <li>Declaration of CIT in percentage of revenue: declaration made on each occasion within 10 days from day as foreign contractors received the settlement.</li> <li>In cases where foreign contractors receive monthly payments, they may register their tax returns on a monthly basis instead of making declarations on each occasion: no later than 20th of the following month.</li> </ul>
Finalization period	<ul style="list-style-type: none"> <li>Within 45 days of the end of the contract.</li> </ul>	
Place to submit Dossier for declaration and finalization of FCT	<ul style="list-style-type: none"> <li>Tax authorities directly managing the company.</li> </ul>	



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