

DOING BUSINESS IN VIETNAM

2014



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THIS GUIDE HAS BEEN PREPARED FOR THE ASSISTANCE OF THOSE INTERESTED IN DOING BUSINESS IN VIETNAM. IT DOES NOT COVER EXHAUSTIVELY THE SUBJECTS IT TREATS, BUT IT IS INTENDED TO ANSWER SOME OF THE IMPORTANT BROAD QUESTIONS THAT MAY ARISE. WHEN SPECIFIC ISSUES ARISE IN PRACTICE, IT WILL OFTEN BE NECESSARY TO CONSIDER THE RELEVANT LAWS AND REGULATIONS AND TO OBTAIN APPROPRIATE PROFESSIONAL ADVICE.

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GENERAL INFORMATION

DEMOGRAPHY

Vietnam is a long and narrow country, completely in the tropical zone with a total area of 330,363 km². It has 59 provinces and 5 municipalities (Ha Noi, Ho Chi Minh City (still often referred to as Saigon), Hai Phong, Can Tho and Da Nang). Ha Noi is the capital, where most Government bodies are located, while Ho Chi Minh City is the commercial hub of the country. Da Nang is thought to be the 3rd city of Vietnam.

Vietnam's landmass forms the shape of the letter S on the east side of the Indochinese Peninsula in Southeast Asia. It borders China to the north, Laos and Cambodia to the west, the East Sea and Pacific Ocean to the east and south. Its eastern border consists of more than 3,400 km of beautiful coastline which is ideal for development of maritime industries, trade and tourism and for its emergence as a shipping hub for South East Asia and the world in general.

It is predominantly a mountainous country, with mountains and forests covering three quarters of the land area. Its two main cultivated areas are the Red River Delta (15,000 square km) in the north and the Mekong River Delta (40,000 square km) in the south.

Vietnam is located in the tropical and temperate zone. Because of differences in latitude and the marked variety in topographical relief, the climate tends to vary considerably from place to place. Northern Vietnam has all four seasons while southern and central regions are characterised by just dry and rainy seasons.

POPULATION SIZE & DENSITY

As of July 2012, Vietnam had a population of 91.92 million people (13th largest in the world), with an average population density of 260 people per square kilometre. With an annual growth rate of 1.05%, Vietnam is expected to grow to 100 million people by 2020. Nearly 70% of the total population resides in rural areas while the other 30% are located in HCMC, Ha Noi, Hai Phong, and Da Nang. The Annual urbanisation rate is estimated to be 3% (2010-2015). Over 50% of the population is under the age of 25 years and employed in agriculture. Currently, the Government has given priority to developing quality training and education systems for workers serving in highly skilled industries such as information technology, pharmaceuticals, and financial services. The adult literacy rate is over 94%. This demographic is often quoted as being a huge advantage to future prosperity.

The Vietnamese Government recognises 54 ethnic groups, of which Viet (Kinh) accounts for 85.7% of the country's population but inhabits a little less than half of Vietnam in major cities. The Khmer Krom are found in the delta of the Mekong River, in the South of Vietnam, which was the part of Cambodia that Vietnam conquered in the 17th and 18th centuries. Official Vietnamese figures put the Khmer Krom at 1.3 million people.

The national language is Vietnamese, which is widely used by all ethnic groups. English is increasingly favoured as a second language and has been adopted as the official language for business. Other spoken languages include French (which is still very common due to Vietnam's history), Chinese, and mountain area languages.

Vietnam has a youthful and well-educated labour force. The median age in Vietnam is 28. Average wage costs tend to be lower than those of bordering countries such as China. Factory workers are thought to earn around two thirds of the amount earned by their Chinese equivalents, although the effects of inflation and minimum wage laws may have moved this statistic recently.

A recent report claims that Vietnam has around 20 million people with 'middle income or better spending power. As a result there has been considerable investment in the retail sector, with many new shopping malls and brands entering the market. Initial signs were good, but retail growth seems to have stalled in recent times. In the long term though it is generally felt that the growing urban middle class will continue to fuel consumer spending.

NATURAL RESOURCES

Commercially exploitable metals and minerals include iron ore, tin, copper, lead, zinc, nickel, manganese, titanium, chromite, tungsten, bauxite, apatite, graphite, mica, silica sand, and limestone.

Vietnam possesses large reserves of oil and gas in the coastal areas and on the continental shelf. Potential nonassociated gas reserves are more than 360 billion cubic metres.

Gas and petroleum reserves, coal reserves, and the harnessing of hydropower electricity provide readily available sources of power.

RELIGION & BELIEFS

For much of Vietnamese history, Mahayana Buddhism, Taoism and Confucianism have been the dominant religions, strongly influencing the national culture. About 85% of Vietnamese people identify with Buddhism, but probably practice Confucian and Taoist principles, ancestor worship and a little animism.

Other religious practices in Vietnam include Christianity, Catholicism, and Cao Dai.

Vietnam has a rich and wide variety of religions which include religions based on popular beliefs, religions brought to Vietnam from outside the country, and several indigenous religious groups. Buddhism is the largest of the major world religions in Vietnam while the second largest foreign religion is Catholicism.

INFRASTRUCTURE

In the past decade, the Vietnamese infrastructure system has experienced major expansion in both scale and quality. Service roads, inland waterways and railways received major upgrades while effort has also gone into the improvement of management and maintenance. Seaports and airports have gradually expanded and been upgraded to meet transport requirements which have grown by around 10% per year on average. The Government recognised the impact of an efficient infrastructure system on economic development so many important projects for industrialisation and modernisation such as highways in key economic areas, urban roads, international airports and seaports are being constructed. In the midst of the current global economic difficulties, the Government's main priority has been to stabilise inflation (which has largely been successful). Recently though, State budgets have been tightened causing a reduction in the funds necessary to carry out infrastructure construction projects. Budgets tend to be aimed at commercial infrastructure systems and projects that foreign investors do not target. The Government has ambitious plans for infrastructure and most commentators express the view that major foreign investment will be required to fund the planned growth, particularly in areas such as power generation. The main national road is the trans-Vietnam highway No.1A which runs the length of the country.

Vietnam Railways is the state-owned operator in Vietnam, which has about 3,200 kms of track, 60% of which is in the Northern provinces. It is slow and cumbersome to the eyes of Westerners but is effective nonetheless.

Airports in Vietnam are managed and operated by The Airports Corporation of Vietnam. There are many airports but the two largest are Noi Bai (Ha Noi) and Tan Son Nhat in Ho Chi Minh City, which are both major international hubs. Presently a new terminal is being built, as a joint venture between the Japanese and Vietnamese in Ha Noi.

Maritime transportation systems in Vietnam consists of 17 Class 1 seaports, 23 Class 2 seaports and 9 Class 3 seaports. These are mainly based around Hon Gai, Hai Phong, Da Nang, Vung Tau, and HCMC (Saigon). There are 35 access points to national ports with close to 350 berths and a total length of 40,000m. Hai Phong, Da Nang and HCMC ports have attracted many international tourist ships as tourism has boomed in the country in recent years.

GOVERNMENT

The Socialist Republic of Vietnam is a single-party state under the leadership of the Vietnam Communist Party. The Party holds a national congress every five years to outline the country's overall direction and policies for the future.

The National Assembly is the highest representative body of the people and the highest body of State power. It has 498 members, is open to non-Party members, and is the supreme organ of state and the only body with constitutional and legislative power. The President and Prime Minister are elected by the National Assembly which exercises supreme control over all activities of the State.

The Government is the effective executive body of the National Assembly, the highest organ of state administration. It carries out overall management of work for the fulfillment of political, economic, cultural, social, national defence, security and external duties of the State.

Being the Head of State, the President represents Vietnam internally and externally, and is elected by the National Assembly from among its members. The Prime Minister of Vietnam is the head of Government, presiding over a council of ministers composed of 5 Deputy Prime Ministers and the Heads of 26 ministries and commissions.

TAXATION

Most foreign investments and foreign investors will be affected by the following taxes:

- Corporate income tax;
- Various withholding taxes;
- Value Added Tax;
- Import duties;
- Personal income tax of Vietnamese and expatriate employees; and
- Social insurance, unemployment insurance and health insurance contributions.

There are various other taxes that may affect certain investors, including:

- Special sales tax;
- Natural resources tax;
- Property taxes;
- Export duties; and
- Environment protection tax.

All these taxes are imposed at national level. There are no local, state or provincial taxes. We cover all these taxes later on in this publication.

THE ECONOMY OF VIETNAM

OVERVIEW

Vietnam has been one of the fastest growing Asian economies in recent years, effectively weathering the economic crisis and now with some signs of recovery. The Government has managed to get inflation under control (after it peaked at around 25%), and is currently grappling with the issues of a sluggish economy and a banking industry with probably higher levels of Non Performing Loans than it would like to admit to. Nevertheless, the economy is still showing growth of circa 5% per annum, which many European countries would be delighted with.

In 1986 Vietnam's Communist Party adopted an 'economic renovation' (Doi Moi) policy, which laid the foundation for a market-based system to replace the 'planned economy' model. In addition, its accession into the World Trade Organisation (WTO) and establishment of a Securities Market, along with 'equalisation' of the state owned sector has created opportunities for foreign investors to expose their business to the Vietnamese market. Furthermore, the positive prospect for economic growth, a dynamic, young and low-cost labour force and intended increase in the role of the private sector should also contribute to an increase in the investment of foreign capital and enable foreign enterprises to flourish in Vietnam. In reality it has been a 'mixed bag' for market entrants with further market reform to happen which will enable foreign enterprises to flourish.

Nevertheless Vietnam has emerged as an attractive destination for foreign investments. Foreign investors are beginning to regard it as a key strategic investment location and a place where they can achieve cost effectiveness from their global supply chains. Already over half of the US Fortune 100 companies have establishments in Vietnam. The country is becoming more attractive with some tax incentives, low-cost labour, and a long coastline with increasingly modern and sophisticated port infrastructure.

Any new corporate entrant into the market will be able to find many support organisations amongst the business community. These include Eurocham, British Business Group Vietnam, Auscham, Amcham, Cancham and other Chambers of Commerce which provide great links, networks and resources.

CURRENCY

The Vietnamese Dong ("VND") is the official currency of Vietnam. Bank notes are available in denominations of 500,000; 200,000; 100,000; 50,000; 20,000; 10,000; 5,000; 2,000; 1,000 and 500 VND, and also (in theory though seldom in practice) metal denominations of 5,000; 2,000; 1,000; 500; 200 VND. The use of credit cards and ATM machines is becoming more and more popular, especially in major hotels and restaurants in Ha Noi and Ho Chi Minh City. Presently the exchange rate to the US Dollar is around 21,000 and to the GBP 32,000. It is still a fact that comparatively few people have bank accounts, and many do not trust the banking system. Additionally even fewer have credit cards.

EXCHANGE CONTROLS

Throughout the country, only US Dollars and certain other currencies are accepted for transactions with Credit Institutions and other transactions in big cities and provinces permitted by the Prime Minister. In general, the inflow of foreign currency into Vietnam is welcome with minimum restrictions while the transfer of foreign currency abroad has also been significantly liberalised. Foreign investors and foreigners working in Vietnam are permitted to transfer their earnings abroad after completing all their financial liabilities to the Vietnamese Government. However, on leaving Vietnam individuals are not allowed to take more than USD 7,000 or equivalent in other currencies in cash (including debit notes and travellers cheques) without declaration to the Vietnamese Customs and permission from the State Bank of Vietnam or another eligible bank.

Up to now, the Vietnamese Government has issued a range of regulations regarding Foreign Exchange Management in Vietnam which investors are required to follow when doing business in Vietnam.

INFLATION

As a young and emerging economy, Vietnam has always faced a challenge to control inflation. The Government's focus on strong growth-oriented economic policies have caused it to struggle to control one of the region's highest inflation rates, which peaked at 23% in August 2011 and averaged 18% for the year. However, in recent years, Vietnam has shifted its initial focus from economic growth to economic stability with a range of tightened and severe fiscal and monetary policies which have resulted in a decrease in the inflation rate to 6.81% for the year 2012, which it is thought will fall again in 2013.

LABOUR FORCE

Vietnam is well-known for its abundant, young, hard-working, and very fast-learning work force. Its labour force is estimated to be around 51.4 million people, accounting for 58.5% of the total population with men accounting for a higher share than women (51.5% male and 48.5% women). The labour force is growing by 3.5 to 4.0% per year with about 1.5 million people entering the labour market every year. However, the Government recognised that the shortage of skilled labour is still a hindrance to attracting foreign investors. In the whole of the labour force, only 8 million people have received technical training, equating to about 15.6%. The Government has launched a selection of programmes and projects to provide basic training for local workers before introducing them to foreign investors.

WTO

Vietnam officially became the 150th member of the WTO on 11th January 2007 as a result of continuous efforts to improve the investment environment, market liberalisation and the nation's GDP growth rate. The accession of Vietnam to the World Trade Organisation has provided a boost to the domestic economy. However, it also forced Vietnam to launch a wide variety of reforms regarding policies and laws in line with WTO principles, especially in the areas of investment and trading in goods and services.

Even prior to joining the WTO, Vietnam has also been an active member of AFTA, APEC, ASEM, World Bank and the International Monetary Fund.

TRADE AGREEMENTS

Currently, all trading activities in Vietnam are subject to Trade Law adopted by the National Assembly of Vietnam in June 2005 and other legislation regulating trade, including a number of Government decrees and circulars issued by various ministries. Furthermore, Vietnam has also signed, and is negotiating, a variety of bilateral and multilateral trade agreements with other nations and regions in the areas of export and import, manufacturing for trade; sales and purchase agencies; logistic services; trade promotion activities; establishment and operation of representative offices; branches of foreign companies, and companies with foreign capital engaged in trade activities in Vietnam; goods inspection; origin of goods; and franchise. Thanks to this regional and international cooperation, foreign investors in Vietnam may in the future enjoy more favourable conditions when doing business here.

DEVELOPMENT TRENDS

In recent years the Private Sector has become far more influential. The number of private businesses has gone up dramatically over the last 10-12 years. The changes in Enterprise Law and Investment Law in 2005 also created new opportunities for foreign investors in Vietnam through the establishment of partnerships with local private firms.

The Vietnam Stock Exchange came into being in 2000 and the Government's policy of privatising State Owned Enterprises made room for foreign investors to invest in the Vietnamese market.

Vietnam has become a strong base for manufacturing and IT related services with low and reasonable employment costs. However the weak copyright laws are thought to deter 'high added value' industries from bringing too much intellectual property into Vietnam for fear of losing it to clone competitors. Thus at present there is an abundance of 'low-tech' industry and the Government would like to be able to attract more 'higher added value' businesses.

VIETNAM AS AN INVESTOR

The statistics below demonstrate that Vietnam is an active, if not prolific, investor overseas. Foreign Direct Investment (FDI) can be defined as investment that creates a holding of at least 10% in the voting rights of an organisation.

As of 30 December 2011, Vietnam had 627 investment projects in 55 countries with a total registered capital of USD 10.8 billion, according to the Ministry of Planning and Investment.

Vietnam has the highest number of investment projects in Laos with a total capital of USD 3.4 billion, followed by Cambodia (USD 2.1 billion), Venezuela (USD 1.8 billion), Russia (USD 776 million), Peru (USD 508 million), Malaysia (USD 412 million), and Mozambique (USD 345 million).

In 2011 alone, Vietnam granted new licenses for 75 investment projects and increased capital for 33 projects in 26 countries around the world.

The total registered investment capital of these projects including newly granted and 'increased capital' reached USD 2.12 billion, equivalent to the previous year's figure.

The majority of projects focus on the energy industry and communications fields.

According to businesses and groups, USD 950 million was disbursed abroad in 2011.

The Vietnam National Oil and Gas Group (PVN) topped the list of Vietnamese foreign investors with a total capital of USD 347 million, followed by the Viettel Group with USD 185 million, Vietnam Rubber Group (USD 134.6 million) and the Song Da Group (USD 161 million).

INVESTMENT INCENTIVES AND GUARANTEES

The present investment legal framework in Vietnam is regulated by two basic areas of legislation: the Enterprise Law, which sets out provisions on the establishment, organizational management and operation of different types of companies, and the Investment Law, which covers provisions on investment activities, rights and obligations of investors, investment guarantees and investment incentives.

Foreign Invested Enterprises (FIE's) play a key role in the development process of Vietnam. FIE's are an effective force contributing to economic growth, by improving the balance of payments, promoting technological innovation, introducing modern business management methods creating jobs and bringing competitiveness to the market.

Most commentators would agree that if Vietnam is to achieve its goals for the next 10 years, then it will have to attract more foreign investment. Incentives will therefore play a very important role in this process. Clearly there is a balance to consider between market entrants seeing Vietnam as a high growth market in its own right, as opposed to one which is merely giving incentives which may persuade a company to come to Vietnam instead of somewhere else.

Please also refer to Taxation on page 18 which covers this issue in brief.

The Government is looking to attract investment across a wide array of sectors. Sectors receiving preferential treatment are outlined in every new five-year Government plan. Key sectors currently targeted for Investment Incentives include:

- Manufacture of new materials and production of new energy; manufacture of high-tech products; biotechnologies; IT; mechanical manufacturing.
- Breeding, rearing, growing and processing agricultural, forestry and aquaculture products; production of salt; creation of new plant and animal varieties.
- Use of high technology and advanced techniques; protection of the ecological environment; research, development and creation of high-technology processes.
- Labour intensive industries.
- Construction and development of infrastructure facilities and important large scale industrial projects.
- Professional development of education, training, health, sports, physical education and Vietnamese culture.
- Development of traditional crafts and industries.

FIEs are encouraged to invest in specific geographic areas. The list of such areas is divided between a list of 'encouraged areas' and 'special encouraged areas'. Incentives to encourage investment in Vietnam come in varying forms, including:

- Preferential corporate income tax rates (10% and 20%).
- Exemption from, up to 4 years, and/or reduction of up to 9 years, for corporate income tax.
- Import duty exemptions.
- Exemption from, or reduction of, land use or land rental fees.

- Privileges awarded to build-operate-transfer (BOT), build-transfer-operate (BTO) and build-transfer (BT) projects and projects in special economic zones.
- Incentives for investments in geographical areas of Vietnam that face difficult socio-economic conditions.

The Government also provides some basic investment guarantee commitments as follows:

- Investors may invest in domains, branches and trades not banned by law; have the right to autonomy and to decide on their investment activities in accordance with the provisions of Vietnamese law.
- The State treats equally before the law investors of all economic sectors, as between domestic investment and foreign investment, and seeks to encourage and create favourable conditions for investment activities.
- The State recognises and protects the right to ownership of assets, investment capital and income as well as other legitimate rights and interests of investors; recognises the long-term existence and development of investment activities.
- Investment capital and lawful assets of investors shall not be nationalised or confiscated through administrative measures.
- Where it is really necessary for defence, security and national interests, if the State acquires compulsorily or requisitions assets of an investor, such investor will be paid or be compensated at the market prices at the time of announcement of compulsory acquisition or requisition.
- The State shall protect intellectual property rights in investment activities; assuring the legitimate interests of investors in technology transfer in Vietnam under the provisions of intellectual property law and other relevant provisions of law.
- After fulfilling their financial obligations toward the Vietnamese State, foreign investors may transfer abroad the following: "Profits gained from business activities, payments for the supply of techniques, services or intellectual property, principal and interest on foreign loans, investment capital and proceeds from liquidation of investments, other sums of money and assets under investors' lawful ownership. The transfer abroad of the above sums of money shall be conducted in freely convertible currencies at the exchange rates of commercial banks selected by the investors".
- Where new laws or policies provide interests or preferences higher than those previously enjoyed by investors, the investors shall be entitled to enjoy them under the new regulations as from the effective date. Where new laws or policies adversely affect the legitimate interests of investors, which they have enjoyed before they take effect, the investors are able to enjoy whatever was provided in their investment certificate.

BUSINESS ORGANISATIONS AVAILABLE TO FOREIGNERS

The Law on Foreign Investment of Vietnam, which was introduced in 1987, was the first basic framework for foreign investment. Many businesses came here to invest during the '90's but it is really only since 2005, when the new common Law on Investment and Law on Enterprises was released, creating a fair and consistent environment for both foreign and local investment, that the country has become a more attractive destination for foreign investment.

INVESTMENT FORMS

Basically, there are two forms of investment:

- Direct investment, (FDI) where the investor invests its capital and directly participates in the management of the investment activity.
- Indirect investment, where the investor purchases shares, share certificates, bonds, etc., or invests via a securities investment fund or other intermediary financial institutions, and the investor does not directly participate in the management of the investment activity. We do not seek to cover this aspect in much depth in this publication.

FOREIGN DIRECT INVESTMENT

Foreign Direct Investment (FDI) can be made as follows:

- Establishment of business organisations with 100% capital from foreign investor(s). Sometimes this is referred to as a WFOE (Wholly Foreign Owned Enterprise)
- Establishment of joint venture business organisations between domestic and foreign investors.
- Investment in the forms of Business Co-Operation Contract (BCC); Build Operate (BO); Build Transfer Operate (BTO); Build Transfer (BT). These are quite technical definitions and we do not seek to examine them in much detail in this publication.
- Capital Contribution, share purchase or merger / acquisition.

We set out below the various types of organisations that a market entrant can consider;

Limited Liability Company

A company where the investor's liability on the company's liabilities and other financial responsibilities are limited to the amount of capital (known as Charter Capital) as stipulated in the company's Articles of Incorporation. There are two distinct types;

- Limited Liability Company with One member, which is a company owned by one investor (individual or organisation). A Company with One member can be converted into a Limited Liability Company with Two members or more, by (i) adding new capital from other investors; or (ii) the investor transferring part of its capital to others.
- Limited Liability Company with Two members or more, which is a kind of a joint venture (between foreign and local investors) or a 100% foreign owned enterprise (set up by two foreign investors or more) owned by two investors or more. The number of investors must be below fifty.

Joint Stock Company (JSC)

The shareholders can be individuals or organisations, with a minimum number of three and the main difference to an ordinary company is that a JSC can issue shares and securities to the public. The shareholders are responsible for the enterprise's liability up to the limit of capital contributed to the enterprise. There are several hundred JSC's on the two Stock Markets in Vietnam and it is generally thought that the standard of Governance within these companies is continuing to develop.

Partnerships

A Partnership is an enterprise where there are at least two individual partnership owners (partnership members), jointly doing business under a common name and having unlimited responsibility over the enterprise's liability. In addition to partnership members, a partnership may also have capital contribution members whose responsibility is limited to the capital amount contributed to the enterprise. A partnership is not allowed to issue any type of securities.

Private Enterprises

A private enterprise (rather like a Sole Trader) is an enterprise owned by one individual who is liable for all activities of the enterprise to the extent of all his or her assets. A private enterprise is not allowed to issue any type of securities. Each individual may only establish one private enterprise.

Business Co-operation Contract (BCC)

A BCC means a form of investment where investors enter into a contract in order to co-operate in business and to share profits or products without creating a legal entity. The contract stipulates the co-operating parties, contents and duration of the co-operation, rights and obligations of each party, and the management structure as agreed by both parties.

Capital Contribution, Share Purchase, Merger and Acquisition

Investors are allowed to contribute capital to, purchase shares in, merge with and acquire enterprises in Vietnam. The maximum ratio of foreign investors' capital is regulated in a number of sectors and industries.

The authorities have released a number of regulations around this aspect of which the most important are the Rules on foreign investors' share purchase and capital contributions. However, there is a notable lack of practical guidance on procedures.

OTHER MARKET ENTRY OPTIONS

Other than the above investment forms, foreign investors may consider the following market entry (commercial presence) options in Vietnam.

Branch

The establishment of a branch must be made in accordance with Vietnam's WTO commitments and local regulations. For normal foreign merchants, the establishment of a branch in Vietnam is regulated by a Decree from July 2006, which states that a branch is permitted to carry out the activities stipulated in its licence.

If a branch operates in sectors where there are rules and regulations in Vietnam then the Branch must demonstrate that it is compliant with them. In order to get the license you may have to demonstrate the following; certificate of satisfaction of business conditions, practising certificate, certificate of professional indemnity insurance, legal capital requirement, or other requirements stipulated in the Law on Enterprises.

Representative Office

The establishment of a representative office is permitted for foreign companies for market research and sales promotion activities (and therefore not for trading). A condition of the establishment of such an office by a foreign corporation is that the company is already legally recognised in the country of its business registration and has been in operation for over one year from the establishment date. The functions of a representative office include:

- Exercise of the function of a liaison office.
- Facilitation of formulation of co-operative projects of the foreign business entity in Vietnam.
- Market research to promote opportunities for purchase and the sale of goods and for the provision and sale of commercial services of the foreign business entity that it represents.
- Monitoring and activating the performance of contracts of the foreign business entity that it represents which have been signed with Vietnamese parties or which relate to Vietnamese markets.

The obligations of a Representative Office to the authorities are the same as for all trading organisations, but no Financial Statements need to be submitted anywhere and there is no requirement for local audit. Clearly any Financial Statements will be consolidated into the Parent organisation's Financial Statements.

Foreign Contractor/Cross-border supplies

Foreign companies can perform a number of cross-border supplies in accordance with Vietnamese laws and WTO commitments. Particularly, any foreign investor who wishes to trade goods (e.g. import and distribute the goods to local customers) in Vietnam does not usually need to establish a legal entity in Vietnam, subject to certain conditions and approvals. For construction and related activities, foreign contractors can do business by directly entering the construction contract with the Vietnamese project owner and earning income from it. However, the foreign contractor must apply for a Construction Contracting Permit, and set up what is known as a Project Management Office.

ESTABLISHMENT OF FOREIGN INVESTED ENTERPRISES

Limitations of foreign ownership

In most cases, foreign investors are allowed to own 100% of the share capital of a company in Vietnam. However, there are some circumstances where foreign ownership is limited, which is stated in (i) Vietnam's bilateral and international agreements such as WTO commitments, and (ii) particular local laws and regulations.

Investment Procedures

The establishment of a Foreign Invested Enterprise (FIE) involves the procedure for application for an Investment Certificate which also serves as a Certificate of Business Registration. Foreign investors are subject to different licensing procedures depending on the business lines and level of investment capital of their project, and these are known as (i) Investment Registration Procedures, and (ii) Investment Evaluation Procedures.

Investment registration procedures apply to projects with investment capital of less than VND300 billion (circa 14m USD) which are not in conditional sectors (e.g. manufacturing sectors).

Investment evaluation procedures apply to: (i) projects with investment capital below VND300 billion which are in conditional sectors (e.g. trading, distribution sectors), and (ii) projects over VND300 billion.

The laws also specify the number of days which the licensing authorities can take to process the foreign investors' application. However well intentioned this was designed to be, in reality things take longer, and patience is often required mainly due to many additional requests from the authorities.

Licensing Authorities

Normally the application for establishment of an FIE is subject to assessment by the Provincial People's Committee (Department of Planning and Investment) or the Management Board of Industrial Parks, Export Processing Zones, High-Technology Zones, and Special Economic Zones in the relevant city/province.

In a number of special cases (e.g. special business areas), the application is subject to the approval of a higher level of authority, such as the Prime Minister.

Post-Licensing Procedures

Once established, the FIE needs to follow certain requirements on post-licensing tasks, including but not limited to the following:

- Press announcement;
- Registration for Company stamp;
- Registration for Tax identification number (tax code); and
- Opening a bank account for capital contribution and then trading purposes.

TERMINATION OF ENTERPRISES

Dissolution

Following the Law on Enterprise, an enterprise can be dissolved in the following cases:

- The duration of operation stipulated in the charter of the enterprise expires and there is no decision to extend;
- As decided by the enterprise owner in the case of a private enterprise; by all unlimited liability partners in the case of a partnership; by the Members' Council or the company owner in the case of a limited liability company; by a General Meeting of Shareholders in the case of a JSC;
- The enterprise does not have the minimum number of members stipulated by Law for a period of six consecutive months; and
- The business registration certificate is revoked.

An enterprise can only be dissolved when it has paid all debts and other property obligations.

Bankruptcy

Bankruptcy procedures begin from the filing of a petition, leading to either the Recovery Procedures or the Liquidation Procedures when the debtor is declared 'bankrupt'. Within 30 days of formal bankruptcy proceedings filed against a company, the court will issue a decision on whether or not bankruptcy procedures will be commenced.

The Recovery Procedures begin when the court accepts the creditors' (by the Requisite Majority) decision at the first creditors' meeting to restructure the business of the debtor. Once the process begins, the debtor is obliged to submit to the court a rescue plan within thirty (30) days of the creditors' resolution (or such longer time as the court may approve) to rescue the debtor. However, if within such time limit, any creditor or person accepts an obligation to recover the business, it shall have the right to formulate a draft Rescue Plan for submission to the court.

If a debtor is subject to Liquidation Procedures, the assets of the debtor are liquidated and distributed. When the court declares that a debtor has completed the liquidation procedures, it will declare that debtor 'bankrupt'.

TAXATION

This chapter presents an overview of the Vietnamese tax system, Vietnam's major taxes as well as the tax treaties between Vietnam and other countries which may have a significant impact on the activities of a foreign investor in Vietnam.

OVERVIEW OF THE VIETNAM TAX SYSTEM

Vietnam applies a common set of tax regulations on a nationwide basis which over recent years has become equal between local and foreign enterprises. Tax regulations include laws/ordinances/resolutions from the highest level and sub-law guidance such as decrees, decisions, circulars and numerous official letters.

LICENSE TAX

License tax is imposed on enterprises and business individuals (including foreign contractors doing business in Vietnam) on an annual basis. The tax payable amount depends on the registered capital of the taxpayers (for a foreign invested enterprise, this is the total investment capital registered and stated in the Investment Certificate).

CORPORATE INCOME TAX (CIT)

CIT is imposed on the income (actually we mean Profit) of enterprises or any kind of organisations established under Vietnamese or foreign laws doing business in Vietnam or earning income from Vietnam. CIT is calculated by multiplying the taxable income (profit) by the applicable tax rate.

Tax Rates

Previously tax rates applied to foreign invested enterprises were different from those for domestic enterprises, but these were then unified at the standard tax rate of 25% in 2009. The recent amendments to CIT laws have provided lower tax rates (generally 20% for small and medium-sized enterprises from July 2013; 22% for others from 2014, and these are being further lowered to 20% from 2016). Taxation for oil and gas businesses is applied within the range 32% to 50%.

Tax Incentives

CIT incentives are available, including a preferential tax rate (10% or 20%) and tax holidays (some years of tax exemption and some subsequent years of 50% tax reduction) which are granted to investment projects of newly established enterprises based on their business activities (businesses encouraged by the Vietnamese Government are healthcare, education, high-tech, infrastructure development, and software production) or their location (within special economic zones or areas with difficult socio-economic conditions). Some additional CIT incentives are also available for enterprises operating in the manufacturing, construction and transportation fields with a high ratio of female employees or ethnic-minority employees.

Taxable Income (Profit)

Taxable income is defined as the difference between total revenue and total deductible expenses of the enterprise during the tax year.

Revenue includes all income from sales, provision of services and other incidental income accruing to the enterprise from any business activities, irrespective of whether the revenue was derived in Vietnam or overseas and has been collected or not.

Expenses are tax deductible on the basis that they are business related and supported by legitimate invoices/documents. Nevertheless, a number of exceptional guidance notes are provided specifically in the law and regulations, such as the limitation on advertising and promotion expenses; raw material costs exceeding the registered cost norm; or provisions for stock devaluation, bad debts, financial investment losses, product warranties, or construction work which are not in accordance with the prevailing regulations. There is also separate guidance for companies engaging in some special businesses (such as insurance or securities).

Losses Carried Forward

An enterprise is allowed to carry forward fully and continuously the operating loss of a financial year to offset against future taxable income for a period of up to five consecutive years counting from the year after the year of loss.

Transfer Pricing

Vietnam has released Transfer Pricing regulations from 2005 which provide the primary regulatory framework for the determination and audit of Transfer Pricing activities in Vietnam. The principle is that, transactions between related parties must be made on an arm's length basis. Failure to comply with the arm's length principle implies an exposure to a reassessment of prices or profits for tax purposes which may be accompanied by penalties and interest charges (to some extent, this literally implies that the tax authorities may set transfer prices for the company if there is no supporting transfer pricing documentation). The adjustments entail wider consequences in terms of an altered tax profile and possible adverse publicity.

In terms of required documents, an enterprise which has related party transactions must submit a disclosure form of the related party transactions during the year (to be lodged annually to the tax authority together with a year-end CIT return) and preparation of Transfer Pricing documentation as evidence of the arm's length principle.

Profit Remittance

The enterprise is permitted to transfer its after-tax profits abroad (tax on remittance of profits abroad is no longer applied) either at year-end after fulfillment of financial obligations and the filing of a CIT return and audited financial statement to the tax authority, or at the end of the project in Vietnam.

VALUE ADDED TAX (VAT)

Generally, goods and services used for production, business and consumption in Vietnam are subject to VAT. Different VAT rates (0%, 5% and 10%) or VAT exemptions are applied to different kinds of goods and services:

- VAT exempt Some goods and services are exempted from VAT such as medical or veterinary services, certain kinds of insurance services, certain financial operations, education and vocational training, imports for humanitarian aid or non-refundable aid, technology transfers and intellectual property transfers, computer software, etc.
- VAT 0% Mainly applied to exported goods/services.
- VAT 5% Generally applied to areas of the economy concerned with the provision of essential goods and services.
- VAT 10% This is the 'standard' rate.

There are two VAT calculation methods which are the **tax credit** method and the **direct calculation** method. Normally, the enterprise will be required to register for VAT filing using the **credit method** while the direct method is only applied to a limited number of specific cases. As a registered VAT payer under the credit method, the enterprise must record and compute all its input VAT and output VAT on a monthly/quarterly basis and file a VAT declaration to the local tax authority. The enterprise then either pays the difference between the output VAT and input VAT to the tax authority (where the output VAT exceeds the input VAT) or it is entitled to a VAT credit/refund (where the input VAT exceeds the output VAT).

INVOICES

An enterprise can use pre-printed invoices, self-printed invoices or electronic invoices. The tax invoice template must contain stipulated items and be notified to the local tax authorities before coming into use.

PERSONAL INCOME TAX (PIT)

PIT is imposed on taxable income received by individuals. PIT is a liability of individuals, however the PIT regulations encompass the concept of tax deduction at source, in which the enterprise being the employer is required to deduct tax at source prior to paying income to its employees.

Where individuals are remunerated on a gross basis, the income-payer is liable to withhold PIT payable before making payments to the individuals and remitting the tax withheld to the tax office. If the remuneration is on a net basis, the income-payer shall be liable to gross up the net income, calculate the PIT amount and pay such PIT to the tax office.

Residency Status

The taxation of a foreigner under the current Vietnamese regulations turns entirely on physical presence in Vietnam for the relevant tax year. In general, there are two categories of foreign taxpayer under the Vietnamese regulations:

- Residents: A foreigner is considered tax resident if he/she stays in Vietnam for 183 days or more during a tax year, or if he/she has a regular residential location in Vietnam in one of the following cases (this rule is not applicable if the taxpayer refers to an effective double tax treaty with Vietnam):
 - Holding of residence card; or
 - A residential location for which permanent residence has been registered pursuant to the law on residence in Vietnam; or
 - A leased residence to stay in Vietnam pursuant to the law on residential housing, where the lease contract has a term of 183 days or more within the tax year.

A resident taxpayer is subject to PIT at marginal rates with a top marginal rate of 35% on his/her worldwide income.

- Non-residents: A foreigner is considered non-tax resident in Vietnam if he/she does not fall into the above conditions of resident taxpayers. A non-resident foreigner in this circumstance is only taxed at 20% on his/her Vietnamese-sourced income (which remains unclear but needs to be calculated nevertheless).

Taxable Income

Taxable income includes employment income, business income, income from capital investment, income from capital transfer, income from transfer of immovable properties, and other taxable income.

Employment income, in particular, includes income in the form of salaries, wages, remuneration, allowances (excluding the allowance for toxicity and danger, incentive allowance, regional allowance, severance allowance, termination allowance, other allowances paid by the Social Insurance Fund, etc), income from membership of business associations, boards of management, boards of control, management councils and other organisations, and other benefits in cash or in-kind.

Allowable Deductions

An allowable deduction is available for resident taxpayers having taxable employment and business income, including compulsory insurance contributions, charity and humanitarian contributions, and family deduction. Particularly, family deduction includes deduction for the taxpayer themselves (VND9million per month) and deduction for their dependents (VND3.6million per dependent per month).

Tax Rates

Tax residents' business income and employment are taxed using progressive tax rates:

| Band | Taxable income per year (in millions VND) | Approx in USD | Tax income per month (in millions VND) | Approx in USD | Tax rate (%) |
|------|--|------------------|---|------------------|-----------------|
| 1 | Up to 60 | 2880 | Up to 5 | 240 | 5 |
| 2 | From 60 to 120 | 2880-5760 | From 5 to 10 | 240-480 | 10 |
| 3 | From 120 to 216 | 5760-10320 | From 10 to 18 | 480-860 | 15 |
| 4 | From 216 to 384 | 10320-18300 | From 18 to 32 | 860-1525 | 20 |
| 5 | From 384 to 624 | 18300-29700 | From 32 to 52.1 | 525-2475 | 25 |
| 6 | From 624 to 960 | 29700-45720 | From 52 to 80 | 2475-3810 | 30 |
| 7 | Over 960 | 45720+ | Over 80 | 3810 + | 35 |

Note: Assessable business income and employment income means the income after allowable deductions or expenses.

Other income of tax residents is taxed at flat rates:

| No. | Income category | Tax rate |
|-----|-----------------------------|--|
| 1 | Investment income | 5% |
| 2 | Gain on capital transfer | 20% |
| 3 | Gain on securities transfer | 20% on profit; or 0.1% on transaction amount |
| 4 | Real estate transfer income | 25% on profit; or 2% on transaction amount |
| 5 | Income from prize-winning | 10% on portion exceeding VND10 mil |
| 6 | Royalty income | 5% on portion exceeding VND10 mil |
| 7 | Franchise fee | 5% on portion exceeding VND10 mil |

Income of non-resident taxpayers taxed at flat rates:

| No. | Income category | Tax rate |
|-----|--|--|
| 1 | Employment income | 20% |
| 2 | Business income | 1% - 5% (based on type of business income) |
| 3 | Investment income | 5% |
| 4 | Gain on capital assignment, securities | 0.1% on transaction amount |
| 5 | Real estate transfer income | 2% on transaction amount |
| 6 | Income from prize-winning | 10% on amount over VND10 mil |
| 7 | Royalty income/Franchise fee | 5% on amount over VND10 mil |

FOREIGN CONTRACTOR TAX (FCT)

FCT, normally referred to as the Withholding Tax regime is very comprehensive, comprising VAT and CIT (or PIT), and is imposed on foreign entities/individuals not having a legal entity status in Vietnam but carrying out business here or earning income here as a foreign contractor.

Basically FCT is imposed in the following circumstances:

- A foreign entity's sale of goods/commodities within Vietnam (i.e. the delivery place is within the territory of Vietnam);
- A foreign entity's sale of goods/commodities which are associated with services to be performed in Vietnam, including but not limited to installation, commissioning and maintenance;
- A foreign entity's provision of services in Vietnam (with certain exceptions);
- Other income received in Vietnam in any form (irrespective of the location where the business is carried out).

Current regulations provide three methods for FCT filing, which results in different positions of tax payable with, each party's responsibility on tax administration as well as other accounting compliance requirements to be undertaken by the foreign contractor and the Vietnamese party.

| | |
|--------------------|--|
| VAS Method | The foreign contractor applies the Vietnamese Accounting System (VAS), pays VAT by the credit method and is liable to pay CIT on their net profit earned from the project/contract at the applicable rate, similar to a Vietnamese enterprise. |
| Withholding Method | The foreign contractor pays FCT on a deemed withholding basis. FCT applies at various rates, depending on the nature/scope of the contract. It is the responsibility of the Vietnamese contracting party to register the contract with the local tax department, and to withhold and pay the applicable FCT to the local tax department. |
| Hybrid Method | This is a combination of the above two methods. VAT is declared using the credit method (same as VAS Method), while CIT is declared on a deemed basis (same as Withholding Method). |

IMPORT AND EXPORT DUTY

Export duties are primarily agricultural products (e.g. rice, forest products and fish) and natural minerals. Rates may be up to 50% and are imposed on the F.O.B price of exported goods.

Import duties are charged on a much wider range of goods. Rates are calculated taking product type and origin into account. There are three categories of duty rate as follows;

- Preferential rates are applied to goods imported from countries which have Most Favoured Nation (MFN) status with Vietnam;
- Ordinary rates apply to goods imported from other countries. These are 150% of the preferential rates applicable to MFN countries; and
- Special preferential rates apply to goods imported from countries which have a special preferential agreement with Vietnam, e.g. the ASEAN member countries under the CEPT and EU member countries under the Textile-Garment Treaty between Vietnam and the EU.

Vietnam is in the process of promoting imports, and co-operation with AFTA (ASEAN Free Trade Agreement) and some other countries and international trade organisations (Japan, Korea, China, India) in order to reduce customs duty rates and the abolition of non-tariff trade barriers based on the relevant treaties.

OTHER TAXES AND FEES

Special Sales Tax

Special sales tax is only imposed on some kinds of goods and services, such as cigarettes, beer, alcohol, cars, motorbike, airplane, yacht, air-conditioner, gasoline, etc. The rate of special sales tax ranges from 10% to 65%.

Natural Resources Tax

Natural Resource Tax is imposed on organisations or individuals exploiting natural resources such as oil, minerals, forest resources, marine products and natural water etc. Tax rates range from 0% to 40%, and in some cases tax is calculated using a progressive tariff dependant on the exploitation volume.

Environmental Protection Tax

EPT is imposed on products that are considered to have any negative impact on human health or the environment such as coal, petrol, plastic bags, oil etc. It is not charged on goods in transit through the Vietnamese border, goods temporarily imported for re-export within the allowed time limit or goods directly exported or entrusted to export by manufacturers. Environmental Protection Tax is paid once either at the production or importation stage.

Law on Non-agricultural Land Use Tax

The Law on non-agricultural land use tax was effectively introduced from 1st January 2012, replacing the old 1992 Ordinance on Housing and Land Tax and its amendment in 1994 and governs the three following objects: (1) Residential land in rural and urban areas; (2) Non-agricultural production and business land, including land for the construction of industrial parks; land for the construction of production and business establishments; land for mineral exploitation and processing; and land for the production of construction materials and pottery articles; (3) Non-agricultural land which is used for commercial purposes.

Non-agricultural land which is used for non-commercial projects is not subject to this kind of tax. In addition, the regulations also provide nine cases of tax exemption and four cases of 50% tax reduction.

Basically, those who are responsible for tax declaration and tax payment are organisations, households and individuals that have the right to use tax-liable land. Where organisations, households or individuals have not yet been granted certificates of land use rights and/or certificates of ownership of houses and other land-attached assets, the current land users have to be the taxpayers.

The bases for calculation of non-agricultural land use tax are both the tax rate and the taxable price. The tax rate is differentiated between types of land, land with different purposes and land in excess of the set quota.

Tolls and Fees

Other than the above, there are some other tolls and fees such as leasing fees for land use.

Tax Audits and Penalties

Enterprises are audited by the tax authorities on a regular basis, typically once in every three to five year period. In addition, the enterprise may also be subject to many other kinds of inspection from different Vietnamese authorities (for example, the Customs or Finance Departments). The time and scope of the inspection are notified by a written notice which is sent to the enterprise prior to the inspection.

Such tax audit or inspection may result in tax re-collections and penalties. The penalties may include interest on late tax payment, administrative penalties for breaches in tax filing procedures or incorrect tax declarations and penalties on tax fraud/evasion. The statute of limitation on penalties for breaches in tax filing procedures and incorrect tax declarations is two years and for penalty arising from tax fraud/evasion is five years from the date of breach. However, there is no time limit on the collection of under-declared or unpaid tax, except for cases where the tax payment is waived.

DOUBLE TAX AGREEMENTS

Overview

Vietnam has now concluded Double Tax Agreement (DTA) on avoidance and prevention of double tax with over 60 countries. Generally all of the DTAs benefit taxpayers by providing tax exemptions or tax credit schemes as a measure to avoid double taxation. The DTAs also provide restriction of tax rates on some specific kinds of income (see below) and the tax sparing system for developing countries in their initial economic development stage, such as Vietnam.

Tax Rates

The DTAs set out the maximum rates of tax applied to some kinds of income and if the tax rate stipulated by domestic Vietnamese law is different from that in the DTA, the lower rate shall be applied.

| Recipient | Interest (%) | Royalties (%) | Dividend (%) |
|-------------------|--------------|---------------|--------------|
| Algeria | 15 | 15 | 15 |
| Australia | 10 | 10 | 10 |
| Austria | 10 | 7.5/10 | 5/10/15 |
| Bangladesh | 15 | 15 | 15 |
| Belarus | 10 | 15 | 15 |
| Belgium | 10 | 5/10/15 | 5/10/15 |
| Brunei Darussalam | 10 | 10 | 10 |
| Bulgaria | 10 | 15 | 15 |
| Canada | 10 | 7.5/10 | 5/10/15 |
| China | 10 | 10 | 10 |
| Cuba | 10 | 10 | 5/10/15 |
| Czech Republic | 10 | 10 | 10 |
| Denmark | 10 | 5/15 | 5/10/15 |
| Egypt | 15 | 15 | 15 |
| France | Nil | 10 | 5/15 |
| Finland | 10 | 10 | 5/10/15 |
| Germany | 10 | 7.5/10 | 5/10/15 |
| Hong Kong | 10 | 7/10 | 10 |
| Hungary | 10 | 10 | 10 |

| Recipient | Interest (%) | Royalties (%) | Dividend (%) |
|---------------|--------------|---------------|--------------|
| Iceland | 10 | 10 | 10/15 |
| India | 10 | 10 | 10 |
| Indonesia | 15 | 15 | 15 |
| Israel | 10 | 5/7.5/15 | 10 |
| Italy | 10 | 7.5/10 | 5/10/15 |
| Ireland | 10 | 5/10/15 | 5/10 |
| Japan | 10 | 10 | 10 |
| Korea (South) | 10 | 5/15 | 10 |
| Korea (North) | 10 | 10 | 10 |
| Kuwait | 15 | 20 | 10/15 |
| Laos | 10 | 10 | 10 |
| Luxembourg | 10 | 10 | 5/10/15 |
| Malaysia | 10 | 10 | 10 |
| Mongolia | 10 | 10 | 10 |
| Morocco | 10 | 10 | 10 |
| Mozambique | 10 | 10 | 10 |
| Myanmar | 10 | 10 | 10 |
| Netherlands | 10 | 5/10/15 | 5/10/15 |
| Norway | 10 | 10 | 5/10/15 |
| Oman | 10 | 10 | 5/10/15 |
| Pakistan | 15 | 15 | 15 |
| Philippines | 15 | 15 | 10/15 |
| Poland | 10 | 10/15 | 10/15 |
| Qatar | 10 | 5/10 | 5/12,5 |
| Romania | 10 | 15 | 15 |
| Russia | 10 | 15 | 10/15 |
| Saudi Arabia | 10 | 7,5/10 | 5/12,5 |
| Seychelles | 10 | 10 | 10 |
| Singapore | 10 | 5/15 | 5/7/12,5 |
| Slovakia | 10 | 5/10/15 | 5/10 |
| Spain | 10 | 10 | 10 |

| Recipient | Interest (%) | Royalties (%) | Dividend (%) |
|----------------|--------------|---------------|--------------|
| Sri Lanka | 10 | 15 | 10 |
| Sweden | 10 | 5/15 | 5/10/15 |
| Switzerland | 10 | 10 | 7/10/15 |
| Taiwan | 10 | 15 | 15 |
| Thailand | 10/15 | 15 | 15 |
| Tunisia | 10 | 10 | 10 |
| UAE | 10 | 10 | 5/15 |
| Ukraine | 10 | 10 | 10 |
| United Kingdom | 10 | 10 | 7/10/15 |
| Uzbekistan | 10 | 15 | 15 |
| Venezuela | 10 | 10 | 5/10 |
| Kazakhstan | 10 | 10 | 5/15 |
| San Marino | 10 | 10 | 10/15 |
| New Zealand | 10 | 10 | 5/15 |

Notes:

- (1) In some cases the limits set by the DTA are not lower than the present withholding rate under domestic law. Therefore the domestic rates will apply.
- (2) Interest derived by certain government bodies is exempt from withholding tax.
- (3) Royalty withholding tax rates vary for certain types of royalties.
- (4) Serbia and Palestine in development

Tax exemption for a short-term stayer

Generally, a short-term stayer is exempt from tax in the country where the income is earned by virtue of the Tax Treaty if the following three conditions are met:

- The number of days in Vietnam is less than 183 calendar days;
- The source of remuneration is not a resident of Vietnam; and
- The remuneration is not borne by the permanent establishment in Vietnam.

However, the rules of the tax treaty are not automatically applied without any conditions and the tax payer needs to make specific application to the tax authority if tax exemption is claimed.

Tax sparing credit system

In order not to diminish existing tax incentives given by the Vietnamese Government, some tax DTAs recognise the tax sparing credit system (i.e. exemption of deemed foreign tax) by a specific tax treaty due to strong requests from developing countries as well as from political considerations of economic co-operation with such countries. Accordingly, the tax exemptions according to Vietnam law are entitled to the tax sparing credit where the resident of the other country shall be entitled to credit the Vietnamese tax that would have been paid according to the laws of Vietnam (and the treaty) if the Vietnamese tax had not been reduced or relieved in accordance with the special incentive measures designed to promote economic development in Vietnam. This tax sparing credit system normally terminates a certain number of years after the tax treaty is effective.

ACCOUNTING & AUDIT

LEGAL FRAMEWORK OF THE VIETNAMESE ACCOUNTING SYSTEM

The Legal framework of the Vietnamese accounting system is stipulated in the Accounting Law issued by the National Assembly of Vietnam in 2003. The Accounting Law provides the legal framework for accounting, auditing, and corporate reporting in Vietnam. Under Accounting Law, all companies are required to prepare and present legal entity financial statements in accordance with Vietnamese Accounting Standards (VAS). The Ministry of Finance (MOF) is the accounting and auditing standard setting body.

The Accounting Law endorses the alignment of Vietnamese Accounting Standards with international standards for the preparation of corporate financial statements. Article 8 of the Accounting Law implies that accounting standards underpin the financial reporting practices in Vietnam and the MOF issues the accounting standards 'in accordance with International Accounting Standards and the provisions of the Accounting Law'.

Between 2000 and 2006, the MOF released 26 Vietnamese Accounting Standards (VAS) and 37 Vietnamese Standards of Auditing (VSA) based on international accounting and auditing standards.

THE ACCOUNTING SYSTEM IN VIETNAM

Enterprises with foreign-owned capital and foreign parties to business co-operation contracts (collectively FIE's), are required to adopt the Vietnamese accounting system, Vietnamese Accounting Standards and their interpretive guidance. Generally, companies do not need to register their accounting system if they are fully complying with the standard accounting system. However, when a company wishes to adopt any supplement or revision to the standard, they must register and get approval from the MOF before implementation.

The general requirements of the Vietnamese Accounting System include:

- The use of Vietnamese language or both Vietnamese language and another widely used language approved by the MOF in the preparation of accounting records.
- The use of Vietnamese Dong as the currency unit in accounting. Only in limited cases can FIEs use a 'foreign currency' as the currency unit in their accounting records.
- Chart of accounts must comply with the Vietnamese Accounting Regulations.
- All reports must be produced on a monthly basis.
- Numerous reports must be produced as specified in the Vietnamese Accounting Regulations.

THE VIETNAMESE ACCOUNTING STANDARD (VAS)

Accounting treatments are not always clearly stipulated in the Vietnamese Accounting Standard and may therefore be made based on the International Accounting Standard. The reason is that it is considered as the implicit policy of the MOF to use the International Accounting Standard to fill the gaps left by the not-yet-fully developed "fair accounting practice" in Vietnam. Needless to say, its application should be pre-approved by the MOF.

ACCOUNTING CURRENCY

As noted above, it is required that companies in Vietnam (including foreign invested companies) must use Vietnamese Dong as the currency unit in accounting. However, where the company mainly receives income and makes payments in a foreign currency, the company could use a foreign currency regulated by the MOF as its accounting currency. The company must be self-responsible for this and notify the tax authority upon implementation.

A company whose parent company is based overseas may only use the accounting currency used by its parent company when falling into one of the following cases:

- It is established mainly for the purpose of producing and processing products for its parent company, with most of the raw materials bought from and products exported and sold by its parent company;
- The proportion of its operations to its parent company's or that of its business transactions conducted in the accounting currency used by its parent company is material (over 70%).

Companies with foreign capital established and operating in Vietnam and using foreign currency as the accounting monetary unit shall concurrently make financial statements in the accounting monetary unit (foreign currency) and convert these statements into Vietnam Dong for submission to state management agencies.

FISCAL YEAR

The fiscal year applicable to FIEs in Vietnam is normally a calendar year i.e. 1st January - 31st December. FIEs may apply to the local tax authority for permission to adopt their own 12-month fiscal year, commencing from the first day of a quarter and ending on the last day of the previous quarter in the following year.

ACCOUNTING STAFF

Every enterprise is required to employ a Chief Accountant who must satisfy the criteria and conditions stipulated by the Law on Accounting. A foreigner may be appointed to act as the Chief Accountant of the enterprise, provided that he/she meets the prescribed conditions and he/she has a certificate of accounting expertise or an accounting/auditing certificate issued by a foreign organisation recognised by the MOF; or an accounting/auditing professional practising certificate issued by the MOF; or a Chief Accountant certificate obtained after having passed the chief accountant's training course as prescribed in the regulations of the MOF.

Mazars offers a Chief Accountant service whereby we take the post of Chief Accountant and our client outsources some or all of the Accounting to us. It is not possible for a firm to be both Auditor and Chief Accountant.

AUDIT

The annual financial statements of FIEs have to be audited once a year in accordance with Vietnamese regulations. The audit must be carried out by an independent auditing company permitted to operate in Vietnam.

FIEs are required to submit audited financial statements to the authorities (e.g. licensing authority, local tax authority, etc.) within 3 months from the date the fiscal year ends.

Representative Offices and Project Management Offices are not subject to audit and only have to produce Financial Statements to meet the obligations of the parent. However the accounting system they use within Vietnam must be compliant with VAS.

The audit market in Vietnam has grown as expected over the years and seems to have settled into a Local Firm or International Firm market. Clearly these have different pricing structures and so most local Vietnamese businesses tend to use local firms.

LABOUR & IMMIGRATION

SALARY

Enterprises directly employ and agree salaries with their employees. However, they must comply with the regulations on minimum wages. The Ministry of Labour, War Invalids and Social Affairs sets the minimum wages applicable from time to time which sometimes vary between regions and business types (local enterprises or foreign-invested).

In respect of expatriates, these costs would depend on the residency status and the remuneration structure of the expatriate. There are other administrative costs associated with the employment of expatriate staff such as work permit, residency registration, insurance, etc.

OVERTIME

Overtime working is allowable upon satisfying the following conditions:

- With the consent of the employee;
- Ensuring the overtime hours of the employee do not exceed 50% of the normal working hours in a day. In case of weekly basis application, the total normal working hours and the overtime hours cannot exceed 12 hours in a day or 30 hours in 1 month and the total cannot be more than 200 hours in a year, except for some cases stipulated by the Government when it can be extended to 300 hours;
- After any consecutive months with overtime worked, the employer must arrange for the employee to take compensatory leave.

Employees who work overtime are paid at least 150% of the base salary unit on weekdays, 200% at weekends, and 300% in respect of holiday and paid-leave. Employees working at night will also get some additional payment.

In some special cases such as national defence, protecting human life, preventing and working on the consequence of natural disasters, fire, epidemics, etc... the employer has the right to require the employee to work overtime on any day and the employee is not entitled to decline.

COMPULSORY CONTRIBUTIONS FOR EMPLOYERS AND EMPLOYEES

Generally, the employer and the local employee when entering into a labour contract are required to make contributions to the social insurance, health insurance and unemployment insurance funds (except for some cases such as contracts with a term less than three months). Expatriates working for organisations operating under the laws and regulations of Vietnam are subject to compulsory Health Insurance contribution but only from October 2009.

The contribution rates are computed on the salary as stated in the labour contract, but capped at 20 times the common minimum wage regulated by the Government. The contribution rates are regulated for each kind of insurance, currently as follows:

- For social insurance: 17% of the salary contributed by the employer and 7% of the salary contributed by the employee (these rates shall be increased to 18% and 8%, contributed by the employer and employee respectively, from the year 2014 onwards).
- For health insurance: 3% of the salary contributed by the employer and 1.5% of the salary contributed by the employee.
- For unemployment insurance: 1% of the salary contributed by the employer and 1% of the salary contributed by the employee.

TRADES UNION

All Enterprises are subject by Law to Trade Union fund contributions. Currently, for FIEs this is 1% of salary/wages for Vietnamese employees.

REGISTRATION OF INTERNAL LABOUR REGULATIONS

Under the current regulations, enterprises recruiting more than ten (10) employees are required to formulate their Internal Labour Regulations. The Internal Labour Regulations once issued and registered at the local labour department shall become binding on both the employers and the employees of the company.

WORK PERMITS

Foreigners working in Vietnam must obtain a work permit. The term of a work permit shall be the employment contract term, but should not exceed 2 years, and these are renewable subject to certain conditions. Work permit exceptions are available in some technical cases and are not required where the term is less than 3 months or alternatively where the work is such that local staff are not capable of conducting it.

VISAS

Expatriates coming to work in Vietnam will almost certainly need to enter the country with an appropriate business visa. This is best organised in the home country, as then it can be properly planned. It is likely that the term of the visa will be 3 months, and so there is an implicit timetable imposed to either renew the visa or obtain more permanent resident status (see below).

Many expatriates have managed this situation by leaving the country every 3 months and obtaining a new 3 month visa on arrival back at the airport. We are told that this impromptu method to manage the situation will become increasingly more difficult as a process.

TEMPORARY RESIDENT CARDS

The best route for an expatriate staying to work any length of time is to get a Temporary Resident Card. Whereas it used to be possible to obtain these for 3 years, it is now common only to get 1-2 years. In order to obtain one from the authorities, it is necessary firstly to obtain a Labour Contract from the employer, which will enable a Work Permit to be obtained. This in turn will enable a Temporary Resident Card to be obtained. There are some other aspects to the process such as a formally documented medical and the production of a University Degree document. The authorities use an inbuilt assumption that every person coming to work in Vietnam will have been to a University, and if this is not the case then proof of an equivalent amount of learning or experience is required.

LAND

OVERVIEW

In relation to land issues, the Government in Vietnam has issued many regulations to create a stable and long-term basis to facilitate advantages to Foreign Invested Enterprises (FIEs); particularly that FIEs have the right to enjoy a return on investment in land; have the right to a mortgage, have the ability to renew the lease on the land from the Government upon expiry. In addition, an amendment to the Law on Land in 2003 extended the rights of FIEs in areas such as land lease options, especially in situations where both domestic and foreign investors have coinvested in a development and require equal rights.

Issues in relation to the use of land are mostly governed by the Law on Land. In addition the Civil Code also covers general issues relating to land, real estate and property.

LAND USE RIGHTS (LUR'S)

FIEs are not entitled to purchase LURs while domestic enterprises are allowed to do so. Of note, foreign investors can obtain LURs (a) by way of a JVC to which a local Vietnamese partner contributes an LUR as a capital contribution, or (b) by way of land leased directly from certain permitted lessors such as the State.

LAND LEASE

A foreign investor may lease the land directly from the Government after he/she establishes an FIE in Vietnam. Previously FIE's in Vietnam could only lease land from the Government or sublease land from an infrastructure developer. The current Land Law also allows FIE's to lease land from:

- Vietnamese economic organisations, including State owned companies, private joint stock companies and limited liability companies;
- Overseas Vietnamese (Viet Kieu); or
- An existing foreign invested company which leases land from the Government and develops infrastructure facilities on the land, provided that this existing foreign invested company has paid land rental for the whole land lease term.

LEASE TERM

The lease term must be consistent with the duration of the approved project provided that it does not exceed 50 years or, in some circumstances, 70 years. The extension of the lease term may be allowed by the Government upon expiry if the lessee wants to continue to use the land.

To lease an LUR, there must be a suitable written contract notarised by the State notary public. In respect of family and single dwelling homes, certification may be effected by either the State notary public or the People's Committee of the commune, ward or township where the land is situated.

LAND RENT INCENTIVES

Land and water surface rent exemptions and reductions apply to a number of investment projects which satisfy certain conditions such as investment in encouraged sectors or certain fields of business and/or encouraged geographical locations. FIEs and foreign parties to BCCs may enjoy land and water surface rent exemptions of between 3 years to the whole operation period and land and water surface rent reduction in some cases.

NOTARISATION OF LAND CONTRACTS

Under the prevailing Vietnamese Land Law, all land transaction related contracts must be notarised by the notary public office, except for the transfer or lease of a property of which the owner or the landlord is licensed to do real estate business.

APARTMENTS OWNED BY FOREIGNERS

Under the prevailing regulations, the following foreign organisations and individuals are allowed to purchase and own residential houses/apartments in Vietnam (subject to certain conditions and circumstances):

- Foreign individuals who make direct investment in Vietnam under the Investment Law, or are hired to work as managers by enterprises operating in Vietnam under the Enterprises Law, including domestic enterprises and foreign-invested enterprises;
- Foreign individuals who have made contributions to Vietnam and are conferred orders or medals by the President of the Socialist Republic of Vietnam; foreign individuals who have made special contributions to Vietnam as decided by the Prime Minister;
- Foreign individuals who are working in socio-economic domains and possess university or higher degrees, and specialists in fields for which Vietnam has demand;
- Foreign individuals who marry Vietnamese citizens; and
- Foreign-invested enterprises which are operating in Vietnam under the investment law but not engaged in real estate business, and wish to purchase residential houses for their employees.

FOREIGN EXCHANGE CONTROL

BANK ACCOUNTS

Companies are required to open and operate a VND currency account at a commercial bank in Vietnam. They can also open a foreign currency account if the operation requires. Organisations acting in Vietnam as a foreign contractor or their registered office may also open a bank account in Vietnam.

The procedure and required dossier to open a bank account varies from bank to bank..

FOREIGN EXCHANGE CONTROL IMPLICATIONS

The foreign exchange regulations of Vietnam require all transactions within the country and between Vietnam residents be made in VND. The laws prescribe the number of transactions which a company can conduct in a foreign currency. These often include:

- payment for the purchase of goods and services from individuals and organisations outside Vietnam;
- repayment of foreign loans and interest;
- collection of turnover from the provision of goods and services to foreign customers outside Vietnam; and
- payment of salaries, bonuses, and allowances to expatriate employees.

OVERSEAS REMITTANCE

Under current regulations, FIE's are only permitted to transfer after-tax profits abroad (tax on remittance of profits abroad is no longer applied) either at the end of the fiscal year or upon termination of the investment in Vietnam. The Enterprise must fulfill its tax and financial obligations to the State of Vietnam and submit its audited financial report. It is also a requirement that the CIT position must be finalised. However the regulation does not allow remittance of profit abroad from a profitable year but where the financial statements still show an accumulated loss in P&L Reserves.

FIE's are required to submit a Notification of remittance of profit abroad to the relevant tax authority seven business days in advance of the remittance date.

Another noteworthy point is that while a company has the right to buy foreign exchange, the bank does not have an obligation to sell. The availability of foreign exchange depends on market liquidity at any one time. Relationships with banks are therefore important and this is an issue that should be considered when selecting which bank to use in Vietnam.

PRACTICAL INFORMATION

BUSINESS ETIQUETTE AND EXPECTED BEHAVIOURS

Meetings

Meetings are perfectly friendly in Vietnam. The only point to be made is that it is not wise to set meetings too far ahead. It is quite usual to arrange meetings just one or two days in advance. You will very often be served tea and it is good to make some small talk if possible. Vietnamese people can be very demonstrative amongst themselves, but the rule for foreigners is to stay reasonably low key and smile a lot, even when making difficult points. Punctuality is important in Vietnam.

Dress

It is acceptable to be reasonably casual. A shirt (with or without tie) is fine, and check the weather in advance. Thick winter business shirts and suits can be unsuitable for a lot of the year. If you are going to an event, check whether it is indoors or outdoors. Outdoor events can be swelteringly hot, but indoors will be air conditioned, which allows a good suit to be worn.

Names

This can be difficult when coming to the country on business for the first time. Most Vietnamese people have 3 names, starting with the family name and ending with the Christian name (sometimes both the second and third names are used as Christian names). There is almost no way of knowing men from women by the name, and remember that people have the same problem with western names. Recently, however, Vietnamese people have started to westernise their names in business by using only two names and putting the Christian name first. If you see a '2 name' person (rather than '3 name'), then there is a good chance this is happening. Offence is very rarely taken if a mistake is made, and the best approach is just to ask.

Posture

Pointing with fingers, arm folding or putting hands on hips are all to be avoided. And use a good handshake at the start and end of a meeting. There is guidance that says not to shake the hand of women in business. This has never caused us a problem.

Business cards

A two sided card (Vietnamese and English) is helpful, and give and accept cards using both hands with the card flat. It is a good idea to have all your qualifications and titles on your card, as these are respected in Vietnam.

Gifts

Gifts are a good way to break the ice. They shouldn't be expensive, but just thoughtful.

Loss of face

Much is made of this in guides and books and it is very important. Don't overtly criticise anyone in meetings (whether they are present or not). The word 'yes' is said a lot but this does not necessarily signify a formal agreement. In reality this may just be an acknowledgement rather than an agreement, so a little more probing and patience may be required.

PRACTICAL INFORMATION

Transportation

In the cities there are thousands of taxis. Stick to reputable firms and maybe get advice on which ones to use before you travel. Taxi fares are metered and should be low by western standards. From HCMC airport to the city it should be no more than 8 USD and from Hanoi Airport (Noi Bai) to the city should be no more than 20 USD. There are regular flights between all major cities in Vietnam. There are ATM's at the airport to get local currency.

It is relatively inexpensive to hire a car and driver for the day if it is necessary to visit an outlying town or an industrial park well away from the city.

Bus transport dominates for long distances and you will find that there are literally millions of motorbikes (below 125cc) and these are everywhere! Motorways (or Expressways) are a new concept for the Vietnamese, and traffic is growing rapidly. The major roads are dangerous due to outdated design, an inappropriate mix of traffic (do not be surprised to see farm animals on major roads) and no Highway Code to speak of.

According to the International Air Transport Association (IATA), Vietnam is projected to be the third fastest-growing market for freight and international passengers behind the People's Republic of China and the United Arab Emirates, at 10.2% annually until 2014.

Time Relative to Greenwich Mean Time (GMT)

Vietnam is seven hours ahead of GMT year round, but does not operate daylight saving time. So the time difference to the UK changes between 6 and 7 hours (France 5 and 6 hours) depending on the time of the year.

Business Hours

Businesses in Vietnam generally operate an eight-hour day between 8:00am and 5:00pm. A one-hour lunch period is usually taken between midday and 1:00pm. Most business offices are closed on Saturday and Sunday. Retail hours are considerably longer.

Public Holidays

Vietnamese people celebrate 9 public holidays a year.

International New Year's Day (Tet Duong Lich) - 01 January

Vietnamese New Year's Days (Tet Nguyen Dan): The date of Tet Nguyen Dan is based on the lunar calendar and usually takes 4 days. During these holidays, local public services, shops, and restaurants are often closed, and consumer prices tend to increase significantly. Normally late January or February

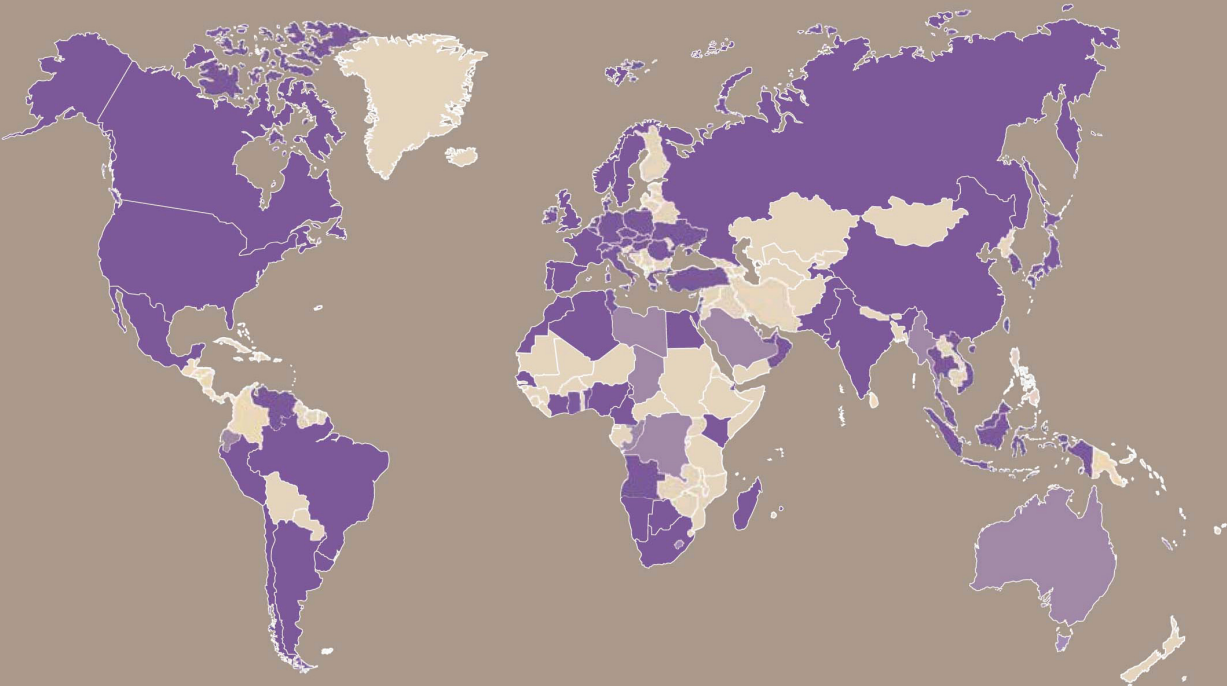
Gio to Hung Vuong Day: A traditional holiday commemorating the Mythical Hung Kings – The first king of Van Lang or Lac Viet. The date of this holiday is also based on the Lunar Calendar.

Liberation Day - 30 April: Celebrates the reunification of Vietnam in 1975.

International Worker's Day – 1 May: Celebrates the workers' economic and social achievements.

Independence Day - 2 September: Celebrates the declaration of Vietnamese Independence.

Mazars' worldwide presence



- Integrated countries
- Non-integrated countries: Mazars correspondents, country local correspondents, joint ventures and representative offices

Mazars is present in 5 Continents.

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