



Tax Planning and Regulatory Compliance for Providing Oil & Gas Services in Vietnam, Cambodia and Myanmar

CAMBODIA

LAOS

MYANMAR

THAILAND

VIETNAM

- Established in Laos in 1994
- Offices in 9 cities in the Mekong Region
 - Phnom Penh, Cambodia
 - Vientiane, Laos
 - Hanoi and Ho Chi Minh City, Vietnam
 - Bangkok, Phuket and Koh Samui, Thailand
 - Yangon, Myanmar (affiliated)
 - **Singapore**
- 100+ Legal Professionals
- 250 Total Staff
- 1 Regional Head Office



ONE REGION ONE FIRM

- Tax & Customs
- Real Estate
- Corporate & Commercial
- Project Finance, Energy and Infrastructure

Managing Director, Tax & Customs Practice



- DFDL's Regional Tax Practice Group is headed by Edwin, a tax lawyer, author and academic with 18 years experience in advising multinational enterprises on international tax , regional tax planning and tax disputes
- Former advisor to Tax Department (2006-07), current Co-Chair of Government-Private Sector Working Group on Taxation
- University lecturer at Leiden University ITC (The Netherlands), Handelshogeschool University (Belgium), Chulalongkorn University (Thailand), ABAC University (Thailand), National University of Economics (CFVG Vietnam) Hanoi and Ho Chi Minh City.
- Author of six textbooks and over 60 articles in professional journals, some of which won scientific awards
- Consultant to World Bank and Asian Development Bank
- "Excellent at what he does" (Chambers Asia)
- "First tier tax law firm in Vietnam" (Asia Pacific Legal 500)

Partner, Tax & Customs Practice



- Jean Loi is widely recognized as one of Cambodia's most experienced tax specialists, formerly a tax partner with PwC Cambodia and Vietnam.
- Jean is a highly successful tax adviser with a CPA background. She assisted on many big projects and market entries in Cambodia such as the hydro and coal power plant projects, oil exploration blocks and market entry of international banks into Cambodia. She has particular expertise in infrastructure, energy projects, telecommunication and financial institutions. Jean assisted clients with the Cambodian and international structure.
- Over her long experience in Cambodia, Jean assisted the Royal Government of Cambodia with redesigning the Tax regulations as well as with other tax administration and policy issues.

A FEW KEY TAX ADVISERS (I):



Clint O'Connell

Senior Tax Manager

Clint has worked in South-East-Asia for more than three years. Before joining DFDL, he has had over 10 years experience in tax, working with the “Big Four” tax advisory firms in New Zealand, Vietnam and Cambodia.

Clint has advised a wide range of clients on structures and taxation aspects of their operations in Cambodia including legal due diligence, corporate income tax, personal income tax and indirect taxes. He has a broad range of clients, in particular clients in infrastructure, telecommunications, consumer products, oil and gas. Clint holds a Bachelor of Law Degree from Victoria University in Wellington, New Zealand.

Laysym Sim

Senior Tax Manager, Head of the Cambodian Tax Practice

Laysym is an experienced tax adviser with a degree in management. He has over 10 years work experience, most recently with a “big four” tax advisory firm where he was responsible for relations with the tax authorities. He has advised, just to name a few examples, on tax planning of large property projects, transport companies, employee benefits and conducted tax due diligence on several major acquisitions in Cambodia.



A FEW KEY TAX ADVISERS (II):



Pham Ngoc Thuan

Senior Tax Manager

Thuan is an experienced tax adviser with a degree in economics and accounting. He has over 10 years work experience, most recently with a “big four” tax advisory firm. He has advised, just to name a few examples, on tax implications of large construction and engineering projects, major acquisitions and on several highly publicized real estate developments.

Huy Cam Luu

Senior Tax Manager

Huy is a career tax lawyer with a J.D. from Hofstra and an LLM in taxation from Georgetown University. He has over 7 years experience in top tier law and tax advisory firms in New York. Huy combines his international tax expertise with a detailed knowledge of Vietnam taxes. He has, among other things, much experience with employee remuneration plans, real estate development and designing international corporate tax strategies.



A FEW KEY TAX ADVISERS (III):



Nipaporn Supha-utchaichan

Legal & Tax Adviser

Nipaporn's areas of practice include corporate taxation, real estate tax structuring and international tax issues. Nipaporn has an LL.B. from Assumption University and an LL.M. (International Program) from Chulalongkorn University. She has also obtained an LL.M. from University of London (Queen Mary). She speaks Thai and English.

Sounthorn Chanthavong

Tax Adviser

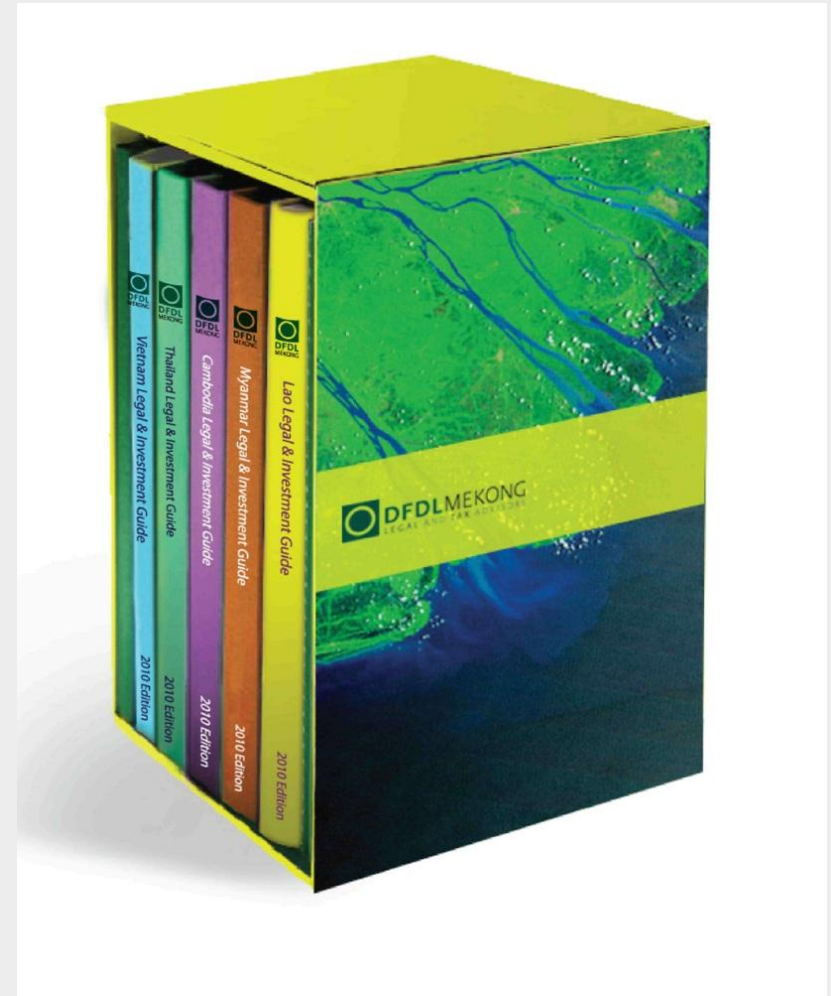
Sounthorn has worked for Mekong Law Group since 1994. He has extensive experience in dealing with Lao tax authorities, tax disputes, tax compliance and corporate and individual tax advisory. He speaks Lao, Vietnamese, English and Thai.



- Lead co-counsel on US\$425M Mobitel deal, lead tax counsel (**“Asia Deal of the Year”**)
- Tax structuring for US\$200 M power plant of listed power producer in Vietnam, Laos, Cambodia
- Tax efficient structuring of US\$150 complex hotel/casino resort project for multinational gaming enterprise
- Regional tax planning structure for multinational bank
- Regional customs duty and tax structure for multinational in consumer products
- US\$120M BOT bridge project
- Tax structuring of US\$300 urban retail and residential projects for listed property fund
- Tax structuring advice for 75 km² island project off Cambodian coast
- Tax structure for mutual fund in Thai resort property

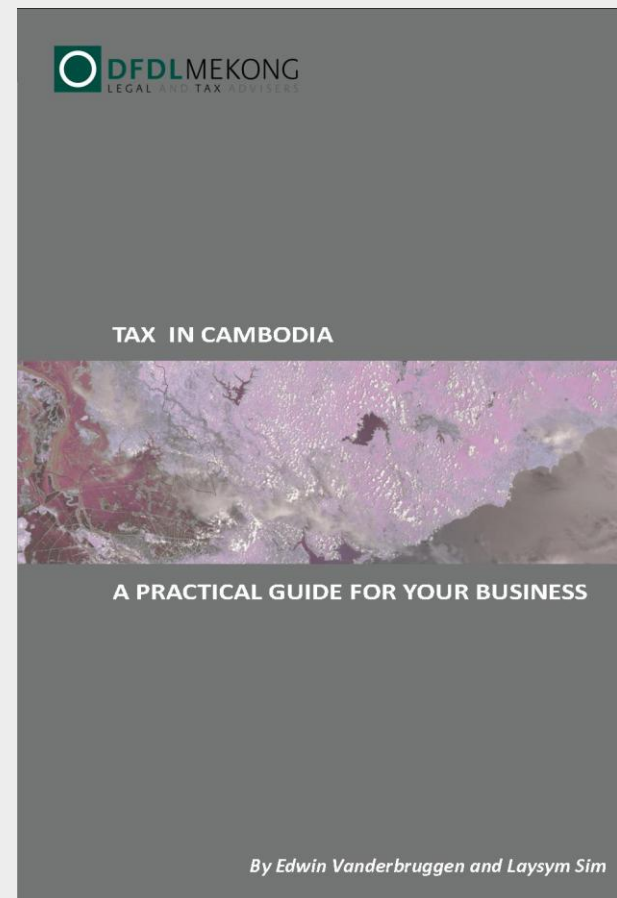
DFDL Mekong Legal & Investment Guide

*Cambodia
Lao PDR
Myanmar
Thailand
Vietnam*



Tax in Cambodia: A Practical Guide for Your Business

*By Edwin Vanderbruggen
and Laysym Sim*



Tax Planning and Regulatory Compliance for Providing Oil & Gas Services in Vietnam, Cambodia and Myanmar

- Regional overview
- Taxing rights in maritime areas
- Vietnam
- Cambodia
- Myanmar

For each country:

- Snapshot
- Taxable Presence Issues
 - PE
 - VAT
 - Non-tax considerations
- Taxation as a branch/PE/SUB
 - CIT
 - VAT
 - Compliance issues
- Taxation as a non-resident
 - WHT
 - VAT
 - Other issue
- PIT and labor compliance
- Forex

REGIONAL OVERVIEW

| | Cambodia | Myanmar | Vietnam |
|--|-----------|-------------|-----------------|
| Corporate Tax Rate of a Branch (common rate) | 20% | 5-40% | 25% |
| Corporate Tax Rate for Oil production | 30% | 40%-50% | 25% |
| Minimum Tax | 1% | - | - |
| Branch profit remittance/Dividend WHT | 14% | - | - |
| Withholding Tax for Oil Field Services | 14% | 3%-3.5% | 5% CIT + 5% VAT |
| VAT/Commercial Tax Rate | 10% | various | 5%/10% |
| PIT/Tax on Salary Rate | 5-20%/20% | 30%/35%/15% | 5-35%/20% |

TRANSFER PRICING - GENERAL

| | Cambodia | Laos | Thailand | Vietnam |
|-------------------------------------|-----------------------------|---------------------------------|--|---|
| Formal Transfer Pricing regulations | No | No | Yes | Yes |
| Bilateral APA | No | No | May be applied for under MAP procedures. | No |
| Unilateral APA | No | No | Formally accepted, but not accepted under current practice | No |
| Definition of related parties | 20% ownership | None | Follows OECD guidelines. | Very broad definition, e.g. 20% ownership can be sufficient |
| Penalties | General penalties up to 40% | General penalties and interests | General penalties applies, with up to 100% of additional tax plus interests. | General penalties applies, with up to 300% of additional tax plus interests ¹⁶ |

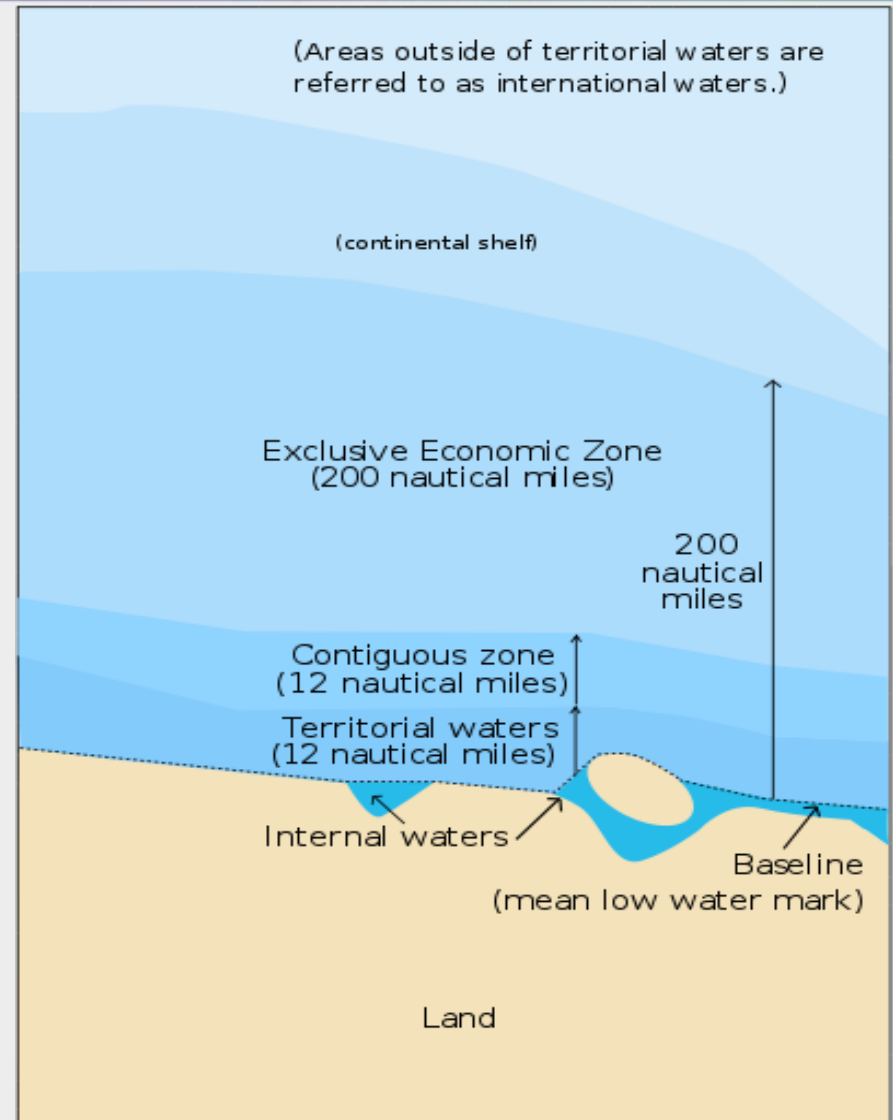
TRANSFER PRICING - DOCUMENTATION

| | Cambodia | Laos | Thailand | Vietnam |
|--|---|---|--|---------------------------------------|
| Tax return disclosures | None | None | Form to be attached to annual return. | Form to be filed at time of return. |
| Formal TP documentation requirement | Implicitly required. | None | Not formally required, but implicit required. | Formally required. |
| Deadline to prepare documentation | None | None | No formal deadline, but documentation should be prepared when filing return. | To be maintained contemporaneously |
| Deadline to submit documentation | None | None | To be presented in a “timely manner” upon request. | Can be requested with 30 days notice. |
| Acceptable languages for documentation | English is acceptable, but a translation can be required. | Generally, translations will be needed. | English accepted, but a translation can be requested. | All documentation in Vietnamese. |

TAXING RIGHTS IN MARITIME AREAS

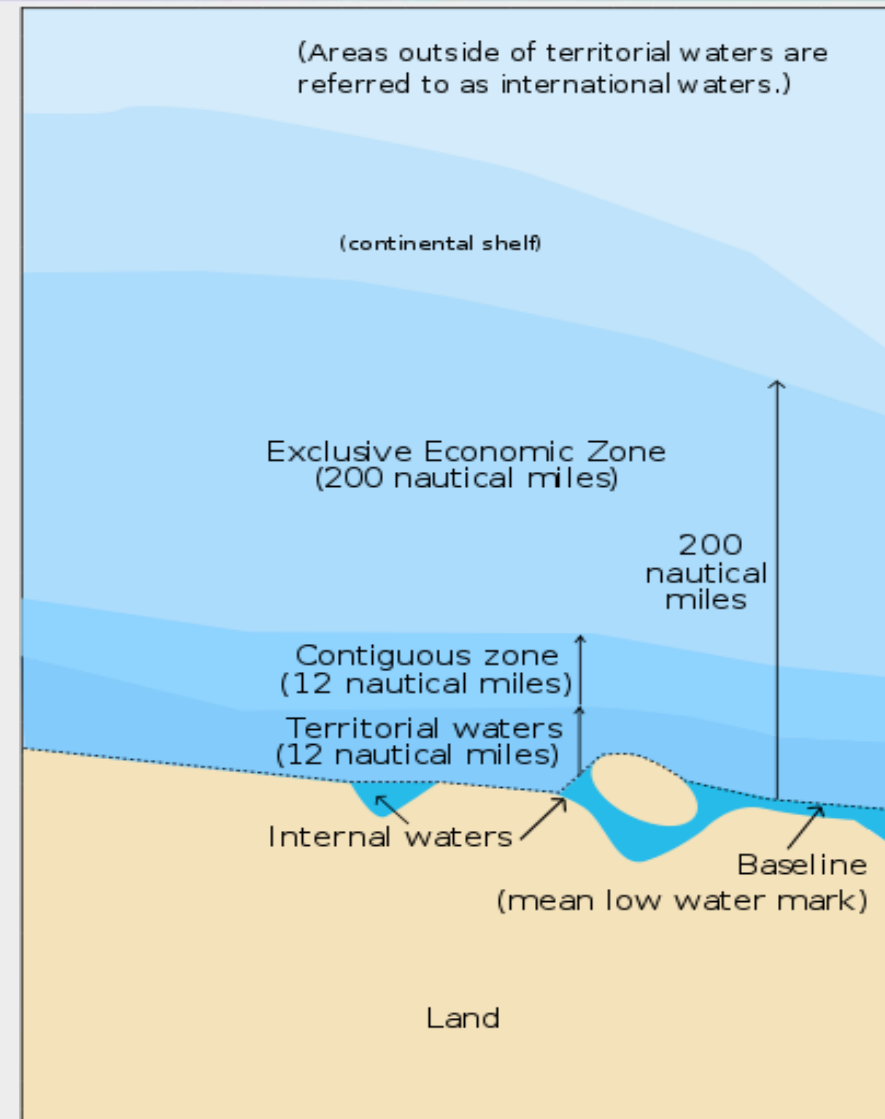
TAXING RIGHTS IN MARITIME AREAS

- Internal waters
- Territorial waters
- Contiguous zone
- EEZ
- Continental shelf
- International waters



TAXING RIGHTS IN INTERNATIONAL WATERS

- Under domestic laws?
- Under DTAs? Example: “The term "Vietnam" means the Socialist Republic of Vietnam; when used in a geographical sense, it means all its national territory, including its territorial sea and any area beyond its territorial sea, within which Vietnam, in accordance with international law, has sovereign rights of exploration for and exploitation of natural resources or the sea bed and its sub-soil and superjacent water mass”(VN-UK Art 3 (1))
- Under the international law of the sea (e.g. UNCLOS)?



VIETNAM

- Corporate Tax 25%
- Withholding to non-resident
 - Dividend 0% - 5% (*individual shareholder)
 - Interest 10%
 - Royalty 10%
 - Services 0% - 5% (+ up to 5% VAT)
 - Purchase goods 1% (exempt if only delivered at border)
- Transfer pricing regulation and compliance
- Possible to have a VAT registration without a CIT registration
- Foreign exchange restrictions

Taxable Presence

Concept in Vietnam domestic law

Permanent establishment of a foreign enterprise means a production [and/or] business establishment through which a foreign enterprise conducts part or all of its production [and/or] business activities in Vietnam which realizes income, comprising:

- a) Branches, operational offices, plants, workshops, means of transportation, mines, petroleum and gas fields, and any other location in Vietnam where natural resources are mined;
- b) Construction sites; and construction, installation and assembly works;
- c) Establishments providing services, including consultancy services provided via staff employed by such establishment or through other organizations or individuals;

- d) Agents of foreign enterprises;
- e) Representatives in Vietnam where they are representatives with authority to sign contracts in the name of the foreign enterprise, or where they are representatives without authority to sign contracts in the name of the foreign enterprise but regularly deliver goods or provide services in Vietnam.
 - “The permanency of a business establishment must not necessarily mean that such establishment must be attached to a specific geographical point for a certain length of time” (Circular 133/2004)
 - PE under Vietnam CIT: “A place of exploration or exploitation of mineral resources or a person who has equipment, facilities used for the exploration and exploitation of natural resources in Vietnam”

VIETNAM VS DTA PE RULES

| Vietnam PE | DTA PE (according to OECD Model) | DTA PE (according to UN Model) |
|--|---|---|
| <i>Permanent establishment of a foreign enterprise</i> means a production [and/or] business establishment through which a foreign enterprise conducts part or all of its production [and/or] business activities in Vietnam which realizes income, comprising: | The term “ <i>Permanent establishment</i> ” means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term “ <i>Permanent establishment</i> ” includes especially: | The term “ <i>Permanent establishment</i> ” means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term “ <i>Permanent establishment</i> ” includes especially: |
| Branches, operational offices, plants, workshops, means of transportation, mines, petroleum and gas fields, and any other location in Vietnam where natural resources are mined; | A place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; | A place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; |
| Construction sites; and construction, installation and assembly works | A building site or construction or installation project if it lasts more than <u>twelve months</u> | A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than <u>six months</u> |
| Establishments providing services, including consultancy services provided via staff employed by such establishment or through other organizations or individuals; | | The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating <u>more than six months within any twelve-month period.</u> |

VIETNAM VS DTA PE RULES

| Vietnam PE | DTA PE (according to OECD Model) | DTA PE (according to UN Model) |
|-------------------------------|--|---|
| Agents of foreign enterprises | <p>The term “permanent establishment” shall be deemed <u>not to include</u>:</p> <ul style="list-style-type: none"> a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise; b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery; c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise; e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character <p>The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraph a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.</p> | <p>The term “permanent establishment” shall be deemed <u>not to include</u>:</p> <ul style="list-style-type: none"> a) The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display; c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise; e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; f) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraph (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character. |

VIETNAM VS DTA PE RULES

| Vietnam PE | DTA PE (according to OECD Model) | DTA PE (according to UN Model) |
|---|--|--|
| Representatives in Vietnam where they are representatives with authority to sign contracts in the name of the foreign enterprise, or where they are representatives without authority to sign contracts in the name of the foreign enterprise but regularly deliver goods or provide services in Vietnam. | A person – other than an agent of an independent status – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise. That enterprise shall be deemed to be PE in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned above. | <p>A person – other than an agent of an independent status – is acting in a Contracting State on behalf of an enterprise of the other Contracting State. That enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if:</p> <ul style="list-style-type: none"> - such a person has and habitually exercise in that State an authority to conclude contracts in the name of the enterprise; unless the activities of such person are limited to those mentioned above; or - where this person has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise. |
| | | An insurance enterprise of a Contracting State shall – except in regard to re-insurance, if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status. |

VIETNAM VS DTA PE RULES

| Vietnam PE | DTA PE (according to OECD Model) | DTA PE (according to UN Model) |
|---|---|---|
| <p>An enterprise <u>shall not be deemed</u> to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business.</p> | <p>An enterprise <u>shall not be deemed</u> to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he <u>will not be considered</u> an agent of an independent status</p> | <p>An enterprise <u>shall not be deemed</u> to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business.</p> |
| <p>A company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State, <u>shall not itself constitute either company a permanent establishment of the other</u></p> | <p>A company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State, <u>shall not itself constitute either company a permanent establishment of the other</u></p> | <p>A company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State, <u>shall not itself constitute either company a permanent establishment of the other</u></p> |

Differences between DTA PE and Vietnam domestic PE

- Vietnam law does not provide a minimum time threshold for construction or installation projects, while the DTA PE requires a 6 month (UN DTA) or 12 month (OECD DTA) threshold;
- Vietnam law does not provide a minimum time threshold for furnishing of services while the UN DTA requires a 6 month threshold (a similar rule has been included in the 2008 OECD Commentary);
- Vietnam law does not provide that in order for the furnishing of services to lead to a PE, such services must be performed in Vietnam, while the UN DTA and the OECD DTA both have this requirement;

- Agents
- Vietnam law refers only to one fixed place of business which does not constitute a PE, notably a representative (office) does not have the authority to sign contracts on behalf of the enterprise and does not regularly deliver from a stock of goods in Vietnam. The OECD DTA and the UN DTA refer to a number of so-called negative cases, which do not constitute PEs;
- “The permanency of a business establishment must not necessarily mean that such establishment must be attached to a specific geographical point for a certain length of time” (Circular 133/2004)
- PE under Vietnam CIT: “A place of exploration or exploitation of mineral resources or a person who has equipment, facilities used for the exploration and exploitation of natural resources in Vietnam”

Why is the function of a PE in DTA law somewhat different than in Vietnam tax law?

- 1) Vietnam will subject (most) income that is derived from Vietnam to tax under the FCT regime, whether such income was realized through a PE (as defined in the Vietnam CIT) or not. Only when a DTA applies to the situation it will thus in practice be important to know whether a PE exists or not;
- 2) Having a PE in Vietnam does not necessarily mean that the non-resident enterprise is taxed on a net-basis.

- Non-resident companies can pay tax via the FCT, which is in practice mostly used as a comprehensive withholding tax system that can cover both income tax and VAT.
- Alternatively, a non-resident may be taxed on a net-basis without withholding if the following conditions are met:
 - The non-resident disposes over a permanent establishment in Vietnam;
 - The period of carrying out business in Vietnam is 183 days counting from the date the contract entered into effect; and
 - The non-resident adopts the Vietnam accounting system

Under DTA law

- The DTA has source taxation for technical fees (such as Vietnam's DTAs with Germany and Malaysia)?
- The service provider must have a PE in Vietnam for Vietnam to have the right to tax the service fee.
- Circular 133-2004 states that having equipment can suffice to have a PE, and that — having equipment, facilities used for the exploration and exploitation of natural resources in Vietnam constitutes a PE.

- The same Circular states as an example that a foreign subcontractor that uses facilities, equipment and labor for participation in oil and gas exploration activities in Vietnam, shall be deemed to conduct business in Vietnam through a PE.
- Unlike the OECD Model, a number of Vietnam DTAs actually provide explicitly that equipment or drilling rigs or installations used in exploration constitute a PE (such as Vietnam's DTAs with Austria, Hong Kong, Myanmar, Spain, Indonesia and The Philippines). In that case, Vietnam clearly has taxing rights under this specific rule.

- Vietnam's DTAs often include a provision which states that the supply of services within Vietnam for a period of 6 months will result in a PE (Art. 5 par. 3 b) UN Model, a so-called furnishing of services PE). Obviously, services provided in relation to oil & gas wells can resort under this rule.
- Construction, installation and assembly projects trigger a PE under all Vietnam DTAs after a period of 6 months (3 months in the case of The Philippines). There is no treaty definition, but it is likely that certain services can be seen as installation , or construction such as the laying of pipelines, excavating and dredging (OECD Commentary 5/17). This would bring such services under the construction & installation PE.

- So, in which cases does Vietnam NOT have taxing right on income derived by oil & gas service providers?
- In a number of situations the DTA does not explicitly confirm Vietnam's taxing right on oil & gas services.
 - Services which are performed outside Vietnam can normally not lead to a Vietnam PE under the DTA.
 - Without a rule in the DTA which states explicitly that having equipment in Vietnam for mineral exploration triggers a PE, services that are performed for periods not exceeding 6 months usually do not result in a PE. Except for installation services, even services exceeding 6 months do not necessarily lead to a PE according to the text of many of Vietnam's DTAs (notably those DTAs which do not have a furnishing of services PE).

- Note however certain DTAs that explicitly state that services related to oil & gas or exploration of natural resources constitute a PE (such as Vietnam's DTAs with Austria, Hong Kong, Myanmar, Spain, Indonesia and The Philippines)
- In practice, however, the Vietnam GDT may interpret the DTA in accordance with Circular 133-2004, which states the view that subcontractors are deemed to have a PE.

CAN A VESSEL OR DRILLING RIG BE A PE?

- Decree 32/2010/NĐ-COP for foreign fishing boats to legally operate in Vietnam's territorial water
- Drilling rig for exploration of natural resources
- Living resources included in that definition?
- Is the vessel or rig self-propelled, towed, anchored?
- Used in one limited geographical area?
- Leased or used by operator

- Under the FCT, “used in Vietnam” or “consumed in Vietnam” suffices, no need for services to take place in Vietnam
- Note that outside territorial waters is still “in Vietnam” for tax purposes if on continental shelf or Vietnam’s EEZ
- Duration is not an issue in the FCT
- Services performed and used outside Vietnam
- Exemptions explicitly accepted in Circular 134 on FCT:
 - Repair
 - Brokerage of goods
 - Training
 - Advertizing and sales promotion

- Service provider has its own place of business in Vietnam
- Service performance on the premises of the Vietnam customer
- Duration of 6 months or less?
- Agency
- Negative PE

- Example: engineering company uses machinery in Vietnam for construction of a bridge. After completion, the machinery is not removed from Vietnam. Is this a PE?
- Equipment or machinery is, in certain instances, a place of business in the sense of Art. 5 (1) DTA (OECD Commentary 5/2), but it will be a PE only if the equipment remains in a certain geographical place in that state for a period that is more than just temporary. How long exactly that is, is not clear in international tax law. The practice of states differs considerably, a period of 6 months is regarded in many cases as sufficient to conclude there is a PE (OECD Commentary 5/6).

- The presence of automated equipment thus does not suffice to have a PE. It is required that the non-resident enterprise operates and/or maintains the equipment directly or indirectly. Equipment that is merely leased to another party would not trigger a PE (UN Commentary 5/10 and UN Commentary 5/3).
- Circular 133-2004 states that having equipment can suffice to have a PE, and that having equipment, facilities used for the exploration and exploitation of natural resources in Vietnam constitutes a PE. No reference is made to a required period in time.
- What about automated equipment (pumping station, vending machine, slot machines)?

ARE CABLES AND PIPELINES PE'S?

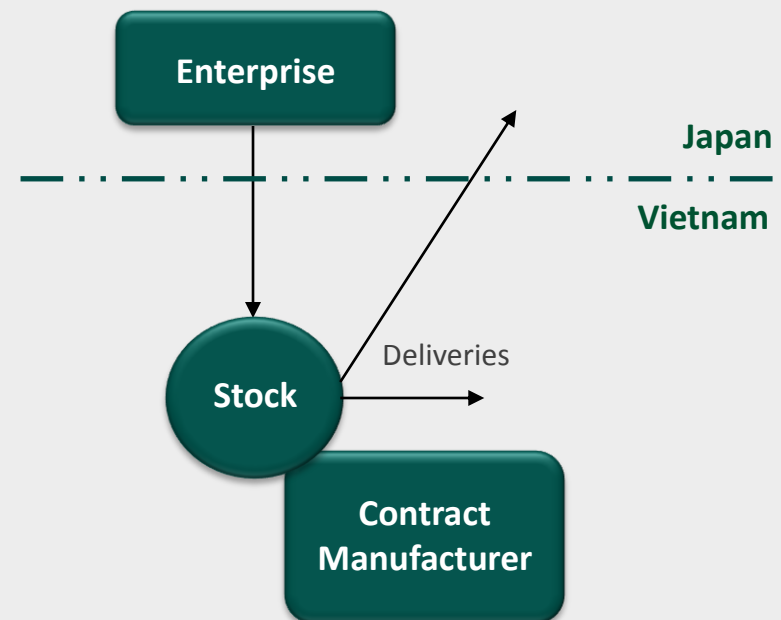
- Cable or pipeline is a “place of business”
- If the enterprise that owns or operates the cable or pipeline derives income from providing the use of the cable or pipeline to other enterprises, the cable or pipeline may very well constitute a PE (OECD Commentary 5/26.1; German Tax Court, Decision of October 30, 1996, II R 12/92).
- Under the OECD DTA, if an enterprise uses a cable or pipeline for itself, for example to transport its own oil or information, they would be deemed facilities solely for the purpose of storage, display or delivery of goods belonging to the enterprise
- However, most Vietnam DTAs follow the UN DTA in this respect, which does not refer to delivery in the text of Art. 5 (4) DTA. Accordingly, a cable or pipeline may be deemed a PE under many Vietnam DTAs



IS A WAREHOUSE OR A STOCK A PE?

- Storage only, no PE
- Delivery also, triggers PE except in a number of DTAs
- Enterprise that rents out storage space or that provides storage services to other enterprises, always PE
- Warehouse is PE, Hong Kong, Pakistan

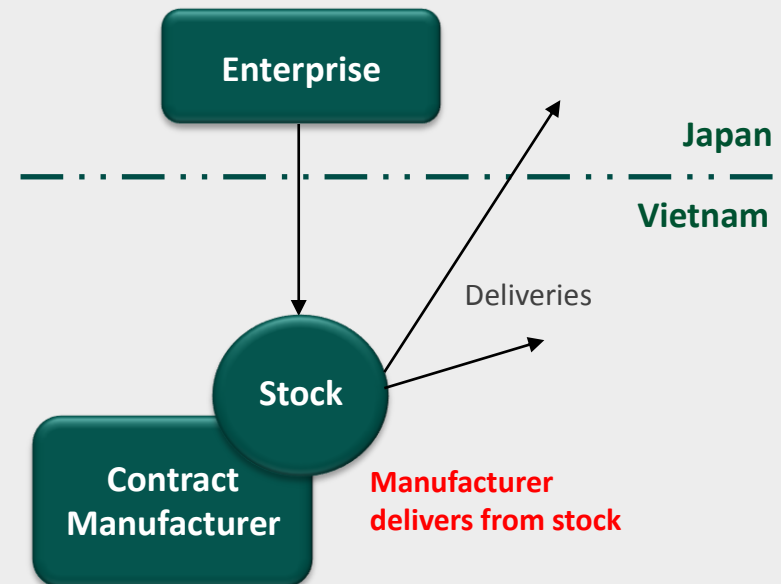
Warehouse & stock of goods



IS A WAREHOUSE OR A STOCK A PE?

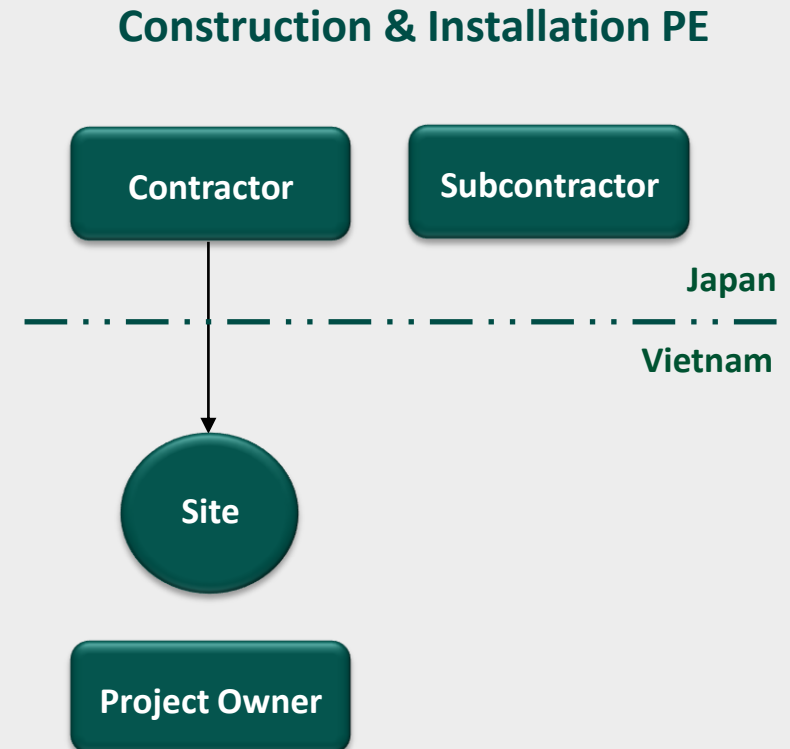
- Agent without authority to sign contracts
- Habitually
- Maintains in the first-mentioned State a stock of goods or merchandise
- From which he regularly delivers goods or merchandise on behalf of the enterprise
- No PE if this is an independent agent

Warehouse & stock of goods

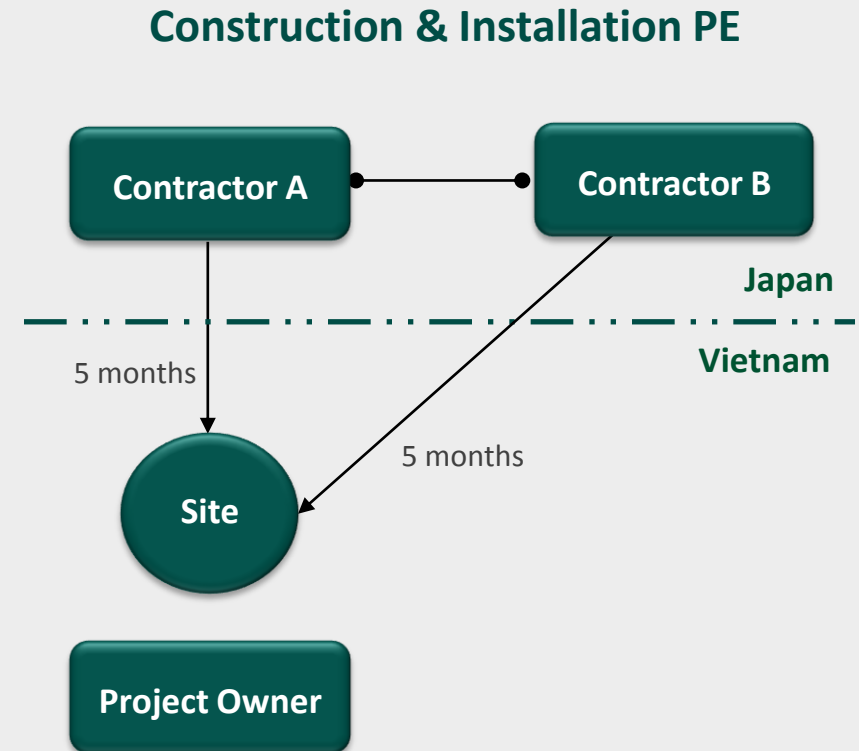


6 MONTH PERIOD FOR SERVICES

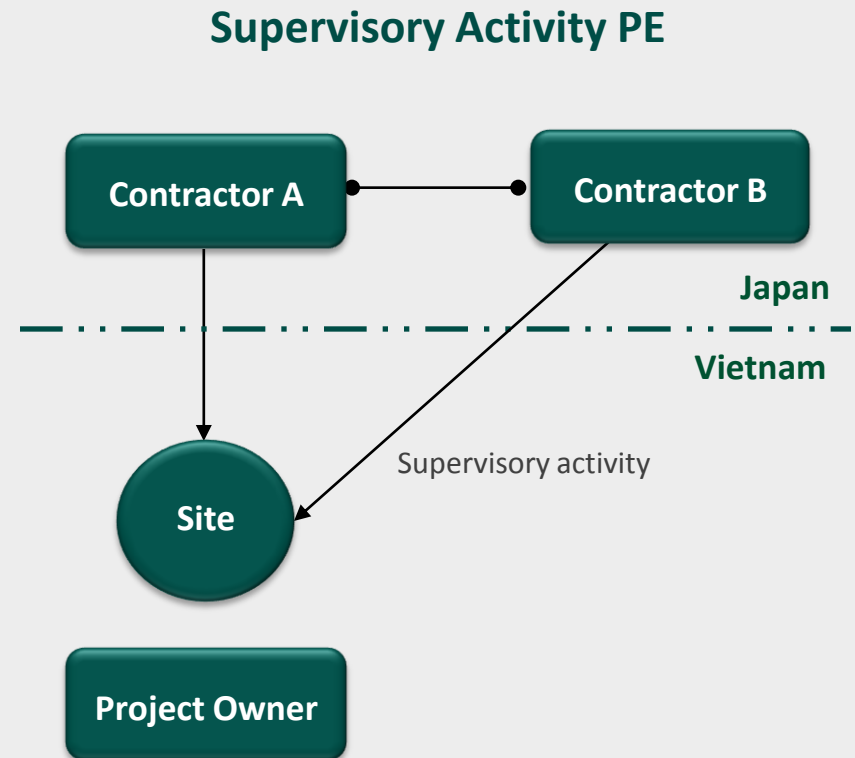
- Start of period: when work commences (Circular 133: “establishes an office, plan the design”)
- End of period: Acceptance of the works? Preliminary hand over of works? Testing period? (Circular 133: “completion and transfer”)
- Time of subcontractors to be included;



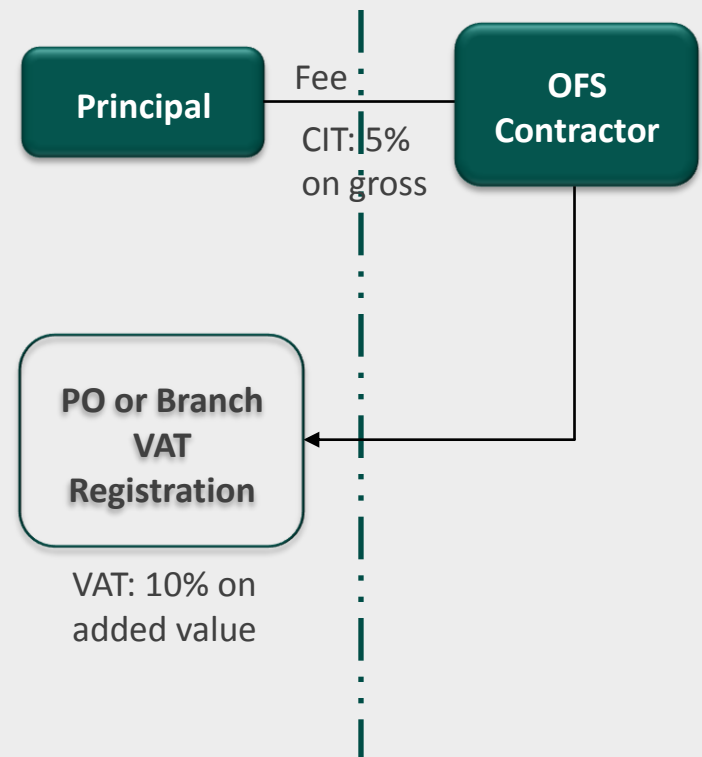
- One project subdivided in periods which are each below 6 months
- Under DTA law, the work that is commercially or geographically connected will be taken together



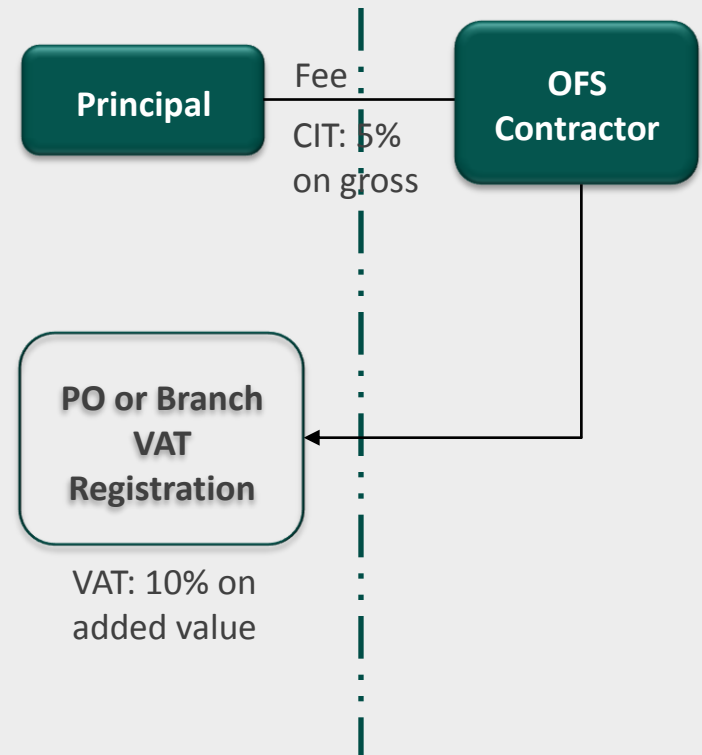
- Supervisory activity alone is also covered in some VN DTA but not in all;
- If in Art. 5 (3) DTA, this activity is a PE without regard to other heads of jurisdiction;
- If not, only PE is fixed place of business or agent.



- Follows the same rules, through the FCWT
- Either pay VAT on a withholding basis (5% on general services) or register and pay VAT at 10% on added value.
- However, “hybrid system”: registration, declaration and payment of VAT as for any VAT registrant
- You will only be allowed to register subject to the same conditions as for the CIT, notably



- The non-resident disposes over a permanent establishment in Vietnam;
 - The period of carrying out business in Vietnam is 183 days counting from the date the contract entered into effect; and
 - The non-resident adopts the Vietnam accounting system
- Register for hybrid system within 20 days after signing contract
 - Without consequence for CIT
 - Note: no hybrid system between 1 Jan 2009 and 23 Nov 2009



- Branch or SUB
 - Liable to VAT and CIT as customary
 - Not feasible for short periods
- Foreign contractor with CIT and VAT registration
 - Must have PE
 - 6 month period
 - Apply VAS
- Foreign contractor with only VAT Registration (same conditions)
- Foreign contractor without any tax registration
 - Principal will withhold VAT and CIT
 - Minimal compliance requirements
 - DTA exemption!

Taxation as a Branch/PE/SUB (Points of Attention)

- Branch/PE, Subsidiary
- “Project Office”
- CIT at 25%
- No dividend or branch profit remittance tax, but dividend payments are subject to government approval
- Only official invoices, so-called “red-invoices” are accepted for VAT and CIT purposes
- Loss carry forward 5 years (conditions)

- FCT returns
- Monthly tax returns (VAT and PIT)
- Quarterly CIT calculation and advance payment
- Annual tax returns/finalization for CIT and PIT
- Legal representative of the branch/company
- Vietnam Accounting Standards compliance
- Foreign Exchange restrictions

Taxation as a Non-Resident (Foreign Contractor Withholding Tax)

- FCT
 - FCT for services: Vietnam will impose 5% CIT as withholding on the payer of the income (and 5% VAT)
 - FCT applicable to the lease of equipment: Vietnam will impose 5% CIT and 5% VAT
 - FCT applicable to income from the sale of parts: Vietnam will impose 1% CIT, and VAT is exempt. VAT at import stage may be imposed.
- VAT can be offset by the payer, in most cases.
- Foreign exchange control for paying service fees: no advance approval. Bank will require documents (agreement, invoice, FCT declaration, tax receipt) and will decide.

FOREIGN CONTRACTOR TAX

| Business line | Added value as % of turnover | CIT/PIT as % of turnover | Total FCT |
|---|--|--|------------|
| Trading: distribution/supply of goods, raw materials, supplies, machinery and equipment attached with provisions of services in Vietnam | 30 (Paid VAT rate is of 3%) - VAT exempt if trading is not accompanied with provision of services | 1 - 2% if the value of goods and services cannot be separated | 4 |
| Services, insurance, machinery/equipment rental | 50 (Paid VAT rate is of 5%) | 5 | 10 |
| Construction/installation services without supply of materials and/or equipment, machinery | 50 (Paid VAT rate is of 5%) | 2 | 7 |
| Construction/installation services with supply of materials and/or equipment, machinery | 30 (Paid VAT rate is of 3%) | 2 | 5 |
| Other business or production activities and transportation (including air and sea transport) | 30 (Paid VAT rate is of 3%) | 2 | 5 |
| Interest from offshore loans (including loans obtained from parent company) | N/A | 10 | 10 |
| Royalties | N/A | 10 | 10 |
| Securities trading | N/A | 0.1 | 0.1 |
| Leasing plane (including machines, spare parts) and seagoing vessels; re-insurance | 50 (Paid VAT rate is of 5%) | 2 | 7 |

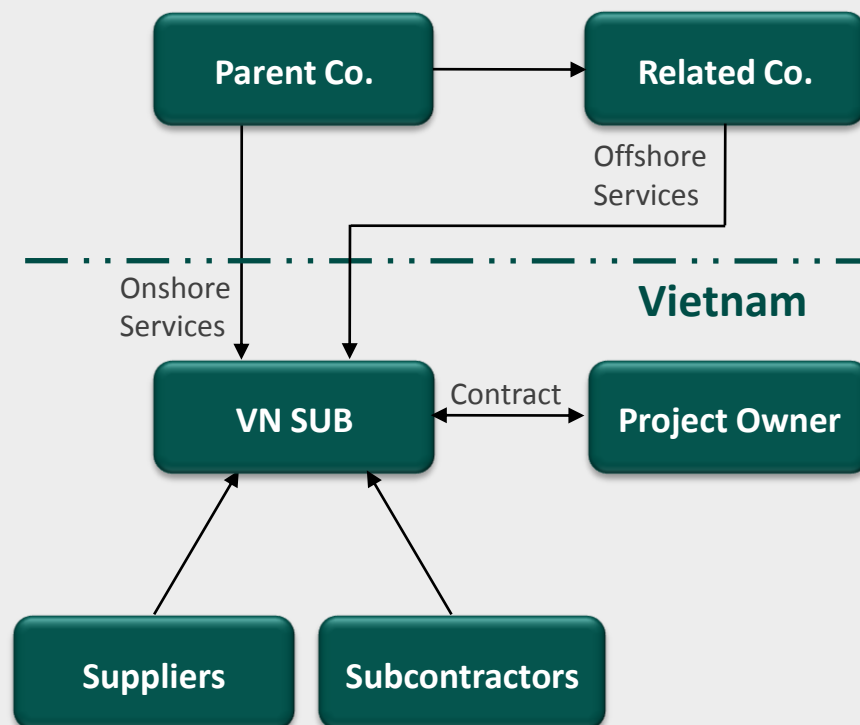
FOREIGN CONTRACTOR TAX – DTA IMPLICATIONS

| | Services (onshore > 6 months) | Services (offshore) | Software | Trademark | Patent | Lease of Equipment |
|-----------------------------|----------------------------------|---------------------------|----------|-----------|--------|-----------------------|
| Singapore | May be exempt* | 0% | 15% | 15% | 5% | 5% |
| Hong Kong | 10%* | 0% | 10% | 10% | 7% | 10% |
| Malaysia | 10% | 10% | 10% | 10% | 10% | 10% |
| France | May be exempt * | 0% | 10% | 10% | 10% | 10% |
| Germany | 7.5% | 7.5% | 10% | 10% | 10% | 10% |
| Japan | May be exempt * | 0% | 10% | 10% | 10% | 10% |
| No DTA (taxed under FCT) | 10% | 10%; some exceptions** | 10% | 10% | 10% | 10% |

- Refer to UN Model “furnishing of services” provision. Singapore, France and Japan do not have this provision, so services over 6 months may be exempt provided that the service provider does not have a fixed place of business, an office or dependent agent in Vietnam. Hong Kong, on the other hand, has this “furnishing of services” provision.

** No FCT applies with respect to certain services performed outside of the territory of Vietnam and the product or outcome is consumed outside of Vietnam notably: repairing of means of transportations, machinery and equipment; advertising; sales promotion; investment and trade promotion overseas; broker commission for sales overseas; and training overseas.

- 1% FCT on goods in case of “attached services” in Vietnam
- DTA protection? PE under DTA?
- Services performed abroad
- Services with or without equipment



- Leasing no longer included in “royalty” for FCT (Vietnam levies a 5% VAT and a 5% CIT withholding)
- Under DTA law, lease income is business income resorting under Art. 7 DTA (OECD Model), unless it is included under the definition of Art. 12 “Royalty” (UN Model);
- VN has taxing power under one of the following conditions:
 - Art. 12 of the DTA includes equipment (usually); or
 - Art 12 does not include equipment but the lessor has a PE in VN (this is for example the case with **UK** and **The Netherlands**)

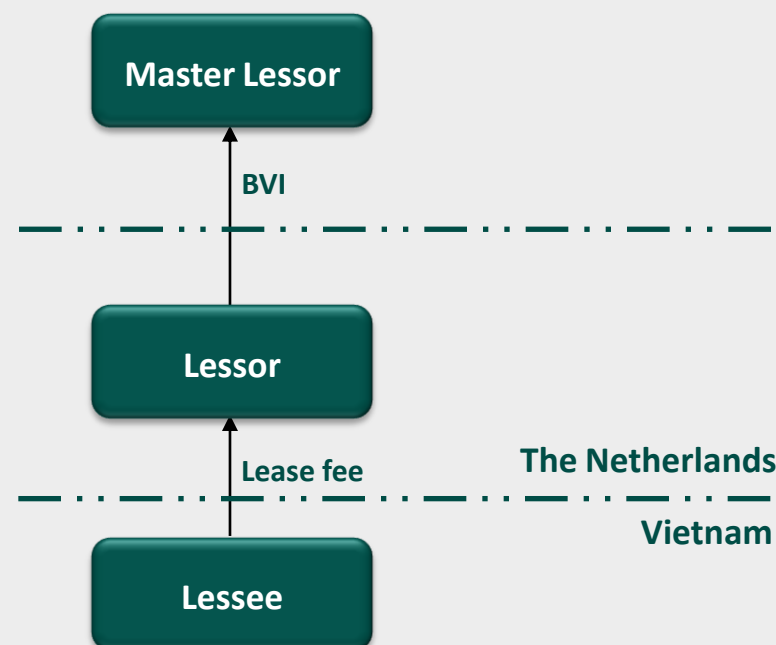
Note: Non-Member Country Position of Vietnam is that presence of heavy equipment triggers a PE!

- Source taxation can also be avoided, even if Art. 12 includes lease, when the arrangement is characterized as a “service” rather than a “lease”.

“Lease Route”

- Dutch BV sources equipment from Special Purpose Company;
- Lease fee received in BV is subject to tax (20%, 23% and 25.5%). No WHT on payment of interest or lease fee by BV to non-resident recipient;
- When would the BV be deemed to have a PE in Vietnam?
- Beneficial owner, abuse, PE?

“Dutch leasing structure”



- Procedures for income not related to capital assignment/securities transfer (Circular 60): Must submit the following documents to Vietnamese party 15 days before the performance of contract, and the Vietnamese party will notify the tax authority of eligibility for exemption/reduction under DTA:
 - Notice of eligibility (form № 01-1C/NTNN);
 - Original certificate of residence granted by a tax agency of the country of residence (regarding the prior year);
 - Copy(ies) of the business registration certificate and/or the tax registration certificate granted by the country of residence;
 - Copies of contracts signed with Vietnamese organizations and individuals.
- Self-assessment can be made after notification
- Note upon expiration of the contract, must submit certificate of residence granted by a tax agency of the country of residence for the current year.

PIT and Labor Compliance

| Vietnam | DTA |
|---|--|
| <ul style="list-style-type: none">▪ Present 183 days or more in Vietnam in a calendar year or 12 consecutive months from the first point of entry, or▪ Having a regular accommodation in Vietnam, including a registered permanent address and/or a contracted rental house with accumulated period of not less than 90 days. | <ul style="list-style-type: none">▪ Permanent home▪ Centre of vital interest▪ Habitual abode |

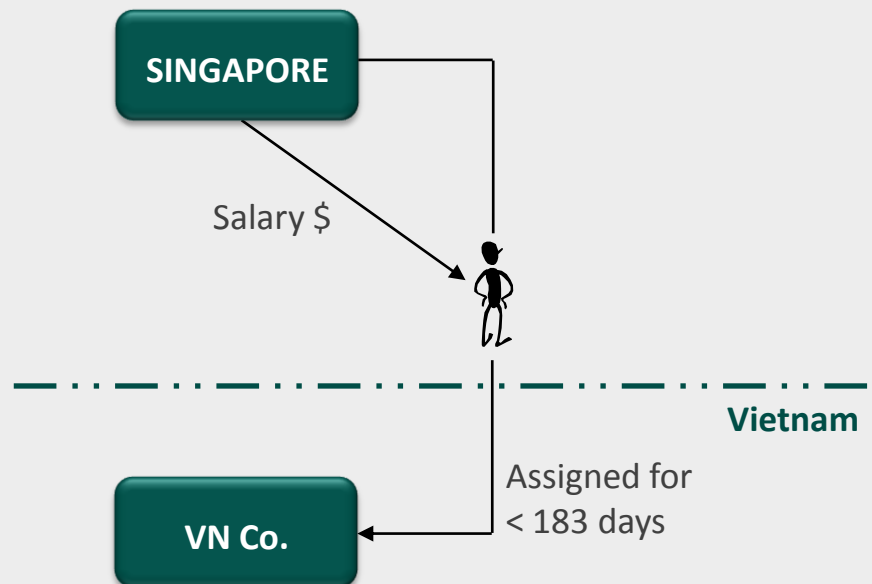
| Tax bracket | Yearly taxable income (VND million) | Monthly taxable income (VND million) | Tax rate (%) |
|---------------------|--|--|-----------------|
| 1 | Up to 60 | Up to 5 | 5 |
| 2 | Over 60 to 120 | Over 5 to 10 | 10 |
| 3 | Over 120 to 216 | Over 10 to 18 | 15 |
| 4 | Over 216 to 384 | Over 18 to 32 | 20 |
| 5 | Over 384 to 624 | Over 32 to 52 | 25 |
| 6 | Over 624 to 960 | Over 52 to 80 | 30 |
| 7 | Over 960 | Over 80 | 35 |
| | | | |
| Non-Resident | - | - | 20 |

* Non-residents are subject to a flat withholding rate of 20%

- Under Vietnam's PIT law, an individual is a Vietnam tax resident if he/she:
 - is present 183 days or more in Vietnam in a calendar year or 12 consecutive months from the first point of entry, **or**
 - has a regular accommodation in Vietnam including a registered permanent address and/or a contracted rental house with accumulated period of not less than 90 days.
- Under DTA, the "183-day rule" exempts income for short-term assignment. Need to meet the following conditions:
 - The employee is present in Vietnam for less than 183 days;
 - The employee is paid by an employer from abroad; and
 - The employer does not have a PE in Vietnam.

Danger! "Real Employer"

- Presence in VN less than 183 days
- Paid from abroad
- DTA exemption?
- Vietnam will not exempt if VN Co. is the "real employer"
- Example
- Risk of double tax



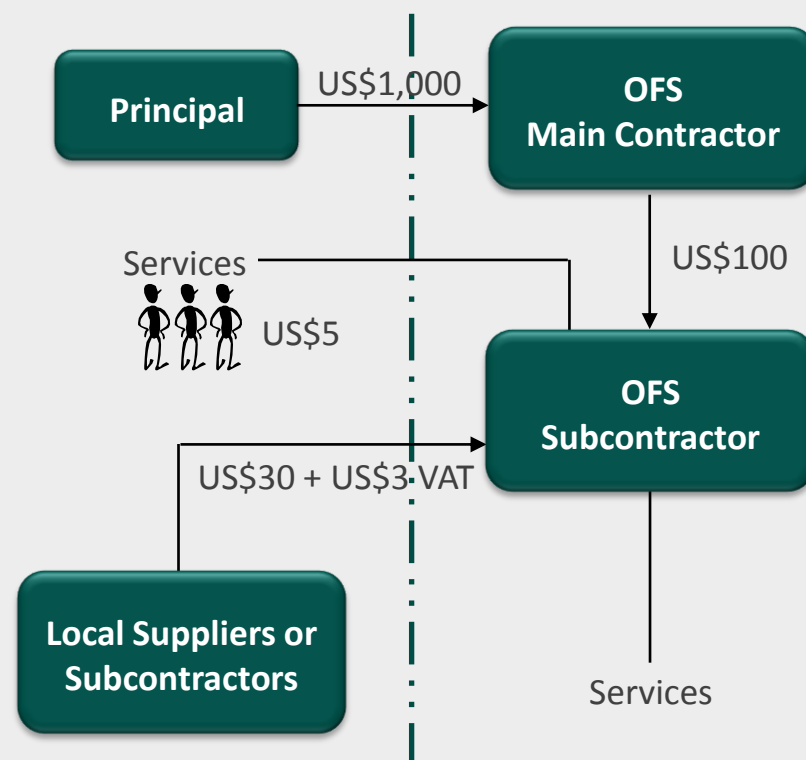
Benefits Not Subject to PIT

- | | |
|----|--|
| 1 | Payment for business trip |
| 2 | Payment for telephone charges |
| 3 | Payment for uniform/stationery costs |
| 4 | Overtime premium (i.e., the additional payment above the normal wage, not the full amount of the overtime payment) |
| 5 | Payment for cease allowance subject to the Labour Code |
| 6 | Relocation allowance from abroad to Vietnam |
| 7 | Air tickets for home leave (round trip) to home country |
| 8 | Tuition fee for children of expatriates studying in Vietnam (until high school). |
| 9 | Car pick-up for general staff (i.e., cannot be specific to one individual) |
| 10 | Membership fee for golf/gym for general staff (i.e., cannot be specific to one individual) |
| 11 | Training for staff in line with the employer's policy |
| 12 | Mid shift meal subject to cap regulated by the Ministry of Labour and Invalids Social Affairs |

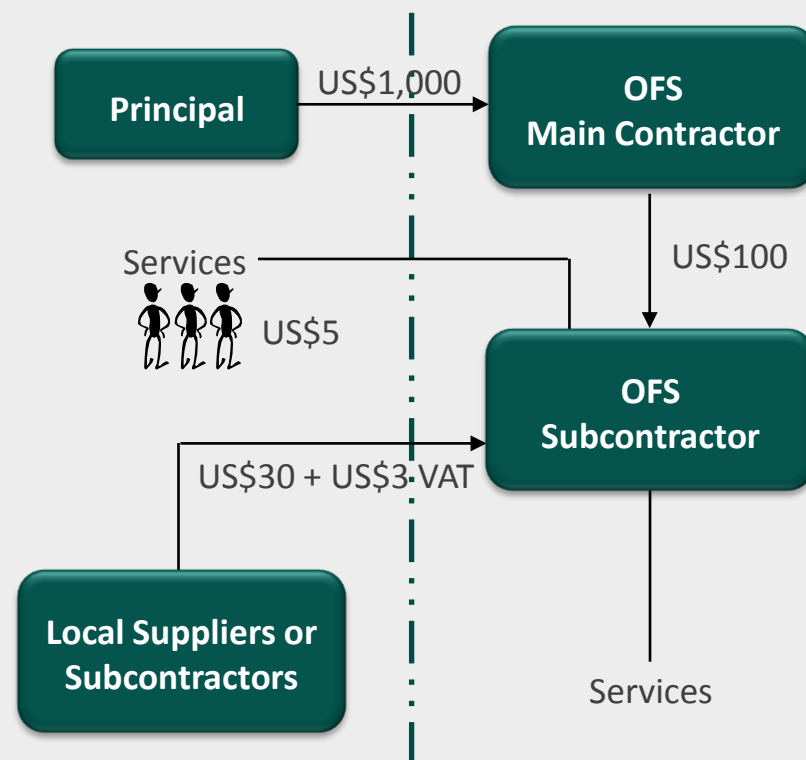
3 Options (as non-resident employer)

1. The non-resident contractor files tax returns and pays PIT on behalf of the employees.
 2. The employees obtain their own tax ID and file tax returns themselves or via an agent.
 3. The principal files and pays the PIT on behalf of the employees.
- Work permits
 - Immigration

- Without taxable presence
 - 5% CIT FCT on US\$1,000
 - 5% VAT FCT on US\$1,000
 - Subcontractor can register/pay
→ no double tax
 - No recoup US\$5 VAT
 - PIT at 20% on US\$5 (DTA exemption possible < 183 days)
- VAT registration, CIT as WHT
 - 5% CIT FCT on US\$1,000
 - VAT on added value
 - PIT same as above



- Branch or project office with VAT and CIT registration
 - 25% CIT on net profit
 - 10% VAT on added value
 - PIT same as above



CAMBODIA

- Corporate Tax 20% (30% for oil & gas production)
- Minimum Tax 1% on turnover (if higher than Corporate Tax)
- Withholding to non-resident
 - Dividend 14% (+20% for exempt profit)
 - Branch profit remittance 14%
 - Interest 14%
 - Royalty/Rent 14%
 - Services 14%
 - Purchase goods 0%
- No WHT on liquidation bonus
- No formal transfer pricing regulation
- No foreign exchange control

- No VAT reverse charge
- If onshore services exceed certain thresholds (15 k per 3 months turnover) in theory there is a VAT liability, but it was not administratively implemented. This may be in development soon.
- Imports of goods are always subject to VAT
- An importer must have a Cambodian VAT registration
- Suppliers and subcontractors in Cambodia normally need to charge VAT. The concept of “export of services” is uncertain in Cambodian VAT regulations.
- Except for a full tax registration as a branch or subsidiary, there is at this time no way to recoup VAT charged to you by Cambodian suppliers or subcontractors.

Taxable Presence

Corporate Income Tax (“Tax on Profit”) Prakas № 1059 PK/MEF/DT (TOP)

A permanent establishment as mentioned in paragraph 4 refers to a fixed place of business or a resident agent in the Kingdom of Cambodia through which a non-resident person carries out business, wholly or partially, in the Kingdom of Cambodia. A permanent establishment includes also any other association or connection or mean through which a non-resident person engages in economic activities in the Kingdom of Cambodia. A permanent establishment shall be considered a resident legal person with respect to its Cambodian source income only.

A permanent establishment includes mainly:

- a place of management;
- a branch of a foreign enterprise, an agency;
- an office of a foreign enterprise;
- a warehouse;
- a factory;
- a workshop;
- a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- a farm or plantation.

- A permanent establishment includes also:
 - a building site, a construction project or an assembly project, or supervisory activities connected to such site or project, where such site or project or activities continue for a period of more than six months;
 - the furnishing of services including consultancy services by the employees or other personnel of a foreign enterprise where such activities continue within the Kingdom of Cambodia for periods aggregating more than six months in any 12 month period.

In addition to the provisions of sub-paragraphs a and b of this paragraph, a person shall be considered a permanent establishment in the Kingdom of Cambodia if such person satisfies one or more of the three conditions as follows:

- has and regularly exercises the authority to conclude contracts in the Kingdom of Cambodia on behalf of a foreign enterprise;
- regularly maintains in the Kingdom of Cambodia a stock of goods or merchandise from which he regularly delivers or supplies such goods or merchandise on behalf of a foreign enterprise;
- collects insurance premiums or insures risks, except the reinsurance of risks, situated in the Kingdom of Cambodia, on behalf of a foreign enterprise.
- In actual implementation, the tax administration shall decide for each particular case whether there is permanent establishment or not, on the basis of factual circumstances in that case except in the case of the implementation of the clauses of an international agreement.

- Practical implementation by the GDT
 - It was not possible to obtain a tax registration as a PE unless the enterprise would open a formal commercial branch in Cambodia. That position may be in development.
 - In many cases, the GDT prefers enterprises not to register as a PE but to pay tax through withholding instead.

- Considered to “doing business in Cambodia”
 - Rent office or other space
 - Processing or services for more than one month
 - Employs any person to work more than one month
 - Commercial basis

Limited Liability Company (LLC)

- There is no restriction against establishing a 100% owned LLC in Cambodia. Foreign owned LLCs are afforded all the rights and benefits of a locally owned LLC, with the exception that they cannot own land. The parent of a subsidiary is liable for its Subsidiary's debts and liabilities only to the limit of its subscribed capital in the Subsidiary.
- The LLC would be a resident taxpayer for Cambodian tax purposes and therefore be subject to 20% CIT or 1% Minimum Tax. All LLC's are VAT taxpayers.

Branch of a Foreign Company

- A branch may enter into contracts to buy and sell goods and services and engage in manufacturing, processing and construction activities undertaken by its principle, employ staff etc. In all aspects, a Branch can undertake the same activities as a LLC.
- A subsidiary and a branch are by and large taxed in a similar manner under Cambodian tax law, including a 14% withholding tax on remittances of profit by the branch.
- However, a disadvantage of this form of enterprise is that a branch does not enjoy the limited liability provided by a LLC.

Representative Office (RO)

- A Representative Office is commercially not allowed to supply goods or services to third parties, but may only act as a liaison for the enterprise.
- A Representative Office is not subject to a separate tax regime in Cambodia. It is treated as any other taxpayer, but it will normally not realize any income or make any supplies, so there is no actual Tax on Profit or VAT due. However, a representative office will often have withholding tax liability when it pays for rent, services or other income, and is of course obligated to withhold Tax on Salary for employees.

CHOICE OF ENTITY

| Issue | Branch/LLC | Representative Office |
|--|--|--|
| Corporate income tax liability (Tax on Profit “TOP”) | Yes, subject to 20% TOP on net profit or 1% Minimum Tax on turnover (whichever is higher) | Liable to TOP , but no income or sales so no tax due |
| Calculation of the taxable profit | Taxable income minus deductible expenses; however, for a branch interest, service fees and royalties paid to the head office, are not deductible expenses. | Not applicable |
| Minimum Tax | Yes, 1% on turnover but not payable if TOP is higher | No turnover, thus no Minimum Tax |
| Withholding taxes (“WHT”) | Yes, on income paid to residents and non-residents including rent, service fee, royalty, and interest. However, for a branch interest, service fees and royalties paid to the head office, they are not deductible expenses. | Yes, on income paid to residents and non-residents including rent, service fee, royalty, and interest. |
| Profit Remittance | Yes, 14% WHT on the branch profit remittance to the head office | Not applicable |
| Transfer of the entity without Cambodian income tax | No | No |
| Foreign income | Not taxable | Not taxable |

CHOICE OF ENTITY

| Issue | Branch/LLC | Representative Office |
|--|--|--|
| Tax on Salary liability for remuneration paid to employees | Yes, progressive rates up to 20% for residents and flat rate of 20% for non-residents. | Yes, progressive rates up to 20% for residents and flat rate of 20% for non-residents. |
| Fringe Benefits Tax Liability for benefits paid to employees | Flat effective rate of 25%. | Flat effective rate of 25%. |
| Value Added Tax ("VAT") liability | Yes, a branch that provides services (to head office) is providing VAT-taxable supplies. The branch/LLC charges 0% VAT on exported services. There is a risk that the 0% rate does not apply to your case. | As the RO will only provide services for the head office itself, and not to third parties, there is no VAT-taxable supply. |
| VAT rate | Normal rate is 10%. | Not applicable |
| Input VAT deduction and refund | Yes, subject to conditions. Note however that refunds are subject to extreme delays and are often considered impractical. | The RO is not a VAT registrant thus it cannot deduct or have a refund for input VAT |

CHOICE OF ENTITY

| Issue | Branch/LLC | Representative Office |
|---|---|---|
| Allowed business operations under the LCE | Fullest range of activity same as the local company except any acts that are prohibited for natural or legal person who is foreigner. | <p>Contact customers for the purpose of introducing customers to its principal.</p> <p>Research commercial information and provide the information to its principal.</p> <p>Conduct market research.</p> <p>Market goods at trade fairs, and exhibit samples and goods in its office or at trade fairs.</p> <p>Purchase and keep a quantity of goods for the purpose of trade fairs.</p> <p>Rent an office and employ local staff.</p> <p>Enter into contracts with local customers on behalf of its principal.</p> |
| Liability of parent | Yes for branch, no for LLC | Yes |
| Minimum capital | No | No |
| QIP | Possible in theory subject to national policy but in practice may be difficult to qualify | Not possible. |
| Other taxes (only taxes likely to be relevant in your case) | Yearly patent tax | Yearly patent tax |

- Branch or SUB
 - CIT (20%) and VAT (10% on added value) as customary
 - No withholding on fees paid by the principal in Cambodia
 - 14% dividend withholding tax or branch profit remittance
 - 14% WHT on services from overseas recipients, and 15% on services supplied by Cambodian suppliers without a VAT registration
- Non-resident without tax registration
 - 14% WHT
 - No VAT reverse charge
 - No way to deduct VAT charged by suppliers or subcontractors
 - Import of equipment without the principal or a third party is not possible, because importers need a VAT registration

Taxation as a Branch/PE or a Subsidiary

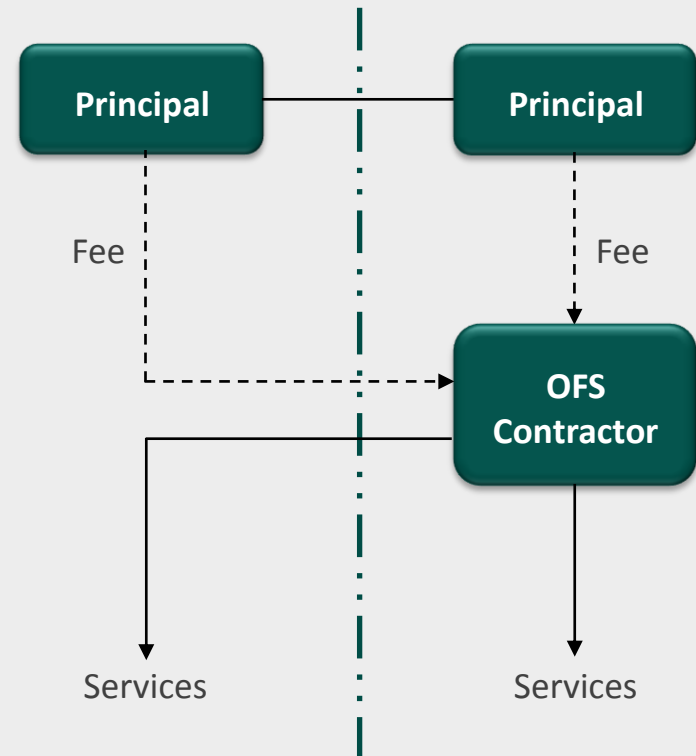
- Corporate Tax 20%
- 1% Minimum Tax on turnover (unless corporate tax is higher)
- Most expenses are tax deductible. There is no system of “official” tax invoices.
- Loss carry forward 5 years (with conditions)
- 14% WHT on payments for services, rental, interest to non-residents
- A company is ipso facto a VAT taxpayer
- The concept of “export of services” is not clear

- Monthly tax declarations for TOP (Prepayment), VAT, WHT and PIT
- Annual TOP finalization, and “Patent Tax”. No annual PIT or VAT finalization
- Processing fees apply for filing tax returns
- Audited financial statements not always required (threshold “2 out of 3” between 750k turnover, 500k balance sheet total, or 100 employees)
- Tax audits are frequent, multiple cross-checking teams
- VAT refund is not transparent, extreme delays or even impossible
- Liquidation requires a final tax audit, important delays

Taxation as a Non-Resident

- Rate 14%
- “Technical and management services”; no definition
- “Use of movable property”
- No WHT on the purchase of goods (VAT and customs duty)
- It does not matter where the services are performed. Services performed outside Cambodia are also subject to WHT.
- The WHT is triggered by payment or when they are “incurred as an expense”.
- Pay and declare tax on 15th of the following month.
- No gross up.
- In practice, contracts will often provide that the payer has to bear the cost of the WHT.

- Does the WHT apply in case payments are made from abroad?
 - Allocation of expenses
 - In case there is no allocation
 - Possible challenges



PIT and Labor Compliance

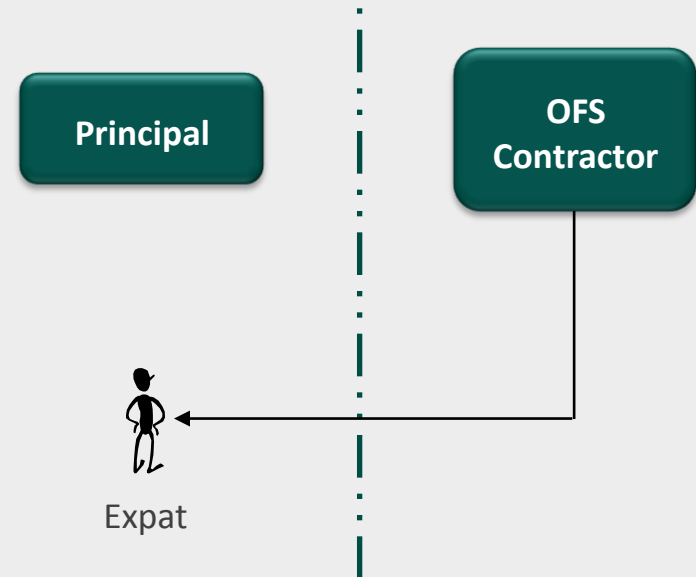
Residents are taxed on an incremental scale:

| Taxable monthly salary | | | | Incremental tax rate |
|------------------------|------------------------|-------|--------|-------------------------|
| Khmer Riel | Approx. USD equivalent | | | |
| From 0 | 500,000 | 0 | 125 | 0% |
| From 500,001 | 1,250,000 | 125 | 313 | 5% |
| From 1,250,001 | 8,500,000 | 313 | 2,125 | 10% |
| From 8,500,001 | 12,500,000 | 2,125 | 3,1255 | 15% |
| Over 12,500,001 | | 3,125 | | 20% |

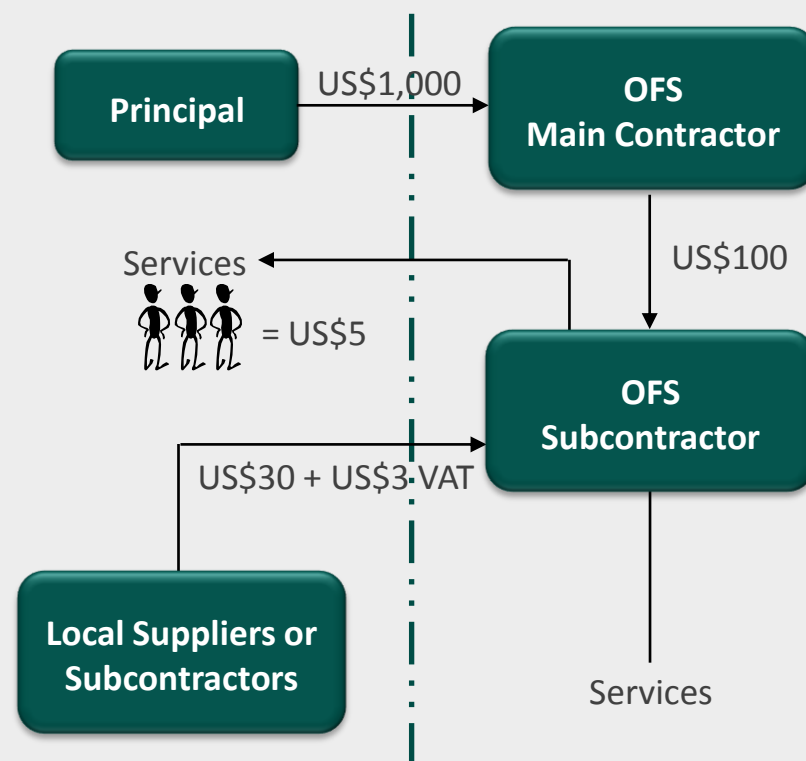
Non-Residents are taxed at flat rate of **20%**.

- Work permits
- Immigration issues

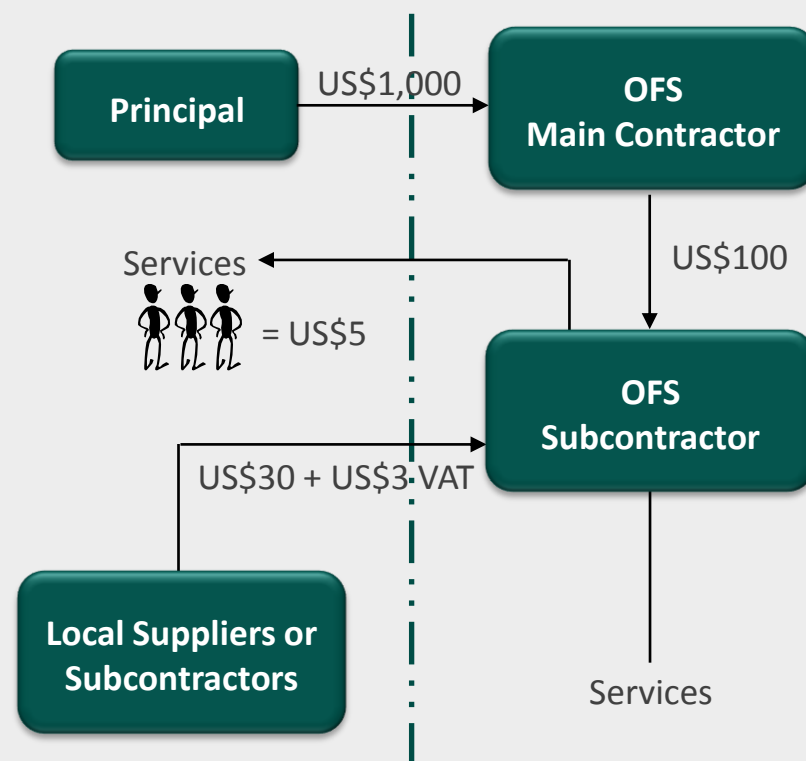
- PIT 20%
- No DTA
- Exemption for projects (183 days?)
- Work permits
- Immigration



- Without taxable presence
 - 14% WHT on US\$1,000
 - No WHT on US\$100
 - No WHT on US\$30
 - No recoup on US\$3 VAT
 - PIT at 20% on US\$5 (if > 183 days)
- With taxable presence (branch) for OFS Main Contractor
 - No 14% WHT if recipient is registered
 - 10% VAT on services by registered entity



- Offset US\$3 VAT
- 20% TOP or 1% MT at registered entity
- 14% WHT on branch profit remittance
- PIT at 20% on US\$5 (if > 183 days)



MYANMAR

- Corporate Tax 30% (certain incomes in forex: progressive rates 5%-40% - the highest apply capital gains at 10%)
- Withholding taxes (non-residents)
 - Dividend 0%
 - Interest 15%
 - Royalty 20%
 - Services 3.5% (contracting oil & gas)
 - Goods purchase 3.5%
- DTAs with a few important trade partners including Thailand, Malaysia, Singapore, Korea, Vietnam (implemented?)
- No formal transfer pricing regulation and compliance

- Effective since 1990-91
- Turnover tax applicable to specific transactions
 - Goods or services rendered in Myanmar
 - Imported goods (CIF value)
- Various rates 5-200% (8% if in foreign currency)
- Oil and gas field services are typically not within the scope of the Commercial Tax

Taxable Presence

- No concept of PE in domestic Myanmar tax law
- Typically, OFS providers will not be required to open a presence
- A branch, a representative office or a subsidiary are possible options, but uncommon for OFS providers

Taxation of a Branch/PE or Subsidiary

- Progressive rates (5%-40%) or 35% (in forex) or 30% (Kyats)
- Expense deduction, depreciations
- Capital gains are taxed
- Loss carry forward 3 years
- Capital losses cannot be deducted from income
- Domestic WHT (15% on royalties, service fees 3%)
- Annual tax returns, but monthly or quarterly advance payments
- Tax declaration on capital gains within 1 month following disposal

Taxation as a Non-Resident

- WHT of 3.5% for non-resident foreign service providers (final tax)
- WHT of 3% for resident service providers (not final tax)
- “Under a contract, agreement or other form”
- The WHT covers services and (recently) procurement of goods. It is unclear whether leasing is subject to WHT.
- It is not relevant whether the services were performed in Myanmar or abroad, provided they are performed under a contract with a Myanmar /resident principal
- The tax liability for the WHT is triggered by payment of the fee
- Gross-up if needed
- Payment within 7 days (procedure)

- Subcontractors: payment by principal, in practice
- Overseas payer cannot comply with payment procedure
- DTA implementation

| Country | Dividends | | Interest (1) | Royalties |
|----------------|------------------------|----------------------|--------------|-----------|
| | Individuals, Companies | Qualifying Companies | | |
| Korea | 10 | 10 | 10 | 10/15 (2) |
| Malaysia | 10 | 10 | 10 | 10 |
| Singapore | 10 | 5(3) | 8/10 (4) | 10/15 (2) |
| United Kingdom | 0 | 0 | -(5) | 0 (6) |
| Vietnam | 10 | 10 | 10 | 10 |

- (1) Many of the treaties provide for an exemption for certain types of interest, e.g. interest paid to public bodies and institutions. Such exemptions are not considered in this column.
- (2) The 10% rate applies in respect of payments of any kind received as a consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
- (3) This rate applies if the beneficial owner is a company which owns at least 25% of the shares of the company paying the dividends.
- (4) The lower rate applies if the interest is received by any bank or financial institution.
- (5) The domestic rate applies; there is no reduction under the treaty.
- (6) Royalties are exempt up to an amount considered fair and reasonable consideration for the rights for which the royalties are paid. Royalties do not include royalties or other amounts paid in respect of the operation of a mine or quarry or of other extraction of natural resources, or rent or royalties in respect of a motion picture film.

- A branch or representative office of a foreign OFS provider would in any event be taxed as a non-resident on services income. Other income would be normally taxed, however.

PIT and Labor Compliance

- **Residence**

Under Myanmar tax law, foreigners may be subject to income tax in Myanmar either as resident foreigners or as non-residents. An expatriate working for a foreign invested enterprise in Myanmar (under the Myanmar Foreign Investment law) are deemed tax residents of Myanmar, regardless of their actual period of presence in the country.

- **What is the taxable basis?**

The term “salary” includes salary, wages, annuity, pension, gratuity, and any fees, commissions or “perquisites received in lieu of or in addition to any salary and wages”. In other words, benefits are included in the definition of taxable salary. However, there is no clear description of what constitutes a taxable benefit in this regard. In practice, Income Tax borne by the employer is also regarded as a taxable benefit in itself.

- **Paying tax in practice**

Employers of expatriate employees must apply a withholding for the income tax on salary on a monthly basis. Note that when the income is paid in foreign currency, also the tax must be paid in that currency. In view of various financial restrictions, this may be difficult to achieve in practice. It is not possible to have a deductions for costs related to employment income, but there are a number of allowances.

- **Tax Rates for Expatriate Employees**

The progressive tax rates applicable to salary range from 3% to 30%. However, non-resident foreigners that derive a salary from Myanmar are subject to a flat rate of 35% (stay less than 183 days).

Resident foreigners (stay over 183 days/qualify for the 15% tax rate)

- **Social security**

Note that Myanmar also has a compulsory system of social security contributions. Only employers with more than 5 employees are within the scope of the system. The contribution is calculated as 1.5% of the total salary (including benefits). It is actually the employer who must deduct the contribution from the employee's salary and remit the amount to the authorities.

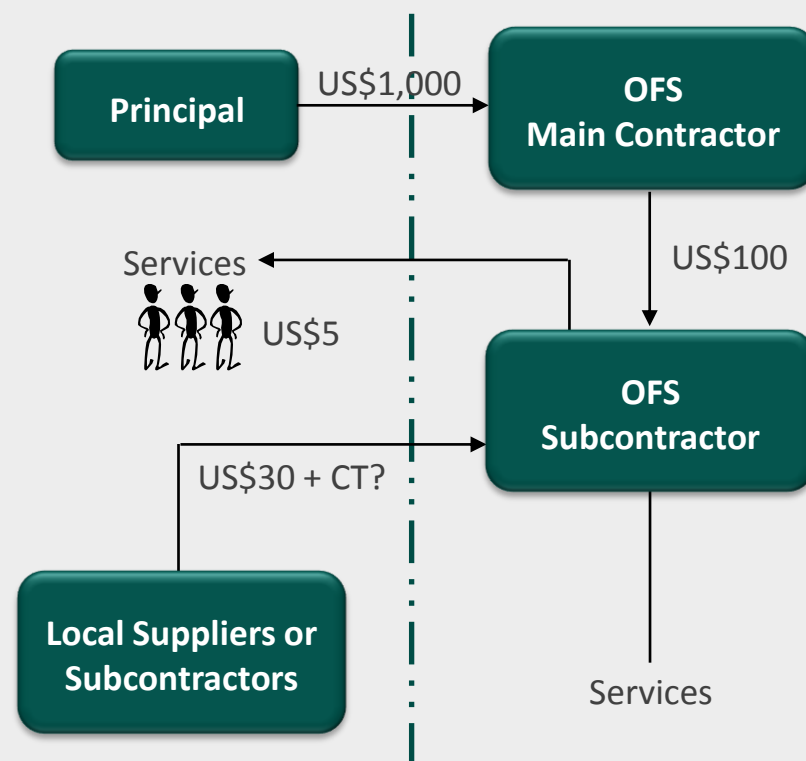
- **Tax Compliance Obligations**

All persons deriving income from Myanmar must file tax returns and comply with monthly payment and declaration requirements. This applies to foreigners that are non-residents, resident foreigners and national employees. The employer must also provide an annual finalization statement of salaries paid to employees.

- No work permits, but entry visas (10 weeks)
- Multiple journey visas
- Presence in Myanmar, government recommendation letter

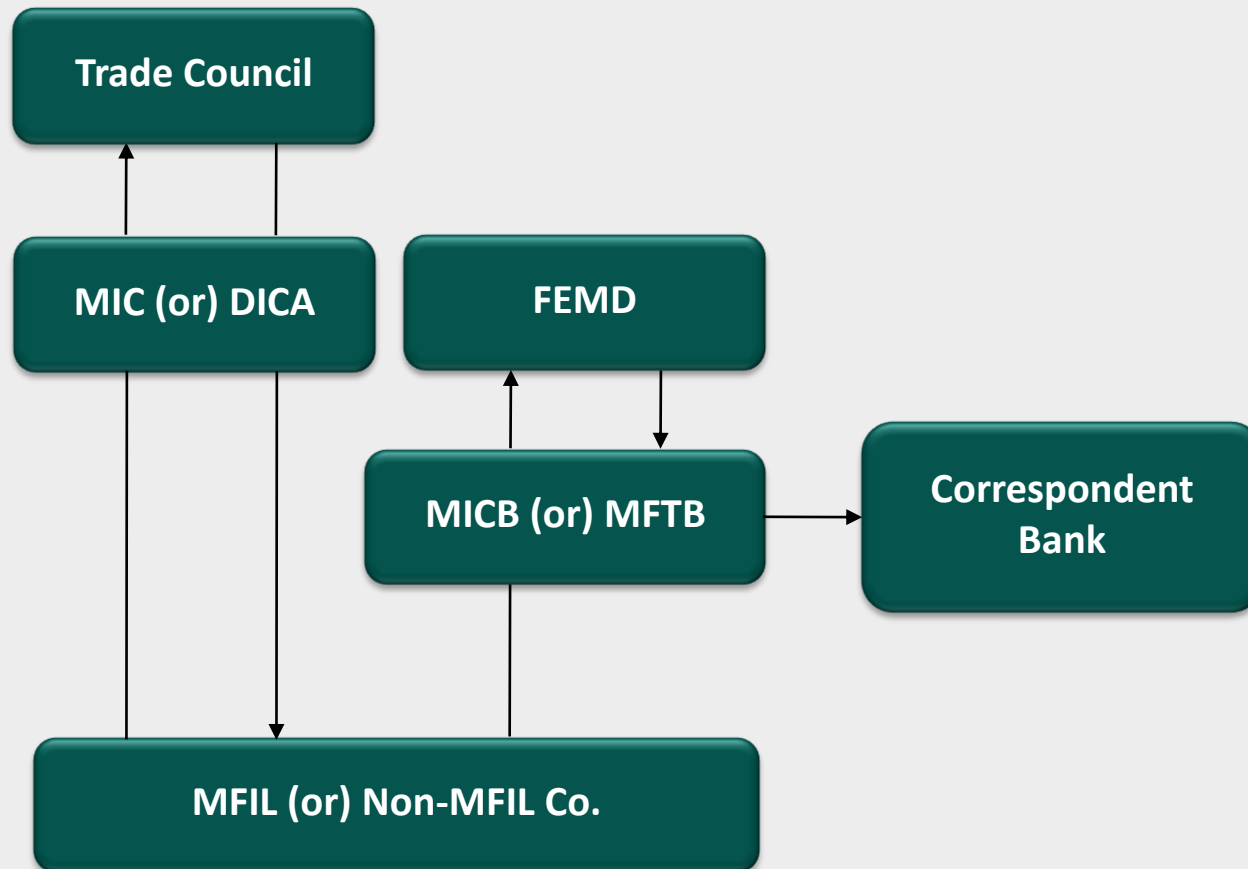
- Rates from 0% to 40%
- CT is levied at border as well for imported goods
- Customs draw back for re-export (6 months)
- MOGE can facilitate customs/CT free import or temporary imports
- Exemption from customs duties under bond

- Without taxable presence
 - 3.5% WHT on US\$1,000
 - No CT
 - 3.5% WHT on US\$100?
 - PIT at 15% or 35%
- With taxable presence
 - 3.5% WHT on US\$1,000
 - No CT
 - 3.5% WHT on US\$100?
 - PIT at 15% or 35%

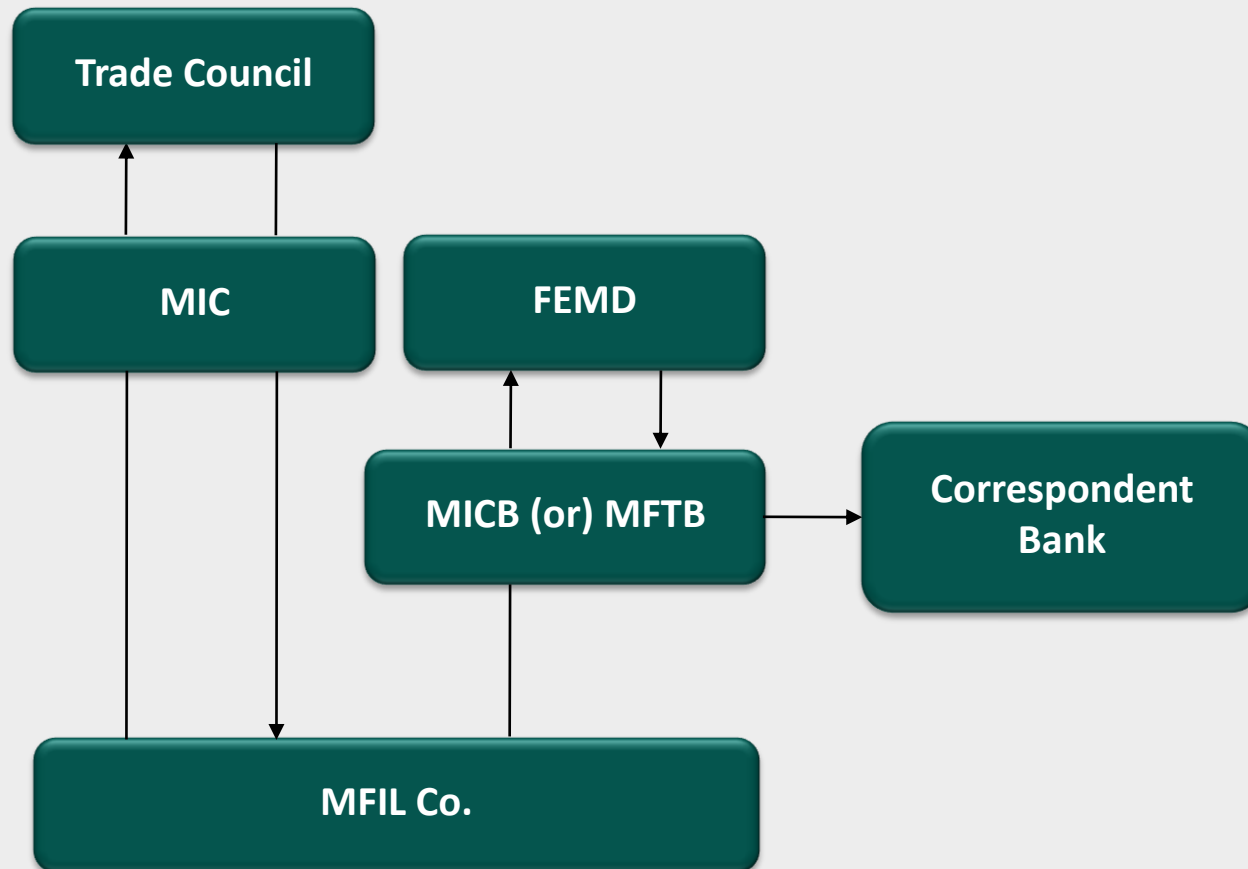


Forex Issues

PROFIT REPATRIATION THROUGH DIVIDENDS



PROFIT REPATRIATION THROUGH SHAREHOLDER LOANS



THANK YOU

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***ONE
REGION***



***ONE
FIRM***

