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VIETNAM BRIEFING

From Dezan Shira & Associates

How to Set Up in Vietnam

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Introduction

ALBERTO VETTORETTI
Partner
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Vietnam's economy continues to perform well, sustained by continued domestic reforms, a stable government, and the diversification of foreign direct investment in the country. GDP growth in the country is broad based, sustained by strong manufacturing growth and bolstered by a strong external demand. Vietnam's medium-term outlook continues to be strong, and despite a slack in the economy, inflation is expected to remain around 4 percent of the government target.

With such growth, it makes sense that new market entrants see Vietnam as a good opportunity to establish in Asia or diversify their regional presence. But setting up in a new country requires some planning. Foreign investors can reduce potential pain points by selecting a corporate structure that best suits their business model, understanding the set up process, and planning for key compliances.

In this issue of Vietnam Briefing magazine, we detail company structures in Vietnam and outline the most efficient structure for foreign businesses that seek to take advantage of the country's investment climate. We showcase a four step set up process, while also highlighting compliance requirements, including auditing and bookkeeping requirements for foreign companies operating in Vietnam.

Dezan Shira & Associates' team of corporate structuring specialists in Hanoi and Ho Chi Minh City provide our clients with years of experience in assisting foreign enterprises navigate and manage their corporate establishments within Vietnam. We are always available to discuss questions on how to best structure or scale operations in the country.

With kind regards,

Alberto Vettoretti

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This Issue's Topic

How to Set Up in Vietnam

Table of Contents

This Month's Cover Art
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Corporate Structures: ROs, BOs, FOEs, JVs, and PPPs

By Dezan Shira & Associates

Vietnam's economy is forecast to expand to 7 percent this year and foreign companies from the Middle East, Asia, and North America have been flocking to the country. The most significant growth is expected in exports and manufacturing – foreign direct investment indicators are showing that Vietnam is outpacing other rivals in ASEAN.

This growth is not expected to stop any time soon, representing a good opportunity for foreign businesses to start or expand their operations in Asia. Investors have a number of options for entry into the Vietnamese market. In this chapter, we will outline the most common forms of corporate structure options for foreign investors.

Representative Office

A Representative Office (RO) offers a low-cost entry for companies seeking to gain a better understanding of the Vietnamese market. As such, this option is among the most common for first-time entrants to the Vietnamese market and often precedes a larger presence within the country. Currently, ROs are permitted to engaged in the following activities:

- Conducting market research;
- Acting as a liaison office for its parent company;
- Promoting the activities of its head office through meetings, and other activities, that leads to business at later stages.

Vietnam's Ministry of Planning and Investment (MPI) does not currently specify required capital for ROs. While the MPI does not impose specified capital requirements, companies will be required to show that their capital contributions are sufficient to fund the activities of their operations. As a result, potential investors should prepare to commit a minimum of US$ 10,000 to fund their operations. ROs can be set up in between six to eight weeks.

Branch Office

A Branch Office (BO) can conduct business activities in Vietnam with the parent company's business scope. To set up a BO, a parent company must have conducted business in its home country for at least five years. BOs are limited to certain types of service businesses, such as finance and banking. BOs can hire staff directly, make it easier to do contracts between parent company and Vietnamese companies, and serve in similar ways to a liaison office.
BOs are permitted to engage in the following activities:

- Rent offices;
- Lease or purchase the equipment and facilities required for operations;
- Recruit local and foreign employees;
- Remit profits abroad;
- Purchase and sell goods and commercial activities per licensing;
- Set up accounting, marketing and HR departments to represent the parent company.

The BO will need to obtain an establishment license and have a seal with the name of the parent company. The BO will also need to appoint a branch manager who is a Vietnam resident. Foreign companies may appoint a manager from their countries of origin, however this employee must get a Vietnam work permit to be hired as a BO manager.

The Department of Industry and Trade approves the registration of the BO after the company submits all the documents with the process taking 20 working days.

100 percent Foreign Owned Enterprise

A 100 percent Foreign Owned Enterprises (FOE) in Vietnam can operate under the following structure:

- Joint stock companies;
- Limited Liability companies.

Limited liability Companies (LLC) are the most common form of investment for foreign investors due to their reduced liability and capital requirements.

LLCs can be broken down into single member LLCs, where there will only be one owner, and multiple member LLCs, where there will be more than one stakeholder. These owners can be private individuals or companies, depending on the requirements of a given investor.

The setup time for a 100 percent FOE ranges between two to four months on average.

Joint Venture

A joint venture (JV) entails the partnership of companies or individuals for a specific business purpose. JVs are not a unique corporate structuring option; partners usually establish an LLC for standard JVs and a Joint Stock Company (JSC) if the there is a desire to list on Vietnam's stock exchanges.

For investors purchasing stakes in state owned enterprises equitized on Vietnam's exchanges, the JSC structure is required. When entering the Vietnamese market, foreign investors can choose to enter into joint ventures as a majority (ownership more than 50 percent) or minority (ownership less than 50 percent) stakeholder.

The capital requirements for JVs are the same as for 100 percent FOEs. Unconditional sectors are not subject to specified capital requirements. However, Vietnam's MPI does apply industry specific capital requirements in many cases.

The percentage of ownership, and thus the amount of capital contributed, is the more important metric to use when evaluating the capital requirements for JVs in Vietnam. At present, statutory guidelines impose a foreign contribution floor of 30 percent for JVs, as well as a ceiling in specific conditional sectors. The government also mandates minimum contributions for domestic investors on an industry specific basis. Set ups for JV take about two to four months.

Public Private Partnership

A Public Private Partnership (PPPs) entails a partnership between a foreign or domestic enterprise and the government for the completion of key infrastructure projects. Vietnamese authorities are aggressively pursuing PPPs for a variety of infrastructure projects as a means of filling gaps left by a reduced role of state owned enterprise, rising population, and increasing urbanization. The five types of PPPs are Build-Transfer-Operate (BTO), Build Transfer (BT), Build- Operate-Transfer (BOT), Build-Own-Operate (BOO) and Build, Transfer and Lease (BTL).

FIE Structure Type	Common Purpose	Pros	Cons
Representative Office	• Non-separate legal entity • Market Research • Liaison with overseas parent company	• Easy Registration procedure	• Cannot conduct profit making activities • Parent company bears liability
Branch Office	• Non-separate legal entity • Commercial activity within parent company's scope	• Can remit profits abroad	• Limited to certain industry sectors • Parent company bears liability
Limited Liability Company	• Separate legal entity	• Liability limited to capital contribution • No restriction on the scope of business	• Cannot issue shares • Maximum of 50 shareholders
Joint-Stock Company	• Separate legal entity	• Liability limited to capital contribution • No restriction on the scope of business • Can issue shares and go public	• Three of more shareholders required • Supervisory board required for most joint stock companies
Joint Venture	• Partnership of companies or individuals for specific business purpose	• Unconditional sectors not subject to specific capital requirements	• Minimum contribution guidelines for domestic investors for industry specific cases • Two to four months to set up
Public Private Partnership	• Entails partnership between foreign or domestic enterprise and government for infrastructure projects	• Government aggressively pursuing PPPs to develop infrastructure	• Several PPP models • Investors unsure of returns

Four Step Set Up Guide

By Dezan Shira & Associates

While Vietnam is a highly attractive investment destination for foreign investors, it still has a complex legal process for establishing a company.

In this chapter we discuss the different set up procedures for companies that want to begin operations in the country. We also recommend professional assistance to guide companies through the myriad of laws and procedures in the country.

Step 1 – Pre-investment approval

For some types of investment, companies need to seek the approval of Vietnamese authorities prior to starting establishment procedures. As a result, it is important to understand if an investment will require approval, and if so, preparing requisite documentation and working against the application processing times.

Step 2 – Investment Registration Certificate application

The first step in the Vietnamese corporate establishment process is an application for an Investment Registration Certificate (IRC). This is required of all 100 percent foreign owned investment projects, and establishes the right of the foreign enterprise to invest within Vietnam.

To apply an investor must:

- Application for implementation of investment project (this should include details of the project in Vietnam);
- Proposal of investment project (should include the details of the investment project, including lease agreements or land use needs);
- Financial statements (to be provided for the last two years of a company's operation; additional information may be required to prove financial capacity).

Timeframe: 15 days from the date when documents are submitted.

Step 3 – Enterprise Registration Certificate application

The Enterprise Registration Certificate (ERC) is required for all projects that seek to set up new entities within Vietnam. When obtained, the ERC will be accompanied by a number that will double as the tax registration number of the entity.
As part of the application process, the following information should be prepared:

- Application for enterprise registration;
- Company charter;
- List of all board members;
- List of legal representatives;
- Letters of appointment and authorization.

Any foreign documents or supporting information provided will need to be notarized, legalized by consular officials, and translated into Vietnamese by competent authorities.

Timeframe: Three days from the date when documents are submitted. It should be noted that applications for the ERC and IRC can be processed concurrently; both can be obtained within 15 days when applied for concurrently.

Step 4 – Post licensing procedures

Once the IRC and ERC have been issued, additional steps have to be taken to complete the procedure and start business operations. This includes:

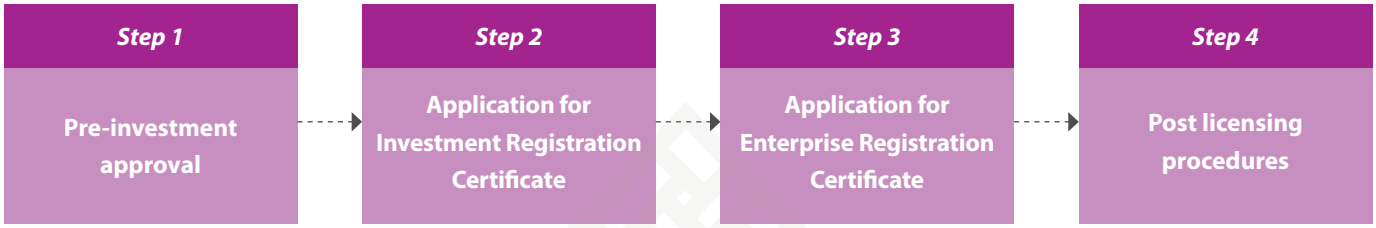
- Seal carving;
- Bank account opening;
- Labor registration;
- Business license tax payment;
- Charter capital contribution; and
- Public announcement of company establishment.

A closer look at charter capital

Charter capital can be used as working capital to operate the company. It can be combined with loan capital or constitute 100 percent of the total investment capital of the company. Both charter capital and the total investment capital (which also includes shareholders' loans or third-party finance), along with the company charter, must be registered with the license issuing authority of Vietnam. Investors cannot increase or decrease the charter capital amount without prior approval from the local licensing authority.

Capital contribution schedules are set out in foreign-invested enterprise (FIE) charters (articles of association), joint venture contracts and/or business cooperation contracts, in addition to the FIE's investment certificate. Members and owners of a limited liability company (LLC) must contribute charter capital within the capital contribution schedules set out in these documents and within the contribution timeframes established by the Law on Enterprises, 2014.

To transfer capital into Vietnam, after setting up the FIE, foreign investors must open a capital bank account in a legally licensed bank. A capital bank account is a special purpose foreign currency account designed to enable tracking of the movement of capital flows in and out of the country. The account also allows money to be transferred to current accounts in order to make in-country payments and other current transactions.



Investments and projects requiring approval	Agency	Requisite documentation	Time (days)
• Projects which currently make use of technology outlined in the Law on Technology Transfer • Projects where government land is obtained without the use of the tendering process	Provincial People's Committees	• Application • Financial statements • Detailed use of restricted technology • Proposed use of land	35
• Relocations of local populations (10,000–20,000 people) • Petroleum exploration • Seaports • Airports • Gambling • Development of Infrastructure in economic zones • Sea Transport • Telecommunications • Press and publications • Science or technological enterprises with 100% foreign owned capital	Various government agencies	All documents listed above in addition to: • Environmental impact assessment • Socioeconomic efficiency evaluation	60
• Projects involving nuclear power plants • Projects involving the mass relocation of local populations (20,000-50,000) • Projects involving protected environmental areas • Projects that repurpose land for rice cultivation	National Assembly	All documents listed above in addition to: • Relocation plan (if applicable)	Should be submitted 150 days before the start of national assembly sessions

Compliances: Taxes, Accounting, Audits, and Remittance

By Dezan Shira & Associates

Many small and medium sized businesses are prioritizing investments in Vietnam and are acting on the business potential it holds. In this chapter, we examine the tax landscape so that new investors can better understand their in-country tax exposure before setting-up.

Taxes

All taxes in Vietnam are imposed at the national level; there are no local, city, or provincial taxes. Enterprises should pay tax in localities where they are headquartered or have duly registered branches.

Most companies and foreign investors in Vietnam are subject to the following six major taxes:

- Business license tax;
- Corporate income tax;
- Value-added tax;
- Special consumption tax;
- Foreign contractor tax;
- Customs duties.

Business license Tax (BLT)

BLT is an indirect tax imposed on entities conducting business activities in Vietnam, paid by enterprises annually for each calendar year that they do business in the country. All companies, organizations or individuals (including branches, shops and factories) and foreign investors operating businesses in Vietnam are subject to BLT.

Corporate Income Tax (CIT)

All income arising inside Vietnam is subject to CIT, no matter whether a foreign enterprise has a Vietnam-based subsidiary, or whether that subsidiary is considered a Permanent Establishment (PE). CIT is a direct tax levied on the profits (gross revenue minus expenses) earned by companies or organizations.

Value-added Tax (VAT)

VAT is imposed on the supply of goods and services at three different rates: 0, 5 and 10 percent, with the latter being the standard rate. All organizations and individuals producing and trading goods and services in Vietnam are liable to pay VAT, regardless of whether the organization has a Vietnam-based establishment.

Special Consumption Tax (SCT)

SCT is a form of excise tax that applies to the production or importation of 11 categories of products and six types of services which are considered to be luxurious or non-essential such as alcohol and tobacco products. Companies are liable for SCT both at the time of import and sale. However, to prevent an excessive tax burden, import SCT will be creditable against SCT incurred at the point of sale.

Customs duties

Most goods exported across the borders of Vietnam, or which pass between the domestic market and a non-tariff zone are subject to export or import duties. Exceptions to this include goods in transit, goods exported abroad from a non-tariff zone, goods which are imported from abroad into a non-tariff zone and only used within that non-tariff zone and goods passing from one non-tariff zone to another. Most goods and services being exported are exempt from tax.

Foreign contractor tax

Foreign businesses are considered foreign contractors if they conduct business or earn income in the country under contract with local organizations and individuals. Usually, foreign contracts are the winners of auctions or bid offerings organized by the Vietnamese

government or organizations and may be principal contractors, general contractors, partnership contractors or subcontractors. Foreign contractors in Vietnam are liable to pay the same tax rates applicable to local companies, including import-export duties, personal income tax and other taxes required by authorities.

Accounting and Bookkeeping

Local and foreign-invested companies doing business in the country are required to comply with Vietnam Accounting Standards (VAS) when recording their financial transactions.

Foreign companies may choose to manage two accounting records: one based on the VAS and another compiled specifically for the overseas head office. In practice, many foreign companies maintain an accounting system according to VAS and only convert financial statements into the International Financial Reporting Standards (IFRS) on a quarterly basis for the foreign parent company's reference.

In brief, the VAS requires that accounting records:

- Are in the Vietnamese language, or can be combined with a commonly used foreign language;
- Use VND as the accounting currency (however, FIEs are allowed to select a foreign currency as their accounting currency);
- Comply with the Vietnam chart of accounts;
  Include reports specified by VAS regulations, printed on a monthly basis, signed by the General Director, and affixed with the company seal.

An accounting period in Vietnam is generally determined according to the calendar year, or January 1 to December 31. However, after registering with the Tax Department, this can be adopted to 12 month periods beginning the first day of each quarter.

Tax authorities can penalize companies for VAS non-compliance through the disallowance of input VAT credits and withdrawal of CIT incentives.

Annual finalization

Based on the accounting periods specified above, investors and other enterprises operating in Vietnam will be required to prepare audit and file annual financial statements 90 days following the close of the annual accounting period.

As per current regulation, annual finalization must be filed with the following offices:

- The General Statistics Office;
- The Ministry of Planning and Investment;
- Tax office at the provincial or city level.

For those companies operating in export processing zones (EPZs or industrial zones (IZs)), financial statements may be required to be filed with the management board of the respective EPZ or IZ. Most economic zones will qualify an investor for tax holiday incentives. Foreign investors should check with each zone to clarify its incentives, which government officials grant on a case-by-case basis.

Retention of documentation

Following annual finalization, companies will be required to retain a variety of documents that may arise as the result of the bookkeeping and accounting process. The time period of retention is tied to the nature of the documentation generated and is broadly split into 5-year, 10-year, and indefinite periods of retention.

- The 5-year retention period applies to all documentation that is used in the management and operation of the enterprise.
- The 10-year retention period applies to all accounting data, accounting books, financial statements, and reports of independent audit firms that have been prepared on behalf of the company in question.
- The Indefinite retention period is limited to documents that are deemed to be of significance to the economics, national defense, or security of the Vietnamese state

Whether it be convergence with IFRS, the growth of e-filing, or simple efforts to improve business competitiveness, Vietnam has a continually changing set of audit procures that must be followed closely in order to ensure compliance.

Below we provide a step-by-step guide on this process for one of the most common investment vehicles of foreign enterprises in Vietnam: Foreign Owned Enterprises (FOEs).

Audit procedures for FOEs

The FOE compliance process, which is also applicable to JVs, can be complex and time consuming. The successful completion requires the compilation of a statutory annual audit report, and the finalization of corporate and personal income taxation. Following successful submission of this information to various government bodies, it becomes possible for firms to repatriate profits from their operations.

With rules constantly changing, prospective and established investors alike should contact a service provider or relevant government officials to ensure that reports are prepared in accordance with the most up-to-date regulations.

Step 1 – Prepare statutory annual audit report

All FOEs are required to produce audited financial statements on an annual basis. These statements must be prepared in accordance with Vietnamese Accounting Standards (VAS) and follow the most up to date guidance available.

As per Vietnamese law, compilation of all reporting must be conducted externally from invested enterprises by an independent auditor. The following audit procedures must be followed and documentation prepared to ensure compliance:

Statutory Audit Requirements

- Statement of income;
- Statement of financial position;
- Statement of changes in equity (if any);
- Statement of cash flow;
- Balance sheet;
- Notes.

Requisite Documentation

- From 04-CS/SXK: Report on Production and Business Activities, including:
  - » Actual Operating Business Lines,
  - » Labor Statistics (Number of Employees, turn over, etc.),
  - » Labor Income and employer payments of social insurance, health insurance, unemployment insurance, and trade union fees,
  - » Production and business activity results (revenue, profit, cost, etc.),
  - » Taxes and other amounts payable to the state;
- From 04-CD/GVGL: Report on Charter Capital
  - » Contribution, including
  - » Initial registered charter capital,
  - » Current registered charter capital,
  - » Implemented charter capital in the reporting year,
  - » Charter capital accumulated by the end.

The Goods and Services tax (GST) system requires taxpayers to self-assess their tax liability and pay their tax without any intervention by the tax authorities. The law provides for a robust audit mechanism to measure and ensure compliance by the taxable person.

Deadlines

Within 90 days after the end of the fiscal year, FOEs need to submit audited reports to the following three government departments:

- Provincial Department of Planning and Investment (DPI) (or the Provincial-Level Export Processing and Industrial Zone department in the case of FOEs based in IZs or EPZs);
- Provincial Level Tax Departments;
- Provincial level Statistical offices.

Upon receipt of documentation, these offices place an incoming stamp directly on one copy of submitted reports for confirmation purposes.

Step 2 – CIT Finalization

In addition to the submission of quarterly Corporate Income Tax (CIT) declarations, FOEs in Vietnam must conduct CIT finalization at the end of every year. The standard tax year applied in Vietnam is the duration of one calendar year. If a different year is utilized, the enterprise must report this to the local tax agency.

When preparing finalization paperwork, enterprises should pay close attention to revenue streams to ensure all requisite income is included in finalization statements. Currently, revenue applicable for CIT includes any and all income arising from production, trading, and service; irrespective of whether it has been generated within Vietnam.

Following an assessment of revenue streams, outstanding obligations, and investment incentives, it is a possibility that taxes may be reduced substantially or avoided altogether. In the event that no tax liability has arisen or taxation has been exempt under applicable tax incentives, enterprises must still complete tax filings with tax authorities by established deadlines.

It should be noted, however, that filing is not required for enterprises whose tax-generated activities are terminated or have ceased business operations and no tax liabilities have arisen. Those finalizing Corporate Income Taxation should prepare CIT reports in accordance with the following requirements and deadline:

Requisite Documentation

- Form 03/TNDN CIT finalization statement;
- Annual Financial Statements and other related documents;
- One or more annexes enclosed with the declaration (depending on the actual arising of the enterprise).

Deadlines

Submission of finalization paperwork must be submitted to the head of relevant tax agencies 90 days prior to the end of the fiscal year. For cases of operation termination, contract termination, or corporate ownership transformation tax offices must be made aware 45 days following the date at which changes were made.

Step 3 – PIT Finalization

FOEs, as employers, are responsible for the finalization of all personal income taxation (PIT) of their employees covering deductions from salaries throughout the year.

Enterprises finalizing PIT for their employees should make sure that the following forms are successfully completed by the deadlines outlined below:

Requisite Documentation

- Form No. 05/KK-TNCN – PIT finalization statement;
- Form No. 05A/KK-TNCN – The list of taxable in-come and tax deductions from salaries and wages of resident

individuals who are engaged in an employment contract;

- Form No. 05B/KK-TNCN – The list of taxable in-come and tax deductions from salaries and wages of resident individuals who do not have an employment contract, have an employment contract of less than three months, or other non-resident individuals.

In the event that enterprises are consolidated or merged, they must complete PIT finalization for deducted tax in advance of these changes and provide a voucher to employees for their PIT finalization at the end of the year.

Deadlines

The submission of finalization paperwork must be completed no later than 90 days from the end of the calendar year and sent to the tax office that directly manages the enterprise. In most circumstances, this is the department of taxation in the province or city that the enterprise conducts its operation; however, there may be instances where local tax offices authorize alterative state bodies to collect taxes.

Step 4 – Social Insurance Finalization

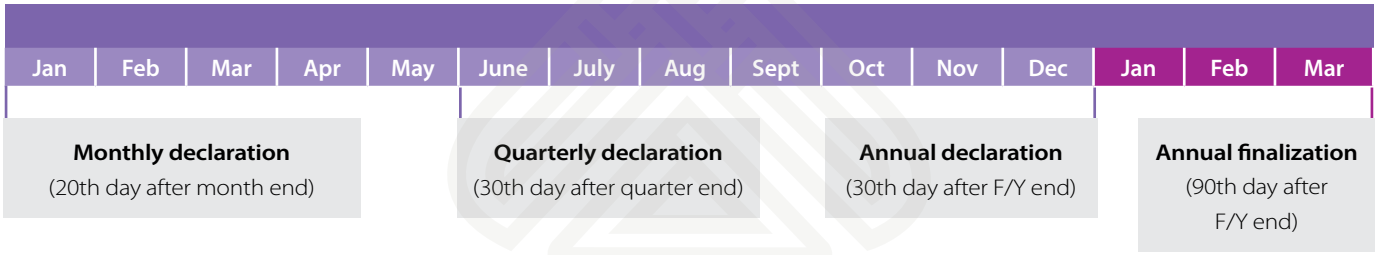
In addition to their Vietnamese counterparts, all foreign employees working in Vietnam under labor contract with indefinite terms, or definite terms of over three months, need to be included in the mandatory social insurance scheme. The new rule came into effect.

Step 5 – Profit Remittance

Following tax finalization, or the termination of investment projects in Vietnam, profits may be remitted to offshore accounts. For enterprises whose investments are still in operation within Vietnam, profits may only be remitted in the event that the FOE in question has not accumulated losses.

Deadlines

In the event that an FOE has completed tax finalization, the relevant tax office must be notified of any plan to remit profits at least seven working days before the scheduled transfer.



FOE Compliance Procedures

Document Checklist		
	FOEs	
1	From No. 04-CS/SXK	Report on Production and Business Activities
2	From No. 04-CD/GVGL	Report on Charter Capital Contribution
3	Form No. 03/TNDN	CIT Finalization Statement
4	Form No. 05/KK-TNCN	PIT Finalization Statement
5	Form No. 05A/KK-TNCN	List of income and deductions of resident employees
6	Form No. 05B/KK-TNCN	List of Income and deductions of non-resident and temporary employees.