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AN INTRODUCTION TO

Doing Business in Vietnam 2022

Special Edition

Pandemic Management Measures and Fiscal Policies Benefiting Business in 2022

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This edition of Doing Business in Vietnam was produced by a team of professionals at Dezan Shira & Associates, with Pritesh Samuel as Senior Editor.
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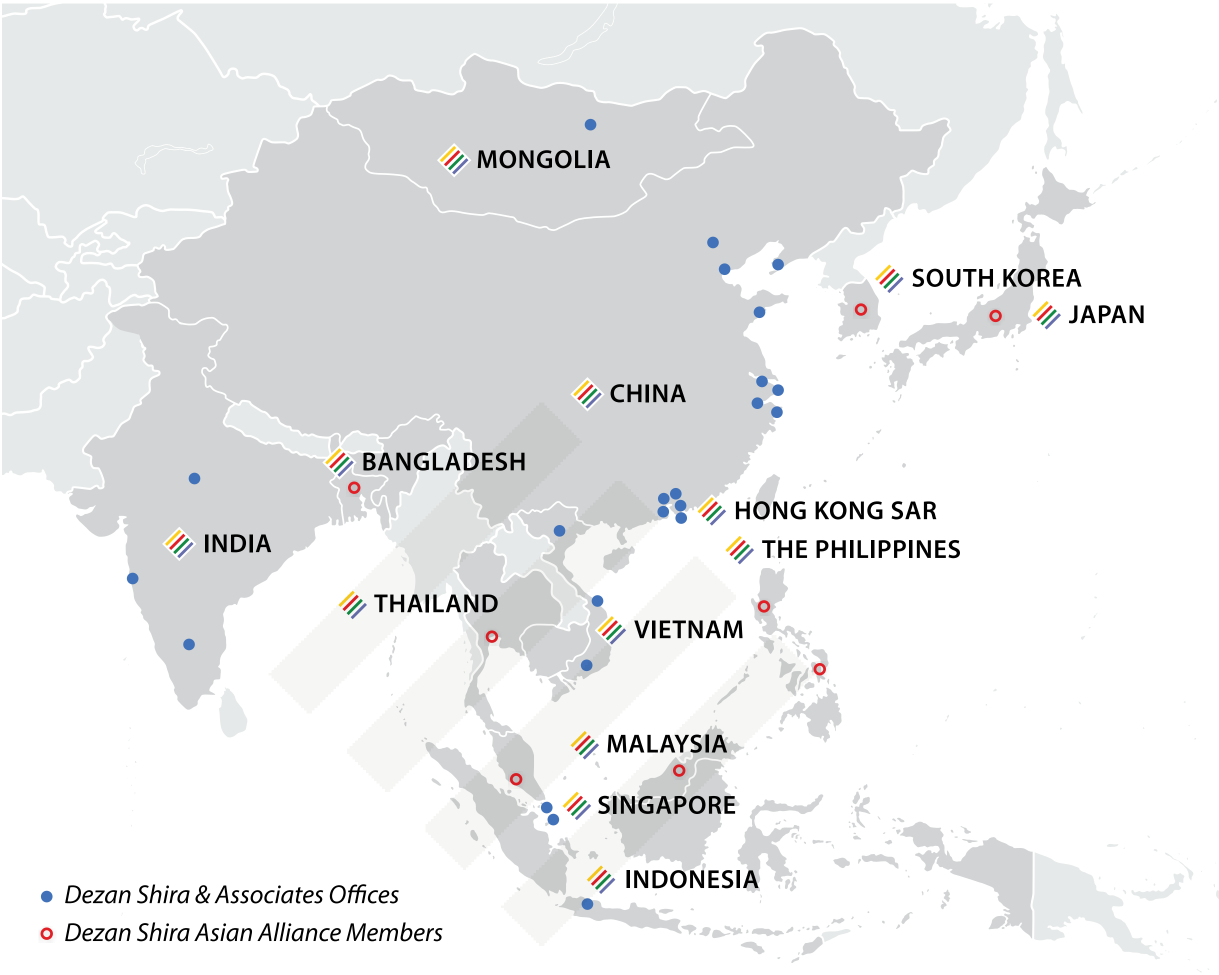

About Dezan Shira & Associates

At Dezan Shira & Associates, our mission is to guide foreign companies through Asia's complex regulatory environment and assist them with all aspects of establishing, maintaining and growing their business operations in the region. Since its establishment in 1992, Dezan Shira & Associates has grown into one of Asia's most versatile full-service consultancies with operational offices across China, Hong Kong, India, Singapore and Vietnam, as well as liaison offices in Italy, Germany and the United States, and partner firms across the ASEAN region. With over 26 years of on-the-ground experience and a large team of professional advisers, we are your reliable partner in Asia.

Preface

ALBERTO VETTORETTI
Managing Partner
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Vietnam persevered through a difficult 2021 as the COVID-19 pandemic took a significant toll on its economy and people. The country went through a strict lockdown in the middle of the year, which lasted almost five months, forcing businesses to halt production and disrupting global supply chains. Residents, particularly in commercial hub Ho Chi Minh City and the southern provinces, were forced to stay at home and only go out for emergencies. The result was that Vietnam's GDP suffered a sharp decline by 6.17 percent in Q3 – the first time its economy recorded negative growth since 2000. This was a sharp contrast to 2020 when Vietnam managed to keep the pandemic at bay and with economic activities largely operating in normal capacity. But the Delta COVID variant incapacitated traditional strategies of containment.

Nevertheless, things are looking up. Economic activity resumed in October as Vietnam opted for a 'living with the pandemic' approach. Government authorities also announced a phased plan to reopen the economy to ensure pandemic prevention policies are in line with mandates from health authorities. Vietnam's Ministry of Planning and Investment (MPI) has targeted an annual average GDP growth rate of 6.5-7 percent during the 2021-2025 period.

While the country suffered setbacks, AmCham has noted that Vietnam's role in global supply chains is only expected to grow. The business chamber also noted that Vietnam remains an attractive investment destination, including for further relocations out of China. As with last year, Vietnam's market fundamentals remain strong, and its economy appears resilient to overcome the recent disruption to production due to the pandemic.

Vietnam has already fully vaccinated more than 50 percent of its population. Foreign investors remain bullish on Vietnam's long-term prospects. Businesses remain confident though there are challenges regarding a shortage of labor force, border restrictions, and compliance issues. Designed to introduce the fundamentals of investing in Vietnam, this publication is compiled by the experts at Dezan Shira & Associates, a specialist practice providing corporate establishment, business advisory, tax advisory and compliance, accounting, payroll, due diligence, and financial review services to multinationals investing in emerging Asia.

Doing Business in Vietnam 2022 covers the following:

- Special Edition - Pandemic Management Measures and Fiscal Policies Benefiting Business in 2022
- How to Set Up in Vietnam
- Tax, Audit, and Accounting
- Human Resources and Payroll

Within these chapters, we discuss a range of different topics that affect doing business in Vietnam, including market entry considerations, investment models, key taxes and incentives for foreign companies, as well as upcoming accounting changes. Special focus is also given to Vietnam's reopening measures and fiscal policies for the new year.

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Dezan Shira & Associates expanded to Vietnam in 2008, and quickly set up offices in Hanoi and Ho Chi Minh City. The year 2008 also saw the launch of Vietnam Briefing which has now become a premier source of business intelligence related to Vietnam. In 2019, we also established our third office in Da Nang.

Our staff includes a growing number of Vietnamese chartered accountants and lawyers, all of whom have multiple years of experience advising foreign companies.

Specifically, our services include pre-investment and entry strategy advisory, business advisory, accounting and reporting, treasury administration, tax and compliance, payroll and human resources, and audit and financial review. Dezan Shira & Associates' experienced business professionals are committed to improving the understanding and transparency of investing in emerging Asia.

Our business advisors, tax experts and accountants in Hanoi, Ho Chi Minh City and Da Nang can help you with any questions related to establishing or conducting your business in Vietnam. To talk to an accountant or business consultant, please contact us today.

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Special Edition - Pandemic Management Measures and Fiscal Policies Benefiting Business in 2022

The fourth wave of the pandemic was a significant blow to Vietnam resulting in strict movement restrictions and lockdowns. The outbreak particularly affected the southern region with economic center Ho Chi Minh City recording the highest number of daily cases. The resultant lockdown caused significant economic damage with negative GDP growth in the third quarter of the year.

Nevertheless, starting October 1, 2021, authorities in Ho Chi Minh City and surrounding areas eased curbs and lifted social distancing measures allowing several businesses activities to resume. Curbs were also lifted in neighboring provinces Dong Nai and Binh Duong as well as the Mekong Delta, which contain several factories and production hubs making goods for western markets.

Hanoi and surrounding provinces in the North also underwent a lockdown but were able to resume business activities from September 21.

Vietnam's country-wide reopening comes after a significant shift in the government's strategy to 'living with the virus safely' rather than a 'zero-covid' approach. While Vietnam won plaudits for containing the pandemic in 2020, the Delta variant proved overwhelming as traditional mitigation measures became ineffective.

Vietnam's National Assembly has set targets for economic recovery in 2022 including a 6 to 6.5 percent GDP growth, a consumer price index of 4 percent, and a fiscal deficit of 4 percent of GDP. For 2022, government officials have stated that Vietnam's recovery will be U-shaped rather than a V-shaped one. Analysts estimate that Vietnam would need fiscal and monetary support of around US$19.5 billion of 5.5 percent of the 2021 GDP.

Businesses need to prepare for 2022, using government measures and policies that have been issued so that they can streamline operations and improve cash flow as Vietnam's slowly opens up.

We highlight some of these reopening measures and fiscal policies by the government in subsequent sections below.

Resolution 68 support package for employers and employees

Vietnam issued Resolution 68, which became effective on July 1, 2021, announcing support policies for employers and employees facing challenges due to the pandemic with a support package of US$1.13 billion (VND 26 trillion).

Employers and employees are entitled to suspend contributing to the pension/retirement and survivorship fund for six months starting from the month the dossier is submitted if the company/offices meet two requirements:

- Have fully paid the social insurance (SI) contribution or have suspended the contribution of insurance fund of occupational accident and disease until April 2021; and
- Have had to reduce the number of employees paying social insurance by at least 15 percent compared to April 2021.

After the suspension period, employers and employees are expected to continue making contributions to the fund and compensate for the suspension period. However, the compensation is not subject to late payment interest.

Employers are also entitled to financial support for training and improving vocational skills for employees using the unemployment insurance fund. The maximum value is set at VND 1,500,000 (US$65) per employee per month with a maximum duration of six months. A request document must be submitted to the relevant authorities between July 1, 2022, and June 30, 2022. However, they must meet the following conditions:

- Contribute in full to unemployment insurance for 12 months;
- Their revenue of the previous quarter must have decreased by 10 percent or more compared to the same period in 2019 or 2020; and
- Have a plan or cooperate with a vocational education institution on training and improving vocation skills and qualifications to maintain jobs.

Support package for employees

Employees who take unpaid leave or their work contracts are suspended due to the pandemic are entitled to a one-time support of VND 1,855,000 (US$80) per person. The period of suspension or unpaid leave must be at least 15 continuous days to less than one month between May 1, 2021, and December 31, 2021 period and employees must be contributing to the social insurance of the month before starting the work suspension.

Employees that are out of work (take unpaid leave or their work contract is suspended) for more than a month will be entitled to VND 3,710,000 (US$161).

This applies to employees working at enterprises, cooperatives, public business units, and educational institutions.

Resolution 68 | Loan Policies for Business and Labor

Incentive measure

a. Short term loan (less than 12 months) at 0% interest rate
b. Not required to provide a loan security

1 Loan policy to pay furlough wages

2 Loan policy to pay wages for production

Applicability

1.
   a. To employees who have contributed to compulsory social insurance, and
   b. Have been put on furlough for 15 consecutive days

2.
   a. If employer resumes business after suspending operations at the request of the competent authority to prevent and control the COVID-1, or
   b. Business lines in the field of transportation, aviation, tourism, accommodation services, sending Vietnamese workers to work abroad

Requirements

a. No bad debt
b. Maximum loan amount not exceed regional minimum wage for each employee but not exceeding 3 months

Business support

In addition, the Ministry of Finance in June issued *Circular no 47/2021/TT-BTC* (Circular 47) reducing fees charges for several business lines affected by the pandemic from July 1, 2021, to December 31, 2021. Industries that can benefit include, banks, construction activities, tour businesses, water resources, securities, commercial publications, healthcare, automobiles, and so on.

Further, most banks have agreed to cut the lending rate for businesses affected by the pandemic.

Significantly Resolution 68 is progressive and has expanded the scope of entities that can benefit. The zero percent interest on loans will improve cash flow for businesses that have suffered due to the pandemic. Businesses and employees can take advantage of the vocational training incentives but must file an application by the June 2022 deadline.

Decision No 27 on land rent reduction

Vietnam issued *Decision No 27/2021/QD-TTg* (Decision 27) on reducing land rent for those affected by COVID-19. Eligible parties include businesses, households, and individuals that directly lease land from the State or are under contract with the relevant government agency with annual land rental payments.

The criteria is as follows:

- Reduction of 30 percent of land rent in 2021, but no reduction on any outstanding land rent before 2021 and late payment interest; and
- Reduction is calculated on the payable land rent in 2021.

If an entity is part of any other benefits on land rent, the reduced 30 percent will be calculated on the payable land rent after the existing benefit has been made as per applicable laws.

Decision No 27 | Reducing Land Rent

Reduces 30% of payable land rent, calculated based on payable land rent of 2021	
Applicable if	a. Renting land directly from the Gov't in form of annual land rent payment, and b. Not benefitting from land rent reduction
Procedure	a. Online or via other methods, submit application for land rent reduction until December 31, 2021 b. Based on the application, the competent authority shall determine the reduced land rent and issue a Decision

If the eligible entity has already paid the full lease for 2021 but can obtain the eligibility approval from the relevant government authority, the 30 percent overpayment can be carried forward to offset against the land lease obligation applicable in the following year.

Nevertheless, the eligible entity will be responsible for doing a self-assessment of their eligibility for such a reduction. If they are found to be ineligible for land lease reductions in future audits and inspections, they will be required to pay for such shortfalls and will be subject to interest penalties for late payments.

This will further help businesses improve cash flow in 2022 due the reduction in land rent.

Resolution 116 – support for businesses and employees

Resolution 116 NQ-CP (Resolution 116) was issued to support businesses, employees, and employers affected by the pandemic which came into effect on September 24, 2021.

Resolution 116 | Reducing Contribution to the UI Fund

	Reduction from 1% to 0% of the monthly wage fund for employees participating in the unemployment insurance
Applicable if	Employers participating in unemployment insurance before October 1st, 2021
Duration	12 months, from October 1st, 2021, to September 30th, 2022
Procedure	Every month, social insurance authorities shall reduce the contribution payable to employers to 0% of the monthly wage fund for employees who have participated in unemployment insurance

Support for employees paying UI contribution

As per the Resolution, employees are eligible for support under the following conditions:

- Employees that have participated in UI until September 30, 2021 (apart from those in state/ government agencies); and
- Employees whose employment contracts were terminated between January 1, 2021, until September 30, 2021, and whose UI contributions are reserved.

The one-time allowance depends on the UI contribution as shared on the following page.

Unemployment insurance contribution period	Support per person
Under 12 months	VND 1.8 million (US$79)
12 months to less than 60 months	VND 2.1 million (US$92)
60 months to less than 84 months	VND 24 million (US$105)
84 months to less than 108 months	VND 2.65 million (US$116)
108 months to less than 132 months	VND 2.9 million (US$127)
132 months or more	VND 3.3 million (US$145)

Support for employers

Employers participating in UI prior to October 1, 2021, are also eligible for benefits. Eligible employers are entitled to a reduction to 0 percent from 1 percent of the monthly salary fund of employees that is subject to UI. The support period applies for one year from October 1, 2021, to September 30, 2022.

The reduction in UI will also help businesses and employees alike and with the duration till September 2022, those suffering from a difficult year, will benefit.

Resolution 406 on CIT reduction

One of the most significant measures to help businesses was *Resolution 406/NQ-UBTVQH14* (Resolution 406) to help businesses and individuals affected by the pandemic including a 30 percent corporate income tax (CIT) cut.

Who is eligible?

- The CIT reduction applied to businesses that have revenue of less than VND 200 billion (US$8.8 million) in 2021;
- Revenue for 2021 is less than 2019;
- The CIT cut applied to all businesses that are involved in the production and trade of goods as well as services in accordance with Vietnamese law;
- The CIT reduction applies to the total revenue of the enterprise including incomes such as capital transfer, real estate transfer, and services subject to special consumption tax; and
- The 30 percent CIT reduction will apply to the business' CIT payable for the 2021 fiscal year minus the CIT incentives eligible for enterprises as per the Law on Corporate Income Tax.

This means that most small and medium enterprises (SMEs) are eligible for such tax breaks regardless of the number of employees and the actual financial loss due to the pandemic.

Resolution 406 | Tax Reduction

Reduces 30% of payable CIT for year 2021

Applicable if	a. Revenue not more than VND 200 billion (US$8.8 million in 2021; and b. Decreased revenue in 2021 compared to 2019

How to determine the amount to be reduced?

The reduced amount is calculated based on entire income of enterprises: the reduced amount will then be the payable CIT for the tax period 2021 minus the CIT amount subject to incentives according to the Law on Corporate Income Tax

Declaration of tax reduction	a. Based on revenue in FY2019 and estimated revenues in FY2021, enterprises determine PIT to be reduced while temporarily paying quarterly CIT b. Upon filing annual tax returns for FY2021, and after the eligibility assessment from the competent tax bureau, CIT may be reduced by 30%

However, it is important to note that this does not apply to businesses that are newly created, merged, consolidated, or split during the 2020 and 2021 tax periods.

Personal income tax exemptions and value-added tax for business households and individuals

The resolution also outlines personal income tax (PIT) and value-added tax (VAT) exemptions in Q3 and Q4 of 2021 for individuals and household businesses affected by the pandemic. This exemption does not apply to services like digital entertainment, electronic games, digital movies, and digital advertisement.

Exemption details:

A 30 percent VAT reduction applies from November 1 to December 31, 2021, to the following goods and services:

- Transportation services (railway, airlines, road, etc.);
- Accommodation;
- Catering and services related to tourism,
- Publication products;
- Cinematographic services;
- Television production;
- Museums; and
- Sports and entertainment services.

Other measures

The government has also allowed an exemption of late payment interest in 2020 and 2021 related to tax debt, land use, and lent rent for businesses due to losses in 2020.

This reduction is significant for businesses. Vietnam already has a competitive CIT rate of 20 percent and a further reduction in CIT will further help businesses keep costs low. The government is keen to ensure businesses benefit from these cuts and thus grow its economy.

Resolution 105 on easing of foreigner work permits

To ease procedures for work permits of foreign workers Vietnam issued Resolution *105/NQ-CP* (Resolution 105). One of the most significant development is the easing of regulations for issuing, extending, and certification of work permits for foreign workers in Vietnam. Decree 152, which was issued in February, had tightened regulations on hiring foreign workers prompting several businesses to voice concerns.

To ease restrictions, the government had asked the Ministry of Labor, Invalids and Social Affairs (MoLISA) to instruct local provincial authorities to relax restrictions and some conditions on the issuing and renewing of work permits. Specifically, these include:

- As per Decree 152, the university degree had to be related to the job position in Vietnam. Now as per Resolution 105, authorities have been asked to be flexible where the degree does not have to necessarily be related to the job position in Vietnam.
- Second, the training field does not have to be related to the job role or relevant experience.
- Thirdly, for experts and technicians, previously issued work permits can be accepted as work experience rather than work experience of the foreign company from the home country. Certificates may also be used.
- Lastly, as per the Resolution, foreign workers with valid work permits can be sent to another province or city for not more than six months without having to reapply for a work permit. However, the employer must report to the labor department where the foreign workers have gone to work.

Resolution 105/2021 | Ease of regulations on **Foreign Workers**

Simplifies the supporting documents required to obtain a work permit
Under Decree 152/2020/ND-CP

1 **Proof of experience for experts and technical workers**

Now the issued work permit can be used as proof of experience instead of using diplomas, certificates, certification issued by the foreign agency, organization, enterprise in respect of the number of year's experience of the expert or technical worker

2 **Passport**

Now a valid copy of the passport is sufficient, while before a valid certified true copy of the passport was necessary

- The Ministry of Education and Training has been tasked with cooperating with MoLISA to provide further guidance and qualifications for foreign teachers teaching at short-term training centers, high schools, vocational training centers, and universities as per international best practices.

In addition, notarization requirements for passports have been removed; just a copy of the passport is sufficient.

The government has also tasked relevant agencies to streamline entry procedures for foreign employees to enter Vietnam as well as the recognition of a vaccine passport. The government is likely to issue further guidance on these issues. Nevertheless, businesses have welcomed the government decision particularly on easing work permit requirements for foreign workers.

As Vietnam further reopens its economy, this easing of work permits will further help foreign employees enter Vietnam. Several businesses have complained about tedious work permit procedures and strict regulations regarding foreign workers. The pandemic and border closures has further restricted the entrants of foreign employees. While more needs to be done, businesses and employees have welcomed the easing of work permits to facilitate entry.

Vietnam's tourism plan

The government is slowly, but cautiously opening up the country for tourism. Vietnam welcomed fully vaccinated international tourists on November 20 as part of approved packaged tours almost two years after closing borders. The government has opened up five locations such as Phu Quoc, Nha Trang, Quang Nam, Da Nang, and Quang Ninh for the time being.

Under a three-phase tourist plan, fully vaccinated foreign tourists will be allowed in designated areas under package tourists on chartered flights. From January 2022, under phase two, more destinations would be added to the list where tourists can book tours with multiple destinations after finishing tour programs at the first destination within seven days.

In phase three, Vietnam expects to fully reopen to foreign travelers, however the time for fully reopening will be based on the COVID-19 situation as well as outcomes of the first two phases.

Vietnam also recognizes vaccine passports by 72 countries and is discussing with another 80 on the mutual recognition of vaccine passports.

What's next?

Despite the pandemic, Vietnam remains resilient and is well-placed for benefits as companies seek to diversify global supply chains and decrease reliance on China while adopting the China plus one strategy.

Depending on the pandemic and variants, the government is further expected to issue policies and measures opening up the economy and facilitating trade. There will be challenges. Consumer spending is not expected to return to pre-pandemic levels at least for another year. Nevertheless, some industries have shown strong growth and businesses that are able to adapt will see benefits. The government also seems determined to increase growth to rates prior to the pandemic in phases.

All these factors bode well for Vietnam. While the country is not out of the woods yet, it has enough pull factors to encourage investors to continue their business operations and even move their manufacturing operations to Vietnam. While future COVID-19 variants such as Omicron are likely to result in a shaky recovery, a nuanced approach to business recovery and positive business sentiment should help Vietnam keep its factories humming to meet consumer demand.

An Introduction to Vietnam

- Business etiquette 101
- Legal and political structure

Business etiquette 101

Vietnam has one of the oldest cultures in Southeast Asia. While national identity can be complex given Vietnam's history, locals are proud of their language and its complexities, as well as the distinctiveness of their society and culture. The expression dat viet (Vietnamese land), for example, encapsulates the notion that Vietnamese society have an organic relationship to their environment.

Since the introduction of Doi Moi – or 'renovation' policy – in the 1980s, which began the transition from the country's socialist economy to a market economy, Vietnam has experienced many significant changes, including a rise in the standard of living. These factors have in turn inspired a flurry of foreign businesses looking to start operations or expand in the country.

But for those planning to do business in Vietnam for the first time, it is important to learn about the country's vibrant culture and traditions. Those that do will find it easier to work in the country.

Greetings in Vietnam

While English is gaining in popularity, Vietnamese remains the dominant language: it is spoken by 86 percent of the population. Vietnamese appreciate it if a foreigner tries to learn simple phrases in their language such as xin chao (pronounced as 'seen chow'), meaning "hello" in Vietnamese.

A handshake and a slight bow of the head is the general custom for saying hello and goodbye. Meanwhile, Vietnamese names are written and introduced in the following order: last name, middle name, first name.

Business protocols and nuances

When possible, business meetings should be done in the presence of someone who can translate. Be prepared to attend several meetings as successful deals are rarely completed in a few encounters. Conversations held in person are preferred over online communication and emails.

Cold calling is not recommended. It is advised to be introduced to a potential business contact by a common acquaintance or third-party reference. Business meetings should be scheduled in advance and should avoid major public holidays, such as Tet, which is the Vietnamese New Year celebration.

For first time meetings, it's best to meet at your potential partner's office. This avoids the possibility of a last-minute cancellation because of any travel difficulties on behalf of your business partner.

When giving or receiving business cards, do so with both hands. Time should be taken read the name on the card – hastily stuffing a business card or barely giving it a glance is deemed offensive. When possible, seek to create a business card that has both English and Vietnamese translations.

If offered tea at the reception, accept it, as this is a sign of hospitality. In the North, hot tea is typically served, while in the South, meetings take place with iced tea or soft drinks.

It's best to have an agenda before the meeting so the business partners can acquaint themselves with what will be discussed. It is also helpful to have all documents translated in Vietnamese.

Silence is common in meetings and means that your partners are thinking about your interests. Interrupting this time of reflection can be considered rude. Further, silence may be used when someone disagrees, and so not cause a loss of face for attendees.

Seniority and hierarchy are important in Vietnam. For example, showing the eldest person respect by giving them your business card first is appropriate.

Saying "yes" may merely indicate understanding, rather than actual agreement. It is best to follow up and confirm with your business partner to understand if you have agreed on a deal.

It is typically the guest's responsibility to signal the end of the meeting.

The first few meetings will involve getting to know each other, as compared to the West, where first meetings tend to remain on a business level. Social connections are important, and Vietnamese may make most of their business decisions based on how they see you as a person outside of the business.

Many Vietnamese will ask questions that may seem personal to a foreigner. Discussing one's family and personal life is normal and is seen as a sign of friendliness and interest.

It's common to give gifts at the end of a business meeting. These can be small and does not need to be expensive. A possible item could be a pen or stationary with a company logo or an item typical from your country of origin.

Business attire

Business attire will depend on the location of the meeting. For example, Hanoi is known for its white-collar environment, while Ho Chi Minh City is more business casual.

Typically, business partners should dress modestly, avoiding bright colors. Suits are appropriate for men, while skirts and blouses are fine for women.

The Vietnamese working week is typically from Monday to Friday with office hours from 8:00 a.m. to 5:00 p.m.

The concept of 'face'

As with many other Asian countries, the concept of face is extremely important in Vietnam. While in the West being frank and direct is considered a good trait, direct disagreement or raising of questions in public can be seen as causing a person to "lose face" in Vietnam. Face is a concept that can be roughly described as reflecting a person's reputation, dignity, and prestige.

Foreigners should be aware of unintentionally causing a loss of face due to their words or actions. The important takeaway is to treat your business partners with respect. If you have suggestions or challenges, its best to bring them up carefully in private.

Eating and drinking

If invited as a guest in a Vietnamese home, bring fruit, sweets, flowers, or incense. Avoid giving handkerchiefs, anything black, yellow flowers, or chrysanthemums. The best dishes will likely be offered to you; be sure to taste and share these dishes.

Wait for the host to give the signal to start the meal before sampling any of the food. It is considered good manners to finish all the food in your plate.

At a restaurant, wait to be seated. In most cases, the oldest in the group will be seated first. Use both hands to pass items and never pass anything over someone's head. When motioning for a person to come over, do not use your finger, and use your hand to beckon instead.

If paying, tipping of five to 10 percent is appreciated, though not customary.

Safety

Vietnam is a relatively safe country to travel. However, business travelers need to be aware of petty and opportunistic theft, particularly in major cities, such as Hanoi and Ho Chi Minh City.

Valuables should be stored in hotel safes, while mobile phones and wallets should be kept out of sight to minimize the risk of pickpocketing, particularly in tourist areas. While the police are not always helpful, they will generally treat foreigners with respect.

Taxi scams are common, including the use of faulty meters, or taking a longer route to a destination. Business travelers should book transport through their hotel or use registered taxis such as Mai Linh (green) or Vinasun (white with green and red stripes). These taxi companies also have card machines for direct payment.

Vietnam in a Snapshot

Capital
Hanoi

Large economic centers
Ho Chi Minh City, Da Nang, Nha Trang, Hai Phong

Provinces
63

Area
330,972 km²

Population
95 million

Currency
Vietnamese dong (VND)

GDP (2020)
2.91%

Major sectors contributing to GDP
Services, manufacturing and construction, agriculture, forestry and fishery

Major FDI sources
South Korea, Japan, Singapore, Taiwan and Hong Kong

Official Language
Vietnamese

Business hours
8:00 to 17:00

Average annual income
US$2,587

Major export partners
US, EU, China, ASEAN, Japan, South Korea

Legal and political structure

Vietnam is a socialist country operating under the single-party leadership of the Communist Party. A nationwide congress ('National Congress') of the Communist Party of Vietnam is held every five years, with the most recent being in early 2020. This gathering is held to determine the country's orientation and strategies and adopt its key policies on policies for socio-economic development. The National Congress elects the Central Committee, which in turn elects the Politburo.

Executive power is concentrated in the government. The government is charged with the general management of the economy and the state. The head of government is the Prime Minister.

The Head of State, also known as the President, represents Vietnam in internal and foreign affairs, and helps to appoint prime ministers and other officials with the help of the National Assembly.

Below the Central government are People's Councils and People's Committees. People's Councils are directly elected by the people and People's Committees are elected by People's Councils. There are three levels of People's Committees and People's Councils: provincial, district and commune (or ward).

The National Assembly is the highest representative and legislative body and determines domestic and foreign policies, socio-economic tasks, national defense, and security issues. Its members are elected by popular vote to serve five-year terms. While the Constitution in general establishes the rights of the people under the leadership of the Communist Party, the power of the people is exercised through the National Assembly at a central level and through People's Councils at a local level.

The Vietnamese judiciary is independent of the executive. The legal system consists of the Constitution, codes, laws, ordinances, decrees, decisions, circulars, directives and official letters. Although all have the force of law, only laws passed by the National Assembly are referred to as such. The Constitution is the Supreme Law of the country.

The court and prosecution system in Vietnam have a structure similar to the administrative system. At a central level, the Supreme People's Court is the highest judicial body in Vietnam. At a local level, courts exist at provincial and district levels. Legal decisions are made by the People's Courts, the People's Inspectorate, Military Tribunals, and Special Tribunals.

The court system is based on the two-tier system, which ensures that the rulings of one court can be appealed to a higher authority. Such higher authority may either uphold or reverse the ruling from the lower court. Most cases begin at the district or provincial court level with the possibility of appeal to the high courts. If a case has been heard initially at a district court, it may in special cases even be brought for a third hearing before the Supreme Court.

All Courts, barring the District People's Courts, are divided into five divisions: criminal, civil, administrative, economic, and labor. Under the Civil Procedure Code, all disputes, whether civil, commercial or labor, are subject to the same set of procedural rules. A dispute may, depending on the type and the value of the dispute, either be heard at the district court or the provincial court at first instance. The recognition of foreign judgments and foreign arbitral awards fall under the jurisdiction of the provincial court.

The current legal system is similar to civil law jurisdictions in that its sources of law comprise only written legislation commonly referred to as legal instruments. These are laws and regulations enacted by state bodies, which are binding on citizens and enforceable by the state. Court judgments are not officially considered a source of law as judges do not have the power to interpret the law and court judgments are not binding in subsequent cases.

National Assembly	Standing Committee of National Assembly	Government	Prime Minister	Ministries	Other authorities
Laws, resolutions	Ordinances and resolutions	Decrees	Decisions	Circulars	Other instrument /guidelines

The legal system is organized in a hierarchy in which higher-ranking legal instruments set out general rules and lower-ranking legal instruments provide the details. The Constitution stands at the top of this legal hierarchy and forms the foundation of the entire legal system. Under the Constitution are laws, ordinances, decrees, decisions, circulars and other subordinate legal documents dealing with different aspects of social life.

One of the government's priorities is to enhance the legal system, which will result in a more business friendly regulatory environment. In 2022, the government is expected to implement several laws including ones to make it easier to do business.

How to Set Up in Vietnam?

- Set up procedures
- Intellectual property
- Vietnam's free trade agreements

Due to the country's complex legal processes, when establishing a company in Vietnam, we recommend that professional assistance be sought in order to guide companies through the setup process and to help them understand the roles and responsibilities of key positions. This will help ensure that your company is set up for success.

Here, we discuss:

- Set-up procedures;
- Key positions in foreign-invested entities; and
- Intellectual property.

Set up procedures

Phase 1 – Corporate structure

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 engage in the following activities:

- Conducting market research;
- Acting as a liaison office for its parent company; and
- 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; and
- 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; and
- 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 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 requires • 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

Phase 2 – Four step set up guide

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

In this section, 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); and
- 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; and
- 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 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.

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.

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.

1. Pre-investment approval
2. Application for Investment Registration Certificate
3. Application for Enterprise Registration Certificate
4. Post licensing procedures

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

Intellectual property

Domestic protection

Vietnam's National Assembly passed the Law on Intellectual Property Rights (IPRs) in 2005, which forms the basis for IP protection within the country. In September 2010 and October 2013, in an effort to strengthen the protection of IPRs after entering into a Bilateral Trade Agreement (BTA) with the US and participation in the World Trade Organization (WTO), the government issued stricter administrative sanctions for violations of industrial property rights, along with some important changes to IPR regulations in Vietnam.

The National Office of Intellectual Property of Vietnam (NOIP) is the agency, under the aegis of the Ministry of Science and Technology, which assumes the functions of exercising state management and providing services in the field of intellectual property. This includes administrating the registration of industrial designs, trademarks, brand names and other IPRs and conducting legal appraisals to settle intellectual property disputes.

Vietnamese Protection of Intellectual Property			
Industrial property	• Patents • Trademarks	• Law on Intellectual Property via the National Office of Intellectual Property (NOIP) • Vietnamese Criminal Code	• The Paris Convention • The Hague Agreement • The Madrid Agreement • WIPO • The Patent Cooperation Treaty
Copyright	• Copyrights • Related rights	• Law on Intellectual Property via the Copyright Office of Vietnam • Vietnamese Criminal Code	• The Geneva Universal Copyright Convention • The Berne Convention • WTO via TRI

International protection

Aside from local IPR legislation, Vietnam also participates in international IPR conventions such as the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention, the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, the World Intellectual Property Organization (WIPO), the Patent Cooperation Treaty, and the Madrid Protocol.

In addition to the aforementioned treaties, Vietnam has recently signed on to several ambitious trade agreements including the Comprehensive and Progressive Agreement for Transpacific Partnership (CPTPP), UK-Vietnam Free Trade Agreement (UKVFTA), and the European Union Vietnam Free Trade Agreement (EVFTA).

In addition, Vietnam signed the Hague Agreement which allows the protection of design in multiple countries through a single filing. The agreement came into effect in January 2020. These agreements are projected to provide great assistance to Vietnam as it brings its national IP protection up to par with international best practices.

Vietnam’s free trade agreements

Free trade agreements (FTAs) are when two or more countries agree on the terms of trade between them. They determine the value of tariffs and duties that countries impose on imports and exports. In 2007, with Vietnam’s ascension into the World Trade Organization (WTO) – it took a significant step integrating with world trade and subsequently entering into several free trade agreements.

Over the past few years, Vietnam has been active in signing bilateral trade agreements with countries throughout the world. Additionally, due to its membership in the Association of Southeast Asian Nations (ASEAN), Vietnam has become a party to several FTAs that the regional trade bloc has signed.

FTAs – The benefits

The benefits of the free trade agreements will enable Vietnam’s economic development to continue to shift away from exporting low-tech manufacturing products and primary goods to more complex high-tech goods like electronics, machinery, vehicles and medical devices.

This can be done in two ways – first, through more diversified sourcing partners through larger trade networks and cheaper imports of intermediate goods from partner countries, which should boost the competitiveness of Vietnam’s exports.

Second – through partnership with foreign firms that can transfer the knowledge and technology needed to make the jump into higher value-added production. An example of this is the VSmart phone manufactured by Vietnamese conglomerate Vingroup.

Vietnam is touted as a low-cost manufacturer with several companies such as Samsung and Nokia setting up shop to manufacture and then export electronics, but the latest example shows how Vietnam can develop its own products from the transfer of know-how technology.

Such sophisticated business practices and technology will help boost Vietnamese labor productivity and expand the country’s export capacity.

With recent trade agreements like the CPTPP and the EVFTA – Vietnam seems to prioritize international trade integration trade partners outside ASEAN.

Such trade agreements will allow Vietnam to take advantage of the reduced tariffs, both within the ASEAN Economic Community (AEC) and with the EU and US to attract exporting companies to produce in Vietnam and export to partners outside ASEAN.

Vietnam's entry into these trade deals will also ensure alignment with national standards ranging from employee rights to environmental protection. Both the CPTPP and EVFTA require Vietnam to conform to the International Labor Organization's (ILO) standards. The ILO has noted that this is an opportunity for Vietnam to modernize its labor laws and industrial relations systems.

Challenges posed by FTAs

The FTAs may also come with some added downsides. Such agreements are likely to trigger aggressive competition from foreign rivals on local businesses – particularly in the agriculture sector including meat and dairy products from the EU, Australia, and Canada.

If local firms do not adapt, make use of new market opportunities and potential partnerships with foreign firms – they could find competing in the market challenging.

The Vietnamese government would also need to continue on its path of reforms – strengthening the banking sector, removing corruption, refining legal and tax structures, and improving trade facilitation.

Vietnam's Ministry of Planning and Investment forecast that the CPTPP could increase Vietnam's GDP by 1.3 percentage points by 2035, while the EVFTA could boost GDP by 15 percent. These trade deals along with already signed and upcoming FTAs are likely to ensure that Vietnam remains competitive in the short-to-medium term.

4

Tax and Accounting

- Vietnam's major taxes
- Accounting and bookkeeping
- Introduction to transfer pricing

Vietnam’s major taxes

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.

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; and
- 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 (FCT)

Foreign businesses and individuals without legal entity status are considered foreign contractors if they conduct business or earn income in the country under contract with local organizations including foreign owned companies. FCT, normally referred to as “withholding tax”, is not a separate tax type. It comprises of VAT and income tax (either CIT or PIT) imposed on payments of local organizations to foreign contractors. Such payments are considered income earned in Vietnam in which the Vietnamese parties are liable to declare and make payments on behalf of foreign contractors.

Payments subject to FCT include interest, royalties, service fees, goods supplied within Vietnam’s territories or associated with services rendered in Vietnam. The applicable tax rates vary depending on the payment method and the nature of the transactions. Certain distribution arrangements where foreign entities are directly or indirectly involved in the distribution of goods or provision of services in Vietnam are also subject to FCT.

FCT exemption is applicable in certain circumstances such as pure supply of goods, services performed and consumed outside Vietnam and various other services performed wholly outside Vietnam.

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 monthly/quarterly/yearly 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 if they meet the requirements as per the Law on Accounting.);
- Comply with the Vietnamese chart of accounts; and
- Include reports specified by VAS regulations, printed on a monthly/quarterly/yearly 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 foreign enterprises operating in Vietnam will be required to prepare audit and file annual financial statements no later than the last day of the third month from the end 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 a result of the bookkeeping and accounting process. The period of retention is tied to the nature of the documentation generated and is broadly split into five-year, 10-year, and indefinite periods of retention.

- The five-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; and
- 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 procedures 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, financial statements of FOEs must be audited externally, by using 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; and
- 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.) and
  - » 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

FOEs need to submit audited reports to the following three government departments on the last day of the third month at the end of the calendar or fiscal year:

- 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; and
- Provincial level Statistical offices.

Upon receipt of documentation, these offices place an incoming stamp directly on one copy of submitted reports for confirmation purposes. For electronic submissions, the enterprise will receive an electronic confirmation or the documentation will be stored directly in the system of the authority without being stamped.

Step 2 – CIT finalization

In addition to the quarterly remittance of provisional CIT payments, 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 as mentioned earlier.

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. In the event that no tax liability has arisen, or taxation has been exempted 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 deadlines:

Requisite documentation

- Form 03/TNDN CIT finalization statement;
- Annual Financial Statements and other related documents; and
- 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 no later than the last day of the third month from the end of the fiscal year. For cases of operation termination, contract termination, or corporate ownership transformation tax offices must be made aware within 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/QTT – PIT finalization statement;
- Form No. 05-1/BK-QTT-TNCN – Detailed list of taxable income and tax deductions from salaries and wages of individuals who are subject to progressive tax rates; and
- Form No. 05-2/BK-QTT-TNCN – Detailed list of taxable income of individuals who are subject to direct tax rates; and
- Form No. 05-3/BK-QTT-TNCN - Detailed list of employees' registered dependents.

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 the last day of the third month 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.

Step 5 – Profit remittance

Following tax finalization, or the termination of investment projects in Vietnam, profits may be remitted to offshore accounts if the business has completed all financial obligations to the State of Vietnam under Vietnamese law. 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 a 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.

Tax Declaration and Finalization Timeline for a Fiscal Year (F/Y)*

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar

Monthly declaration
(20th day after month end)

Quarterly declaration
(30th day after quarter end)

Annual declaration
(30th day after F/Y end)

Annual finalization
(90th day after F/Y end)

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/QTT-TNCN	PIT Finalization Statement
5	Form No. 05-1/BKQTT-TNCN	Detailed list of taxable income and deductions from salary of individuals subject to progressive tax rates
6	Form No. 05-2/BK-QTT-TNCN	Detailed list of taxable income of individuals who are subject to direct tax rates
7	Form No. 05/3/BK-QTT/TNCN	Detailed list of employees' registered dependents

A Roadmap to IFRS

International Financial Reporting Standards (IFRS) are global accounting standards issued and regulated by the International Accounting Standard Board (IASB) to guide the preparation and presentation of financial reports. Vietnam uses IFRS as a basis for its own system, the VAS, yet there are key differences between the two.

As all foreign and local companies operating in Vietnam are obliged to conform to VAS, foreign investors should be well aware of unique fundamental characteristics of VAS to fully comprehend compliance requirements and make informed investment decisions.

Vietnam's government currently has 26 VAS accounting standards based on IFRS. To provide guidance for local and foreign enterprises in Vietnam on these standards, the MoF recently issued Circulars, No. *200/2014/TT-BTC* and No. *202/2014/TT-BTC*, which enhance the comparability and transparency of corporate financial statements and bring the two systems closer.

Key differences between IFRS and VAS include terminology, applied methods, or presentation scope. Below are several critical differences between the two financial reporting systems.

Presentation of financial statements

A complete set of financial statements based on IASB's International Accounting Standard (IAS1) includes the following:

- Statement of Profit or Loss and other comprehensive income;
- Statement of Financial position;
- Statement of Changes in Equity;
- Statement of Cash flows;
- Notes to the Financial Statements.

The components of financial statements under VAS are:

- Balance Sheet;
- Income Statement;
- Cash Flow Statement; and
- Notes.

According to VAS 21, the Statement of Changes in Equity is enclosed in the Notes, rather than as a primary component of the financial statement. Furthermore, VAS does not require disclosure of management's key judgments, assumptions about the future and sources of estimation uncertainty.

Cash flow statements

Under IFRS 7, cash flow statements are based on the balance sheets from the first and final period accounting reports and can include some information from the ledger. IFRS stipulates that receivable accounts and trade payables can be separated from receivable accounts and payables on the sale of fixed assets or long-term assets; hence, cash flow from business is distinct from cash flow from financial investment.

Based on VAS 24, cash flow statements are taken from the cashbook and ledger bank deposits corresponding to the side account. VAS 24 gives guidance on setting up cash flow statements using the indirect method starting from pre-tax profits plus or minus the adjustment including differences of payables excluding payables related to financial investment activities.

Chart of accounts

Vietnam's Ministry of Finance issued a uniform chart of accounts for enterprises' financial statements. Circular No. 200/2014/TT-BTC introduced new accounts, including corporate restricting funds (Account 417) and prize stabilization funds (Account 357), while some are omitted or amended.

Roadmap of IFRS in Vietnam

In the future, however, VAS will be replaced by IFRS and promote international conformity in the field of accounting.

Three stage roadmap

The MoF is responsible for the introduction of IFRS in Vietnam. The MoF published a draft IFRS roadmap before it was submitted to the Prime Minister for approval. The roadmap divides the IFRS implementation into three stages:

Stage 1 (2019-2021): The MoF makes necessary preparations for the implementation of the roadmap, such as the publication of the Vietnamese translation of IFRS standards, training and the preparation of guidelines for IFRS implementation. Companies that will adopt IFRS from 2022 onwards will receive special support.

Stage 2 (2022-2025): The MoF selects certain pilot companies, in particular state-owned enterprises, listed companies, and (large) non-listed companies, to implement IFRS in practice. Foreign companies can adopt IFRS for their individual financial statements on a voluntary basis.

Stage 3 (from 2025): IFRS will be mandatory for the consolidated accounts of all state-owned companies, listed companies, and (large) non-listed companies. All other companies can adopt IFRS for their individual financial statements on a voluntary basis.

Move towards IFRS by 2025 – plan ahead

The adoption of IFRS will be mandatory for state-owned enterprises (SOEs), listed companies and large, unlisted public companies after 2025.

Trinh Duc Vinh, Deputy Director of the AAPD at the Ministry of Finance, said the application of IFRS in Vietnam should overcome the limitations of the VAS, perfecting the legal framework for accounting and increasing the transparency of financial information. It also aims to promote corporate accountability by facilitating Vietnamese companies' access to more sources of capital and listing in the international market so that Vietnam is internationally recognized as a full-fledged market economy.

The move is significant as this is in line with international best practices, enhancing transparency and effectiveness in corporate governance.

Introduction to transfer pricing

Many foreign businesses delocalize their production facilities in Vietnam and charge their foreign outposts for administrative, technical, financial, and commercial services. However, financial administration teams need to be aware that their transactions must comply with the arm's length and substance-over-form principles.

Before the government released "Providing tax administration applicable to enterprises having controlled transactions" ('Decree 20') in April 2017, followed by *Decree 132/2020/ND-CP* (Decree 132) in November 2020, which replaces Decree 20 transfer pricing rules in Vietnam were lax. Investors could enter the market without worrying too much about their transfer pricing policies.

Now, companies that are considering an investment into Vietnam, as well as those companies that are already operating in the country, need to comply with the stricter regulatory requirements in Decree 132, which are based on Organization for Economic Cooperation and Development (OECD) and Base Erosion and Profit Shifting (BEPS) guidelines and actions.

Key compliance in Vietnam

Transfer pricing rules are almost the same everywhere as they are generally based on the same principles and share common approaches. Of course, there are small differences between Vietnam's rules and other countries, but the core is the same.

Before Decree 20 and Decree 132 were issued, transfer pricing rules in Vietnam incorporated the arm's length principle as their foundation. Accordingly, the biggest impact is the introduction of the substance-over-form principle: foreign investors should review this when structuring supply chains.

Substance-over-form is a principle by which tax authorities look past the legal forms of transactions and operating structures, and instead consider and analyze their economic substance.

What does it means in practice?

Foreign parent companies that delocalize their production facilities in Vietnam may seek to act solely as a subcontractor, operating through their Vietnamese subsidiary alone. The foreign parent company then seeks to charge its subsidiary on a monthly basis for commercial services performed in regard to developing sales in Vietnam.

According to the substance-over-form principle, those commercial services should contribute to the creation of operating sales revenue or income for the Vietnamese subsidiary. As a consequence, expenses related to commercial services are not deductible from the subsidiary's taxable income.

Alternatively, if the same Vietnamese subsidiary were engaged in sales activities, then those same commercial service expenses would comply with the substance-over-form principle. Accordingly, the expenses could then be deducted if the prices charged were at arm's length (or market rate).

Some companies, however, may seek to engage in more complicated relationships. A multinational enterprise may like to interpose a Vietnamese entity in transactions between two member companies that are residents of countries, which have not signed a double taxation agreement.

According to the substance-over-form principle, associated transactions should have a significant purpose (aside from reduction of tax liability) and an economic effect (aside from any tax effect) in order to be accepted by authorities. In this case, no related expenses would be deductible from the Vietnamese entity's taxable income.

Finally, from a tax planning perspective, it is worth noting that the previous Decree 20 introduced limitations on the deductibility of loan interest costs, which now, after Decree 132, should not exceed 20 percent of earnings before interest, taxes, depreciation, and amortization (EBITDA).

This measure is aimed at addressing thin capitalization, as Vietnam lacks specific thin capitalization rules. However, the Ministry of Finance reportedly plans to introduce thin capitalization rules in the near term to limit the deductibility of interest costs if specific debts to equity ratios are breached.

How to comply with transfer pricing regulations

Taxpayers in Vietnam that have entered into related-party transactions have a number of obligations under Decree 132. These have been summarized and set out below:

Forms

Companies in Vietnam that engage in related party transactions need to disclose their relationships and transactions in their annual tax returns.

Taxpayers subject to transfer pricing regulations need to file Form 01 – which is attached to Decree 132 – to disclose what transfer pricing transactions they have entered into, and the value of these contracts. Further, taxpayers need to provide what the arm's-length prices of the related-party transactions would be to enable a comparison.

The timeframe to do this is 90 days after the end of the financial year. This may prove very challenging given the short amount of time to collect and collate all necessary information and data – careful planning and observance are therefore prudent.

Contemporaneous documentation

Transfer pricing contemporaneous documentation is designed to document taxpayers' relationships and transactions with related parties, as well as their global transfer pricing policies and the allocation of profits among all members/entities within a corporate group.

Taxpayers meeting specific thresholds must, in accordance with Decree 132, prepare, and then maintain transfer pricing contemporaneous documentation, which encompasses a Local File, and one or more of the Master File and Country-by-Country Report (CbCR).

It is likely that the Master File and CbCR will be prepared by headquarters, as they are likely to have direct access to all necessary information. All those documents must be declared by filing Form 02 and 03, attached to Decree 132 (for local file and master file respectively), and Form 04 (CbCR).

Safe harbors from contemporaneous documentation

According to Decree 132, enterprises are exempted from preparing the transfer pricing documentation if any of the following conditions are satisfied:

- Total revenue < VND 50 billion (USD 2.5 million) and total revenue of related-party transactions < VND 30 billion (USD 1.5 million);
- Entered into an Advanced Pricing Agreement (APA) and submitted annual APA report(s);
- Exercise only simple functions, sales < VND 200 billion (USD 10 million) and EBIT, depending on business, of at least 5% (distribution), 10% (manufacturing) or 15% (toll manufacturing).

Audits

In case of transfer pricing audits, taxpayers will have 10 working days to provide the transfer pricing documentation, while they will have 30 working days to provide it during the consultation procedures prior to the audit.

Risk/penalties

If the tax authorities believe the transaction was not priced according to the arms' length principle, they will adjust the value of the transaction and impose tax accordingly. Furthermore, according to the substance-over-form principle, costs arising from services rendered for the sole purpose of providing other affiliates with benefits or values will not qualify for a deduction from taxable income.

Companies can also be held criminally liable if found to be evading tax. The tax authorities also publish the details of companies that are non-compliant, or report irregularities, on their national and provincial websites – a critical reputational risk.

Managing risk

In light of the recent developments in local transfer pricing rules and the increasing interest on transfer pricing worldwide, it is important that companies take the necessary steps to ensure that they are compliant and effectively managing their risk. There are a variety of measures that companies can take. These include:

- Providing disclosures: All companies should disclose information about their related-party relationships and transactions in the prescribed forms and in accordance with the requisite timeframes.
- Risk assessments: Conducting risk assessments to monitor and revise intercompany transactions and planning ahead to create a robust transfer pricing strategy is also an important risk mitigation tool.
- Contemporaneous documentation preparation: Taxpayers meeting the abovementioned thresholds are required to prepare contemporaneous documentation. Companies not meeting the thresholds should however still accurately document their associated party transactions and be able to substantiate the rationale adopted in case they receive any queries or audit notices from the tax bureau.
- Advanced Pricing Arrangements: Taxpayers have the option to proactively manage their transfer pricing risk profiles by entering into an Advanced Pricing Agreement (APA) with the local tax authority. An APA is a binding agreement as to how taxpayers' transfer pricing arrangement will be taxed.

Key takeaways

In light of the recent focus internationally on tax and transfer pricing through the OECD and BEPS program, as well specifically in Vietnam through the introduction of Decree 132, companies engaging in related/associated party transactions are under increased scrutiny. It is important that these companies seek the appropriate advice to ensure that they are compliant and that effective risk mitigation measures are put in place.

5

HR and Payroll

- How do I hire staff?
- Types of visas
- Employment contracts in Vietnam
- Tax obligations for company employees

How do I hire staff?

After setting up your business in Vietnam, the next big hurdle is actually hiring the staff that you will need to help grow your business. Hiring, and the associated legal obligations that go along with it, can be a confusing process. It is recommended that businesses take a careful look at all relevant regulations and engage with a professional services firm where appropriate to ensure proper compliance with all laws.

Vietnam is an attractive place for businesses of all types. The country has a growing consumer class and a young and dynamic workforce that is building its skills set. In fact, Vietnam's labor force is growing by more than one million people per year.

There are a number of important HR trends occurring in Vietnam. While labor costs are still low, wages are steadily increasing. Over the past five years, this increase in salaries has come without a corresponding increase in productivity. Compounding the costs of employing staff in Vietnam are the comparatively high social insurance contribution and income tax rates.

Due to the developing nature of the workforce in Vietnam, it is natural that there exists some difficulty in finding highly skilled employees. Skills and talent shortages are particularly acute in industries such as high tech and banking. However, many international companies, in partnership with the Vietnamese government, are sponsoring training programs to ensure that there are a growing number of highly skilled employees to choose from.

The country has a young and growing workforce with new demands and high expectations for their futures. As the workforce continues to grow there is a resulting rise in competition in the job market.

There tends to be a high turnover rate at companies as employees are often shopping their skills around to potential employers. Higher salaries elsewhere are certainly an attraction, but money may not be the only factor in what makes employees stay longer at a company – those that find ways to build employee loyalty will be particularly successful.

Companies may find it difficult to transfer employees to different cities or areas because of their strong local connections. This has the potential to put a drag on a company's expansion plans as it may struggle to relocate experienced employees. Thus, finding the right partner to aid in the recruitment process is crucial.

Many companies rely primarily on outsourced providers when it comes to HR, particularly for advice related to recruitment, training, and payroll. In fact, many multinationals report that they would like to outsource more of their operational HR practices to a regional shared services function.

Foreign companies wanting to do business in Vietnam must ensure they follow the provisions of the Labor Code, which contains the legal framework for the rights and obligations of employers and employees with respect to working hours, labor agreements, social insurance, overtime, strikes, and termination of employment contracts, to name a few.

Here we discuss:

- Foreign employees
- Contracts
- Compliance

Foreign employees

A Vietnamese entity is permitted to recruit foreign workers in order to work as managers, executive directors and experts where local hires are not yet able to meet production and business requirements. Unlike in certain other Asian countries, Vietnamese representative offices are also able to hire staff directly.

To demonstrate the necessity of a foreign employee, 30 days prior to recruiting the foreign employee, the entity must publicly announce recruitment for this position to Vietnamese job seekers in a Vietnamese newspaper or online portal.

Evidence of this announcement must be presented in the application for a work permit for a foreign employee. The other option is to recruit foreigners through a government-owned employment service center.

When hiring foreign staff in Vietnam, there are a number of procedures and legal frameworks that must be understood.

Types of visas

In order to enter Vietnam, a foreigner needs a visa issued by the Vietnamese Embassy or Consulate. A Vietnamese visa can be granted while in a third-party country or from within Vietnam. Citizens of ASEAN countries receive a free entry visa to Vietnam that lasts between 15 and 30 days, while Vietnam also has an e-visa policy for 80 nationalities lasting until 30 days. However, to work in Vietnam and remain for an extended period, foreigners need to apply for a longer-term three-month single or multiple entry visas.

Relevant visa types include:

Vietnam Visa Types		
Visa Type	Description	Validity
DL	Tourist visa	3 months
HN	Meetings/Conferences	3 months
LD	Foreign workers/Working visas	2 years
LV1-LV2	Working with Vietnamese authorities	12 months
DT	Investor Visas	5 years
DN	Working with Vietnam businesses	12 months
NN1-NN2	Chief Representative Office in Vietnam, Head of Project Office of foreign NGO	12 months
NN3	NGO Staff, Represenative Office	12 months
DH	Student/Internship	12 months
NG1-NG4	Diplomatic visas	12 months

Work permit procedures and requirements

A work permit is required when working in Vietnam for more than three months. This should ideally be applied 15 days by the employer with the provincial Ministry of Labor, Invalids and Social Affairs (MoLISA) before the foreign worker commences their employment. Work permit processing times take up to 10 business days.

Where a work permit is not compulsory, a notice must be submitted seven days in advance to the provincial MoLISA prior to working in Vietnam. Currently, work permits for foreigners are valid for a maximum of two years and can be extended one time for a further two year term. A new application must be made if the company wishes to continue employing the foreign worker.

To be eligible for a work permit, the applicant must comply with the following conditions:

- At least 18 years of age;
- In good enough health to satisfy job requirements;
- A manager, executive director or expert with technical skills and knowledge necessary for the job; and

- Not currently subject to criminal prosecution or any criminal sentence in Vietnam or overseas or have a criminal record.

A work permit may be terminated in the following circumstances:

- Expiration of work permit;
- Termination of labor contract;
- The content of the labor contract is not consistent with the work permit granted;
- If the foreign employee is fired by the foreign employer;
- Withdrawal of work permit by authorized state agencies;
- Termination of operation of the company, organization, and partners in Vietnam; and
- The foreigner is sentenced to prison, dies or is proclaimed missing by court.

The following situations exempt the foreigner from needing a work permit:

- Working in Vietnam for less than three months;
- A member of a limited liability company with two or more members;
- The owner of a limited liability company with only one member;
- A member of the board of a joint stock company;
- Coming to Vietnam to market products and services;
- Coming to Vietnam for less than three months in order to resolve an emergency or technologically complex situation that could affect production, which Vietnamese experts or foreign experts currently in Vietnam are unable to resolve;
- Lawyers granted a professional permit in Vietnam;
- Heads of representative offices, chiefs of project offices or someone working for foreign non-government organization in Vietnam;
- Internally transferred within an enterprise, which has a commercial presence in the committed service list of Vietnam with the World Trade Organization, including: business service, information service, construction services, distribution service, education service, environment service, financial service, health service, tourism service, cultural and recreational services and transportation service; and
- Coming to Vietnam to supply consulting services on tasks serving to research, build, appraise, monitor and evaluate, manage and process programs and projects that use Official Development Assistance (ODA) in accordance with regulations or agreements in an international treaty on ODA signed between an authorized Vietnam agency and foreign agency.

Vietnamese authorities are becoming stricter regarding work permits. Those who violate the regulations by working in Vietnam without a work permit may be penalized or, if unable to meet work permit requirements, deported back to their home countries within 15 days. In addition, the employer's operations may be suspended for three months with a possible penalty of up to US$3,300.

Temporary residence cards

Foreigners who hold work permits valid for one year or more, as well as senior management, can be granted a Temporary Residence Card (TRC). A TRC is issued by the immigration agency under the Ministry of Public Security and is valid from one to five years depending on the visa type.

People granted a TRC can enter and exit Vietnam without a visa within the valid terms of their TRC. The processing time typically takes five working days while the fee varies between US$60 to US$100 depending on the duration of the card.

Holders of work visas are eligible for a TRCs, as well as members of management boards, members of councils and boards of directors, heads of company branches and Chief Representatives of representative offices of foreign enterprises in Vietnam.

Permanent residence cards

An expatriate who has a legal residence while earning a living in Vietnam may also apply for a Permanent Residence Card (PRC); however, they are subject to the following conditions:

- The expat works for the development of Vietnam and is awarded a medal or title by the government;
- The expat resides temporarily in Vietnam for three or more consecutive years and is sponsored by his parent, spouse or child who is a Vietnamese citizen and has a permanent residence in Vietnam; and
- Foreign scientists or experts recommended by the head of a ministerial or government agency.

The processing time typically takes five working days with a fee of US$100. A PRC holder can stay in Vietnam without a visa however, a PRC must be re-issued every 10 years.

Employment contracts in Vietnam

As per the new labor code which took effect in January 2021, there are now only two types of labor contracts:

- **Indefinite term** - A contract in which two parties do not determine the term and the time for its termination.
- **Definite term** - Two parties determine the term as a period of 12 months to 36 months and the time for its termination.

If an employee continues working after the expiration of his or her definite term labor contract, the contract must be renewed within 30 days after the expiry date or it will become an indefinite term labor contract. In addition, e-contracts are now officially recognized and have the same validity as those in written form. A verbal labor contract is also recognized as long as its valid for less than one month.

A labor contract must contain provisions such as the scope of work, working hours, rest breaks, wages, job location, term of contract, occupational safety and hygiene conditions and social insurance.

Both employer and employee can unilaterally terminate a contract. A 45-day notice is required for indefinite term contracts and a 30-day notice for definite term contracts. In some cases, the employer will be required to discuss the termination with the executive committee of the trade union.

Companies which employ ten or more people must have a copy of company rules or internal labor regulations registered with the provincial labor department. Company working rules include contents such as working and rest hours, rules and orders in the company, labor safety, hygiene in the workplace, protection of assets, business and technology confidentiality, and sanction methods to name a few.

Severance and payment in Vietnam

If a labor contract is terminated, employers may be liable for a severance payment to the employee in question. The nature of severance payment is dependent on the salary of a given employee, the amount of time that the employee in question has been working in their current position, and the amount of time the employee has been covered under social insurance.

Eligibility for severance payments is open to all employees who have been working for a company for 12 months or longer. Severance payments will be required in instances where an employer or employee can prove that one or more general termination triggers or unilateral termination provisions have occurred during employment.

Under the Vietnamese Labor Code, severance compensation shall amount to half a month's wages for every year that the employee has been working. For example, an employee that had been with a company for three years would be eligible for one and a half months' pay.

Grounds for the Unilateral Termination of Contracts in Vietnam	
Employee	**Employer**
1. Employee is not assigned to the job or workplace or is not given the working conditions as agreed in the labor contract*. **2.** Employee is not paid in full or on time as agreed in the labor contract. **3.** Employee is maltreated, sexually harassed, or is subject to forced labor. **4.** Employee is elected to perform a full-time duty in a people-elected office or is appointed to hold a position in the state apparatus. **5.** A female employee who is pregnant and must take leave as prescribed by a competent health establishment. **6.** If he/she is sick or has an accident and remains unable to work after having received treatment for 90 consecutive days, in case he/she works under a definite-term labor contract, or for a quarter of the contract's term, in case he/she works under a labor contract for a seasonal job or a specific job of under 12 months.	**1.** The employee often fails to perform his/her job stated in the labor contract. **2.** The employee is sick or has an accident and remains unable to work after having received treatment for 12 consecutive months, in case he/she works under an indefinite-term labor contract, or for 6 consecutive months, in case he/she works under a definite-term labor contract, or more than half the term of the labor contract. **3.** If, as a result of natural disaster, fire or another force majeure event as prescribed by law, the employer, though having applied every remedial measure, has to scale down production and cut jobs. **4.** The employee is absent from the workplace after the time limit specified in Article 33* of this Code.

Source: Limitations as prescribed under Law No. 10/2012/QH13
**Article 33 allows for a 15 day grace period for all employees returning to work following a temporary suspension of their contracts.*

Compensation

In Vietnam, there are two kinds of minimum wages. The first type is the common minimum wage VND 1,490,000 (~US$64) which is used to calculate salaries for employees in state-owned organizations and enterprises, as well as to calculate the social contribution for all enterprises (i.e. the maximum social contribution is 20 times the common minimum wage). The second type of minimum wage is used for employees in all non-state enterprises based on zones as defined by the government.

Vietnam Minimum Wage 2021			
Business enterprises' locations	**2019 Minimum Monthy Wage (VND)**	**2021 Minimum Monthy Wage (VND)**	**Increase (%)**
Region 1	4,180,000 (US$180)	4,420,000 (US$190)	5.74
Region 2	3,710,000 (US$159)	3,920,000 (US$169)	5.66
Region 3	3,250,000 (US$140)	3,430,000 (US$148)	5.54
Region 4	2,920,000 (US$125)	3,070,000 (US$132)	5.14

The above minimum wage rates only apply to Vietnamese employees doing the most basic work under normal working conditions. For those who have passed vocational training courses, including company training, wages are at least seven percent higher than minimum wage rates. Minimum wages did not change for 2021 due to the pandemic.

For Vietnamese employees that work in foreign companies in Vietnam, compensation is determined through negotiations between the two parties. However, the compensation should be no lower than the minimum monthly salary rates as stipulated by the government.

Employees who work extra hours are also paid for those extra hours based on their current hourly wages, as immediately below.

Vietnam Overtime Compensation	
Overtime Type	**Compensation Rate**
Weekday, day time	150%
Weekend, day time	200%
Public holiday, paid leave days	300%
Weekday, night time	30% extra, above aforementioned rates

In cases where an employee works extra hours at night, they are paid extra in accordance to the applicable regulations. Furthermore, employees who are given time off in compensation for working extra hours will need to be paid the difference between their wages during normal working hours and overtime work. Finally, employees who work night shifts should be paid at least 30 percent higher than normal.

Salaries paid to Vietnamese staff working for foreign companies must be denominated in Vietnamese Dong. Foreign employers may base salary rates in either Vietnamese Dong or US Dollars, but salaries that are based in US Dollars must be converted into Vietnamese Dong.

In general, an employee's typical monthly salary package includes their gross salary and mandatory insurance contributions. Personal income taxes (PIT) will be levied on the balance after mandatory insurance contributions have been deducted.

Types of bonuses

Bonuses are given to employees based on company earnings and performance and as a way of boosting company morale and productivity. There are various kinds of bonuses that a company may grant its employees throughout the year.

For example, a 13th month's salary is usually given as a kind of "annual bonus" by both local and foreign companies in Vietnam to employees that have worked with the company for at least one year. Employees that have worked at a company for less than one year are typically given a bonus that is prorated and based on their actual employment period.

In addition, there is also a special bonus called the "Lunar New Year" bonus (or "Tet Bonus") that is often paid to employees prior to their leaving for the Lunar New Year holiday.

The amount of any Tet Bonus will be dependent on both company and employee performance, but the bonus typically ranges from smaller amounts of money (up to an entire month's salary) to larger amounts of money (up to an entire year's salary) depending on the company progress and goals.

Apart from the larger annual bonuses mentioned above, employees may also be given smaller bonuses for public holidays or other special days (e.g., International Labor Day or National Day). Senior management and other valued employees may be given bonuses during these days as well, including in the form of share certificates with a vesting period, for which the corresponding stock can be sold only after the employee had worked for the company for a certain amount of time.

All salaries and bonuses are subject to PIT in Vietnam.

Allowances and benefits

Apart from salary and bonuses, an employee may be entitled to several kinds of allowances and monetary or non-monetary benefits designed to retain staff. Some of these are subject to PIT. Taxable benefits include:

- Housing rent;
- Payments for power, water, and associated services for employees that amount to more than 15 percent of their total taxable income;
- Transportation allowances;
- Premiums for life insurance;
- Health care services;
- Entertainment fees; and
- Sports/athletics fees or membership fees to golf clubs, tennis courts, and other exclusive clubs.

Prefixed lump sum amounts (or "khoan chi" amounts) for telephone calls and services, stationery, uniforms and per diem allowances are not subject to taxes if the amounts are within the levels set out under the relevant regulations.

Foreigners that work in Vietnam are also exempted from PIT on various benefits such as relocation allowances for moving into the country, airfare to their home country, and education fees for their children.

Tax obligations for company employees

In addition to the basics of hiring contracts and monetary compensation, there are specific laws governing the levying of taxes and the paying of social security for the employee. The employer must be aware of these and be prepared to accommodate deductions made to the employee paychecks.

Withholding paying individual income tax

In general, a typical monthly salary package will include gross salary and mandatory social insurance. PIT will be levied on the balance after deducting mandatory social insurance contributions.

Vietnam's Law on Personal Income Tax recognizes ten different categories of income, with a host of different deductions, tax rates, and exceptions applying to each of them.

A tax resident is defined as someone residing in Vietnam for 183 days or more in either the calendar year or a period of 12 consecutive months from the date of arrival.

Tax residents are subject to PIT on their worldwide employment income, regardless of where the income is paid or earned, at progressive rates from five percent to a maximum of 35 percent. Non-resident taxpayers are subject to PIT at a flat rate of 20 percent on their Vietnam-sourced income.

Companies conduct PIT finalization on behalf of their employees at the beginning of the year for taxable income arising from the previous year.

Tax-exempt incomes

Vietnam's tax authorities have singled out a number of incomes that are exempt from PIT. These include:

- Income from transfer of residential houses by individuals who possess only one residential house or land plot;
- Interest earned on deposit from the bank or from life insurance contracts;
- Overseas remittance, retirement pension, scholarship;
- Income from compensation for insurance contracts or from charity funds;
- Wages paid for night shift or overtime work, which are higher than those paid for day shifts or prescribed working hours in accordance with the law; and
- Income received from governmental or non-governmental foreign aid for charity or humanitarian purposes approved by competent state agencies.

From July 1, 2020 a resident taxpayer is allowed to deduct from his taxable income US$472 (VND 11 million) every month or US$5,664 (VND 131,000,000) every year. The yearly amount can be fully deducted, regardless of whether the taxpayer had an income every month.

Tax exemptions

In Vietnam, foreign individuals can be exempted from taxation for certain employment benefits. These exemptions include:

- One-off relocation allowance for foreigners to relocate to Vietnam;
- Round-trip airfares paid once a year by employers for foreign employees who are on annual leave; and
- General education school fees or tuition paid by the employer for the expatriates' children studying in Vietnam.

Additionally, other benefits can be treated as non-taxable income if certain conditions are met. These include:

- Employee housing costs exceeding 15 percent of the total taxable income (excluding housing benefit from employers);
- Expenses for means of transportation for a group of employees to and from work;
- Training fee for employees relevant to employees' profession and/or in accordance with the employers' plan;
- Mid-shift meal allowances if the employers directly cater such meals for their employees; and
- Presumptive expenditures for telephone, stationery, per diem, working outfit, etc. are not subject to tax if the amounts are within the levels set out under relevant regulations.

Tax payment

Foreign invested enterprises (FIEs) have to conduct PIT finalization on behalf of their employees at the beginning of the year for taxable incomes arising from the previous year.

If an employee has more than one source of income and wishes to conduct tax finalization on their own, FIEs can issue a certificate of deduction at the request of the employee. If an expatriate's labor contract in Vietnam expires before the end of a calendar year, they should conduct tax finalization before their departure.

The taxpayer pays PIT to the state treasury in one of two ways: cash or bank transfer. The taxpayer can pay cash directly to the state treasury to receive the voucher from state officials. Otherwise, they can transfer money to a tax office bank account at the state treasury. The deadline for tax payment is the same as tax finalization, meaning no later than 90 days from the end of the calendar year.

Social insurance funds

There are three types of mandatory social security in Vietnam that must be covered by foreign enterprises seeking to hire local staff:

- Social insurance;
- Health insurance; and
- Unemployment insurance.

Mandatory minimum contributions are required of both employer and employee. All domestic and foreign companies operating in Vietnam are required to pay these social insurances for all employees under labor contracts with a definite term of over three months or labor contracts with indefinite terms.

Employers register and pay insurance contributions monthly on behalf of their employees at the provincial Department of Labor, Invalids and Social Affairs (DoLISA).

Minimum Basic Salary

Social Insurance

Capped salary base subject to contribution	US$ 1,295	Employer contribution	17%	Employee contribution	8%

Health Insurance

Capped salary base subject to contribution	US$ 1,295	Employer contribution	3%	Employee contribution	1.5%

Labor Accident & Occupational Disease Insurance

Capped salary base subject to contribution	US$ 1,295	Employer contribution	0.5%

Contributions are determined based on employees' monthly salary or wage. While payable amounts will differ depending on the compensation of an employee, it should be noted that a wage ceiling for calculation of contributions is imposed at 20 times the common minimum wage for social and health insurance (Currently VND 29,800,000 (US$1,300)) and 20 times the regional minimum wage for unemployment insurance (VND 88,400,000 (US$3,800) depending on the region).

Social insurance covers employee benefits including sick leave, maternity leave, allowances for work-related accidents and occupational diseases, pension allowance, and mortality allowance. Health insurance entitles employees to a medical examination and inpatient and outpatient treatments at authorized medical establishments.

Unemployment insurance, which takes the place of severance pay, is paid out to employees in quantities depending on the period of time for which they and their previous employers contributed. The monthly unemployment allowance is equal to 60 percent of the persons' average salary of the last six months of employment.

It should be noted that under the Ministry of Labour, Invalids and Social Affairs (MOLISA), social insurance contribution was made mandatory for all working foreigners as of December 1, 2018 under *Decree 143/2018/ND-CP.*

To ease the transition, the government gradually increased social insurance contributions for both employers and employees as shown in the table below.

Social Insurance Contribution

	Since December 1, 2018	From January 1, 2022
Employer	3.5%	17.5%
Foreign worker	0%	8%

The salary subject to social insurance contribution is what is defined as per the labor contract, but this is capped at 20 times the minimum salary for social insurance contributions set by the government.

At present, the maximum salary for the social insurance contributions is US$1,295.

Once a foreign worker's employment in Vietnam expires, the foreign worker can claim a one-off payment on the contributed amount from the social insurance agency depending on the following circumstances.

- Reach retirement age, but have not contributed social insurance for the full 20 years;
- Suffer from a fatal disease such as cancer, polio, HIV or other diseases regulated by the Ministry of Health;
- Satisfied conditions for pension, but are not living in Vietnam anymore; and
- Their employment contract is terminated or work permit expires without renewal.