DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

An Introduction to

Doing Business in Vietnam 2018-19

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This edition of Doing Business in Vietnam was produced by a team of professionals at Dezan Shira & Associates, with Adam Pitman as Managing Editor and Maxfield Brown as Technical Editor.
Creative design of the guide was provided by Jessica Huang, Kking Lu and Belén Rodríguez.

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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
Dezan Shira & Associates

Foreign investors continue to prioritize their investments into Vietnam despite the rise of protectionism across the globe. The country is steadily becoming an important manufacturing base for electronics makers who are searching for the next location in the world that is able to provide a well-educated and low-cost workforce. On the heels of major investments from the likes of Samsung, Foxconn Technology Co., Intel Corp., LG Electronics and Canon Inc., investors are also beginning to drastically expand their investments into the country. The steady inflow of capital sends a strong signal that Vietnam not only looks attractive from the outside but can retain value for investors at a variety of locations on the value chain.

Vietnamese businesses are optimistic about the economic future of the country and are also looking to grow their businesses to meet upcoming demand. A prime example is VietJet, a discount airline that is aggressively expanding its operations throughout the country. In a groundbreaking move, and one that is highly indicative of Vietnam's rapidly emerging business environment, Vietjet has chosen to raise capital via IPO rather than through conventional debt markets.

The country has a growing workforce; however, there is still a noticeable lack of high-tech skills among job seekers. The Vietnamese government is pushing ahead with skills training programs. Foreign companies are also investing in the future of the country's workforce. Intel is leading a group of technology companies, including Siemens, to train Vietnamese workers by funding training programs intended to develop a high-tech workforce within the country.

An additional reason to be positive about Vietnam is the soon to be implemented European Union Vietnam Free Trade Agreement (EVFTA) which will place Vietnam in a prime position vis-à-vis tariff free trade links with some of the biggest markets in the world. Furthermore, recent progress on the Trans-Pacific Partnership (TPP) and Regional Comprehensive Economic Partnership (RCEP) could accelerate growth in Vietnam and ASEAN even further in the years to come.

On top of this, research shows encouraging results on the efforts to improve the ease of conducting business in Vietnam. Vietnam ranks 68th out of 190 countries in the World Bank's "Doing Business 2018" overall ranking, up 14 positions from 2017. Similarly to the overall improvements of doing business in 2017, several aspects of Vietnam's investment environment show significant movement; however, areas for improvement prevail:

- "Paying taxes" rose 81 positions year-on-year to 86,
- "Protecting investors" rose 6 positions to 81,
- "Starting a business" is ranked at only 123 (falling 2 positions year-on-year), while
- "Getting credit" ranks at 29 (rising 3 position year-on-year).

This publication, designed to introduce the fundamentals of investing in Vietnam, was compiled by Dezan Shira & Associates, a specialist foreign direct investment practice, providing corporate establishment, business advisory, tax advisory and compliance, accounting, payroll, due diligence and financial review services to multinationals investing in emerging Asia.

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Dezan Shira & Associates expanded to Vietnam in 2008, and quickly set up offices in Hanoi and Ho Chi Minh City (HCMC). The year 2008 also saw the launch of Vietnam Briefing which has now become a premier source of business intelligence related to Vietnam.

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 and Ho Chi Minh City can help you with any questions related to establishing or conducting your business in Vietnam. To talk to a Hanoi or HCMC accountant or business consultant, please contact us today.

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An introduction to Vietnam

Officially named the Socialist Republic of Vietnam, Vietnam is the easternmost country on the Indochina Peninsula in Southeast Asia. The name Vietnam translates as “South Viet”, and was officially adopted in 1945. The country is bordered by China to the north, Laos to the northwest, Cambodia to the southwest, and the South China Sea to the east.

Lying on the right bank of the Red River in northern Vietnam, approximately 85 miles inland from the South China Sea, is the charming capital city of Hanoi. Hanoi is Vietnam’s old imperial capital and its modern center of politics and culture. The previous generation of people in Hanoi experienced a strict communist domination. While still recognized for their humility and simpler lifestyle compared to those living in the south of the country, today Hanoi people display an increasing warmth and openness in communication and work.

Vietnam's commercial center, Ho Chi Minh City (HCMC), is the country's largest city. It is located in the Southeast region of the country, an area which has long been a focus of foreign investment inflows thanks to impressive growth fueled by a massive energy sector and a thriving manufacturing sector

Vietnam's economy continues to be in a period of transition. In recent years, Vietnamese authorities have moved to implement structural reforms needed to modernize the economy and to produce more competitive export-driven industries. While retaining a significant portion of economic output, the business community has seen increasing privatization of state owned enterprises.

In addition to gravitating towards private sector production, Vietnam has also continued a long standing shift away from agriculture and towards industrial output. Agriculture's share of economic output has shrunk from 25 percent in 2000 to roughly 15.35 percent in 2018, while services' share increased from 38.74 percent to 41.32 percent during the same period.

However, the country's "three pillar" economic reform program, which proposed the restructuring of public investment, state-owned enterprises and the banking sector, has had little effect so far. The banking sector remains undercapitalized and the level of non-performing loans remains high.

While the global recession was a significant drag on the Vietnamese economy, GDP growth dropped to 5.25 percent in 2012, the country is now in a steady growth phase again. GDP grew at a rate of 6.7 percent in 2017, and is projected by the world bank to growth by at least 6.5 percent in 2018.

Vietnam's main imports include machinery and equipment, petroleum products, steel products, raw materials for the clothing and shoe industries, electronics, plastics and automobiles. Its exports include clothes, shoes, marine products, crude oil, electronics, wooden products, rice and machinery.

1

Establishing and Running a Business

- How do I establish a company?
- What are my options for investment?

How do I establish a company?

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:

1. Set-up procedures
2. Key positions in foreign-invested entities
3. Intellectual property

Set-up procedures

Step 1 – Pre investment approval

For certain lines of investment, companies will be required to seek the approval of Vietnamese authorities prior to starting establishment procedures. As a result, it is important to understand if investment will require approval and to plan ahead to prepare requisite documentation and work around established application processing times.

	Time (days)	Requisite documentation	Investments and projects requiring approval
Provincial People's Committees	35	• Application • Financial statements • Detailed use of restricted technology • Proposed use of land	• 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
Various government agencies	60	All documents listed above in addition to: • Environmental impact assessment • Socioeconomic efficiency evaluation	• 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
National Assembly	Should be submitted 150 days before the start of national assembly sessions	All documents listed above in addition to: • Relocation plan (if applicable)	• 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

DUSTIN DAUGHERTY
Manager
International Business Advisory
Ho Chi Minh City Office

"The first step in the Vietnamese corporate establishment process is an application for an Investment Registration Certificate (IRC)."

Step 2 – application for an Investment Registration Certificate (IRC)

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.

- 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 outlined land use needs.
- Financial statements: to be provided for the last two years of a company's operation. Additional information may be required to prove the financial capacity of an investor.

Timeframe: 15 days from the date at which documents are submitted.

Step 3 - application for an Enterprise Registration Certificate (ERC)

The Enterprise Registration Certificate (ERC) is required for all projects that seek to set up new entities within Vietnam. The issuance of an ERC will be accompanied by a number which will double as the tax registration number of the entity.

As part of the application process, the following information* should be prepared:

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

*Note: any foreign documents or supporting information provided as part of the aforementioned establishment process will need to be notarized, legalized by consular officials, and translated into Vietnamese by competent authorities.

Timeframe: The ERC will be ready three days from the date at which the documents above are submitted. It should be noted that applications for the ERC and IRC can be processed concurrently. As a result, it is possible that both can be procured within 15 days.

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, including:

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

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, published in 2014.

To transfer capital into Vietnam, after setting up the FIE, foreign investors must open a capital bank account in a legally licensed bank. A capital bank account is a special purpose foreign currency account designed to enable tracking of the movement of capital flows in and out of the country.

The account also allows money to be transferred to current accounts in order to make in-country payments and other current transactions.

RELATED READINGS

Remitting Profits from Vietnam
Vietnam Briefing Magazine May issue, 2016

In this issue of Vietnam Briefing, we outline existing regulations on remittance and provide guidance on how to ensure compliance in order to repatriate profits in a timely fashion. We highlight relevant government bodies, outline steps required to successfully repatriate returns, and provide expert guidance on carrying losses.

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Key positions in foreign-invested entities

The key positions in foreign-invested entities vary by entity type. Here, we'll discuss the management structure of an LLC.

The management structure of a multiple-shareholder LLC consists of:

- The Members' Council and its Chairman;
- The General Director; and
- The Board of Supervision (when the LLC has more than ten members).

The Members' Council is the highest decision-making body of the company and serves a management role under its Chairman. In an LLC with multiple owners, each member participates in the Members' Council, and where the owner is an entity, that entity can appoint representatives to serve on the Member's Council.

The Members' Council convenes at least once a year, and the Chairman or a shareholder holding at least 25 percent of the share capital can request a meeting at any time. The Chairman is responsible for preparing meeting agendas, convening meetings and signing documents on behalf of the Members' Council.

The General Director oversees the daily business of the company and implements resolutions of the Members' Council.

A Board of Supervision is mandatory if an LLC has more than ten members. The formation, operation, powers and functions of the Board of Supervision are not stipulated in law, but are prescribed in the company's charter (articles of association).

"A Board of Supervision is mandatory if an LLC has more than ten members. The formation, operation, powers and functions of the Board of Supervision are not stipulated in law, but are prescribed in the company's charter (articles of association)."

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

		Domestic protection	International protection
Industrial property	• Patents • Trademarks	• Law on Intellectual Property via the National Office of Intellectual Property (NOIP) • Vietnamese Criminal Code	• The Paris Convention • 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 TRIPS

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 Transpacific Partnership (TPP) and the European Union Vietnam Free Trade Agreement (EVFTA). These agreements are projected to provide great assistance to Vietnam as it brings its national IP protection up to par with international best practice.

What are my options for investment?

ROSSELLA BIZZARRI
Associate
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For foreign investors seeking to establish a presence in Vietnam, there are two main vehicles for investment within the country:

- 100 percent foreign-owned enterprises (FOEs); and
- Joint venture enterprises (JVEs).

100 percent foreign-owned enterprises can be established by one or more foreign investors, under the form of either a limited liability company (LLC) or a joint-stock company (JSC). Joint venture enterprises (JVEs) on the other hand may be established as an LLC, a JSC, or a partnership company. Under all forms of a JV that are permitted in Vietnam, profits and risks are distributed among the parties in proportion to their contribution to the charter capital. Other options for doing business in Vietnam include representative offices and branch offices, in addition to a number of business contract forms.

"100 percent foreign-owned enterprises can be established by one or more foreign investors, under the form of either a limited liability company (LLC) or a joint-stock company (JSC)."

In this section, we discuss:

1. Limited liability companies
2. Joint-stock companies
3. Partnership companies
4. Representative offices
5. Branch offices
6. Other investment options

Limited liability companies

100 percent FOEs and JVEs can be established as limited liability companies (LLC). In an LLC, members are only liable for the debts of the partnership to the extent of the capital contribution they have poured into the company.

Charter capital

There is usually no minimum capital requirement for foreign investors that intend to establish an LLC in Vietnam, although authorities will expect the investor to commit a reasonable amount of charter capital according to the scale and business scope of the project. This capital must be committed within 90 days from the date at which the enterprise registration certificate is issued.

Ownership

An LLC can consist of a single member or multiple members, but the total number of members cannot exceed 50. Investors can be corporations or individuals. An LLC cannot issue shares.

Legal representation

An LLC is permitted to have more than one legal representative in Vietnam. This individual or these individuals will be required to represent the firm in its Vietnamese transactions, arbitral disputes, and court proceedings. The exact responsibilities of all legal representatives must be detailed in the company's charter. While legal representatives are not required to be Vietnamese nationals, it should be noted that at least one representative must maintain residence in Vietnam.

Joint-stock companies

FOEs and JVEs can also be established as joint-stock companies (JSC). A JSC can issue securities and bonds, so investors will often choose this form if they plan to go public in the future.

Charter capital

The JSC's charter capital is composed of shares belonging to the founding shareholders in proportion to the capital they have contributed. There is no minimum requirement for the capital contributions of the foreign investors. Similar to requirements imposed on LLCs, shareholders of a JSC will have 90 days from the issuance of their ERC to pay in shares.

Ownership

A JSC is required to have at least three shareholders. There is no limitation on the maximum number of shareholders, nor on their nature – they can be individuals or institutions, Vietnamese or foreigners.

Legal representation

JSCs are permitted to have multiple legal representatives but must ensure that at least one representative is a resident of Vietnam. In the event that a JSC elects to have a single representative, this person is by default the chair of the JSC's board.

Partnership companies

A partnership company is a legal entity established by at least two individuals who are members of the partnership and co-owners of the enterprise. They are the General Partners and are liable for all obligations of the partnership, without limitations.

In addition, a partnership company can consist of limited liability members (individuals or organizations) who contribute only part of the capital and hold limited liability and rights in the operation of the company.

Representative offices

In contrast to JV and 100 percent FOEs, a representative office (RO) is not a legal entity and is forbidden from conducting any revenue-generating activities. Rather, ROs are permitted to conduct market research, serve as a liaison with an overseas parent company and/or serve other supporting roles such as ensuring quality control, and acting as a product showroom.

ROs are not subject to tax in Vietnam. Unlike in certain other Asian countries, ROs are permitted to hire staff directly.

Branch offices

A branch office is the subsidiary of a parent company and does not constitute a separate legal entity according to Vietnamese law. Unlike the representative office, a branch office is entitled to conduct business activities in Vietnam within the parent company's business scope.

To set up a branch, a parent company must have conducted business in its home country for at least five years.

Other investment options

Other investment options include a number of business contract forms such as BCCs, BOTs, BTOs, and BTs.

Business Cooperation Contract (BCC)

A BCC is typically signed between a foreign investor and a local company or the government of Vietnam with the objective of jointly conducting business operations in Vietnam. BCCs are based on sharing allocation of responsibilities, as well as sharing profits or losses without creating or forming a legal entity in Vietnam.

Build-Operate-Transfer (BOT), Build-Transfer-Operate (BTO) and Build-Transfer (BT) contracts

All of these investment options are specific projects carried out by foreign investors on behalf of an authorized government agency. These investment vehicles have been introduced in Vietnam as a means of compensating for a lack of technological readiness and ensuring the rapid development of much needed infrastructure and services. Business scopes can range from roads, electricity, production and business, water supply or drainage, waste treatment and other conditional or restricted sectors as stipulated by the Prime Minister.

The difference between these contract types is at what point the title of the project is transferred to the government, namely after the investor operates the project, before the investor operates the project or immediately following completion (in which case the investor does not operate the project and is compensated for capital investment in other ways).

Corporate Structuring Options in Vietnam Compared			
FIE structure type	**Common purpose(s)**	**Pros**	**Cons**
Limited liability company	• Separate legal entity	• Liability limited to capital contribution • No restrictions on the scope of business	• Cannot issue shares • Maximum 50 shareholders
Joint-stock company	• Separate legal entity	• Liability limited to capital contribution • No restrictions on the scope of business • Can issue shares and go public • No limitation on the maximum number of shareholders	• Three or more shareholders required • Supervisory board required for most joint stock companies, depending upon the number and type of investors
Partnership company	• "Half-separate" legal entity • Generally used for professional services offered by individuals (e.g., architects)	• One of the partners can be excluded from unlimited liability	• Requires at least two general partners, individually liable for the partnership debts without limit
Representative office	• Non-separate legal entity • Market research activities, liaison with overseas parent company, supporting activities	• Easy registration procedure	• Cannot conduct profit-making activities • Parent company bears liability
Branch office	• Non-separate legal entity • Commercial activities within the parent company's scope	• Can carry out commercial activities within the parent company's scope	• Business scope limited to that of the overseas parent company • Parent company bears liability

Tax and Accounting

- What are Vietnam's major taxes?
- What are some of the key compliance requirements?
- An Introduction to transfer pricing
- Transfer pricing compliance

VINH LE
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“Many foreign companies underestimate the importance of the initial tax declaration with the local tax department. The documentation submitted can significantly affect tax settlement and tax refunds later.”

In Vietnam, most businesses and investors will find themselves subject to some form of tax. These taxes are imposed at the national level; there are no local, state, or provincial taxes. Dealing with tax and accounting can be a confusing process even for the most prepared business professional. It is recommended that businesses take a careful look at all relevant regulation and engage with a professional where appropriate to ensure proper compliance with all laws.

Companies and individuals are subject to a range of taxes in Vietnam, including corporate income tax (CIT), value-added tax (VAT) and personal income tax. Complicating matters are the range of double taxation agreements (DTAs) that Vietnam subscribes to. Careful application of the tax regulations and the relevant DTA can greatly improve the taxpayer's outcome. Additionally, there are a number of important tax incentives that can create a further favorable tax environment to operate in. It should however be noted that many tax incentives and DTAs can be confusing and difficult to discern whether or not you qualify. It is therefore suggested that you seek professional advice before moving ahead with any specific tax plan.

Once registered, all companies, whether or not they are operational or profit centers, must file tax declarations. In addition to reducing the administrative burden of compliance with local tax regulations, Dezan Shira & Associates' tax and accounting maintenance services prevent a company's exposure to tax-related risks.

Our tax and compliance services include:

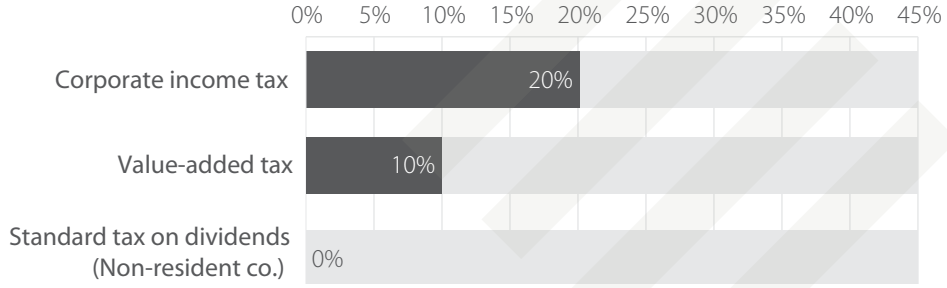
- Monthly / Quarterly / Annual Tax Calculation and Filing
- Corporate and Personal Tax Planning
- Profit Repatriation Processing
- Offshore Tax Withholding and Exemption Services
- Corporate Tax Filings
- Personal Tax Filings
- Transfer Pricing Services (China only)
- Legal and Financial Health Checks
- Temporary Finance Manager
- Annual Tax Compliance
- Assistance with Closure Audit, Tax Clearance and De-registrations
- VAT Compliance and Planning
- Specialist Tax Advice
- Inter-company Service Agreement Implementation

What are Vietnam's major taxes?

All taxes in Vietnam are imposed at the national level, i.e. there are no local, state 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 major taxes:

1. Business license tax
2. Corporate income tax
3. Value-added tax
4. Special consumption tax
5. Foreign contractor tax
6. Customs duties



Personal income tax is covered in the Human Resources and Payroll section.

Foreign investors in Vietnam can increase tax efficiency with Double Taxation Avoidance Agreements (DTAs) between Vietnam and other countries. As of January 2018, Vietnam has signed DTAs with over 70 countries and territories including France, China, Italy, Germany, Singapore and Hong Kong.

RELATED NEWS

Vietnam's Tax Outlook in 2016 and Beyond
Vietnam Briefing News
July 25, 2016

Faced with conflicting pressure to upgrade infrasture and boost investment, the Vietnamese government finds itself in a precarious financial position in 2016.

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Business license tax

Business license tax (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 Vietnam. All companies, organizations or individuals (including branches, shops and factories) and foreign investors operating businesses in Vietnam are subject to BLT.

The amount of BLT due is based on the amount of registered capital, as shown in the accompanying table. For state-owned enterprises (SOEs), LLCs and JSCs, the registered capital is the charter capital. Additionally, for foreign–owned enterprises and private enterprises, the registered capital is the investment capital.

BLT rates and related guidance is based on a fee schedule set out under Circular 302/2016/TT-BTC, in effect since January, 1, 2017. Rates for economic entities depend on corporate structure and the amount of registered capital, while rates for households and individuals depend on monthly incomes.

Business License Tax (BLT) Rates for Economic Entities

Registered capital (billion VND)	BLT/year (VND)
Over 10	3,000,000
Under 10	2,000,000
Branches, representative offices, business premises, public service providers, other business entities	1,000,000

Business License Tax (BLT) Rates for Households and Individuals

Monthly income (million VND)	BLT/year (VND)
Over 500	1,000,000
Over 300 to 500	500,000
Over 100 to 300	300,000

Corporate income tax

The standard corporate income tax (CIT) rate is 20 percent for both domestic and foreign-invested enterprises in most industries. 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.

When calculating CIT, FIEs can deduct most expenses paid for production and business activities if supported by adequate lawful invoices and documents. Business establishments that suffer losses after tax finalization are entitled to carry forward those losses to future taxable income for a maximum period of five years.

An enterprise that conducts multiple business activities that are subject to different tax rates should calculate the income for each activity separately, multiplying income from each activity by the corresponding tax rate.

CIT incentives apply to investment projects in specific sectors and areas with difficult socioeconomic conditions, as well as those in high-tech zones and economic zones.

Enterprises are eligible to receive preferential tax treatment, including CIT exemption for up to two years, 50 percent CIT reduction for up to four years, and a CIT rate of 17 percent for 10 years. Enterprises must derive income from one of the following:

The implementation of new investment projects, in the manufacturing of high-grade steel; energy-saving products; machines and equipment for agricultural, forest and fishery production and salt making; irrigation equipment; production and refining of livestock, poultry and aquatic feeds; and development of traditional trades and occupations.

In addition to tax incentives, tax reductions may be available for enterprises engaging in manufacturing, construction and transportation activities, which employ numerous female staff or ethnic minorities.

RELATED READINGS

Tax Incentives in Vietnam
Vietnam Briefing Magazine
December, 2017

In this issue of Vietnam Briefing, we discuss the importance of taxation to new investment projects and outline the role that corporate tax incentives can play in reducing costs in Vietnam.

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Value-added tax

Value-added tax (VAT) is imposed on the supply of goods and services at three different rates: zero percent, five percent, and 10 percent, with the latter being the standard rate.

VAT Rates

Rate	Applicability
0%	Goods and services for export or sold to non-tariff zones
5%	16 categories of goods and services, such as: • Fertilizers • Medical equipment and instruments • Scientific and technological services • Cultural, exhibition, physical training and sports activities
10%	Everything else

Goods and services encouraged by the government are exempt from VAT. These include agricultural products, healthcare services and scientific activities, derivative financial and credit services, securities trading, insurance services, education and vocational training, and printing and publishing newspapers.

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.

There are two different methods of calculating VAT: the credit method (also called the 'deduction method') and the direct method.

RELATED NEWS

Choosing the Correct VAT Calculation Method in Vietnam
Vietnam Briefing News
March 10, 2014

Value-added Tax (VAT) is a broadly-based consumption tax assessed on the value added to goods and services arising through the process of production, circulation, and consumption.

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Credit method

Most businesses are required to use the credit method, which applies to foreign-invested enterprises, foreign parties to business cooperation contracts, and business organizations established under the Vietnamese Law on Enterprises.

PAYABLE VAT AMOUNT	=	OUTPUT VAT AMOUNT - CREDITABLE INPUT VAT AMOUNT

Under the credit method, payment and declaration of VAT is made on a monthly basis, where the taxpayer subtracts the input VAT from the output VAT, and pays or claims the balance to the relevant bodies. As the situation is normalized every month, no annual VAT finalization is required at the end of the year.

Direct method

The direct method applies to business establishments and foreign organizations or individuals without resident offices and which have not implemented the Vietnamese Accounting System, but generate income in Vietnam, along with those in specific industries (such as gold, silver and gem trading activities).

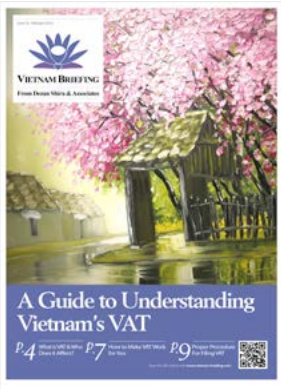
PAYABLE VAT AMOUNT	=	ADDED VALUE OF SOLD GOODS OF SERVICES* X VAT RATE

**Added value of sold goods or services = Selling price – Purchasing price of goods or services.*

According to this method, VAT depends on total revenues. As such, the monthly payments are just provisional and the total amount of VAT may be different at the end of the year. Therefore, when using the direct method of calculation, tax finalization procedures must be done within three months following the end of the year.

For goods and services purchased from abroad, VAT applies to the duty paid value (the sum of the value and the duty paid) of imported goods and services. The importer must pay VAT at the same time that they pay import duties to customs.

RELATED READINGS



A Guide to Understanding Vietnam's VAT
Vietnam Briefing Magazine
February, 2014

In this issue of Vietnam Briefing, we attempt to clarify the entire VAT process by taking you through an introduction as to what VAT is, who and what is liable, and how to pay it properly. We first take you through the basics of VAT in Vietnam before taking you deeper into the topic. Additionally, we provide updates on the new changes to the VAT process and explain how they will impact your business.

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NGUYEN THI THANH THAO
Senior Associate
Corporate Accounting Services
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Special consumption tax

Special consumption tax (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.

The basis of VAT calculation is selling price plus SCT. For imported products, VAT is imposed on the dutiable value plus import duties plus SCT. 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.

SCT refunds are also available for exported goods upon request of taxpayers in certain cases, such as goods temporarily imported for re-export. In case items subject to SCT are produced from materials for which the SCT was already paid, the SCT already paid will be deducted.

SCT rates currently range from seven percent on petrol to 70 percent on cigarettes. Furthermore, SCT rates on alcohol and tobacco products are scheduled to increase in the coming years.

"Special consumption tax (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."

Foreign contractor tax

Foreign businesses are considered foreign contractors if they conduct business or earn income in the country under contract with local organizations and individuals. Usually, foreign contractors are the winners of auctions/bid offerings organized by the Vietnamese government or organizations and may be principal contractors, general contractors, partnership contractors or subcontractors.

Foreign contractors in Vietnam are liable to pay the same tax rates applicable to local companies, including import-export duties, personal income tax and other taxes required by authorities.

The calculation of corporate income tax (CIT) and value-added tax (VAT) for foreign contractors can be done in one of following three ways, depending on the nature of a foreign contractor's status and activities in Vietnam.

1. Deduction method

The deduction method requires that contractors comply with Vietnamese Accounting Standards (VAS) for filing of CIT and VAT returns. In order to utilize this method of calculation the contractor must meet the following requirements:

- Has a permanent establishment or resident status in Vietnam;
- Conducts business in Vietnam under a contractor or subcontractor contract for a duration of 183 days or more from the effective date of the contract; and
- Applies the Vietnamese Accounting System.

2. Direct method

Applicable when foreign contractors do not meet one of the conditions mentioned above. Under this method of calculation, PIT, CIT, and VAT will all be deducted by Vietnamese customers at the point of sale. As tax is withheld by the customer, there are no additional tax obligations or compliance on the part of contractors following the conclusion of a sale.

For those qualifying for the direct method, it is important to review the rates that will be applied to differing transactions in order to understand costs and to plan ahead.

3. Hybrid method

VAT is calculated based on the deduction method, while CIT is determined under the direct method rates on the gross turnover. In order to adopt the hybrid method, foreign contractors and subcontractors must meet the following conditions:

- They have a permanent establishment or resident status in Vietnam;
- Their duration of conducting business in Vietnam under a contractor or subcontractor contract is 183 days or more from the effective date of the contract; and
- Apply for a VAT code, issue invoices, and file VAT returns in compliance with prevailing Vietnamese Accounting Standards.

TAM NGUYEN
Manager
Business Advisory Services
Ho Chi Minh City Office

"Most goods and services being exported are exempt from tax. Export duties (ranging from zero percent to 40 percent and computed on free-on-board (FOB) prices) are only charged on a few items."

Customs duties

Most goods exported or imported 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.

The payable import tax or export tax amount shall be equal to the unit volume of each actually imported or exported goods item inscribed in the customs declarations multiplied by the tax calculation price and the tax rate of each item stated in the tariff at the time of tax calculation.

Most goods and services being exported are exempt from tax. Export duties (ranging from zero percent to 40 percent and computed on free-on-board (FOB) prices) are only charged on a few items, mainly natural resources such as minerals, forest products and scrap metal.

Consumer goods, especially luxury goods, are subject to high import duties, while machinery, equipment, materials and supplies needed for production, especially those items which are not produced domestically, enjoy lower rates of import duties, or even a zero percent tax rate. Duty rates for imported goods shall include preferential rates, special preferential rates and standard rates depending on the origin of the goods.

Import and export duties declaration are required upon registration of customs declarations with the customs offices.

Export duties must be paid within 30 days of registration of customs declarations. For imported goods, import duties must be paid before receipt of consumer goods, specifically:

- Within 275 days for imported supplies and raw materials intended for the production of exported goods; and
- Within 15 days for goods temporarily imported and intended for re-export, as from the deadline for temporary import for re-export or temporary export for re-import, as provided for by competent state agencies.

What are some of the key compliance requirements?

There are a number of legally mandated requirements with which FIEs in Vietnam must comply, failure of which will jeopardize the ability of the FIE to continue operating in Vietnam. These procedures and requirements may be different from what the FIEs are accustomed to in their home countries. Investors should therefore be sure to familiarize themselves with these requirements as well as to seek professional advice.

In this section, we discuss:

1. Accounting and bookkeeping
2. Annual compliance
3. Transfer Pricing

Accounting and bookkeeping

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

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

In a nutshell, 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, but FIEs are allowed to select a foreign currency as their accounting currency;
- Comply with the Vietnam chart of accounts; and
- Include numerous reports specified by VAS regulations, printed on a monthly basis and signed by the General Director and affixed with the company seal.

An accounting period in Vietnam is generally determined according to the calendar year, i.e. January 1 to December 31. However, 12 month periods beginning the first day of each quarter, e.g. April 1 to March 31 of the following year; July 1 to June 30 of the following year; or October 1 to September 30 of the following year, can also be adopted after registering with the Tax Department.

Companies are advised to double check their accounting system, taking care to spot possible VAS non-compliance issues. There have been recent reports that some provincial tax authorities cite VAS non-compliance as a basis for collecting additional tax and recovering paid VAT refunds. In addition, tax authorities can penalize companies for VAS non-compliance through the disallowance of input VAT credits and withdrawal of CIT incentives.

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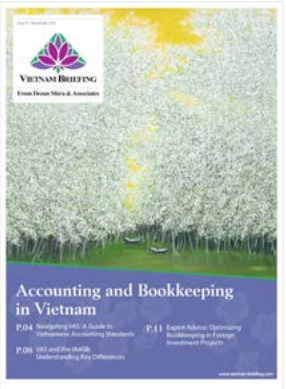

Accounting and Bookkeeping in Vietnam
Vietnam Briefing Magazine November issue, 2016

In this issue of Vietnam Briefing, we outline the basic framework of accounting applied in Vietnam and provide guidance on how to ensure compliance. We discuss existing Vietnamese accounting standards, highlight differences between Vietnamese and international accounting standards, and provide expert insight on key areas of compliance in Vietnam.

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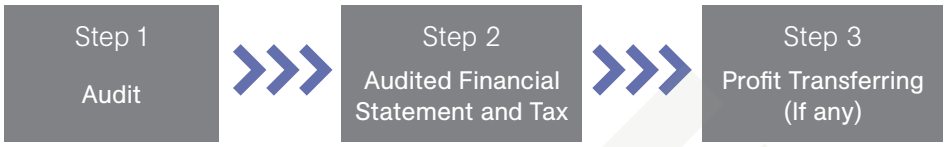
Annual compliance

Prior to transferring profits, foreign companies must fulfill certain annual compliance requirements, involving a statutory audit, audited financial statements and tax finalization filings. These procedures are not only required by law, but are also a good opportunity to conduct an internal financial health check.



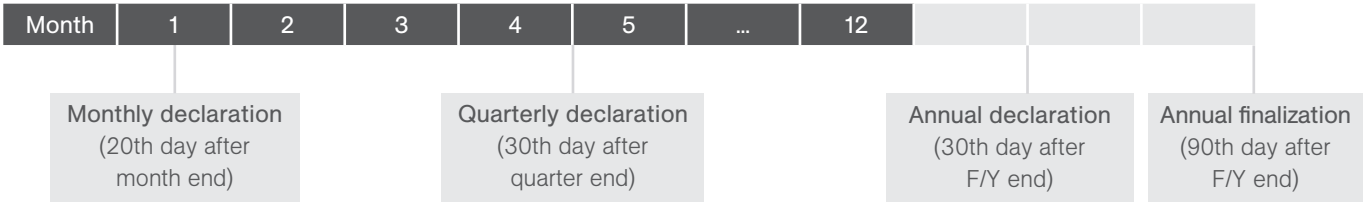
All foreign-invested entities are required to have their annual financial statements audited by an independent auditing firm. Statutory audits in Vietnam are performed in accordance with the Vietnam Standards on Auditing.

Audited financial statements and tax finalization filing must be done within 90 days from the end of each financial year. After fulfilling these obligations and giving notice to local managing tax offices at least seven working days in advance, foreign investors may remit profits abroad.

Annual compliance for ROs is different from that for other foreign-invested entities. An RO is required to report on its activities to a local department of trade prior to the last working day of January of the following year.

A taxpayer who pays tax later than the deadline is to pay the outstanding tax amount plus a fine equal to 0.03 percent of the tax amount for each day the payment is late. Taxpayers that make incorrect declarations, thereby reducing taxes payable or increasing refundable tax amounts are to pay the full amount of the under-declared tax or return the excess refund, and will also pay a fine equal to 20 percent of the under-declared or excess refunded tax amounts together with a fine for late payment of the tax. A taxpayer that commits acts of tax evasion or tax fraud is liable to pay the full amount of tax and a fine between one and three times the evaded tax amount.

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



**For taxes paid when a liability arises, the deadline is the 10th day from the date the liability arises.*

An introduction to transfer pricing

FILIPPO BORTOLETTI
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Companies that are expanding internationally often struggle to coordinate a growing portfolio of wholly owned subsidiaries, joint venture partnerships, and local supplier networks.

In Vietnam, transfer pricing regulations – or the regulation of the price of transactions between companies with common ownership – are quickly emerging as one of the most important pre-investment considerations and post-establishment compliance risks for foreign businesses.

"Taxpayers subject to Decree 20 must prepare a local file, a master file, and where necessary, a country-by-country report to ensure compliance with transfer pricing regulations in Vietnam."

Transfer pricing

Transfer pricing refers to the setting of prices on property or services that are exchanged between commonly controlled legal entities within a multinational enterprise (MNE) group. MNE groups can use transfer pricing as a method of allocating profits among their various subsidiaries by taking advantage of different tax regimes in different countries.

Companies operating in multiple countries inevitably must conduct some inter group transactions to ensure operations; however, in recent years, regulators in Vietnam have grown concerned that companies are using these transactions to reduce – or entirely offset – their tax obligations.

To tackle the issue, governments publish transfer pricing rules to deter and limit tax avoidance. In Vietnam, the Ministry of Finance has aligned its transfer pricing regulations with international standards.

These rules are based on OECD Transfer Pricing Guidelines and BEPS Actions. The pillars of these rules are the"arm's-length"principle and"substance- over-form"doctrine.

Arms length principle

According to the arm's length principle, transactions should be valued as if they had been carried out between unrelated parties, each acting in his own best interest.

Paragraph 3, Article 3 of Vietnam's Decree No. 20/2017/ND-CP states, "The arm's-length principle should be applied in the same manner as the principles applied to transactions between independent parties which do not have any related- party relationship in tax treaties in force in Vietnam".

Substance over form doctrine

Substance over form is a doctrine that allows tax authorities to ignore the legal form of an arrangement and look at its actual substance. This doctrine allows tax authorities to prevent artificial structures from being used for tax avoidance purposes.

Paragraph 1, Article 8 of Vietnam's Decree No. 20/2017/ND-CP states, "… transactions which neither agree with the arm's length nature of transactions nor contribute to creating operating sales revenue or income of a taxpayer shall not incur any cost qualified as allowable tax deductions …"

Transfer pricing compliance

Vietnam's transfer pricing regulations under Decree No. 20/2017/ND-CP ("Decree 20") became effective in May 2017 and outline all relevant aspects of the transfer pricing compliance process. Foreign investors should consider the following when creating a compliance strategy for transfer pricing in the country.

What are the main transfer pricing compliances?

According to regulations, taxpayers subject to Decree 20, if not exempted, must comply with the following requirements:

- Disclose information about their related-party relationships and transactions by compiling the Form 01 of Decree 20, which should be transmitted together with corporate income tax (CIT) finalization return declaration;
- Prepare and store transfer pricing contemporaneous documentation, including a local file pertaining to the company's operations in Vietnam, and all related party transactions, as well as a master file with information on the company's inner workings.

What files do I need to prepare?

Investors must prepare a local file, a master file, and, where necessary, a country-by-country report. The details follow on each of these filings.

Local File

The purpose of the Local File is to help verify compliance with the arm's length principle between a taxpayer and their related parties. The Local File contains the following:

- A list of related-party transactions in which the client was involved in the period;
- A determination of related parties involved in those transactions and their relationship; and
- A function and comparability analysis of client and related parties involved in respective related-party transactions.

After analyzing the transactions and the parties involved, companies must select the most appropriate transfer pricing method, followed by the most appropriate comparable for each transaction. This benchmarking helps the Local File verify compliance with the arm's length principle of transactions.

RELATED READINGS

Transfer Pricing in Vietnam
Vietnam Briefing Magazine April issue, 2018

In this issue of Vietnam Briefing, we introduce the concept of transfer pricing, highlight current compliance requirements, outline changes that have been made in recent months, and analyze several areas where foreign investors may find themselves at odds with regulators.

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Master File

The purpose of a Master File is to provide a global overview of a multinational group's operations, particularly related to transfer pricing. The Master File contains the following:

- an overview of the company's global operations;
- transfer pricing policies for the creation and ownership of intangibles and the company's financial activities; and
- the global allocation of income and economic activities of the company to place the MNE group's transfer pricing practices in their global context.

Given the amount of information required for the Master File, the parent company is usually responsible for the report. However, all businesses should check with local tax officials and review relevant government circulars to understand how Vietnam's regulations are applied.

Country-by-country Report

The Country-by-Country Report (CbCR) contains aggregate information – without any intercompany adjustments or eliminations – for all entities and each tax jurisdiction. This aggregate information includes:

- Revenues;
- Profits become income tax;
- Income tax paid (including withholding taxes);
- Income tax accrued;
- Number of employees;
- Stated capital;
- Retained earnings;
- Tangible assets (excluding cash and cash equivalents).

CbCR requirements apply in two scenarios: one, the client is part of an MNE with annual consolidated group revenue of at least VND 18,000 billion (US$790 million) in the last fiscal year; and two, the ultimate parent company must prepare the CbCR in its host country.

What are the deadlines for transfer pricing documentation?

Foreign investors should note two key transfer pricing deadlines for documentation. The annual compliance deadlines apply to all taxpayers, while there are also special deadlines during audits.

Annual compliance deadlines: Taxpayers must prepare their transfer pricing documentation before the submission of annual corporate income tax (CIT) returns, which are due within 90 days of the taxpayers year-end.

Ad hoc compliance: Companies must submit TP documentation to tax authorities within 15 business days of receiving a request during a tax or transfer pricing audit.

Who must comply with Vietnam's transfer pricing regulations?

Under Decree 20, Companies calculating tax liability according to the declaration method and performing transactions with related parties (related-party transactions, i.e. RPTs) are considered subjects of transfer pricing regulations.

Transfer pricing penalties

Investors'greatest transfer pricing risk in Vietnam is to fall afoul of tax authorities. Tax authorities may impose a 20 percent penalty, following an audit, on the amount of tax that is determined to be underdeclared. Companies that fail to make this payment on time, are subject to interest of 0.03 percent of the tax liability for every day that it is not paid.

When do transfer pricing regulations apply?

Under most circumstances, foreign companies operating in Vietnam will be subject to the country's transfer pricing regulations at one point or another. However, not all companies will end up carrying out transactions that require documentation in line with transfer pricing requirements.

Thresholds for related entities

Investors in Vietnam should consider the below definitions for related parties and transactional thresholds when considering their exposure to transfer pricing regulations.

Threshold	Threshold details
Related parties are defined as	• Third parties that a company directly or indirectly participates in the management of, controls equity in, or places investment in;
Thresholds for management and control are defined as	• Retention of 25% or more of total equity; • Being the shareholder that has the greatest ownership of equity, or participating in at least 10% of total share capital; • Guaranteeing or offering a loan in any form that is at least 25% of the third parties equity and more than 50% of its total medium to long term debts; • Controlling more than 50% of executive board membership or having one member of the executive board authorized to decide the financial policies or business activities of the company.

Exemptions from transfer pricing regulations

Foreign investors may be exempt from some or all transfer pricing compliance in the following cases.

Exemption	Qualifying criteria
Internal TP exemption	A company is exempt if all the followings requirements are met: • It is engaged in a related-party transaction with an entity that must pay CIT in Vietnam; • It is subject to the same CIT rate as related third parties; • Neither the company or third party is claiming CIT incentives within the fiscal year. Taxpayers are still required to provide bases for such exemption by compiling the Sections I and II of Form 01 together with the CIT finalization return declaration.
Internal TP exemption	A company is responsible for declaring TP information according to Form 01, but it is exempted if any of the following apply: • Its total revenue is less that VND 50 billion and the total value of related party transactions are less than VND 30 billion; • It has an Advanced Pricing Agreement (APA); • It exercises routine functions, has sales less than VND 200 billion, and does not exceed the following earnings before interest and taxes thresholds: 5% for distribution operations, 10% for manufacturing operations, or 15% for toll manufacturing operations.

3

Human Resources and Payroll

- An introduction to HR and payroll in Vietnam
- How do I hire staff/workers?
- What major tax obligations does a company have for its staff/workers?

An introduction to HR and payroll in Vietnam

HUONG HOANG
Assistant Manager
Payroll
Ho Chi Minh City Office

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 (f.e., 84 percent that of China's cheapest provinces), 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 (especially women) 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.

"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."

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.

Dezan Shira & Associates provides payroll processing and HR administration services for clients with employees based across a number of countries in Asia. Outsourcing of payroll processing ensures an efficient, accurate, reliable and continuous service and improves confidentiality of salary information within the company. By handing the responsibility and liability for this time-consuming processing work over to us, our clients streamline their internal HR departments to concentrate resources into the core HR roles – setting strategy, hiring excellent employees, monitoring employee performance and ensuring good communication between management and staff.

Our payroll and human resource services include:

- Monthly Payroll Calculation and Processing
- Labor Contract Drafting & Disputes
- Social Welfare and Housing Fund Calculation and Processing
- Social Welfare De-registration for Expat
- Staff Manual
- Visa Services
- Training Course for Financial Team
- Technical Interview of Financial Team

How do I hire staff/workers?

DAM THI PHUONG MAI
Senior Associate Business
Advisory Services
Hanoi Office

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:

1. Foreign employees
2. Contracts
3. Compliance

Foreign employees

An employer is permitted to recruit foreign workers in order to work as managers, executive directors, experts, and technicians where local hires are not yet able to meet production and business requirements.

In order to enter Vietnam, in most cases a foreigner needs a visa issued by a Vietnamese Embassy or Consulate. A Vietnamese visa can be granted in a third-party country or in Vietnam. Citizens of ASEAN countries receive a free entry visa to Vietnam that lasts between 15 and 30 days.

To work in Vietnam and remain for an extended period, foreigners need to apply for a longer term visa and, upon arriving in Vietnam, a work permit. Currently, work permits for foreigners are valid for a maximum of three years. Certain foreigners are exempt from work permits, including those mentioned in Article 172 of Vietnam's Labor Code, these include: contributing members, or owners of limited liability companies; members of the Board of Directors of a joint-stock company; Heads of representative offices, projects of international organizations, and non-governmental organizations in Vietnam; and those coming to Vietnam for a period of less than three months. Also included are internal transferees working for companies operating in sectors listed in the WTO commitments.

> *"Foreigners who reside in Vietnam for one or more years can be granted a temporary residential card (TRC), issued by Ministry of Public Security which is valid from one to five years."*

Foreigners who reside in Vietnam for one or more years can be granted a Temporary Residence Card (TRC), issued by the immigration agency under the Ministry of Public Security and which is valid from one to five years. People granted a TRC can enter and exit Vietnam without a visa within the valid terms of their TRC.

In an effort to support the hiring of Vietnamese nationals, 30 days prior to recruiting a foreign employee, a company must determine the demand for foreign workers for every working position which Vietnamese are unable to hold, and send reports thereon to chairpersons of provincial-level People's Committees where the head offices of the employers are located.

Annually, employers (except contractors) are required to report their use of foreign labor to the chairpersons of provincial-level People's Committees. In the course of implementation, employers shall report any change, when arising, in their demand for foreign workers to the chairpersons of the provincial-level People's Committees.

Contracts

Previously, foreign enterprises were required to recruit Vietnamese employees via a local employment service agency, but now companies can hire staff directly and are simply required to provide a list of hired employees to local labor authorities.

There are three types of labor contracts under Vietnamese law depending on the term:

- **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
- **Specific/seasonal term -** A contract for a job position with a term of less than 12 months

If an employee continues working after the expiration of his or her definite term or specific/seasonal labor contract, said contract must be renewed within 30 days after the expiry date or it will become an indefinite term labor contract. Moreover, after two definite contracts with an employee, in order to renew the contract, an indefinite term labor contract must be signed.

A labor contract must contain provisions such as 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, 30 day notice for definite term contracts and three day notice for

RELATED READINGS

Managing Contracts and Severance in Vietnam
Vietnam Briefing Magazine December issue, 2016

In this issue of Vietnam Briefing, we discuss the prevailing state of labor pools in Vietnam and outline key considerations for those seeking to staff and retain workers in the country.

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seasonal 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.

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*.	1. The employee often fails to perform his/her job stated in the labor contract.
2. Employee is not paid in full or on time as agreed 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, in case he/she works under a labor contract for a seasonal job or a specific job of under 12 months.
3. Employee is maltreated, sexually harassed, or is subject to forced labor.	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. 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.	4. The employee is absent from the workplace after the time limit specified in Article 33 of this Code.
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.	

Source: Limitations as prescribed under Law No. 10/2012/QH13
**Note: under extraordinary circumstances, outlined in Article 31 of the Labor Code of 2012, employers are within their rights to create temporary assignments that do not exceed a total of 60 days per annum.*

Compliance

Compensation

In Vietnam, there are two kinds of minimum wages. The first type is the common minimum wage VND 1,300,000 (~US$57) 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). Vietnam's common minimum wage is set to increase to VND 1,390,000 (~US$61) from 01 July 2018. The second type of minimum wage is used for employees in all non-state enterprises based on zones as defined by the government.

Minimum Wage by Zone

Minimum monthly wage	Zone
VND 3,980,000 (~US$174)	Zone 1
VND 3,530,000 (~US$155)	Zone 2
VND 3,090,000 (~US$136)	Zone 3
VND 2,760,000 (~US$121)	Zone 4

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.

Hours & overtime

The normal working week in Vietnam is limited to no more than eight hours in one day and no more than 48 hours per week.

Employees who work in excess of these times will must be paid extra for those hours based on their current wages as follows: regular working days - 150 percent; weekends - 200 percent; and holidays and paid leave days - 300 percent. A ceiling for total working hours is imposed at no more than 12 hours in one day, while overtime is capped at 30 hours in one month and 200 hours annually.

Leave

Workers are entitled to leave on all public holidays, of which there are currently 10 per annum. In addition, normal workers are permitted 12 days of paid leave per year. In special industries, workers may be entitled to between 14 and 16 days leave annually.

Aside from annual vacation days, maternity leave is a significant consideration for employers as they plan ahead. Currently, mothers are entitled to maternity leave of no less than six months under normal circumstances.

What major tax obligations does a company have for its staff/workers?

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.

Here we discuss:

1. Withholding and paying individual income tax
2. Contributing to social insurance funds

Withholding and paying individual income tax

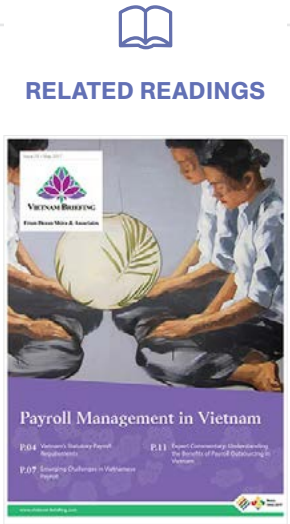
In general, a typical monthly salary package will include gross salary and mandatory social insurance. Personal income tax (PIT) will be levied on the balance after deducting mandatory social insurance contributions.

PIT is levied on the worldwide income of Vietnam residents and on Vietnam-sourced income of non-residents, irrespective of where the income is paid. The tax calculation and finalization procedure for Vietnamese locals and expatriates is the same, but the procedure is different between residents and non-residents.

FIEs 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 his/her own, FIEs can issue that employee a certificate of deduction. If an expatriate's labor contract in Vietnam expires before the end of a calendar year, he/she should conduct tax finalization before his/her departure.

Vietnam's Individual Income Tax Rates

Tax bracket	Monthly taxable income (million VND)	Monthly taxable income (US$)	Tax rate
1	Up to 5	Up to 238	5%
2	Over 5 to 10	Over 238 to 476	10%
3	Over 10 to 18	Over 476 to 857	15%
4	Over 18 to 32	Over 857 to 1,524	20%
5	Over 32 to 52	Over 1,524 to 2,476	25%
6	Over 52 to 80	Over 2,476 to 3,810	30%
7	Over 80	Over 3,810	35%



RELATED READINGS

Payroll Management in Vietnam
Vietnam Briefing Magazine May issue, 2017

In this edition of Vietnam Briefing, we discuss Vietnam's current statutory requirements regarding payment, social insurance withholdings, and individual income taxation.

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Other Income Rates by Residency		
Income	Rate	
	Residents	Non-residents
Capital investment (dividends, interest)	5%	5%
Franchise/royalties	5%	5%
Winnings or prizes	10%	10%
Inheritances or gifts	10%	10%
Sale of shares (applied to sales proceeds)	0.1%	0.1%
Sale of real estate (applied to sale proceeds)	2%	2%

An individual staying in Vietnam for an aggregate of 183 days or more within one calendar year or a consecutive 12 month period from the first day of arrival, or a Permanent Resident that has been registered pursuant to the Law on Residency or having a lease contract with a term of 90 days or more within a tax assessment year, will be treated as a tax resident in Vietnam. Tax residents are subject to PIT on employment income at progressive rates from five percent to 35 percent.

An individual is a non-resident if he/she does not satisfy any of the above conditions, and is subject to PIT at a flat rate of 20 percent. Certain exemptions to PIT exist. For example, entities and individuals exempt from value-added tax, personal income tax and enterprise income tax since 2014 include those providing hostel services for laborers, workers, students, nursery services, or catering services (under certain conditions). Also, individuals earning taxable incomes from salaries, wages and businesses that belong to Level 1 of the partially progressive tariff specified in Article 22 of the Law on Personal Income Tax No. 04/2007/QH12 are exempt from PIT since July 1, 2013.

Social Security Minimum Contributions Employer and Employee								
Social insurance		Health insurance		Unemployment insurance		Total compulsory contribution		
Employer	Employee	Employer	Employee	Employer	Employee	Employer	Employee	Both
17.5%	8%	3%	1.5%	1%	1%	21.5%	10.5%	32%

Contributing to 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.

Social and unemployment insurances are compulsory only for Vietnamese staff, while health insurance applies to both Vietnamese and foreign staff employed in accordance with Vietnam's Labor Code. Employers register and pay insurance contributions monthly on behalf of their employees at the provincial Department of Labor, Invalids and Social Affairs (DoLISA). 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 26,000,000 / VND 27,800,000 from 01 July 2018) and 20 times the regional minimum wage for unemployment insurance (VND 55,200,000 to 79,600,000 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 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.

Expert Analysis:
Vietnam's Investment Outlook for 2018

- Five takeaways for investors
- China+1 the New Face of Manufacturing in Vietnam
- What do free trade agreements bring to the table?

Five takeaways for investors

MAXFIELD BROWN
Senior Associate
Business Intelligence
Ho Chi Minh City Office

"Vietnam's close proximity to China, competitively priced labor and strong network of trade agreements have proven critical to its competitiveness as a destination for foreign direct investment."

1. **Strong GDP growth**
   Vietnam's economy grew at a six year high of 6.81 percent in 2017, bolstered by strong investment and a growing consumer class. Vietnam's services sector in particular has become a dominating force. In 2017, services accounted for 41.32 percent of Vietnam's GDP, followed by industry and construction at 33.34 percent, and agriculture, forestry, and fisheries at 15.34 percent.

2. **Strong investor confidence**
   At the backbone of growth, foreign direct investment has been pouring into the country. FDI, driven by investments from Japan, South Korea, and Singapore, reached US$35.6 billion, highest since 2009. The disbursed capital hit US$17.5 billion, a 10-year high. The registered FDI capital and disbursed FDI grew by 444 percent and 10.8 percent respectively, compared with 2016. Manufacturing and processing continue to be a major attractor of FDI, with 2017 FDI reaching US$15.87 billion, accounting for 44.2 percent of the total FDI.

3. **High export competitiveness**
   As Vietnam has become recognized as a serious player on the global trade stage, it has seen a corresponding positive rise in its trade numbers. Vietnam's total import-export turnover in 2017 reached a record high of US$400 billion, with a trade surplus of US$2.7 billion. FDI sector was the major contributor to the country's trade with a trade surplus of US$28.8 billion, while the domestic sector had a trade deficit of US$26.1 billion. In 2017, exports and imports witnessed double-digit growths at 21.1 and 20.8 percent respectively. Trade between Vietnam and Africa, Asia, and Oceania grew the fastest at 27.6, 25.7, and 24.5 percent respectively, while trade with EU and Americas grew by 13.8 and 10.8 percent respectively.

4. **Rising consumer demand**
   Vietnam was found to have one of the fastest growing middle classes in Southeast Asia. By 2020, the country is expected to have 30 million middle class and rich consumers. Alongside Vietnam's rising consumer class, the country's per capita income is expected to increase to US$3,000 by 2020 from its current level of US$2,215. This not only provides amazing opportunities for sales of consumer goods, but it also looks set to increase the education of the Vietnamese workforce.

5. **Remaining opportunities for investment**
   With all of the advantages outlined above, Vietnam is truly on the verge of becoming a regional powerhouse in both production and consumption. However, given its relatively low level of development, many of the investments of tomorrow have yet to be made. While some may be put off by Vietnam's often confusing investment laws, those with a firm understanding of the Vietnamese legal, tax, and economic environment will be perfectly positioned to read the benefits of the nation's rapid growth.

China+1 the New Face of Manufacturing in Vietnam

Foreign companies outsourcing operations to reduce costs and improve market share is nothing new. The only things that seem to change are the companies changing the way that operations are relocated, and the countries that manage to attract capital inflows.

Among nations competing for investment over the last decade, Vietnam has rapidly emerged as a highly effective location for future relocation in Southeast Asia.

Capitalising on rising costs and increasingly complex regulatory compliance requirements in neighboring China—the former "factory of the world", the Vietnamese government's accession to the WTO, competitive costs and receptive investment environment have made it an ideal location for Chinese-based investors seeking to reduce costs and diversify supply chains.

RELATED PODCAST

The Case for Manufacturing in Vietnam
August 5th, 2016

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China is not out of the picture altogether

Foreign investors and domestic Chinese companies largely view China's production capabilities in a favorable light and place a considerable value on its deep talent pools, top-tier infrastructure network and excellent sourcing options.

Instead of abandoning the Chinese market, investors are choosing to supplement Chinese operations with low-cost inputs sourced from production facilities in markets such as Vietnam. While the structures of these operations differ greatly depending on the country in question, this production model has become widely known as China+1.

Vietnamese Competitiveness and China+1 Production

Vietnam's close proximity to China, competitively priced labor and a strong network of trade agreements have proven critical to its competitiveness as a China+1 destination. Cities such as Hai Phong are just 865km away from China's manufacturing hub of Shenzhen. While a considerable journey, this is much closer than alternatives such as Jakarta (3,300km), Bangkok (2,750km) or Kuala Lumpur (3,025km).

By situating manufacturing cost centers close to traditional hubs in mainland China, investors are able to reduce costs with limited interruption or delays to currently existing supply chains.

Foreign investors pursuing China+1 also generally benefit from cost reductions on wages, land pricing, and inputs. Vietnam again stands out in this respect, offering investors a minimum wage 59 percent of that found in China and 70 percent of that in Thailand.

Finally, and perhaps most importantly, Vietnam's network of trade agreements is among the best that manufacturers will be able to find in a country at this point on the value chain.

Vietnam, unlike China which has historically used its low wages and large size to boost export competitiveness, has a wide network of trade agreements extending to key import markets across the globe.

Among this network are trade agreements with Korea and the European Union, as well as upcoming agreements with the European Union and, should everything go according to plan, members of the Trans Pacific Partnership (TPP). As a member of the Association of Southeast Asian Nations (ASEAN), Vietnam also benefits from the regional bloc's trade agreements with China, Japan, Australia, New Zealand and India. Together these agreements provide a significant advantage over China that more than make up for the potential downsides.

Choosing What to Outsource

Foreign investors who invest in the Vietnamese market need to have a clear understanding of the capacity and limitations of Vietnamese production. As of 2018, Vietnam's education and infrastructure are better suited to assembly and relatively low value-add manufacturing than many of the higher value-added processes becoming popular in mainland China.

Foreign investors often choose to enter the Vietnamese market gradually as a result of these limitations. Basic components or assembly are usually the first aspects of the production to be outsourced to Vietnam. As companies become more comfortable with the capabilities of their Vietnamese counterparts, production can be ramped up and more elements of the supply chain can be relocated.

Knowing What to Watch out for

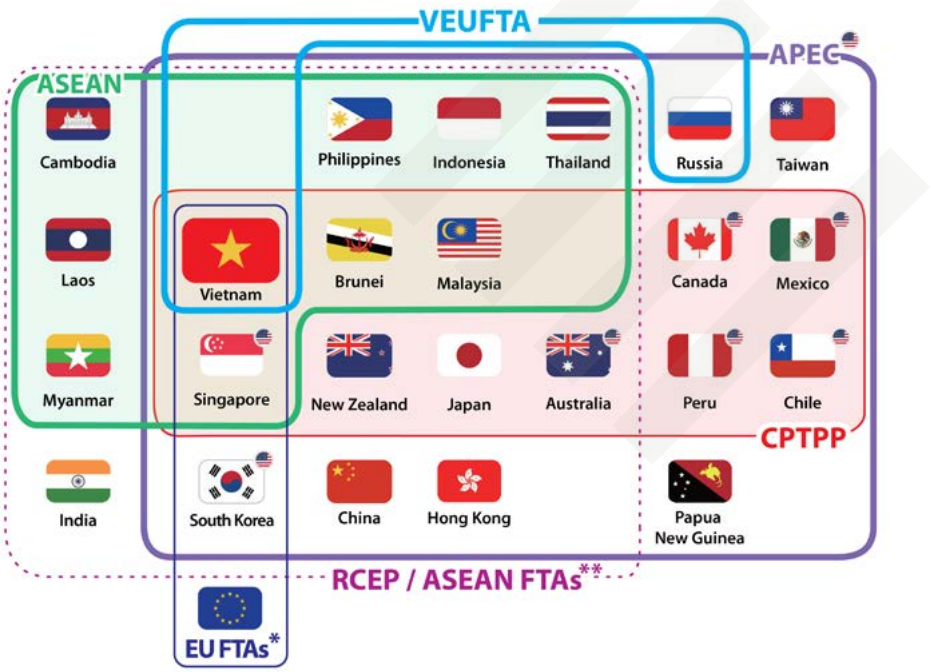
As mentioned above, Vietnam's real competitive advantage as a China+1 destination lies in its network of trade agreements. However, access to these agreements is not guaranteed. Most agreements have been negotiated recently and include "rules of origin provisions" that place limitations on what goods will qualify for tariff reductions.

Most often, origin requirements relate to the value added to exports in the Vietnamese market. As a rule of thumb, investors should attempt to move as much value as possible to Vietnamese production facilities and ensure that assembly facilities result in significant changes between inputs and their final output.

What do free trade agreements bring to the table?

Vietnam has a number of free trade agreements (FTAs), over 60 in total, which extend significant tariff reductions to exports from Vietnamese production facilities and imports of components, supplies, and other goods to be used in the development of fixed assets. While agreements such as the ASEAN Free Trade Area (AFTA) are already in effect, upcoming agreements with the EU (EVFTA) and the Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP), and the proposed Regional Comprehensive Economic Partnership (RCEP), promise to significantly increase Vietnam's access to key sources of global demand.

Vietnam's Free Trade Agreement Network



APEC
Asia-Pacific Economic Cooperation

VEUFTA
Vietnam Eurasian Union FTA

CPTTP
Comprehensive and Progressive Agreement for Trans-Pacific Partnership

RCEP
Regional Comprehensive Economic Partnership

ASEAN
Association of Southeast Asian Nations

EU
European Union

** The EU's FTA with South Korea has been finalized; its FTAs with Vietnam and Singapore have been concluded, but not yet entered into force.*

*** ASEAN has multilateral trade agreements with India, China, New Zealand, Australia, Japan, and South Korea; ASEAN's trade agreement with Hong Kong has been concluded, but not yet entered into force.*

FTA with the United States
Agreements in Force
Singed Agreements
Negotiations ongoing

More strategically, the broad scope of economic cooperation outlined under EVFTA and CPTPP opens up many restricted sectors under a negative list approach (which basically means that if your projected activities are not on such a list then you are free to carry out your business in the country). Modern FTAs also work to eliminate most non-tariff-barriers and promote a levelled playing field, while it also allows for fairer competing with SOEs and more transparent biddings in government procurement contracts.

With the new FTAs in place, Vietnam is ready to accelerate its economic growth even further. If the TPP puts through, it is estimated that the Vietnamese economy will gain an additionally 10 percent by 2030, with exports increasing by another 30 percent. Adding up the benefits coming from the EVFTA and other trade agreements, and the fact that Vietnam is also moving ahead out of its own steam, we can forecast an annualized GDP increase of seven percent and above for the next several years at the least.

The emergence of Vietnam is a significant development for the future of foreign investment in Asia. While in the mainstream media the country is often overlooked in favor of China, Vietnam is now emerging as a serious alternative to its northern neighbor, and is in fact following roughly the same growth trajectory that China embarked on twenty years ago. Today, it is Vietnam, not China, which is the developing market of choice for many investors.