Investment in Vietnam
Tax updates

16 August 2017

Building a better working world

Agenda

- Overview of foreign investment in Vietnam
- Vietnamese taxation system
- Investment certificate
- Hot topics and recent updates
- Other considerations

Overview of foreign investment in Vietnam

Common form of investment & areas of investment

Direct investment

- 100% foreign owned/wholly foreign owned
- Joint venture
- Business Cooperation Contract (BCC); Build- Transfer- Operate (BTO); Build – Operate- Transfer (BOT); Build- Transfer (BT)
- Purchase shares or to contribute capital for management of investment activities

Indirect investment

- Purchase equity, shares, bonds and other valuable papers without management
- Through investment funds
- Through other intermediary financial institutions

(*See definitions on BCC, BTO, BOT, BT, etc… in the Law on Investment)*

Foreign ownership restriction
Examples under WTO commitments

Transportation agency services, warehousing services and storage services (including bonded warehouse services): no limitation on foreign stake

Road transportation services: foreign stake capped at 49% (or 51% subject to assessment of the needs of the market by local competent authorities). Also 100% of the drivers of this joint venture must be Vietnamese citizens

Services incidental to manufacturing (including processing services): no foreign stake limitation

Finance leasing: no foreign stake limit but subject to conditions on total asset

Land ownership restriction

The State shall grant land use rights to land users

Foreign-invested enterprises, may be **allocated land or leased land**, have land use rights recognized by the State, or acquire land use rights

Foreign enterprises are not entitled to land ownership except for housing ownership with certain limitations (i.e. 30% apartments of the building)

Vietnamese taxation system

Overview on taxes and filling requirements

Types	Standard rate	Calculation	Remarks	Filling requirements
Corporate Income Tax (CIT)	20% Incentive rate may be applied	- Taxable income x Tax rate - Taxable income = Revenue – Deductible expenses + Other income – eligible losses carried forward	- Exemption and reduction period may be applied subject to conditions - Conditions for deductible expenses - Losses can be carried forward wholly and consecutively within 5 years	• Quarterly payment • Year-end finalization
Value Added Tax (VAT)	10%; 5%; 0% or exempt, depending on type of transactions	VAT payable = Output VAT - Input VAT	- Conditions applied for creditable input VAT - Output rate for exports is 0% - VAT refund: project under construction period or export sale	• Monthly or quarterly filing
Foreign Contractor Tax	Depending on type of income	- Depending on FCT calculation method adopted - Common method: deemed withholding rates on taxable revenue	- FCT includes CIT and VAT portions - VAT creditable for Vietnam buyer - Vietnam buyer to withhold/declare/pay FCT	• Ad-hoc filing per offshore payment or monthly filing
Personal Income Tax (PIT)	20% or progressive rates	- Taxable income x tax rate	- Income in cash and in kind are taxable except certain cases - Relieves available for residents	• Monthly or quarterly filing • Year-end finalization

Double tax treaties

DTA introduction

1. Principle

- DTA is generally a bilateral treaty between two countries to prevent double taxation (taxes levied twice on the same income, profit, capital gain, or other items).

2. Benefits

- DTA protection (i.e. tax exemption, reduction) is only applicable to direct income tax (e.g. CIT, PIT), not indirect tax (e.g. VAT)

3. General Conditions

- DTA protection is available to Foreign Contractor when, among others, the Foreign Contractor has no PE in Vietnam

4. Administration process

- Applicant self-assess DTA eligibility and prepare documents to notify DTA exemption with tax authority
- Advance ruling should be obtained from tax authority to confirm the DTA benefit

Double Tax Treaties

Vietnam has signed double tax treaties/protocols with **76** countries; **68** of which are now effective.

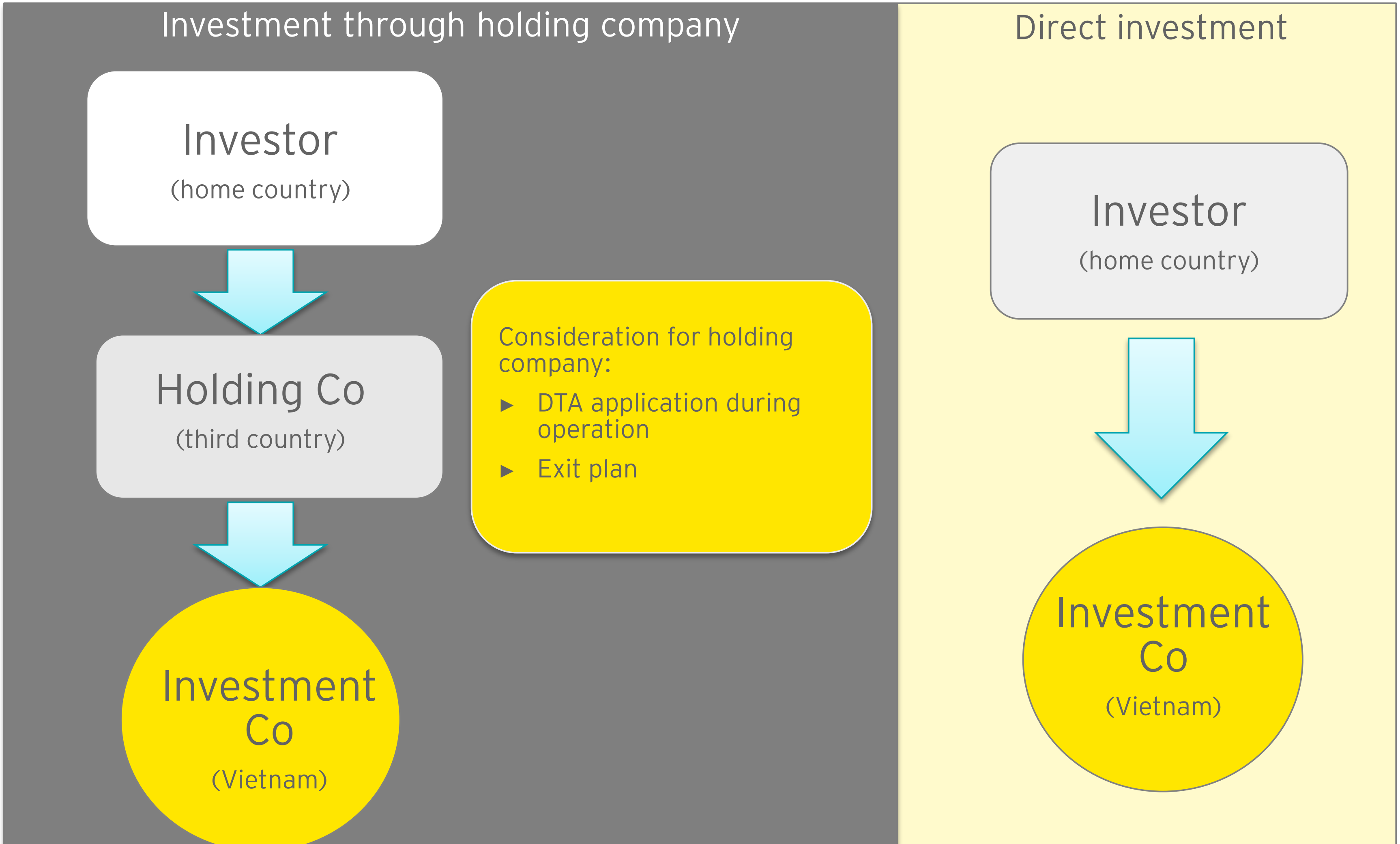
The method of eliminating double taxation varies from one tax treaty to another.

Details on these tax treaties can be found on the General Tax Department's website: http://www.gdt.gov.vn

Effective Protocols/DTAS									
1. Australia	8. Brunei	15. Finland	22. India	29. North Korea	36. Morocco	43. Pakistan	50. San Marino	57. Sri Lanka	63. Turkey
2. Saudi Arabia	9. Bulgaria	16. France	23. Iran	30. Kuwait	37. Mozambique	44. Palestine	51. Serbia	58. Sweden	64. Ukraine
3. Austria	10. Canada	17. Germany	24. Ireland	31. Laos	38. Myanmar	45. Philippines	52. Seychelles	59. Switzerland	65. United Kingdom
4. Azerbaijan	11. China	18. Hong Kong	25. Israel	32. Luxembourg	39. Netherlands	46. Poland	53. Singapore	60. Taipei ROC	66. Uzbekistan
5. Bangladesh	12. Cuba	19. Hungary	26. Italy	33. Malaysia	40. New Zealand	47. Qatar	54. Slovak Republic	61. Thailand	67. Venezuela
6. Belarus	13. Czech Republic	20. Indonesia	27. Japan	34. Malta	41. Norway	48. Romania	55. South Korea	62. Tunisia	68. Uruguay
7. Belgium	14. Denmark	21. Iceland	28. Kazakhstan	35. Mongolia	42. Oman	49. Russia	56. Spain		

DTAs which are not yet enter into force							
1. Algeria	2. Macedonia	3. Portugal	4. USA	5. Egypt	6. Turkey	7. Estonia	8. Panama

Common tax structure for foreign investors



Updates on Base Erosion and Profit Shifting (BEPS)
Three tiered TP documentation

Global Master File	‣ Global business operations ‣ Transfer pricing policies
Local File	‣ Material related party transactions ‣ Amounts involved ‣ Company's analysis of TP determinations they have made
CbCR	‣ Large MNEs to provide information about their group entities on a country by country basis

TP documentation should be prepared before the submission of the annual CIT Return

→

Submit TP documentation to tax authorities within 15 working days upon request (in case of an audit)

→

Increased amount of Information required in the annual TP Disclosure Form

Updates on BEPS
Substance over form

In the BEPS 2015 Final Report, the concept of "substance over form" in a TP context focused on the following:

- Look at the conduct of the parties as well as the commercial arrangements. The conduct will supplement or replace the contractual arrangements if the contracts are incomplete or not supported by the conduct
- Higher risk leads to higher returns but cannot simply allocate risk contractually if the party bearing the risk cannot exercise control over the risk and does not have the financial capacity to assume the risk. In this case the risk will be allocated to the group entity that does have the capacity to control and has the financial capacity to assume the risk.

Decree 20 also introduces the concept of "substance over form" in line with BEPS Report

Vietnamese tax officials will use this principle, together with the arm's length principle, in the assessment of TP of related-party transactions

Investment incentives

CIT incentive rates & exemption/reduction

Standard CIT rate 20%

Incentive rates

- 10% applied within 15 years from first year having revenue from incentive activities, may be extended to 30 years for some particular case subject to conditions and Prime Minister's approval.
- 17% applied within 10 years commencing from first year generating revenue

CIT Exemption and reduction (of 50% CIT payable) period

- Exemption period: 2 years or 4 years commencing from the first year having taxable revenue, in case no taxable revenue generated until the fourth year from the first year having revenue then the exemption period will start from such fourth year.
- Reduction period: 4 years or 9 years subsequent to the exemption period.

CIT incentive conditions
Incentive locations

Investment incentive locations

1	High-tech parks
2	Economic Zones
3	Areas having **specially** difficult socio-economic conditions (per list under Decree 118/2015/ND-CP)
4	Areas having difficult socio-economic conditions (per list under Decree 118/2015/ND-CP)
5	Industrial parks located in disadvantaged areas

1–3:
- 10% CIT rate for 15 years
- 4 years CIT exemption and subsequent 9 years of 10% CIT reduction

4:
- 17% CIT rate for 10 years
- 2 years CIT exemption and subsequent 4 years of 50% CIT reduction

5:
- 2 years CIT exemption and subsequent 4 years CIT reduction

CIT incentive conditions
Incentive sectors

- High-tech (subject to strict conditions), software development, infrastructure development, energy (power): 10% CIT rate for 15 years; 4 years CIT exemption and subsequent 9 years of 50% CIT reduction
- Education, health, environment, culture and sports investment project: 10% CIT incentive rate for whole life of project

CIT incentive conditions
Big investment

Investment project for manufacturing of products not subject to special sales tax:

10% CIT for 15 years, 4 years CIT exemption and 9 years CIT reduction

1

- Total investment capital up to VND6,000 billion (appr. USD270m), implemented within 3 years from the date of first IRC; and
- Having employees up to 3,000 within latest 3 years from the first year having revenue OR have annual revenue of at least VND10,000 billion (appr. USD450m) from forth year latest within 3 years from first year having revenue.

2

- Total investment capital up to VND12,000 billion (appr. USD540m), implemented within 5 years from the date of first IRC; and
- Use technology assessed in accordance with the Law on high tech and the Law on Science and Technology.

An additional 15 years for 10% CIT rate can be applied if subject to the Prime Minister's approval if the following **additional** conditions are met:

- Production of goods having global competitiveness, revenue amounting to VND20,000 billion/year (appr. USD897m) within latest 5 years after the first year having revenue from the investment project.
- Regularly have 6,000 employees or more.

CIT incentive conditions
Supporting industries

Manufacturing investment projects:

- The products support high technology sector; or
- The products support the garment, textile, footwear, IT, automobile assembly, mechanical sectors are not produced domestically as at 1 January 2015, or if produced domestically, they meet the quality standards of the EU or equivalent.

Application documents prepared and submitted to competent authority

Post-audit procedures carried out by competent authority

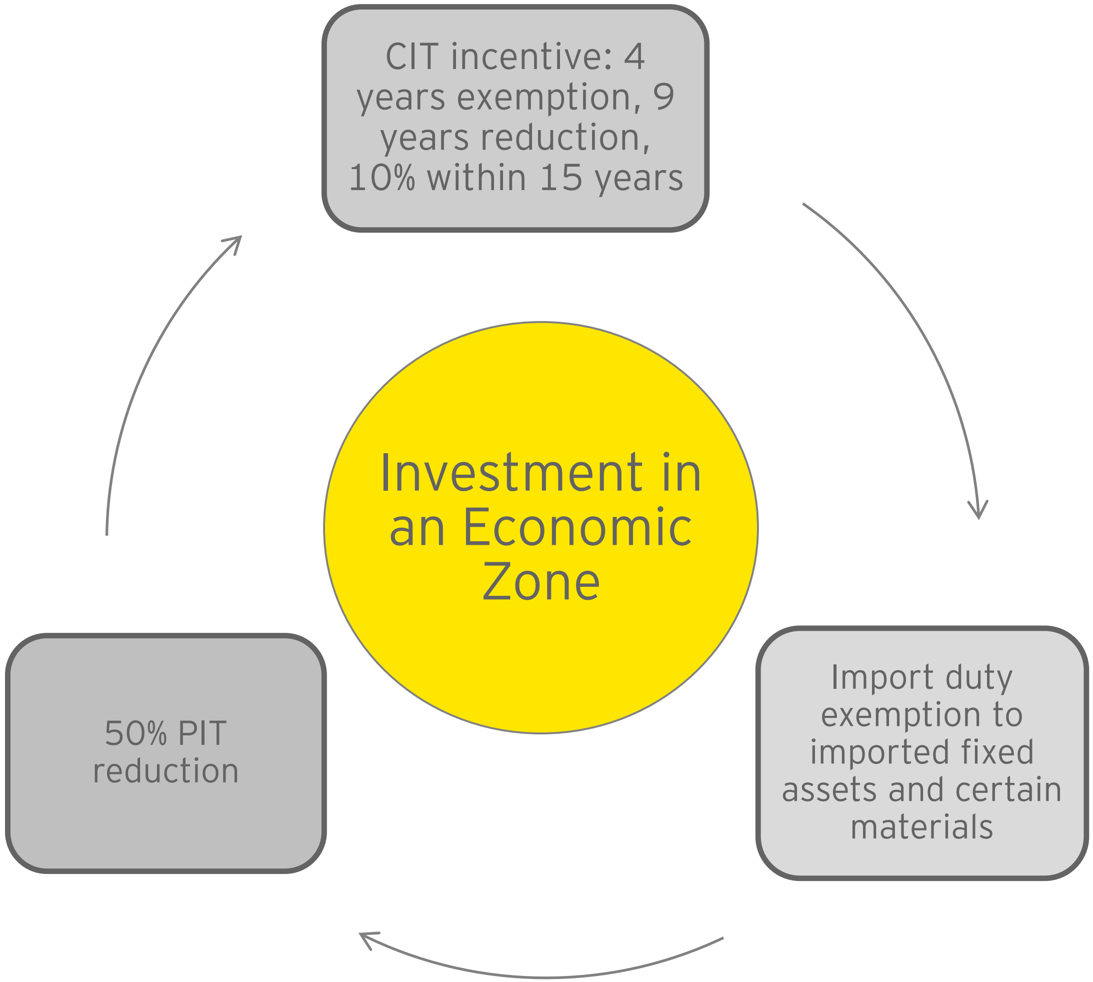
Incentive applied:

10% CIT for 15 years, 4 years CIT exemption and 9 years CIT reduction

Other investment incentives

PIT	**50% PIT deduction:** for Vietnamese and foreign individuals directly and actually working in economic zone
VAT	**No VAT:** Imported goods serving contract for exported goods **and manufacturing** of export goods **0%:** on exported services/goods [supplied and consumed in overseas or non-tariff areas (including export processing enterprises – EPEs)] **VAT refund:** for construction period (no revenue generated) or export sales
Import duty	**Preferential import duty rates:** under ATIGA for imports from Thailand with valid C/O **Duty exemption:** - Goods imported serving export processing/manufacturing contracts - Imported goods forming fixed assets and imported materials not yet able produced domestically if investment project located in incentive areas or within incentive sectors
Land rental	**Exemption of maximum 03 years:** during construction period **Additional years of exemption** (3 years to whole life)**:** subject to (i) incentive business sector, and/or (ii) incentive geographical area

Investment in an Economic Zone

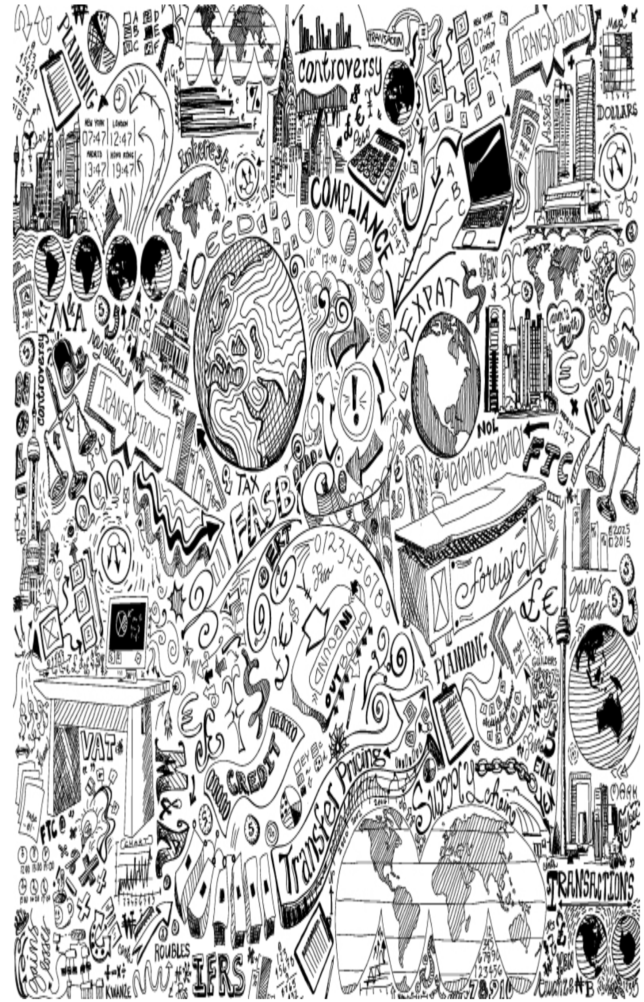


Hot topics and recent updates

Services fee
Intra group transactions

Specific rules relating to the deductibility of intra-group service fees

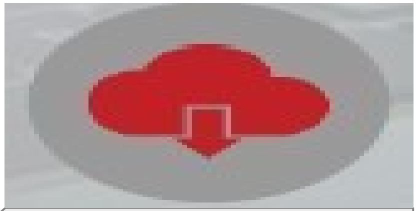
- Services provided must be directly beneficial to the business operation of the taxpayer
- Services from related parties are only determined to “have been provided” if, under similar circumstances independent companies pay for such services
- Service fees are paid on an arm’s length basis, the TP method or allocation keys are consistently applied among the group, and the tax payer is obliged to provide supporting documentation in relation to the receipt of services.



Capped deductible interest expenses

Capped interest = interest expenses from related parties + interest from independent parties

Deductible interest expenses capped at:
20% of [total net operating profit + interest expenses + depreciation]
(EBITDA)



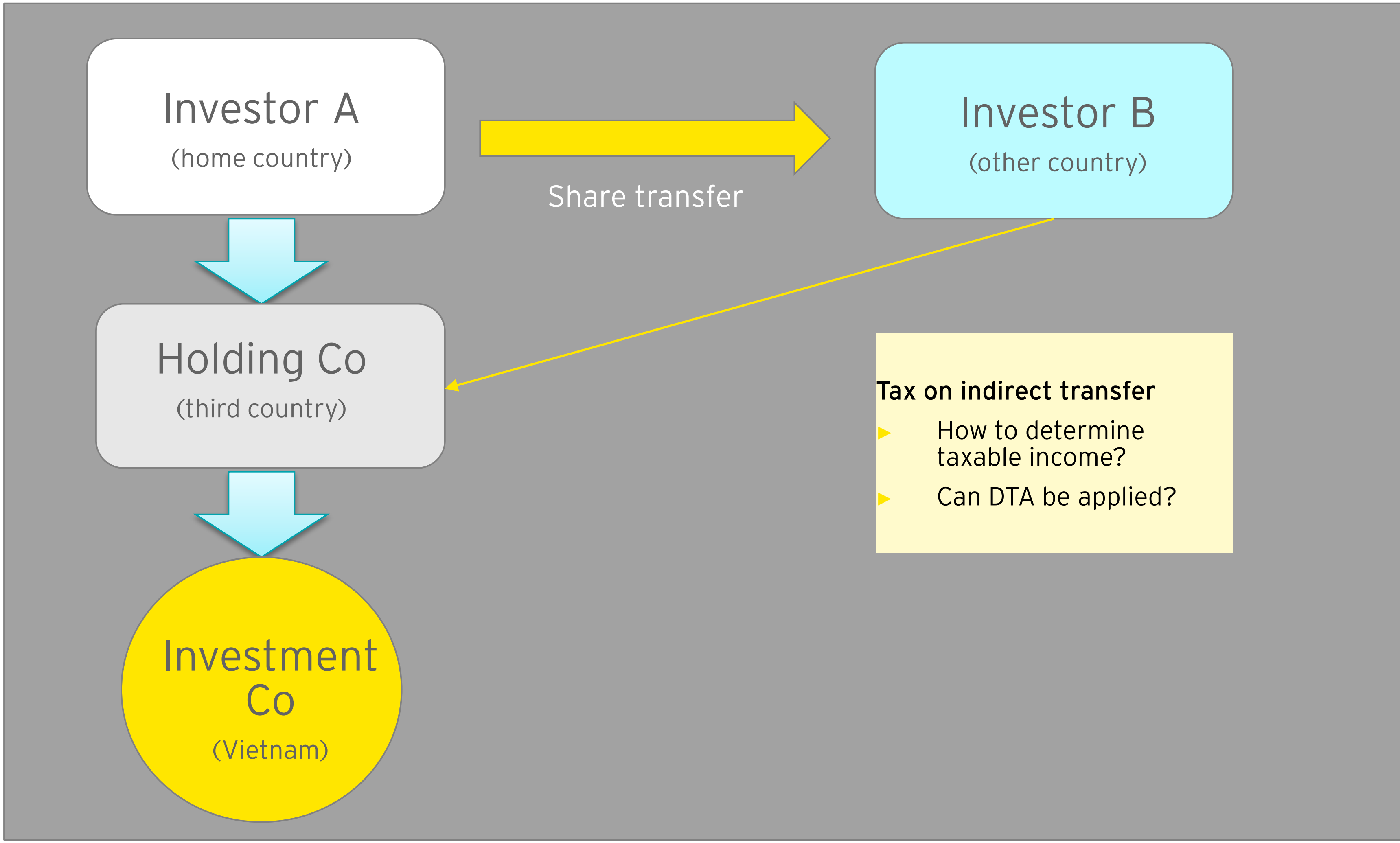
Some issues not yet regulated:

- Capitalized interest expenses subject to cap?
- Capped interest expenses can be offset against interest income?
- If EBITDA <0 => How to determine capped deductible interest expenses?

Regulated entities:

- Except for regulated entities of Laws on Credit Institutions and Law on Insurance Business
- Entities incurring any related-party transactions during the period

Capital gain tax on indirect share transfer



Others

- Thin cap rule being considered by the Government
- More tax audits, especially transfer pricing audit being undertaken by local tax authorities
- Self assessment scheme requires tax payers to understand and comply with the regulations; tax penalties and late payment interest imposed in case of non-compliance

Other considerations

Other considerations

Foreign exchange control

- Vietnam adopts a strict foreign exchange control rule
- All transactions between residents (i.e. companies established and operating in Vietnam) must be conducted (including listing, advertisements, quotation, pricing, or other similar forms such as conversion or adjustment of prices) in Vietnam Dong

Loan registration

- Medium-term and long-term loan or loan having the term of more than 01 year must be registered with the State Bank of Vietnam (SBV) within 30 working days since the date of signing the loan contract and before the draw-down of the loan
- In case the short-term loan agreement is extended and the total accumulated time of short-term loans exceeds one year then such loan agreement must be registered with the SBV within 30 working days from the date of the extension
- The total midterm or long-term loan (including domestic loans) taken by SDBN to serve its investment project in Vietnam must not exceed the difference between the total capital and the contributed capital

Visa and work permit requirement

- Certain cases of work permit exemption
- Simplified procedures for work permit issuance (i.e. 7 working days instead of 10 working days as before)

Profit repatriation

- Foreign investors allowed to purchase foreign currency for profit remittance
- No profit remittance tax
- Subject to notification to tax authority and fulfillment of year-end CIT liabilities

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