



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

Key Considerations for Establishing a Business in Vietnam

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April 18, 2017



Vietnam's Investment Outlook for 2017

Why should I move my company to Vietnam now?



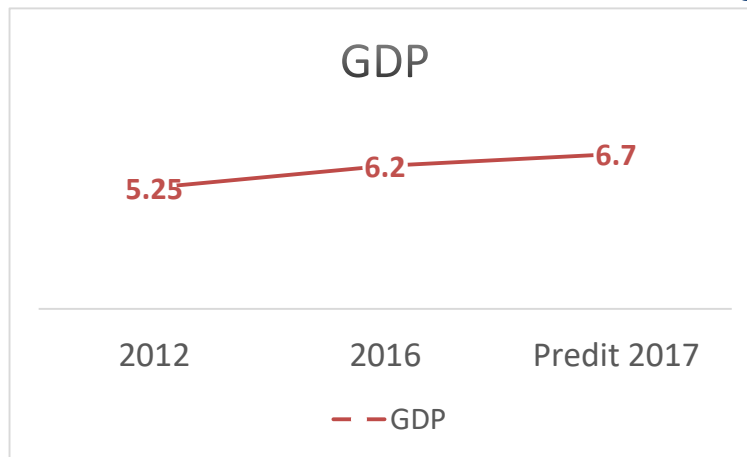
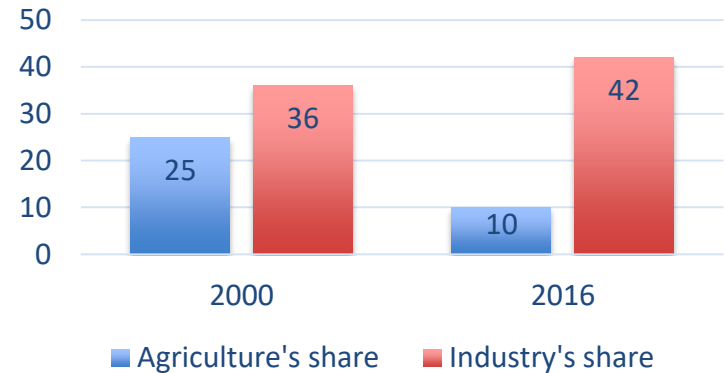


Vietnam Market Watch

Socialist Republic of Vietnam



Share of economic productivity



Why do business in Vietnam?

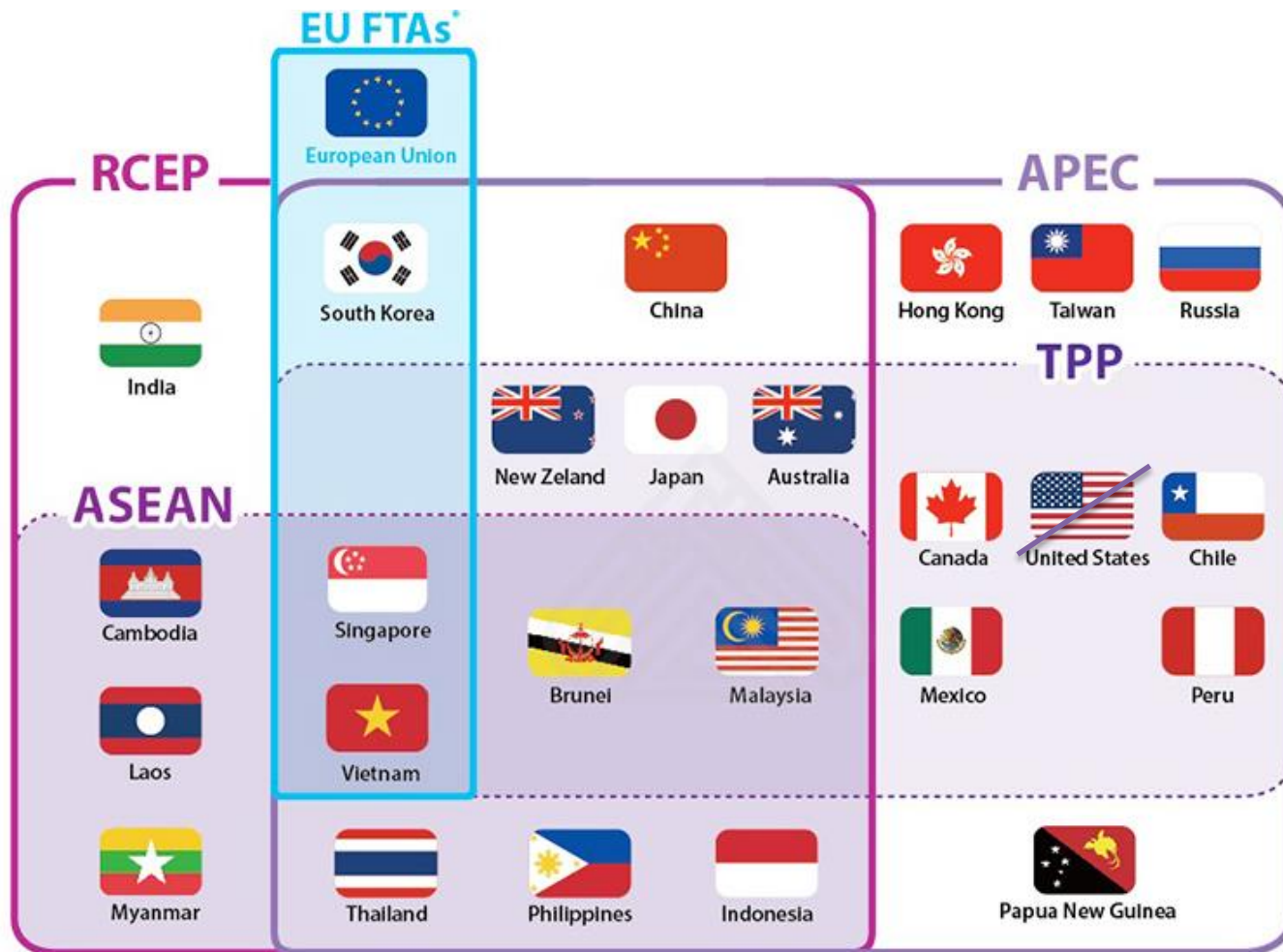
- relatively stable government and social structure
- improved legal environment
- strategic geographic location
 - Southeast Asia
 - proximity to China
- one of the fastest-growing Asian economies with high GDP growth in recent years
- young population
- active global integration
- a member of WTO -> has to maintain a favorable investment environment





Main imports:
Machinery and Equipment
Petroleum Products
Steel Products
Raw materials for the clothing,
shoe industries, electronics, plastics
and automobiles

Main exports:
Clothes
Shoes
Marine Products
Crude Oil
Electronics
Wooden Products
Rice
Machinery



APEC (Asia-Pacific Economic Cooperation); TPP (Trans-Pacific Partnership); RCEP (Regional Comprehensive Economic Partnership); ASEAN (Association of Southeast Asian Nations).

* 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

Intellectual property



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Vietnamese Protection of Intellectual Property

		Domestic protection	International protection
Industrial property	<ul style="list-style-type: none">• Patents• Trademarks	<ul style="list-style-type: none">• Law on Intellectual Property via the National Office of Intellectual Property (NOIP)• Vietnamese Criminal Code	<ul style="list-style-type: none">• The Paris Convention• The Madrid Agreement• WIPO• The Patent Cooperation Treaty
Copyright	<ul style="list-style-type: none">• Copyrights• Related rights	<ul style="list-style-type: none">• Law on Intellectual Property via the Copyright Office of Vietnam• Vietnamese Criminal Code	<ul style="list-style-type: none">• The Geneva Universal Copyright Convention• The Berne Convention• WTO via TRIPS



Establishing and Running a business

What about my Options to invest?



Overview

100 percent foreign-owned enterprises (FOEs)

Limited Liability Company (LLC)

Joint-stock Company (JSC)

Joint Venture enterprises (JVEs)

Limited Liability Company (LLC)

Joint-stock Company (JSC)

Partnership Company

Representative Office

Branch Office

Other options



LLC, JSC and Partnership Company

Limited Liability Company

no minimum amount,
“reasonable contribution required”

50 \geq  \geq 1

Can't issue shares



Company's charter
1 maintain residence in VN

Charter Capital

Owner Ship

Legal representative

Joint-stock Company

no minimum amount,
“reasonable contribution required”

Shareholders  \geq 3
Can issue securities, bonds



At least 1 is a resident of Vietnam

Partnership Company



General Partners
At least 2 individuals



Representative Office



Limited functions:

Cannot conduct revenue-generating activities

Cannot enter directly into contracts with local companies or organizations



Hire staff directly
Ease the execution of contracts between parent company and Vietnamese companies
serve as a liaison office

Licensing Procedures: take 4 to 6 weeks in practice

Post-licensing Procedures: within 45 days

Additional Points: Hiring Staff, The Chief Representative, Office Location, Tax, License Changes and Re-issuance

Branch office and others

BRANCH OFFICE

A branch office is entitled to conduct business activities in Vietnam with 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 5 years. Limited to certain types of service businesses, mainly in finance

Business Cooperation Contract (BCC)

Build-Operate-Transfer (BOT)

Build-Transfer-Operate (BTO)

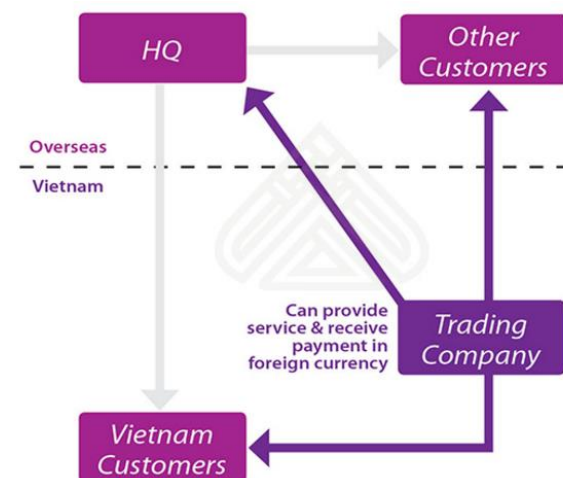
Build-Transfer (BT) contracts

Comparison table

Vietnamese Protection of Intellectual Property			
FIE structure type	Common purpose(s)	Pros	Cons
Limited liability company	<ul style="list-style-type: none"> • Separate legal entity 	<ul style="list-style-type: none"> • Liability limited to capital contribution • No restrictions on the scope of business 	<ul style="list-style-type: none"> • Cannot issue shares • Maximum 50 shareholders
Joint-stock company	<ul style="list-style-type: none"> • Separate legal entity 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Three or more shareholders required • Supervisory board required for most joint stock companies, depending upon the number and type of investors
Partnership company	<ul style="list-style-type: none"> • “Half-separate” legal entity • Generally used for professional services offered by individuals (e.g., architects) 	<ul style="list-style-type: none"> • One of the partners can be excluded from unlimited liability 	<ul style="list-style-type: none"> • Requires at least two general partners, individually liable for the partnership debts without limit
Representative office	<ul style="list-style-type: none"> • Non-separate legal entity • Market research activities, liaison with overseas parent company, supporting activities 	<ul style="list-style-type: none"> • Easy registration procedure 	<ul style="list-style-type: none"> • Cannot conduct profit-making activities • Parent company bears liability
Branch office	<ul style="list-style-type: none"> • Non-separate legal entity • Commercial activities within the parent company’s scope 	<ul style="list-style-type: none"> • Can carry out commercial activities within the parent company’s scope 	<ul style="list-style-type: none"> • Business scope limited to that of the overseas parent company • Parent company bears liability

Trading company

- Distribution Company
- The licensing process can vary 4-6 months including the trading license
- The investor must prepare an application dossier to apply for an Investment Certificate and submit to the licensing authority at the provincial level. The application dossiers after that will be submitted by the provincial licensing authority to the Ministry of Industry and Trade (MOIT) for approval. Once receiving the approval by MOIT, the provincial licensing authority will grant the Investment Certificate to the investors.
- Under World Trade Organization (WTO) commitments, around 95 percent of goods can be distributed by businesses that are 100 percent foreign owned



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Establishing and Running a business

How do I establish a company?



Setup Procedures

Pre-
investment
approval



Setup Procedures

Pre-investment approval

For certain line of investment only

	Time (days)	Requisite documentation	Investments and projects requiring approval
Provincial People's Committees	35	<ul style="list-style-type: none"> • Application • Financial statements • Detailed use of restricted technology • Proposed use of land 	<ul style="list-style-type: none"> • 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
Table category	60	<p>All documents listed above in addition to:</p> <ul style="list-style-type: none"> • Environmental impact assessment • Socioeconomic efficiency evaluation 	<ul style="list-style-type: none"> • 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	<p>All documents listed above in addition to:</p> <ul style="list-style-type: none"> • Relocation plan (if applicable) 	<ul style="list-style-type: none"> • 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



Setup Procedures

Pre-
investment
approval

Application for
Investment
Registration
Certificate (IRC)



Setup Procedures

Pre-
investment
approval

Application for
Investment
Registration
Certificate (IRC)

Application for
Enterprise
Registration
Certificate
(ERC)





Investment Registration Certificate (IRC)

Register office
Within 15 working days
All 100% foreign owned investment projects and establishes

15 days

Business Registration Certificate (ERC)

Pre-application done online
Within 8 working days
All projects that seek to set up new entities within Vietnam
Enterprise identification number issued by National Business Registration Information System

Investment Registration Certificate (IRC)

- A written request for permission for execution of the investment project
- A copy of the ID card or passport; or a copy of the Certificate of establishment
- An investment proposal
- Copies of documents as financial statements of the last two years
- Commitment of a financial institutions to provide financial support
- Guarantee for investor's financial capacity
- Description of investor's financial capacity
- Demand for land use or a copy of the lease agreement
- An explanation for application of technologies
- The business cooperation contract



Business Registration Certificate (ERC)

- Company's charter consists of the charter upon registration and amendments made to the charter throughout the enterprise's operation.
- Application for enterprise registration
- Company charter
- List of board members
- List of legal representatives
- Letters of appointment and authorization



Setup Procedures

Pre-
investment
approval

Application for
Investment
Registration
Certificate (IRC)

Application for
Enterprise
Registration
Certificate
(ERC)

Post licensing
procedures



Setup Procedures

Seal Craving

Tax Code
Registration

Bank Account
Opening

Public announcement of
company

Business
License Tax
Payment

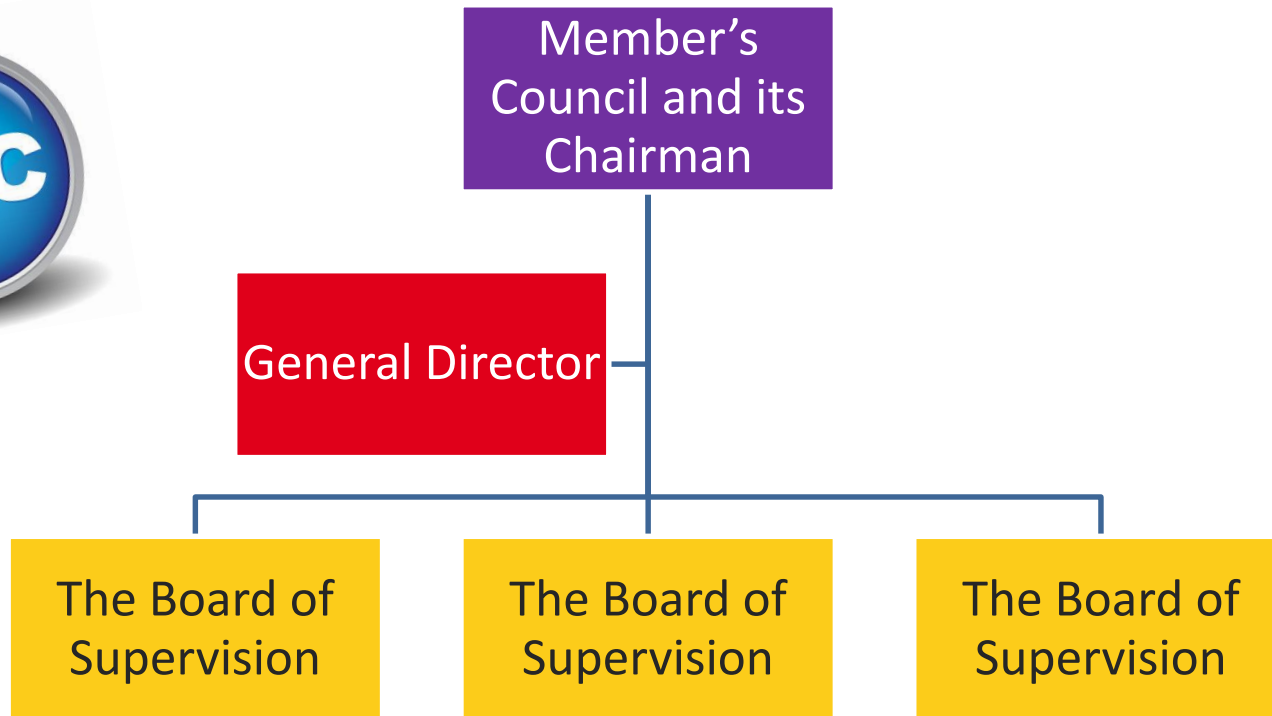
Post licensing
procedures

Charter Capital
Contribution

Labor registration



Key positions in foreign-invested entity

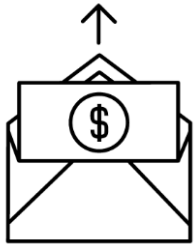


Tax and Accounting

What are Vietnam's major tax?



Overview



Business License
Tax (BLT)

Corporate Income
Tax
(CIT)

Value-added Tax
(VAT)

Special Consumption Tax

Foreign
Contractor Tax

Customs duties

Double Taxation Avoidance
Agreements (DTAs)

Business License Tax (BLT)



All companies, organizations
individuals conducting
business activities in
Vietnam

Calculate Based on
Registered Capital

+ For State-owned
enterprises (SOEs), LLCs,
JSCs: Charter Capital
+ FOEs, private enterprises:
Investment Capital

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

Under Circular 302/2016/TT-BTC, in effect since
January 1, 2017

Corporate Income Tax (CIT)

**5 years
allowed
for
carried
loss**

20%

Direct tax levied on
the profits earned by
companies or organizations

FIEs can: deduct most
expenses paid for production
and business activities by
adequate lawful invoices and
documents



Corporate Income Tax (CIT)

0% 5% 10% 15% 20% 25% 30% 35% 40% 45%

Corporate income tax

20%

Value-added tax

10%

Standard tax on dividends
(Non-resident co.)

0%

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

Certain business lines
Or investment locations
Give preferential rate

Multiply income from each activity
By corresponding tax rate



energy saving



Value-added Tax (VAT)



Goods and services encouraged by the Government are **EXEMPT from or have reduced** VAT:

agriculture products, healthcare services and scientific activities, derivate financial and credit services, securities trading, insurance services, education, vocational training, printing and publishing newspapers

VAT Rates

Rate	Applicability
0%	Goods and services for export or sold to non-tariff zones 16 categories of goods and services, such as: <ul style="list-style-type: none">• Fertilizers
5%	<ul style="list-style-type: none">• Medical equipment and instruments• Scientific and technological services• Cultural, exhibition, physical training and sports activities
10%	Everything else

Calculating VAT



- Credit method (Deduction method)
- *Payable VAT amount = Output VAT – Credit input VAT amount*
- Every month
- No annual VAT finalization is required at the end of the year
- Direct method
- *Payable VAT amount = Added – value of sold goods of service x VAT Rate*
- *Added – value of sold goods of service = Selling price – Purchasing price of goods or services*
- Tax finalization procedures must be done in October, November and December

Special Consumption Tax (SCT)

- $VAT = \text{Selling price} + SCT$
- Imported goods: dutiable value + import duties + SCT



7%



70%

Scheduled to increase in the coming years



Foreign Contractor Tax (FCT)

- 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
- Calculating Corporate Income Tax (CIT) and value-added tax (VAT) in 3 ways:

Deduction method

- Permanent establishment in Vietnam
- 183 days
- Applies the Vietnamese Accounting System

Direct method

- Do not meet other requirements
- PIT, CIT, VAT will be deducted by Vietnamese customers at the point of sale

Hybrid method

- Permanent resident status in Vietnam
- 183 days
- Apply for a VAT code, issue invoices, file VAT returns

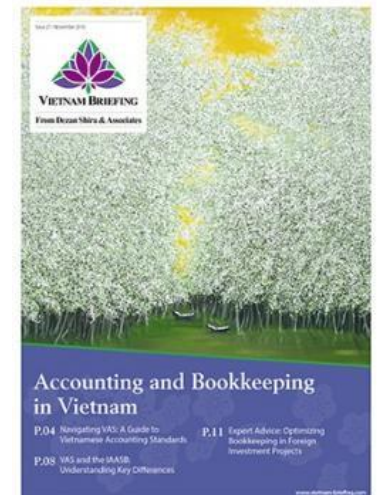
Tax and Accounting

What are some of the Key Compliance Requirements?



Accounting and Bookkeeping

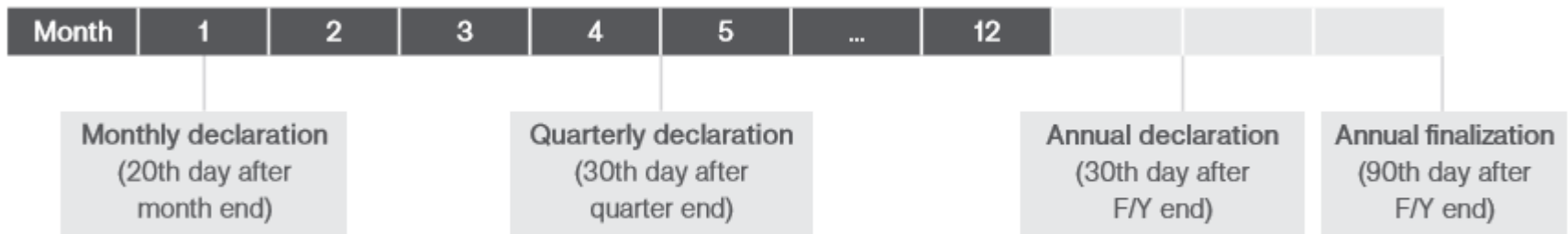
- Vietnam Accounting Standards (VAS) or International Financial Reporting Standards (IFRS)
- VAS:
 - In Vietnamese language
 - Use VND as the accounting currency
 - FIEs can select other foreign currency
 - Comply with the Vietnam chart of accounts
 - Reports specified by VAS regulations, printed a monthly basic



Annual compliance



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.

Human Resources and Payroll

How do I hire staff/
workers?



Foreign employees



Work permit exemptions:

For: contributing members, or owner of LLC, members of the Board of Directors of a JSC, Head of Ros, projects of international organizations, non-governmental organizations, people posted to Vietnam less than 3 months in a year, and for WTO supported industries

Others need work permit sponsored by employer!

Temporary Residence Card (TRC): foreigners who reside in Vietnam for one or more years.

Foreign Hires: work permit

In order to be **eligible** for a work permit, the applicant must comply with the following conditions:

- At least 18 years of age
- In good enough health to satisfy job requirements
- A manager, executive director or expert with technical skills and knowledge necessary for the job
- Not currently subject to criminal prosecution or any criminal sentence in Vietnam or overseas, or have a criminal record

A work permit may be **terminated** in the following circumstances:

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

Foreign Hires: temporary resident card



- Foreigners who hold a work permit valid for one year or more
- Valid from 1 to 5 years
- A TRC allows the holder to enter and exit Vietnam without a visa within the valid terms of their TRC

Contracts

Grounds for the Unilateral Termination of Contracts in Vietnam

Employee	Employer
<ol style="list-style-type: none"> 1. Employee is not assigned to the job or workplace or is not given the working conditions as agreed in the labor contract*. 2. Employee is not paid in full or on time as agreed in the labor contract. 3. Employee is maltreated, sexually harassed, or is subject to forced labor. 4. Employee is elected to perform a full-time duty in a people-elected office or is appointed to hold a position in the state apparatus. 5. A female employee who is pregnant and must take leave as prescribed by a competent health establishment. 6. If he/she is sick or has an accident and remains unable to work after having received treatment for 90 consecutive days, in case he/she works under a definite-term labor contract, or for a quarter of the contract's term, in case he/she works under a labor contract for a seasonal job or a specific job of under 12 months. 	<ol style="list-style-type: none"> 1. The employee often fails to perform his/her job stated in the labor contract. 2. The employee is sick or has an accident and remains unable to work after having received treatment for 12 consecutive months, in case he/she works under an indefinite-term labor contract, or for 6 consecutive months, in case he/she works under a definite-term labor contract, or more than half the term of the labor contract, in case he/she works under a labor contract for a seasonal job or a specific job of under 12 months. 3. If, as a result of natural disaster, fire or another force majeure event as prescribed by law, the employer, though having applied every remedial measure, has to scale down production and cut jobs. 4. The employee is absent from the workplace after the time limit specified in Article 33 of this Code.

Source: Limitations as prescribed under Law No. 10/2012/QH13

*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.

Indefinite Term

Definite Term

Specific/seasonal Term

Compliance



Minimum Wage by Zone

Minimum monthly wage	Zone
VND 3,750,000 (~US\$165)	Zone 1
VND 3,320,000 (~US\$145)	Zone 2
VND 2,900,000 (~US\$127)	Zone 3
VND 2,580,000 (~US\$113)	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.



Limited: 8 hours / day; 48 hours / week

Extra payment:

Regular working days: 150%

Weekends: 200%

Holiday and paid leave days: 30%

Total working hours: 12 hours / day; 30 hours / month; 200 hours annually

Public holidays: 10 days / annum; Paid leave: 12 days / year; (14-16 days leave annually);
maternity leave: no less than 6 months



Human Resources and Payroll

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



Withholding and paying Individual Tax Income

Minimum Wage by Zone

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%

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 securities	20%	20%
Sale of real estate	0.1%	0.1%
Gain	2%	2%
Sale proceeds	2%	2%

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
18%	8%	3%	1.5%	1%	1%	22%	10.5%	32.5%

Vietnam's Investment Outlook for 2017

5 takeaways for investors



5 takeaways for investors



Steady Growth



Strong investor confidence



High Export competitiveness



Rising consumer demand



Remaining opportunities for investment



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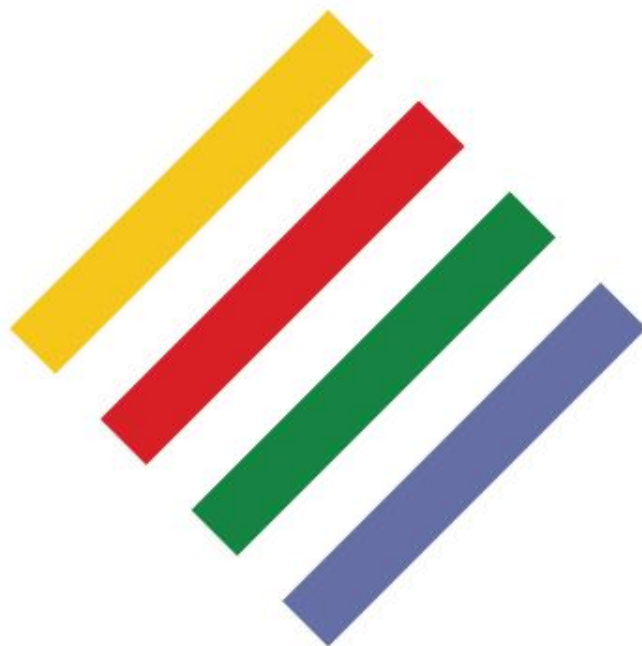
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