Grant Thornton
An instinct for growth™

Doing business in Vietnam 2017

Contents

Foreword

Vietnam is a unique country providing extensive opportunities for those willing to spend time to understand the market. Although not without its problems, Vietnam's economy continues to expand and modernise, and with the opening up of previously restricted industries and sectors to meet WTO commitments; opportunities continue to develop.

Grant Thornton Vietnam has prepared this guide to assist those interested in doing business in Vietnam. This guide does not cover the subject exhaustively. However, it is intended to answer some of the more important questions that may arise. When specific problems occur in practice, it will often be necessary to refer to the laws and regulations of Vietnam and to obtain the appropriate professional advice.

We hope this guide helps you in learning about and understanding business in Vietnam. Should you require professional assistance we will be only too willing to meet you, to see if we can help.

NOTE:

This guide contains only brief notes and includes legislation in force as of January 2017. The information herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one is entitled to rely on this information and no one should act on such information without appropriate professional advice obtained after a thorough examination of the particular situation.

Kenneth Atkinson

Executive Chairman

Nguyen Chi Trung

Managing Partner

Country profile

Summary

Vietnam is a rapidly developing country with a dynamic and emerging market economy. Located in South East Asia, the country has positioned itself as a focal point for investment, boasting an average annual GDP growth rate of 6.1% over the last ten years. Growth decreased slightly to 6.21% in 2016 (2015: 6.68%), mainly due to the impact of the drought on agricultural output, cuts in oil production, and a slowing down of external demand. However the underlying fundamental growth drivers remain intact. GDP growth is expected to recover to between 6.3% and 6.5% in 2017 predicated on a recovery in agriculture and improving global prospects.

Vietnam comprises a landmass of 330,972 km2, a vast sea area including a large continental shelf, and a string of archipelagos stretching from the Gulf of Tonkin in the North to the Gulf of Thailand in the South.

Vietnam is an elongated "S" shape with a long borderline from China in the North, Laos in the West and Cambodia in the West and South West. Vietnam has a diversified topography of plains, midlands and mountains.

The capital of Vietnam is Hanoi, which lies in the north of the country. Other major cities include Ho Chi Minh City (often abbreviated to "HCMC" and also referred to as Saigon), Dong Nai, Ba Ria – Vung Tau, Binh Duong in the South; Hai Phong, Quang Ninh and Hai Duong in the North, Hue, Da Nang, Quang Nam, Quang Ngai on the Central and South East Coast.

Hanoi
Capital

330,972 km^2
Area

Vietnamese
Language

VND
Currency

+84
International dialling code

8am to 5pm
Business and Banking hour

82
Doing Business rank (by World Bank)

6.2%
GDP growth

91 M
Population

Geography and population

Vietnam has the third largest population in South East Asia (after Indonesia and Philippines) and is ranked 13rd in the world in terms of total population, reaching 90.7 million according to the population survey as at 1 April 2015. The rural population accounts for approximately 67%.

The city of Hanoi covers a large urban and rural area in the north of the country. The registered population was around 7.2 million at the end of 2015 .

Ho Chi Minh City, the primary economic hub for Vietnam, had a population of about 8.2 million. However, the actual population of Ho Chi Minh City (and Hanoi, to a lesser extent) is likely to be significantly higher due to unrecorded migration from rural areas. In addition, Ho Chi Minh City is also bordered by the established industrial and urban areas of Binh Duong, Dong Nai and Long An Provinces, which arguably extend the City's limits into these provinces.

Political and legal system

The Constitution in general establishes the rights of the people under the leadership of the Communist Party. The power of the people is exercised through the National Assembly at a central level and through People's Committees at a local level.

The National Assembly is the supreme representative and legislative body and determines domestic and foreign policies, socio -economic tasks, national defence and security issues.

The Head of State is the President, elected by the National Assembly and represents the Nation in internal and foreign affairs. The highest executive body in Vietnam is the Government, formerly known as the Council of Ministers. It is in charge of the general management of the economy and the State. The court and prosecution system in Vietnam has a structure similar to the administrative system. At a central level, the Supreme People's Court is the highest judicial body in Vietnam. At a local level, courts exist at provincial and district levels.

In January 2016 the 12th National Party Congress was held in Hanoi to select new leaders for the country. Nguyen Phu Trong, the incumbent General Secretary of the Communist Party was re-elected. The new President (Mr. Tran Dai Quang), Prime Minister (Mr. Nguyen Xuan Phuc) and Chairman of the National Assembly (Madam Nguyen Thi Kim Ngan) were also elected in May 2016

The Vietnamese legal system consists of a constitution, codes, laws, ordinances, decrees, decisions, circulars, directives and official letters. Although all have the force of law, only laws passed by the National Assembly are referred to as such.

Ordinances are issued by the Standing Committee of the National Assembly to regulate an area where a law is not yet promulgated or regulated. On matters the National Assembly has entrusted to the Government, the Government will issue decrees, decisions, circulars or directives to implement the issued laws or ordinances.

Decrees, decisions and circulars are normally issued by individual ministries and other State agencies, including People's Committees, with respect to subjects within their sphere of responsibility and the force of subordinate legislation.

It should be noted that while codes, laws and ordinances are referred to by name; decrees, decisions, circulars and directives are usually referred to by the number, signing date, and the name of issuer.

Language

Vietnamese is the country's official language. Foreign languages such as English, French, Russian, Chinese, Japanese and German are also used to varying degrees. English, however, is by far the most widespread foreign language and is commonly used alongside Vietnamese in legal documents relevant to foreign trade and foreign direct investment. English is also featured on the websites of many. businesses (both local and foreign-owned) and Government agencies.

Business hours/time zone

Normal working hours in Vietnam are 8 hours per day and 6 days a week. However, the standard working week for officials and public employees and employees in administrative organizations is 40 hours (5 days). Other organizations are encouraged to apply the standard working week of 40 hours. The total number of overtime hours should not exceed 4 hours a day, 30 hours a month or 200 hours a year. In special circumstances, and subject to the government's allowance, the total number of overtime hours can be extended to a limit of 300 hours per person per year.

Public holidays

Employees who have been employed for 12 months are provided with a minimum of 12 days of paid annual leave (vacation) per year, in addition to the Public Holidays.

1 Jan	New Year's Day
Lunar new year (varies)	Tet Holidays (5 days)
10th day of 3rd lunar month (varies)	Hung King's Anniversary
30 Apr	Reunification Day
1 May	International Labour Day
2 Sep	National Day

Economy

Vietnam is a developing country that has been transitioning from the rigidities of a centrally-planned economy since 1986. Vietnam joined the World Trade Organization in January 2007, which has promoted more competitive, export-driven industries. Vietnam successfully finalised negotiations for the Trans-Pacific Partnership (TPP) trade agreement, signed a number of bilateral and multilateral free trade agreements

(FTAs) with other countries, including the EU Vietnam FTA, and joined the ASEAN Economic Community (AEC). It is expected that Vietnam would have much to gain from these agreements and partnerships, especially where booming apparel and shoes industries are poised to benefit from the 0% tariffs in the United States and other significant importing markets.

Agriculture's contribution to the country's GDP has continued to shrink from about 25% in 2000 to 16.3% in 2016, while contribution from the Service sector increased from 39% to 41% in the same period. The foreign invested sector was identified as an increasingly significant source of growth for the Vietnamese economy, accounting for 23.4% of the total capital invested in 2016, an increase of 23.3% from 2015.

In 2016, a total of 60,667 domestic firms closed down, a decrease of 15.0% from the same period of 2015. The number of newly-established businesses was 110,100, an increase of 16.2% in number and 48.10% in terms of capital. In addition, 26,689 enterprises resumed their operations, up 24.1% compared to the same period of 2015.

Employment levels

As at 28 December 2016, Vietnam had 54.4 million people over 15 years old, including 47.7 million people of working age with approximately 66.6% of them concentrated in rural areas.

The number actually employed in 2016 was estimated at 53.29 million, of which, 41.9% were working in agriculture, forestry and fishery sectors, 24.69% working in the industrial and construction sector and 33.41% working in the services sector.

The underemployment rate was 1.64% on average while it was 2.10% in rural areas. Overall the unemployment rate in 2016 was 2.30%, slightly lower than that of 2015 but higher than that of 2014 (2.31% and 2.10% respectively); however, the unemployment rate in urban areas improved to 3.18% compared to 3.29% in the previous year.

Cost of living

According to the Mercer's survey over 209 cities across five continents in 2016, Vietnam's two major cities: Ho Chi Minh City and Hanoi were ranked 88th and 106th respectively in terms of the cost of living, compared with 90th and 86th respectively, in 2015. Living in Ho Chi Minh City and Hanoi is more expensive than in Phnom Penh and Kuala Lumpur (ranked 118th and 151st respectively) but not as expensive as in Bangkok.

Living standards

The national poverty rate continued decreasing to 4.45% compared to 5.97% in the previous year, and has dropped from 37.4% in 1998.

According to the Human Development Index (HDI) report announced by UNDP in September 2015, Vietnam's HDI for 2014 positioned it at 116 out of 188, climbing 5 places from 2013 thanks to some achievements in poverty reduction, healthcare and education improvements.

47.78 M
people of working age

33%
of the labour force
working in service sector

Business etiquette and travel

Business cards

Always carry business cards when you visit Vietnam and distribute them at every business meeting. When you meet someone for the first time in Vietnam, it is polite to offer your card with both hands. Upon receiving a card, do not stuff it into your pocket. Take a minute to look at the person's card, take care to pronounce their name correctly and acknowledge their title to show your counterpart that you value the opportunity to meet them. When you have finished engaging with an individual, place the business card in your wallet or purse, to show respect.

If you have a business card that is in English and Vietnamese, it is good etiquette to present the card with the Vietnamese side facing upwards.

The order for a Vietnamese name is family name, middle name and given name. Vietnamese names list the surname first, so when referring to a Vietnamese person, use their given name, prefixed by the appropriate term of reference. Hence, the General Secretary of the Communist Party of Vietnam, Nguyen Phu Trong should be referred to as Mr Trong.

Language hints

Keep in mind that many Vietnamese have learnt English at high school or university and may not necessarily have had any particular level of contact with native English speakers. Thus you will need to speak slowly and concisely. Remember to avoid using words in English that are specific to a particular country or region, and if someone does not understand certain words, try using a different version (e.g footpath, sidewalk or pavement).

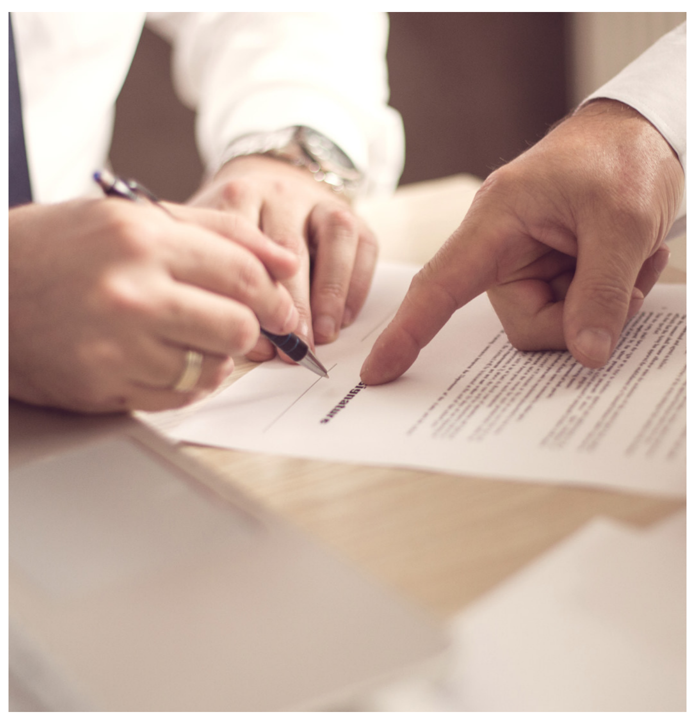
It is impolite to undermine the authority of a more senior Vietnamese person by directing questions or responding to a more junior person whose English skills may be better. When using interpreters, it is polite to talk directly to the person you are dealing with and maintain eye contact.

Business attire

The climate in Vietnam can be quite hot all year round, particularly in the South so it is advisable to make allowances for this when selecting your business wardrobe. However Hanoi does have a winter season and can experience temperatures as low as 7 or 8 degrees Celsius. Probably the most suitable business attire is a lightweight suit for both men and women or smart trousers with a collar and tie for men, skirt and blouse for women.

Handshakes

Handshakes are used upon meeting and departing. Some Vietnamese use a two-handed shake, with the left hand on top of the right wrist.



Business notes

Vietnamese are a polite people and will often smile and agree with you when in fact they may not have fully understood what you have said. The smile and nod are usually to acknowledge that you have spoken, and may not always indicate a firm agreement or that that they have understood what you said..

It is often advisable to have bilingual sales literature, including business cards and product manuals, available for more complex negotiations. It is useful to have an agenda and relevant papers translated into Vietnamese prior to the meeting so both sides are clear on what they wish to discuss.

Eating and drinking is a major part of doing business in Vietnam. Toasting at banquets is a common activity during dinner. Many Vietnamese men may smoke during the meal. When cognac or whisky is served at a meal, the custom is for individuals to drink only after a toast is made.

Returning a toast is standard practice. Common toasts are "Tram Phan Tram" (100% Bottoms Up) and "Chuc Suc Khoe" (Good Health).

Business meetings

Hierarchy and face manifest themselves in different ways at business meetings. For example, the most senior person should always enter the room first. Silence is also common in meetings where someone disagrees with another and remains quiet, so as not to cause a loss of face.

Relationships are critical to successful business partnerships. Always invest time in building a good relationship based on both personal and business lines. Any initial meeting should be used solely as a "getting to know you" meeting.

Currency

The official Vietnamese unit of currency is the Vietnamese Dong, often abbreviated as Dong or VND. Current regulations require businesses to advertise prices in VND only. Businesses that require the flexibility to operate in foreign currencies may apply for the right so to do.

When visiting Vietnam, it is still advisable to carry a supply of foreign currency, usually US dollars. Large bills receive better rates than small bills for currency conversions. Travellers' cheques in US dollars can be exchanged at certain banks.

Automated Teller Machines (ATM's or cash dispensers) have experienced dramatic growth in recent years, with more than 16,937 machines and 223,381 POS machines located across the country. These provide a safe and cheap way to obtain Vietnamese currency. However, it is wise not to depend solely on ATM's when visiting areas outside of the main urban locations.

Tipping, although not customary in Vietnam, is appreciated with small tips becoming more common in recent years for the service industries. The common tip value is 10% of your bills; otherwise, it is all up to the customers' wish.

Gifts

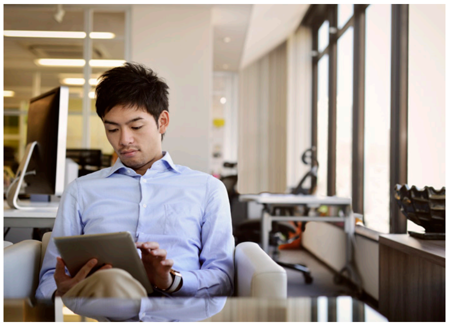
Gifts are not commonly exchanged when meeting for the first time. However a small token over dinner or at an appropriate moment is always appreciated. The gift is not as important as the sentiment sent with it.

A box of chocolates, a bottle of cognac (for a man), or a small souvenir from your country will show that you are a considerate person.

Travel to Vietnam

Visas

A valid visa is required for entry into Vietnam. Legally, tourist visas are not valid for business visits, although this requirement is not strictly enforced. Vietnam has signed bilateral agreements with most ASEAN countries to exempt entry visas for ASEAN citizens visiting other ASEAN countries for a pre-determined period of time. Vietnam has also exempted citizens of The United Kingdom, Germany, France, Italy, Spain Denmark, Finland, Sweden, Japan, South Korea, Norway, Belarus and Russia for citizens visiting Vietnam from requiring entry visas for visits of less than 15 days. Currently, the government is considering entry visa exemptions to foreign visitors from Australia, New Zealand, India, and Canada and the majority of European countries..



In order to obtain a business visa, a business person should be sponsored by an organisation in Vietnam. The sponsorship can be by the visitor's Vietnamese partner or the visitor's representative office or branch, a trade-support institution, a consulting firm or authorized agent. Visitors must submit visa application forms with photographs and their passports to the Vietnamese Embassy in their country for visa issuance and pay a visa stamping fee.

Vietnam introduced a system for e visas from February 1st and visitors from 40 countries can now apply on line for a 30 day single entry visa..

A one-month renewable visa will generally be issued. Multiple entry-exit visas, which are valid for three to six months may be obtained for visitors who have regular business in Vietnam. It is dependent on each case, 6-month visa could be issued to visitors such as prestige tourism agencies or investors who are making investments in Vietnam.

Visas can be pre-arranged through certain travel agents or on line and collected upon arrival at Hanoi or Ho Chi Minh City airports, avoiding the need to visit a Vietnamese Embassy abroad.

In order to make the process of obtaining a visa easier for tourists and business travellers, the Vietnamese Immigration Department has allowed for a Visa upon arrival. This system allows the traveller to apply for an approval letter from the Vietnamese Immigration Department online. The visa will be issued upon arrival at Vietnam international airport having paid the relevant fee. However Visa on arrival can be subject to delays of 30-120 minutes depending on the time of arrival, particularly in HCMC. So using the fast track option is recommended for an additional fee.

International airports and transport

Vietnam's three main points of entry by air are Ho Chi Minh City (Saigon), Hanoi and Da Nang. Ho Chi Minh City's Tan Son Nhat International Airport is located approximately seven kilometres from the city's downtown and a taxi fare of around VND150-200,000 (approximately USD7-9). In Hanoi, with the recent completion of Nhat Tan Bridge, the distance from Noi Bai International Airport to central business districts has been reduced to approximately 25 kilometres. The travel time of about 30 to 45 minutes by car and the taxi fare is approximately VND350,000-400,000 (c.USD16-USD18). Da Nang International Airport, the third international airport in Vietnam, is an important gateway to access central Vietnam. The airport is 2.5 kilometres southwest of the city centre and is about a five minute drive from Da Nang city.

Visitors should only use metered taxis or Uber, Grab Taxi or licensed transfer services available inside the arrival halls, in Vietnam, preferably from one of the reputable taxi operators such as Mai Linh, Vinasun, TaxiGroup and Phuong Trang. There are many illegal or copy-cat taxi operators throughout the country. So to avoid inflated fares look for newer vehicles with distinctive corporate lettering and identification. Visitors are advised not to use transport if it is not metered unless booked through a hotel or reputable company.

Entry and departure requirements

Maecenas malesuada neque non Visitors to Vietnam can bring with them unlimited amounts of foreign currency, objects made of gold, silver, precious metals and gemstones or plated with silver or gold. However these must be declared in detail on customs forms. Foreign and Vietnamese currency equivalent to under USD5,000 and VND15 million respectively need not be declared. There is no restriction on books or other printed material apart from pornographic or politically sensitive material.

Books and other electronic media may be screened to ensure compliance with the laws. It is illegal to bring letters, packages or correspondence for others into or out of the country. It is also illegal to export antiques or images of Buddha. All luggage is x-rayed on international arrival and for all departures. Remember to keep your baggage claim tag, as it is often requested when collecting baggage when travelling domestically.

Key trends and statistics

Overview

According to the World Economic Forum's (WEF) Global Competitiveness Report 2016–2017, Vietnam ranks 60th in terms of competitiveness amongst 138 economies, compared with 56 amongst 140 countries in last year's result. In addition, in May 2016, the credit rating agency Fitch Ratings affirmed Vietnam at "BB-" with a stable outlook, unchanged from last year.

In 2016, Exports and Imports had a growth rate of 8.6% (USD175.9 billion) and 4.6% (USD173.3 billion) respectively with a trade surplus of USD2.6 billion.

Principal imports

The import turnover was USD173.3 billion in 2016.

Vietnam's Principal Imports

Source: Government Statistics Office (GSO)

Top import sectors	2016		2015	
	USD Billion	**%**	**USD Billion**	**%**
Machinery and spare parts	28.1	16%	27.6	17%
Electronics, Computers and spare parts	27.8	16%	23.1	14%
Telephones and spare parts	10.6	6%	10.6	6%
Fabrics	10.5	6%	10.2	6%
Steel	8.0	5%	7.5	5%
Plastics	6.3	4%	6.0	4%
Auxiliary materials for textile, footgear	5.1	3%	5.0	3%

China is the largest market holding USD49.8 billion of Vietnam's import turnover, increasing by 0.5% from 2015, followed by South Korea, ASEAN countries and Japan.

Principal exports

In 2016, the export turnover was USD175.9 billion.

Vietnam's Principal Exports

Source: Government Statistics Office (GSO)

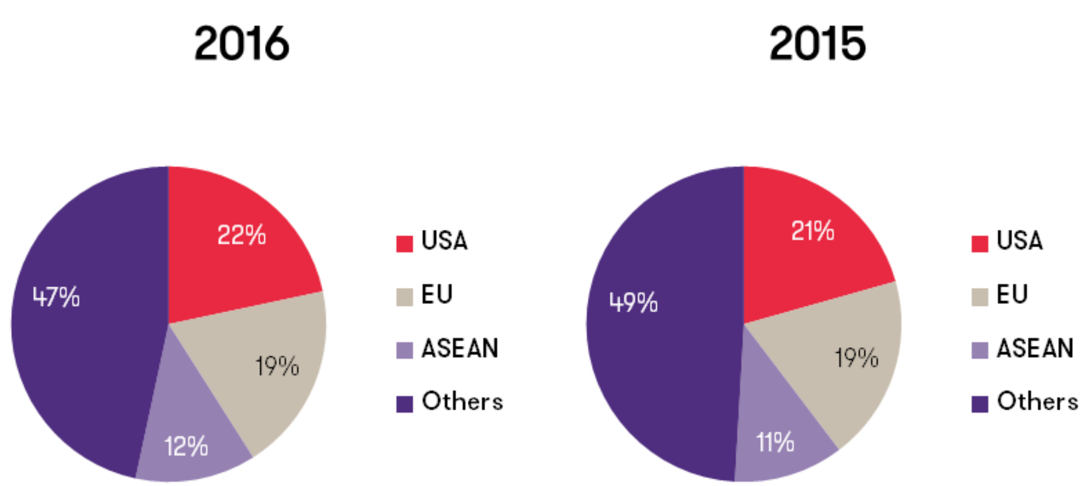
Top export sectors	2016		2015	
	USD Billion	%	USD Billion	%
Telephones and spare parts	34.5	20%	30.2	19%
Textiles	23.6	13%	22.8	14%
Electronics, Computers and spare parts	18.5	11%	15.6	10%
Footwear	12.9	7%	12.0	7%
Other machinery and equipment	10.5	6%	8.2	5%
Seafood	7.0	4%	6.6	4%
Wood and wooden products	6.9	4%	6.9	4%

In 2016, Telephones and spare parts continued to contribute the largest export value with over $34.5 billion, followed by textiles products ($23.6 billion), and Electronic, Computers and spare parts ($18.5 billion). In terms of growth, 'Other machinery and equipment', and 'Electronics, Computers and spare parts' achieved the highest growth of 28.27% and 18.39% respectively.

In 2016, USA was still the largest export market of USD38.1 billion, rising at the approximate rate of 14%. EU was the second largest export market of USD34 billion, increasing by about 10% compared to the last year.

Vietnam's Principal Exports Market (%)

Source: Government Statistics Office (GSO)



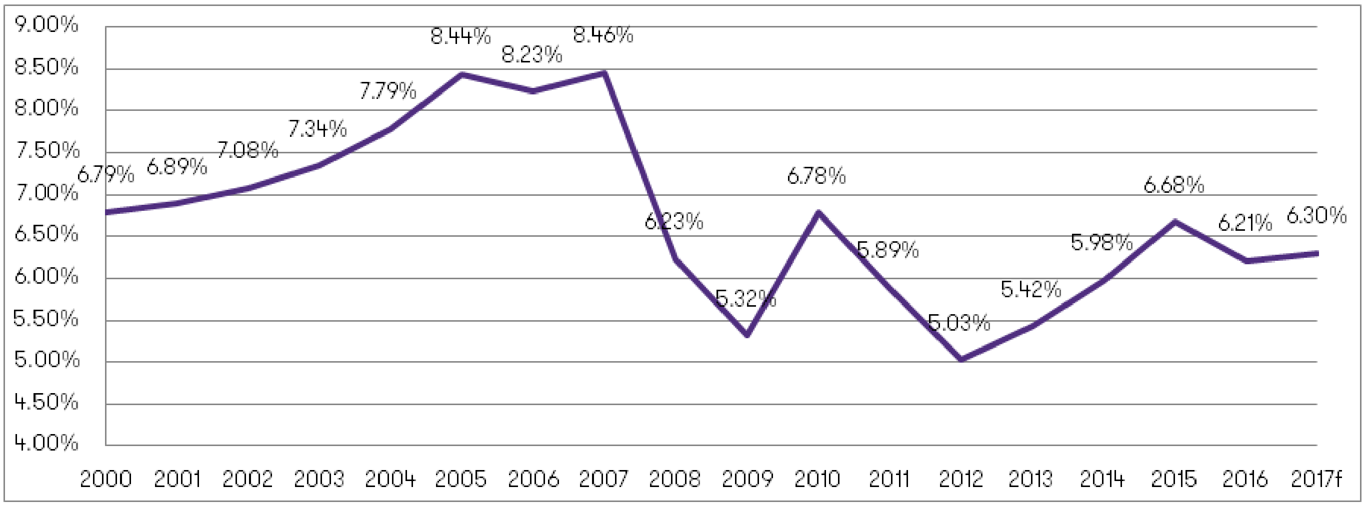
Economic environment

Gross Domestic Product (GDP) Growth

In 2016 the GDP growth rate has decreased slightly to 6.21%. Economic growth in 2017 is expected to recover to between 6.30 and 6.5%.

GDP Growth Rate (2000-2017f)

Source: GSO

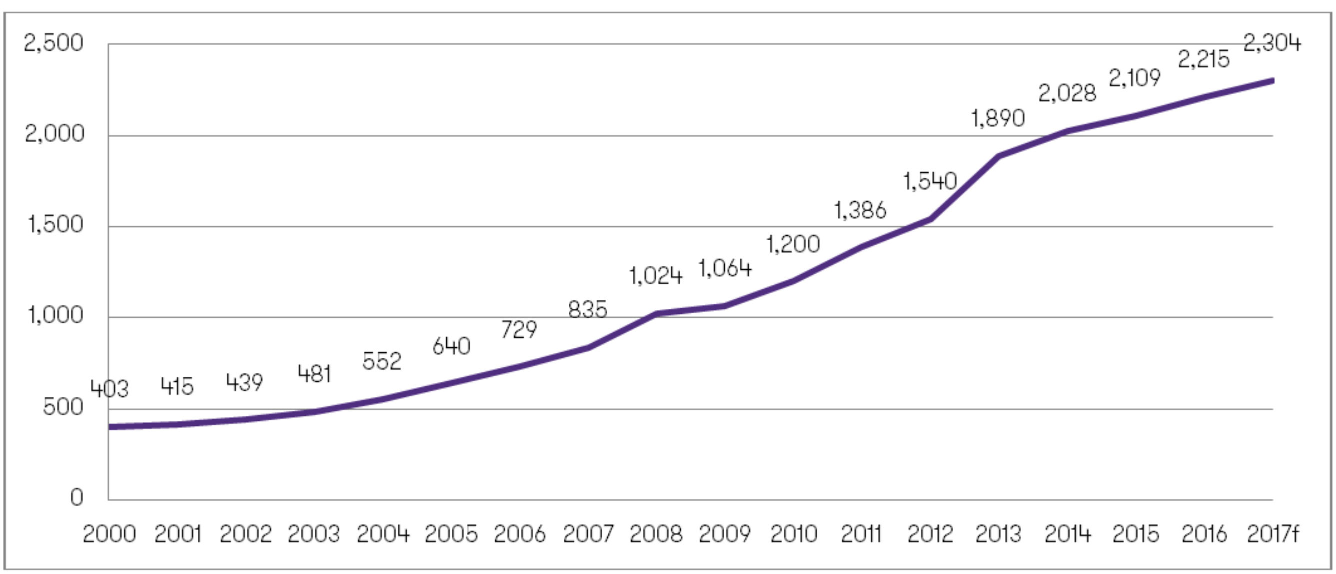


GDP per capita

GDP per capita has continued to improve steadily y-o-y since 2000. The graph below shows the average GDP per capita of USD2,215 in 2016, an increase of 5.03% compared to 2015. The actual GDP per capita in key cities such as Ho Chi Minh City and Hanoi are significantly higher than other regions.

GDP per capita (2001-2017f)

Source: Ministry of Planning and Investment

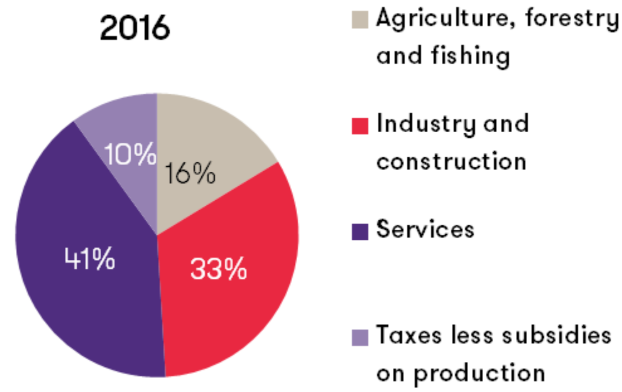


Contribution to GDP

Similar to previous years, in 2016, the Services sector continued to contribute the largest portion to the GDP (41%). Industrial and construction sectors ranked second, followed by Agriculture.

GDP contribution by sectors

Source: GSO



Foreign Direct Investment (FDI)

Total registered FDI in 2016 was USD24.4 billion, an increase of 7.1% compared to 2015, of which, USD15.2 billion represented registered capital of newly licensed projects.

In terms of sector, in 2016, the top 3 sectors for FDI were Processing industries (accounting for 64% of total FDI), Wholesales and Retailing (8%) and Real Estate (7%).

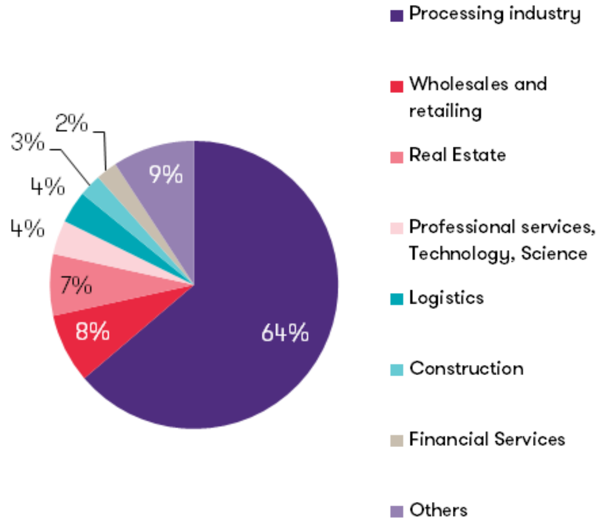
In 2016, Asian countries continued accounting for the largest portion of FDI investment into Vietnam, at 65%, including South Korea, Japan, Singapore, China and Taiwan.

Registered FDI (2006 – 2016)

Source: GSO and Ministry of Planning and Investment

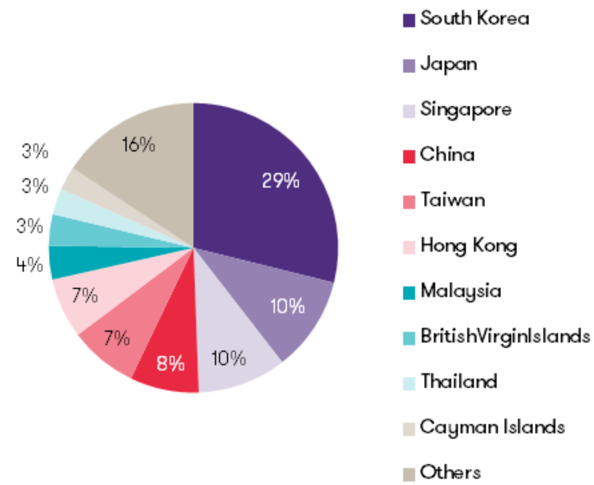
Registered FDI by sectors, USD billion (2016)

Source: Ministry of Planning and Investment



Registered FDI by countries and territories, USD billion (2016)

Source: Ministry of Planning and Investment

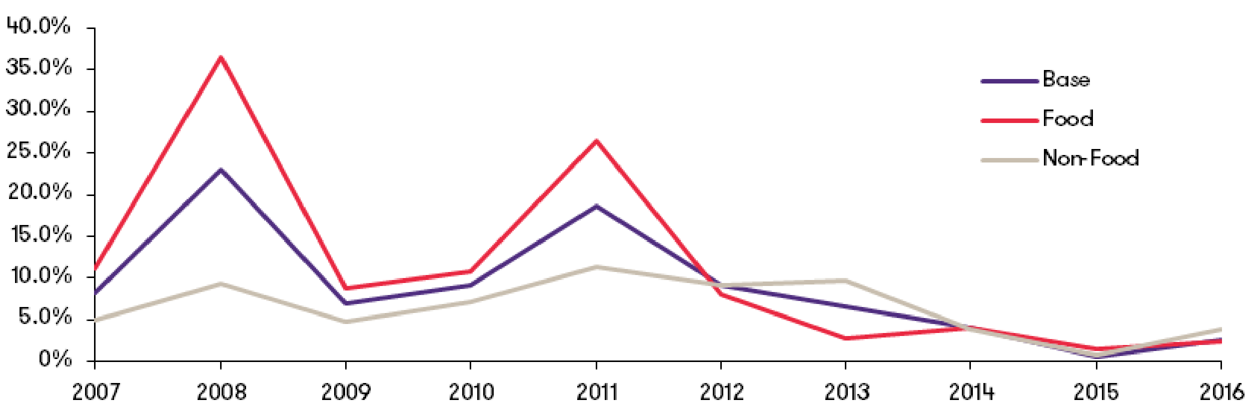


Inflation

Inflation in Vietnam averaged 7.9% between 2009 and 2015. In 2016, the inflation rate increased slightly to 2.66%, after falling to record low of 0.63% in 2015.

Vietnam Annual Inflation rate (2007-2016)

Source: GSO



Regulatory environment

Summary

The political system of the Socialist Republic of Vietnam can be defined by a single-party socialist Republic framework. The system is led by the Communist Party of Vietnam.

Executive power is concentrated in the Government, formerly known as the Council of Ministers. The Government is charged with the general management of the economy and the state. The head of government is the Prime Minister.

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

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

The National Assembly is the supreme representative and legislative body and determines domestic and foreign policies, socio-economic tasks, national defence and security issues. It has 500 members, elected by popular vote to serve four-year terms. While the Constitution in general establishes the rights of the people under the leadership of the Communist Party, the power of the people is exercised through the National Assembly at a central level and through People's Councils at a local level.

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

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

Data Protection

Vietnam does not have a comprehensive data protection law. Instead, the provisions for data protection can be found across a number of different pieces of legislation:

- The Constitution
- The Civil Code (Law No. 33/2005/QH11)
- The Law on Protection of Consumers' Rights (Law No. 59/2010/QH12)
- The Law on E-Commerce (Law No. 51/2005/QH11)
- The Law on Information Technology (Law No. 67/2006/QH11)
- The Law on Insurance Business (Law No. 24/2000/QH11 as amended by Law No. 61/2010/QH12)
- The Law on Credit Institutions (Law No. 47/2010/QH12).

The provisions under the above data protection laws apply to all individuals, companies and State Bodies. While there is no official definition, personal data is generally defined as information which is adequate to accurately identify the identity of a data subject, covering at least one of the following types of information: full name, date of birth, profession, title, contact address, e-mail address, telephone number, ID number and passport number.

The key data protection provisions for people or entities who hold or process personal data are as follows:

- A data subject's right to privacy shall be respected and protected by law
- The collection and publication of personal information must only occur with the consent of the data subject, unless this is being undertaken as part of obligations stipulated by law
- Any form of electronic information of a data subject must be protected and kept confidential; the control of this communication may only take place in circumstances stipulated by law and subject to a decision issued by an authorised State body

- Anyone collecting, processing and using the personal data of a data subject in a network environment must obtain consent from the data subject, unless otherwise stipulated by law
- The data subject must be notified of the form, scope, place and purpose of the collection, processing and use of his or her personal data
- The data must only be stored and used for a certain period, either as stipulated by law or per the agreement between the two parties
- The data collector must take the necessary measures to ensure that the personal data is not lost, stolen, disclosed, modified or destroyed
- Necessary measures must be taken to update or amend personal data if it is inaccurate
- Data can only be transferred to a third party where the data subject provides his consent.

There is no official body in Vietnam regulating the use of personal data. Accordingly, there is no notification or registration scheme for the collection, processing or disclosure of personal data. There is also no legal requirement to appoint a data protection officer.

Any person or business that fails to uphold necessary measures to ensure the safety of personal information may be liable to an

administrative fine of between VND 20 million and VND 30 million (US$ 900-1400).

Exchange Controls

The management of foreign exchange for foreign invested enterprises and foreign parties to business contracts is regulated by the State Bank of Vietnam (SBV).

Foreign invested enterprises and parties to Business Cooperation Contracts ("BCC") must open bank accounts in Vietnam Dong, and/or foreign currencies, with banks permitted to operate in Vietnam. Where necessary, Vietnamese enterprises with foreign-owned capital may open accounts with banks abroad with the approval of the SBV.

Furthermore, foreign invested enterprises and parties to BCCs are able to buy foreign currencies from commercial banks to cover permitted transactions. Although they have the right to cover, there is no guarantee that their foreign currency demands can be met, except for infrastructure development and other "critically important" projects.

Foreign invested enterprises and parties to BCCs are required to open a "capital account", which is a bank account for all transactions in regard to capital remittance, foreign loans, profits and other legitimate types of income from foreign investment. In addition to this account, other operating VND and/or foreign currency accounts can be opened. Specific cases and conditions for Vietnamese companies opening bank accounts in a foreign country also apply.

All foreign loans (except for short-term loan of less than 1 year) must be approved and registered with the SBV. All foreign loan transactions that a foreign invested firm undertakes must be conducted via the capital account. The conversion of currencies into USD or VND for various financial transactions is implemented with reference to the rate set by the SBV, at the time of transfer.

Residents receiving foreign currency income from goods and services exported, or other non-resident sources in foreign countries, must transfer such income to foreign currency accounts opened with authorised credit establishments in Vietnam. This should be done in accordance with payment time-limits of contracts or payment vouchers.

Organisations receiving foreign currency from money transfers, must transfer such currency to foreign currency accounts opened with authorised banks or sell it to authorised banks.

Foreign investors are permitted to transfer dividends abroad and income legally earned in Vietnam and any remaining invested capital upon the liquidation of an investment project. This transfer must be conducted via capital account.

Money Laundering Regulations

Vietnam issued the Law on Anti Money Laundering No. 07/2012/QH13 which was effective from 01 January 2013.

Vietnamese legislation requires businesses to report transactions over a certain threshold and suspicious transactions to Vietnam's financial intelligence unit (FIU). In addition:

- Jewellery sellers must ascertain the identity of, and report, transactions of USD14,000 or more
- Securities brokers, dealers and real estate vendors have to report all transactions to the FIU regardless of the amount of the transaction
- Banks will have to ascertain the identity of businesses and persons undertaking transactions equal to or greater than VND300 million per day if the person or entity has not undertaken any other transactions in six months

- Casinos will have to ascertain the identity of persons gambling when the bets or the wins are equal to or exceed VND60 million per day
- Charities will have to report the names and addresses of organisations and people who make donations and will have to report how the funds were used
- All reporting entities must undertake AM risk assessments in respect of their business and implement compliance plans to mitigate those risks.

Failure to comply with the above provisions may result in a number of administrative sanctions. A monetary fine of VND30 million to VND50 million, (US$ 1,320 -2,200) for a failure to report any suspicious transactions can be imposed. A monetary fine of VND40 million, to VND80 million, (US$ 3,520-4,400) is applicable if a person fails to report parties involved in a concerned transaction named in the black list of the authorities. A fine and a prison term of between one and 15 years may be imposed for involvement in money laundering activities, alongside a ban on holding certain professional positions for one to five years.

Intellectual Property Rights

Vietnam recognises the importance of protecting intellectual property rights (IPR), which include patents, trademarks and service marks, copyright and industrial designs. With the implementation of the Bilateral Trade Agreement provisions regarding IPR, Vietnam has made a commitment to protecting intellectual property. The Bilateral Trade Agreement's property rights chapter was modelled on the WTO Agreement on Trade- Related aspects of Intellectual Property.

The National Office of Intellectual Property (NOIP) is the authority responsible for the registration of intellectual property. Foreign organisations and individuals who seek to register their intellectual ownership should file their applications through an authorised agent, who will transfer their applications to the NOIP.

The Office of Copyright Protection under the Ministry of Culture and Information is responsible for the protection of copyrights.

Copyright

Copyright can protect: literary work, dramatic works, musical works, artistic works, layouts and typographical arrangements, recordings and broadcasts. Copyright works, receive statutory protection automatically once they are placed in the public domain.

Protection granted

Copyright is granted to eligible work automatically irrespective of registration. However, registration of this copyright is recommended. The author or owner of a copyright can directly, or authorise another person, to submit an application for the registration of a copyright to the Department of Copy Right in Literature and Arts of the Department of Information and Culture.

The owner is granted moral and economics rights over his work, including the right to apply technological measures to prevent infringements of his rights.

Infringements

In the case of infringements, whereby a person reproduces, distributes, displays or performs the protected work, the owner can take the following actions:

- request that a person terminates the infringement, correcting any false information and providing appropriate compensation

- request the competent state authority to apply administrative, civil or criminal sanctions.

Duration

The length of protection is indefinite for the moral rights of authors to give titles of their works, attach their names to their works and have their real names acknowledged when the work is published.

However, the right of publication with regard to cinematographic works, photographic works, applied art works and anonymous works is only protected for 75 years from the date of first publication.

For all other works, rights are protected for the life of the author plus 50 years.

Patents

Patents protect inventions which can be applied in an industrial environment. For a patent to be granted, the invention must be new, have an inventive step which is not obvious to someone with experience in the subject and capable of being used in some kind of industry.

Protection granted

A patent gives its owner the ability to take legal action to stop others from:

- the making of a product or the use of a process which is the subject-matter of the patent

- selling anything incorporating the subject-matter of the patent

- inducing third parties into any of the above, without the inventor's permission.

Patents must be registered with the National Office of Intellectual Property of Vietnam. The rights are then protected by registration. granted moral and economics rights over his work, including the right to apply technological measures to prevent infringements of his rights.

Infringements

Infringing a patent means manufacturing, using, selling or importing patented products or processes without the owners' permission.

In case of infringement, the owner of a patent can request that the person terminates any infringement or request the state authority to apply administrative, civil or criminal sanctions.

Duration

20 years from the filing date.

Trademarks

A trade mark must be a sign capable of distinguishing goods and services of one undertaking from those of another undertaking. Those signs can be: words, personal names, designs, letters, numeral slogans, sounds, smells, signs and distinctive colours.

Protection granted

The owner can obtain protection in Vietnam by registering the trademark at the National Office of Intellectual Property, unless it is a famous trade mark which is protected on the basis of actual use in the marketplace.

Registration provides the owner with exclusive use over the trade mark.

Infringements

Some examples of infringement of a trade mark are:

using an identical or similar trade mark for identical or similar goods and services to a registered trade mark creating a likelihood of confusion on the part of the public

where a mark has a reputation, infringement may arise from the use of the same or a similar mark which damages or takes unfair advantage of the registered mark

- In the case of infringement, the owner of a patent can request that the person terminates any infringement or request the state authority to apply administrative, civil or criminal sanctions.

Duration

10 years (registration can be renewed for further periods of 10 years).

Designs

An industrial design, the external appearance of a product embodied in three dimension configurations, lines, colours or a combination of the aforementioned element, can be protected if it is new, of a creative nature and can be applied in industry.

Protection granted

Registering a design gives the owner a property right over the design. Holding design rights provides the own the exclusive right to use it and to prevent any third party using it without consent.

The filing must be made with the National Office of Intellectual Property.

Infringements

Design rights are infringed by an unauthorised person making an article exactly or substantially similar to the protected design or by making a design document for the purpose of making unauthorised copies.

Duration

Once obtained, design rights are protected for a period of five years from the date of filing of the application. It can then be renewed twice for periods of five years.

Opening up to Foreign Investment

In 2016, Vietnam observed a slight drop in foreign investment. While registered Foreign Direct Investment (FDI) for new projects was US$15.182 billion, a drop of 2.5% in comparison with 2015, additional registered capital was US$5.765 billion, equal to 81% of additional registered capital in 2015. Meanwhile, total capital contribution and share purchase by foreign investors with capital share higher than 50% of charter capital or in the conditional investment fields amounted to US$3.425 billion. On the contrary, FDI disbursement recorded an increase of 9% versus 2015, at US$15.8 billion. In general, by December 2016, total value of new, additional registered capital, capital contributed and shares bought by foreign investors amounted to US$24.4 billion.

Since opening up its economy to foreign investment in the late 1980's, Vietnam has experienced significant improvement in living standards and the economy in general. Foreign investment is considered a vital resource for development, and the Government of Vietnam has taken efforts to improve the investment environment and attract further foreign capital inflows.

In addition, there are several sectors that have been partially or even fully opened to foreign investors, following the commitment schedule with the World Trade Organization (WTO).

While 2015 was a successful year for Vietnam with various free trade agreements signed, 2016 saw a number of FTAs come into effect including the VCUFTA (Vietnam with the Customs Union of Belarus, Kazakhstan and Russia), VKFTA (Vietnam with Korea), VCFTA (Vietnam with Chile) and Vietnam – EAEU (Vietnam with Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan).

On 1 February 2016, the text of the EU – Vietnam free trade agreement was published, following the announcement of the conclusion of the negotiations. The EVFTA was signed in 2016 and come into force in 2018, providing easing rules, standards and regulations for exporters to EU markets, reducing duty fees and tariffs as well as extending working permissions for EU workers.

TPP being officially signed on 4 February 2016 in Auckland, New Zealand had concluded 5 years of negotiation. The TTP will now undergo a two- year ratification period for the deal to be implemented. However, as the new President of the USA – Donald Trump has issued an executive order withdrawing from TTP, the absence of USA, which accounts for almost 60 percent of combined TTP GDP, will greatly impact the expected benefit of TPP to its partners, if the TPP survives..

Apart from vast improvements in the legislative environment, there have also been improvements in bureaucratic procedures which have been considered a bottle neck to social development of Vietnam and several administrative procedures have been cut. In 2016, customs clearance time for exports and imports has been reduced to 108 hours and 138 hours respectively and aiming for a further reduction to below 36 hours and 41 hours by 2020. In addition tax payers have been benefited from the annual time reduction for making tax filings and payments which have reduced from 537 hours (prior to 2014) to 247 hours in 2014, to 117 hours in 2015 and to 110 hours by the end of 2016 (the average time for tax fillings of ASEAN+6 is 121 hours/year).

US$15.182 billion

registered FDI for new projects

US$15.8 billion

FDI disbursement

Finance

Capital markets

The Vietnam securities markets are monitored and regulated by the State Securities Commission. There are two centralised securities markets, the Ho Chi Minh City Stock Exchange (HOSE) and the Hanoi Stock Exchange (HNX). Vietnamese law recognises the following types of securities: shares, bonds and fund certificates. On 5th May 2015, the Government enacted decree 42/2015/ND-CP on derivative securities and the derivative securities market, followed by Circular 11/2016/TT-BTC issued on 19 January 2016 with guidelines for the implementation of the decree. It is expected that the derivative securities market will be launched in the first quarter of 2017.

The market for unlisted public companies, UPCOM which was established in June 2009, aims to narrow transactions on the free market, improve information transparency of companies and reduce risks for investors.

In 2015, the Vietnamese government gave a major boost to foreign direct investment by permitting foreign investors to take a majority ownership or to wholly own Vietnamese public companies. From 1 September 2015, the previous foreign ownership cap of 49% was lifted in a number of business sectors in accordance with the issuance of Decree No. 60/2015/ND-CP on 26 June 2015. However, some sectors will continue to have restrictions such as 30% for the banking industry , 49-51% for logistic services, 49% for entertainment services etc. The holding of fixed income securities is not subject to any restriction.

All securities transactions in Vietnam must be conducted in Vietnamese Dong. In order to sell and buy securities of listed enterprises, foreign investors must trade through a special Vietnam Dong indirect investment account opened at an authorized bank in Vietnam.

Banking system

Vietnam's banking system was divided into a two-tier structure in 1988 when the State Bank of Vietnam (SBV) assumed the regulatory and supervisory roles for the banking sector, with commercial activities shifting to credit institutions.

The SBV acts as both the Central Bank and as a Government Agency of the Socialist Republic of Vietnam. Operating under the tight direction of the Government, the SBV is subject to the Government's or the Prime Minister's approval for key areas of operation.

Since dividing into a two-level system, the Vietnam banking system has expanded rapidly. Vietnam's credit institutions comprise state-owned commercial banks (SOCBs), joint-stock commercial banks, joint-venture banks, 100% foreign-owned banks, branches of foreign banks, credit cooperatives, finance leasing companies and finance companies.

Four SOCBs dominate the domestic banking sector, the Bank for Foreign Trade of Vietnam (Vietcombank), the Vietnam Joint Stock Commercial Bank for Industry and Trade (Vietinbank), the Bank for Investment and Development of Vietnam (BIDV), and the Vietnam Bank for Agriculture and Rural Development (Agribank). The SOCBs currently account for around 70 percent of total banking system assets; however the domination of these banks has been on a significant downward trend.

2016 is the first year of the second phase of bank restructuring process (2016 – 2020) which follows the first phase ending in 2015 (2011 – 2015). The merger of several banks and the buying of underperforming banks, banks unable to self – restructure by the State Bank has brought about several achievements including improvement in the performance of banks and reduction of total bad debt ratio of the banking system to 2.7%.

Over the last decades, foreign banks have expanded their presence in Vietnam. There are about 51 foreign bank branches; two joint-venture banks, and six 100 percent foreign-owned banks as of 30 June 2016.

Current legislation states that the total foreign shareholdings, in local Vietnamese banks, is not to exceed 30 percent. Within this limit the maximum shareholding permitted to a foreign bank as a strategic partner is 20 percent, while a non- strategic investor can own 15 percent. Individual investors may hold no more than 5% of the shares.

While the banking industry developed rapidly, Vietnam is still a largely cash-based society. This is evidenced through the fact that only about 20 percent of Vietnam's population of 90+ million held bank accounts at the end of 2015.

Legal treatment

Under the current regulations, credit institutions are permitted to provide a wide range of products and services from traditional banking to fund management or securities services. In practice, due to licensing restrictions, the non-traditional banking services are generally provided by banks through separate legal entities.

In accordance with Vietnam's commitments to the WTO, the government has committed to providing a level playing field for both domestic and foreign credit institutions.

Foreign investor banking services

Generally, all foreign investors are required to open a bank account to conduct business in Vietnam. Foreign investors are permitted to open accounts in Vietnamese Dong and some other foreign currencies. Foreign invested enterprises should note the requirement to open a capital account for all capital and dividend transactions.

Insurance industry

Vietnam's liberalisation policy in the early 1990s opened the insurance industry up to foreign investment. Previously, the market was dominated by state-owned enterprises. Foreign invested enterprises can now operate insurance businesses as 100 percent foreign-owned enterprises, joint ventures with local partners, branches or representative offices. If an investors chooses a 100 percent foreign owned or joint venue form, they must set these up as limited liability companies.

The insurance industry has grown extensively over the past decade; with life and non-life premiums growing at a CAGR of 17.62 percent from 2005 to 2015. In 2016, insurance premiums reached approximately VND 86,049 billion, increasing 22% year-on-year, in which major growth was seen in life insurance premiums. Nevertheless, insurance penetration is still at a relatively low level in the country. By the end of 2016, there were 61 insurance companies (both domestic and foreign-invested enterprises) operating in Vietnam. Among these, there were: 29 non-life insurers, 1 branch of a foreign non-life insurer, 18 life insurers, 11 insurance brokers and 2 re-insurance companies. With Vietnam joining the AEC and the TPP, foreign investment activities and capital inflows into Vietnam are expected to rise, leading to increase in demand for insurance and growth in this market. However, the level of competition is also foreseen to go up.

The insurance market is highly regulated in Vietnam. Insurance companies are supervised by the Insurance Supervisory Authority, a subordinate body within the Ministry of Finance, under a number of laws, including the Law on Insurance Business of 2000 and its amendment in 2010.

Investment management industry

In 2016, the Vietnam stock market started a sustained recovery with VN- Index increasing 16% and total market capitalization equal to 46% of GDP, an increase of 40%. The sector's performance is expected to continue growing in 2017 with the introduction of the derivatives market in Q1 2017, the listing of many big companies including Petrolimex, VEAM, Vietnam Airlines and IPO of Vietjet Air, PV Power, Mobiphone. By the end of 2016, the plan to merge the country's two stock exchanges had been submitted to the Prime Minister for approval. It is expected by the end of 2020, two stock exchanges will be successfully merged to create a single platform to facilitate transactions more effectively. Also in 2016, the Government continued to urge State-owned enterprises to quicken the equitization process. Equitized enterprises are also required to sign up to be listed on UPCoM as soon as practical to provide better liquidaty to investors and the market as a whole.

Vietnam's stock market P/E ratio increased significantly, to approximately 16 in December 2016, making Vietnam stock market no longer one of the cheapest in Asia. Currently, over 40 asset managers operate in the country; offering public mutual funds and privately offered 'member funds'.

The industry is regulated by the State Securities Commission, which supervises the securities market, provides licenses to market participants and regulates the market's activities. The State Bank of Vietnam also has a role in regulating bank wealth management products.

Business entities

The Law on Enterprises (LOE) was adopted by Vietnam's National Assembly on 26 November 2014 and took effect on 1 July 2015. The Law provides four types of legal forms of corporation for business entities, comprising:

- Limited liability company (LLC)
- Joint-stock company (JSC)
- Sole proprietorship
- Partnership

A foreign entity may establish its presence in Vietnam as a limited liability company with one or more members, a joint-stock company, a partnership, a branch, a business cooperation contract or a representative office.

Foreign investors are also permitted to purchase an interest in existing domestic enterprises, subject to ownership limitations; this varies depending on the relevant industry sector.

The main characteristics and management structures of the common business entities are summarised below:

Limited Liability Companies

There are two types of limited liability company: (i) Single Member Limited Liability companies, and (ii) Limited Liability companies with two or more members. Neither form can be listed.

Limited liability companies are not entitled to issue shares and the total members in a limited liability company cannot exceed fifty.

Establishing a limited liability company

Foreign investors wishing to form an LLC in Vietnam, and conducting their first investment in the country, must have an investment project. An investment project is a collection of proposals declaring how the firm plans to spend its medium and long-term capital to carry out its investment activity in a specified area and for a specified duration of time. Documents must also be supplied, attesting: to the legal status of the investors, proposals for investment preferential treatment and a report on the financial capacity of the investor.

This investment project will be assessed before applying for the incorporation license. Following this, an investment registration certificate (IRC) will be issued in 15 days from the receipt of sufficient documents for a common investment project. Upon the issuance of the IRC, the Investor must apply for the business registration certificate (BRC) to complete the incorporation process and put the investment project into implementation. These processes may take longer if the authorities require extra documentation. In some cases, investment certificates are issued automatically providing certain conditions are met. In other cases, investment certificates may not be granted; as it is at the discretion of the authorities.

Following establishment, a number of other formalities must be carried out. These include:

- Announcing the establishment information on the National Business Registration Portal
- Carving and registering the Company seal(s) with the licensing authority
- Opening bank accounts
- Registering labour recruitment plans with the labour office
- Registering to join the social insurance at the social insurance department
- Registering and paying the business license tax
- Submitting the proposed accounting system to the competence tax

Capital requirement

Typically, there are no maximum or minimum capital requirements for a limited liability company. However, in some sectors a company must be able to meet certain capital threshold requirements before they are permitted to start business, e.g. for foreign-owned banks, there is a minimum capital requirement of VND3,000 billion. Limited liability companies can reduce their charter capital in accordance with the new Law on Enterprises (Article No 48/ Law on Enterprises 68/2014/QH13).

A limited liability company cannot issue shares. In addition to cash, capital contributions can be made in the form of gold, the value of land use rights, intellectual property rights, technology, technical know-how and other assets.

Company Charter

The Company Charter (similar to the M &A) is one of the incorporation documents of the Company and constitutes the incorporation and operation of the Company. The Company Charter determins the competence, duties and obligations conferred on the company, the board of directors and its shareholders/ owners.

A Company charter should include:

- the company name, head-office, branches and representative offices
- a list of business activities the firm undertakes
- the charter capital and any methods of raising or reducing the charter capital
- name, address, nationality and other basic identification of company owner
- rights and obligations of the owner/ investor
- management structure
- legal representative of the company
- formality for the adoption of decisions
- dispute resolution methods
- method for calculating salary, allowance and bonuses of chairman, directors or general director
- principles for the distribution of profits and settlement of losses
- procedures for dissolution or liquidation.
- providing the constitution does not contravene legal obligations, the document will be binding between the company and owners.

Management structure

The management structure of a limited liability company will depend on the number of the authorized representatives of the Company to create the mechanism of Chairman or members' council.

In the case of a "Chairman mechanism mode", the management structure will consist of one authorised representatives appointed by the owner and the general director.

In the case of "members' council mechanism mode", the management structure comprises the members' council, the chairman of the members' council and the general director.

A director/general director is appointed or hired by members to manage the daily business operations of the company. The chairman of the Members' Council, who is also elected by members, can be concurrently the company's Director/General Director.

For a company whose total members exceed eleven, a Supervisory Board must be established to supervise the management and direction of the company handled by the Management board and the Director/General Director. The competence and duties of the Supervisory Board are also defined by the company charter.

Filing requirements

Every company established in Vietnam must comply with the Vietnamese Accounting Standards and System regulated by the Ministry of Finance. Companies are obliged to submit financial statements within 30 days for sole proprietorship and partnerships and within 90 days for other type of enterprises from the end of each fiscal year.

Joint-Stock Companies

A joint stock company is a company whose charter capital is divided into shares, held by three or more organisations or individuals. It is a recognised legal entity and the only company type under Vietnamese law that can issue shares. Its shareholders are responsible for its debts and liabilities up to the amount of their contributed capital. A joint stock company (JSC) can issue securities and be listed on the Securities Exchange. A joint-stock company may either be 100 per cent foreign owned or domestically owned, or may take the form of a joint venture between foreign and domestic investors.

Establishing a joint-stock company

A joint stock company is established by its founding shareholders based upon their subscription for shares in the company. It is required to have at least three shareholders, with no maximum stipulated by law.

Following establishment, a number of other formalities must be carried out. These include:

- Announcing the approval and contents of the investment license in designated Vietnamese newspapers
- Opening bank accounts
- Registering labour recruitment plans with the labour office
- Registering with local tax and other relevant authorities
- Submitting the proposed accounting system to the Ministry of Finance.

Capital stock and shareholders

The founding shareholders of a JSC must subscribe at least 20 per cent of the total shares that the JSC is authorised to offer for sale. Shareholders can be Vietnamese or foreign nationals. A joint-stock company must issue ordinary shares and may issue preference shares and/or issue bonds. Types of preference shares include:

- Voting preference shares: only held by government-authorised organisations and founding shareholder.
- Dividend preference shares
- Redeemable preference shares
- Other types of preference share, subject to the company's charter.

Shareholders are permitted to convert preference shares into ordinary shares, but not permitted to convert ordinary shares into preference shares.

The company's shares are allowed to be freely transferred among shareholders, except for voting preference shares.

Company Charter

The Company Charter is one of the incorporation documents of the Company and constitutes the incorporation and operation of the Company. The Company Charter determines the competence, duties and obligations conferred on the company, the board of directors and its shareholders. The Company Charter must include:

- the company name, head-office, branches and representative offices
- the list of business activities the firm undertakes
- the charter capital and any methods of raising or reducing the charter capital
- name, address, nationality and other basic identification of company owner
- rights and obligations of the owner
- management structure
- legal representative of the company
- formality for the adoption of decisions
- dispute resolution methods
- method for calculating salary, allowance and bonuses of chairman, director or general director
- principles for the distribution of profit and settlement of losses
- procedures for dissolution or liquidation.
- providing the constitution does not contravene legal obligations, the document will be binding between the company and owners.

Management structure

The management structure of a JSC comprises the general meeting of shareholders, the board of management, the general director and the board of supervisors (where the company has more than 10 individual shareholders).

The Board of Management should consist of at least three members but no more than 11. Its members are elected by the General Shareholder Meeting for terms of up to five years. The Board of Management has authority to make decisions, exercise the company's rights and perform the company's obligations on behalf of the company.

Filing requirements

Every company established in Vietnam must comply with the Vietnamese Accounting Standards and System regulated by the Ministry of Finance. Companies are obliged to submit financial statements within 90 days of the end of each fiscal year.

Annual financial statements of public joint-stock companies must be audited before being submitted to the Shareholders' Meeting.

All shareholders who held shares for at least one year are entitled to review the reports and statements at an appropriate time.

Partnerships

Partnerships can be established in Vietnam providing there are at least two individuals who are members of the partnership and co-owners of the business. These individuals will be general partners and have unlimited liability for all obligations of the partnership. The partnership may also have limited liability partners, who can be individuals of organisations, who only contribute a part of the capital and have limited liability and rights up to the value of their contribution.

Typically partnerships are not widely used for foreign investment in Vietnam.

Branches and Representative Offices

In accordance with Commercial Law, foreign investors can set up a resident Representative Office or a Branch in Vietnam; however, ownership may be restricted in certain sectors. The following regulations are in place regarding Representative Offices and Branches:

- all foreign businesses, which have been in operation for more than a year will be allowed to open representative offices in Vietnam;
- foreign businesses shall only be entitled to set up a branch in Vietnam with the condition that the business has been in operation for at least five years;
- licenses for representative offices and branches will be valid for five years but may be extended or re-issued upon expiry;
- branches shall be entitled to do business in accordance with the branch license;
- representative offices and branch employees shall be subject to the relevant tax obligations, in accordance with the laws of Vietnam;
- branches shall have to follow the accounting regime, as required by the laws of Vietnam.
- branches are required to report annually to the Ministry of Trade, on the operational and financial position of the business;
- representative offices are required to submit annual reports to the provincial Trade Department office.

Business Cooperation Contracts (BCC'S)

A business cooperation contract is a contractual relationship signed between multiple parties, generally a foreign investor and a local company. This does not form a legal entity but permits the partners to engage in business activities on the basis of mutual allocation of responsibilities and the sharing of profits and losses. This form of business has traditionally been used in industries where LLCs and JSCs are restricted. This form of business is a means of private financing without transferring management control to a foreign partner.

Public and Private Partnership Contracts

Public and Private Partnership ("PPP") contracts are contractual arrangements entered into by the government with the private sector for infrastructure projects and public services. These are typically used for transportation, electricity production, water supply, drainage and waste treatment projects. It includes Build-Operate-Transfer (BOT), Build-Transfer (BT) And Build-Transfer-Operate (BTO) Contracts. The difference between BOT, BT, BTO, BOO, BTL, BLT and O&M contracts is the point in time that the project is transferred to the government.

Labour

Laws governing employment and industrial relations largely stem from provisions set out in the 1992 Constitution which was amended and supplemented under Resolution No. 51/2001/QH10. However, the new Labour Code, enacted in 2012, provides the current framework of regulations regarding the employment relationship. Alongside the Code, there are specific implementing decrees to help guide organisations to comply with the provisions of the new Labour Code, for example, the decrees on labour contracts, on labour disputes, and salary.

The Labour Code covers a diverse range of labour related issues, including recruitment, employment contracts, working hours, labour discipline, and labour dispute resolution. The Labour Code is applicable to employees and employers, across both foreign and resident organisations.

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Employment Contract

In Vietnam, employment relationships are governed by the contractual agreement entered into between employer and employee. Contracts may take one of the following forms:

- Indefinite-term labour contract
- Definite-term labour contract - the duration of which is defined by the two parties as a period of one to three years
- A temporary labour contract for a specific project or seasonal work - the duration of which is less than one year.

A definite-term labour contract can only be renewed twice; following that, the employer must sign an indefinite-term labour contract. In case the employer does not wish to renew the labour contract with the employee, the employer must inform the employee of the termination at least 15 days before the expiry date of the labour contract.

Contracts must comply with a prescribed form published by the Ministry of Labour, War Invalids and Social Affairs (MOLISA). The labour contract must have principal contents: name and address of Employer; full name, date of birth, gender, residential address, ID number of the employee; job and work place; term of the labour contract; wage, form of wage payment; deadline for wage payment; regimes for promotion and wage raise, working time; social insurance and health insurance; training. The Labour Code allows an employer to require an employee whose work is related to business or technological secrets to enter into a separate agreement on confidentiality and nondisclosure of those secrets. The confidentiality agreement may contain a clause on financial penalties in case of breach of contract.

The Labour Code prohibits employers from keeping employees' original identification cards, diplomas and certificates and requesting employees to make deposit in cash or property as security for the performance of the labour contracts when signing and performing labour contracts.

A contract must be signed by the legal representative of the Employer or an authorised person before the employment begins.

Minimum regional wages

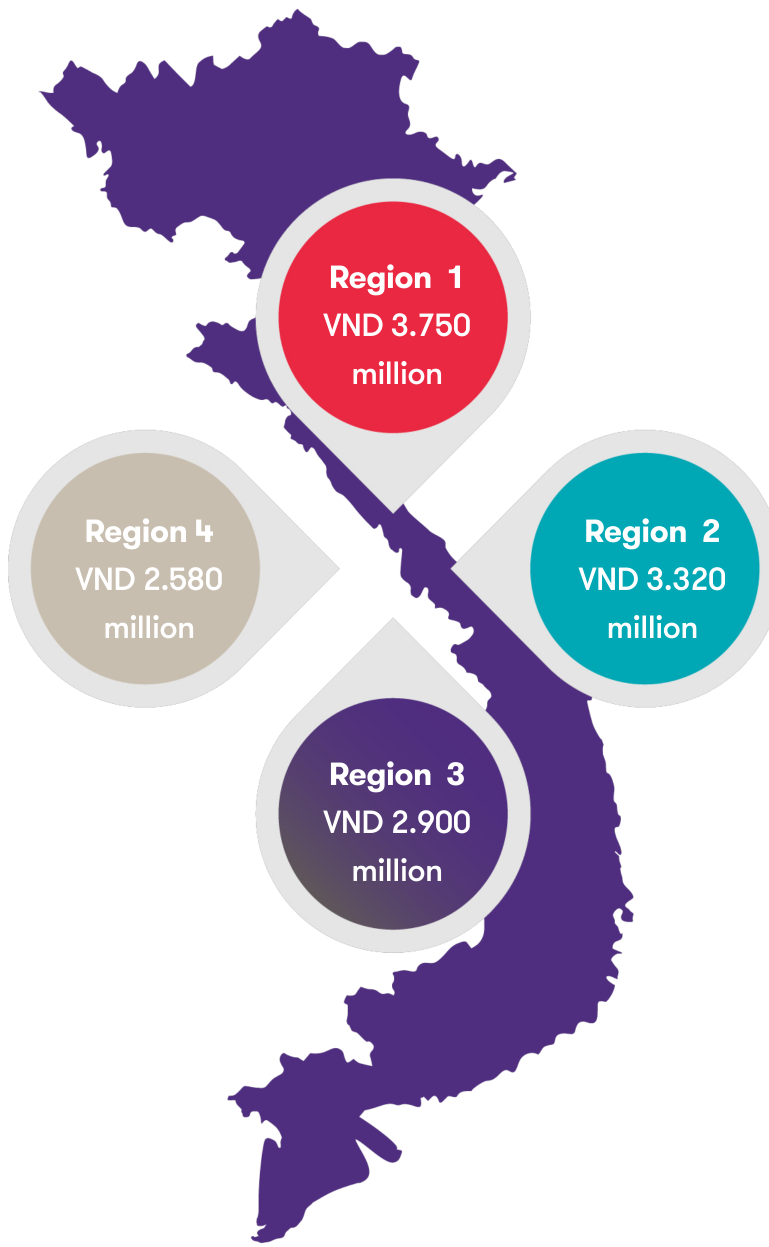
According to Decree No. 153/2016/ND-CP which is effective from 1 January 2017, the Prime Minister approved an increase in Vietnam's minimum monthly salary of between VND180,000 - VND250,000 effective from 1 January 2017, dependent on the region. The minimum wages are as follows:

- **Region One** (which includes urban Hanoi, Hai Phong, Ho Chi Minh City) - VND3.750 million
- **Region Two** (which includes rural Ha Noi, HCMC, Hai Phong plus the capital cities of Hai Duong, Hung Yen, Bac Ninh, Thai Nguyen, Nha Trang, Can Tho and Rach Gia) - VND3.320 million
- **Region Three** (which includes the remain cities and districts in the provinces of Hai Duong, Vinh Phuc, Phu Tho, Bac Ninh, Nam Dinh, Phu Yen, Dong Nai and Tien Giang, Ben Tre) – VND2.900 million
- **Region Four** (the least developed areas in Vietnam) - VND2.580 million.

The above are the regional minimum wage rates which are the lowest rates used as the basis for any arrangement between enterprises and employees on salary and salary payment, in which the wage rate to be paid to employees who work under normal working conditions, meet monthly working hour standards, and fully discharge their obligations for predetermined labor productivity norms or agreed worked duties, but these rates must be:

a) Equal or higher than regional minimum wage rates paid to unskilled employees who perform simple tasks;

b) At least 7% higher than the regional minimum wage rates paid to skilled/trained employees.



Normal working time, overtime and leave

Normal working time

Under the Vietnamese Labour Code, normal working hours should not exceed 8 hours per day or 48 hours per week. This may be extended through an agreement between the employer and employee but the normal working time cannot exceed 10 hours per day, or 48 hours per week.

Overtime

Employers can request the employees to work overtime with the condition that the employer obtains the employee's consent.. The employer must ensure that the number of overtime working hours does not exceed 50% of the normal working hours per day; (in case of applying regulations on weekly work, the total of normal working hours and overtime working hours must not exceed 12 hours per day);), must not exceed 30 hours per month and the total of overtime working hours must not exceed 200 hours per year, except some special cases as stipulated by the Government in which overtime working hours must not exceed 300 hours per year.

Employees who work overtime are entitled to additional wages. Wages for overtime work on normal days is at least equal to 150% of his/her current wage unit. Wages for overtime work on weekends is at least equal to 200% of his/her current wage unit and for public holidays and paid leave days, the overtime wage is at least equal to 300% of his/her current wage unit..

Leave

Employees that are under 18 years of age and women who are over seven months pregnant, or have a child of less than one year in age, are granted an extra hour off a day and are not permitted to work overtime.

Employees are entitled to at least one rest day per week.

Employees who have been employed for 12 months are provided with a minimum of 12 days of paid annual leave (vacation) per year, alongside the 10 days of public holiday each year. Employees who work in dangerous jobs or those that reside in areas with harsh living conditions may be entitled to up to two to four extra days off. Furthermore, workers are generally entitled to an extra day of holiday for each five years of service with a company.

Employees are entitled to sick leave, although this is not paid for by the employer. The Social Insurance Fund covers sick-leave allowances for employees and also for female employees taking care of their sick children. The maximum time granted per year for sick leave is 30 days (in most industries and professions), with 15 days permitted for taking care of sick children. The allowance granted in lieu of salary is equal to 75 per cent of the salary.

Social security

Vietnam's compulsory social, health & unemployment insurance ("SIHIUI") regime covers sickness, maternity, work-related accidents, unemployment, retirement and survivorship allowance. The employers and Vietnamese employees are required to contribute compulsory social insurance, health insurance and unemployment insurance on a monthly basis to the social insurance fund.

The SIHIUI contribution is computed on the factors of salary and mandatory rate.

The mandatory contribution rate by employee and employer are as following.

	Social insurance	Health insurance	Unemployment insurance	Total
Employee	8%	1.5%	1%	10.5%
Employer	18%	3%	1%	22%
Total	26%	4.5%	2%	32.5%

Since 1 January 2015 onwards, it is compulsorily required to contribute the SIHIUI for the employees with labour contracts of 03-month term and above without any taking into account of number of employees in the labour unit as compared to pre 2014.

According to Decree No. 47/2016/ND-CP, effective from 1 May 2016, which regulates the statutory pay rate for public officials, public employees, working employees and workers. Under this Decree, the statutory pay rate was increased to VND1,210,000 per month.

With the effect of the changes in the said Decree, the maximum salary base to determine Social Insurance ("SI"), Health Insurance ("HI") and Unemployment Insurance ("UI") contribution are as follows:

- The salary base to determine SI and HI contribution shall not exceed 20 times of the statutory pay rate, from 1 May 2016 is VND24.2 million per month (i.e. the general minimum salary of VND1,210,000 x 20 times); and

- The salary base to determine UI contribution shall not exceed 20 times of the regional minimum salary, from 1 January 2017 is VND75 million per month for employees working in Ho Chi Minh City (i.e. the regional minimum salary VND3,750,000 x 20 times).

Retirement benefits are provided under the compulsory social insurance regime.

Monthly pensions are provided from the Social Insurance age for men, or 55 years of age for women.

Fund where an individual has contributed social insurance for more than 20 years and when they reach 60 years of age for men, or 55 years of age for women.

A deduction of up to VND1 million per month is permitted for contributions to supplementary pension schemes. Though still in its infancy, it is expected that a greater number of providers will offer supplementary schemes. With these schemes, the employees will have a better support in and the means to save for retirement diversify the sources of their pensions and will provide employers with a means to retain key employees.

Healthcare and benefits

Health care

Basic health care is covered by the Social Insurance Fund. However, private schemes are becoming more popular especially schemes from Insurance companies. However, please note that for foreigners entering into labour contracts with companies in Vietnam, they have to join the health insurance scheme with the local social insurance department.

Workers' compensation

Workers suffering labour accidents or work-related diseases are entitled to an allowance equal to 100 per cent of their salary during the initial treatment period. Employers will be responsible for the allowance and all the examination and treatment expenses. After the conclusion of the treatment, the worker will receive further allowances from the Social Insurance Fund based on the degree of disability and illness. If a worker dies as a result of work related injury or disease, his family will be entitled to death benefits covered by the Social Insurance Fund. Employers have an additional obligation to pay compensation representing at least 30 months' salary to workers who suffer a reduction of more than 81 per cent of their labour capacity, or they must pay an equivalent amount to the close relatives of a worker who dies as a result of a labour accident or disease not caused by his own negligence. In cases where the injury or death of the worker is due to their own fault, the worker will still receive an allowance equalling at least 12 months' salary.

Probation

Employers and employees may agree on a probationary period. This must not exceed 60 days for work that requires special or highly technical skills and 30 days for all other work. A probationary employee must not be paid less than 85% (per cent) of the normal wage for that job.

Dismissal

The current Labour Code protects the employee. In general, both employer and employee may unilaterally terminate a labour contract in certain circumstances specified in the Labour Code; these include failure of employees to carry out their tasks, breach of discipline or serious injury of illness. Termination may also occur due to financial problems or the advent of technology rendering the employee's job obsolete. Termination must be made in writing.

In some cases, the employer is required to discuss the termination and reach an agreement with the executive committee of the trade union. Where the employer or employee is terminating a contract, advance notice must be given. This is calculated considering the period for which the worker has been employed.

Type of contract	Advance Notice Required
Indefinite term contract	45 days
Definite term contract	30 days
Seasonal contracts	3 days

Protection from termination

While Vietnam has not yet developed a set of laws and regulations to deal with employment discrimination issues, labour law prescribes the prohibition of discrimination based on sex, race, social class, beliefs or religion. Therefore, no employee can be dismissed based upon these factors. Furthermore, the labour code specifically provides that no female employee can be dismissed because she is getting married, pregnant, taking maternity leave or nursing a child.

Collective redundancies

Employers are restricted in the situations that they are permitted to make mass redundancies. For example, natural disasters, fire or other major events, as set out by the government. If the employer intends to undergo mass redundancy, they must consult with the trade union and appropriate state authority. They must also provide severance payments, where applicable.

Severance payments

There are two treatments depending upon the date of recruitment:

- For the employee who commenced employment before 1 January 2009 Where a labour contract is terminated, employees working for 12 months or more will be entitled to severance allowance equal to the aggregate amount of half of one month's salary for each year of employment.

In case of restructuring, change of technology, change for economic reasons, merger, consolidation, division, or separation of an enterprise, the severance allowance will be one month's salary for each year of employment, but at least two months' salary.

- For employees recruited after January 1st 2009

Affairs or Labour Tribunal may be asked to intervene to settle the dispute.

Companies are required to contribute 2% of total salary expenses into a trade union fund.

Once the labour contract is terminated subject to contribution of UI, the State Unemployment Agency shall pay the severance allowance.

Employment of resident and non-resident employees

The Vietnamese Labour Code states that foreign companies, branches and representative offices must provide Vietnamese citizens with priority of employment opportunity.

Any Vietnamese citizens who wish to be employed by foreign companies must satisfy the following criteria:

- are over 18 years old (with exceptions)
- have fulfilled their legal obligations
- have not been charged with any criminal activity
- are not officials, employees of mass organisations or armed forces personnel
- are retired officials, public servants or discharged armed forces personnel, who have obtained consent from their former employers.

Where employment positions require specialist skills or senior management responsibilities that Vietnamese residents cannot fill, organisations are authorised to recruit foreigners to fill that position. However, the employer must have a plan or program of training to enable a Vietnamese national to take over the job and replace the foreigner at a point in the future. For most positions, foreign employees must provide original copies of relevant educational qualifications in order to obtain a work permit.

Foreigners who work in Vietnam are required to obtain a work permit or to obtain confirmation from the local labour department that he/she is exempted from a work permit.

Work permits are issued for the same duration as the term of the labour contract; a work permit can be issued for a maximum of 24 months and is allowed to be renewed with the same duration.

All foreigners are required to apply for a work permit, except for the following cases:

- They are a member of a limited liability company with more than two members;
- They are the owner a limited liability one-member company
- They are a member of the management board of a joint-stock company
- They are in Vietnam to offer and sell services
- They are in Vietnam to deal with emergency cases that are likely to affect business activities that Vietnamese experts cannot deal with
- They are a foreign lawyer who has been issued a license to practice law in Vietnam
- Foreigners' internal movement in the enterprises operating in 11 service sectors specified in Vietnam's commitment schedule to WTO are not subject to work permits. (11 service sectors are listed in Annex I under Decree 35/2016/TT-BCT issued on 28 Dec 2016 which is effective from 10th February 2017).

Trade Unions

All companies, with either Vietnamese or foreign

owned capital, must permit their employees to join a trade union. Disputes between employers and employees should be resolved through negotiations. If a resolution is not reached then the Ministry of Labour, War Invalids and Social Affairs or Labour Tribunal may be asked to intervene to settle the dispute.

Companies are required to contribute 2% of total salary expenses into a trade union fund.

Financial reporting and audit

The accounting and auditing practice in Vietnam has improved dramatically in recent years. This is a result of the introduction of and continuing improvement of the accounting and auditing standards. Additionally, professional bodies have been established, the number of qualified accountants and auditors has increased as well as further development of relevant laws and regulations.

Vietnamese Accounting Standards and System

Accounting Standards

There are currently 26 Vietnamese Accounting Standards ("VAS") which were issued from 2001 to 2005. All standards were adopted from and primarily based on the International Accounting Standards ("IAS") and International Financial Reporting Standards as promulgated by the International Accounting Standards Board (IASB) prevailing at the time of issuance. Key differences between IFRS and VAS include terminology, applied valuation methods or disclosure requirements due to the continuing changes and amendments to IFRS.

Vietnam is on the way to close the gap between VAS and IFRS and it is expected that full adoption of IFRS will be made by 2020.

Accounting System

All companies in Vietnam are required to adopt Circular No. 200/2014/TT-BTC dated 22 December 2014 ("Circular 200") issued by the Ministry of Finance ("MOF"), and other prevailing Vietnamese decisions and circulars. Circular 200 provides guidance on Vietnamese Accounting Systems and the application of and adoption of accounting standards to all types of enterprises in Vietnam.

On 26 August 2016, the Ministry of Finance issued Circular No.133/2016/TT-BTC ("Circular 133") which provides guidance on Vietnamese Accounting Systems for Small and Medium-sized Enterprises ("SMEs"). Circular 133 takes effect for fiscal years commencing on or after 1 January 2017. Circular 133 replaces the contents applied to SMEs of both Decision No.48/2006/QD-BTC ("Decision 48") dated 14 September 2006 and Circular No. 138/2011/TT-BTC ("Circular 138") dated 04 October 2011 as issued by the Ministry of Finance. The SMEs are authorised to proactively design and construct their accounting system in line with SMEs' respective industries, management and decision-making purposes. SMEs can decide to apply the accounting system under Circular 200/2014/TT-BTC dated on 22 December 2014 of the Ministry of Finance ("Circular 200") and relevant amendments, supplements or replacements of regulations, but are required to notify the Tax Authorities as well as to consistently apply this accounting system during the fiscal year. In case the SMEs decide to apply Circular 133, they are required to notify the Tax Authorities and implement the changes as from the beginning of the fiscal year.

All securities companies in Vietnam are required to adopt Circular No. 210/2014/TT-BTC ("Circular 210"), issued by the MOF on 30 December 2014, providing guidance on accounting systems applicable to securities companies. Circular 210 provides a number of amendments related to the chart of accounts, accounting methods, forms of accounting books and methods of preparation and presentation of financial statements applicable to securities companies established and operating under the provisions of the Vietnamese Securities Law. Circular 210 is applied for securities companies' financial year starting from 1 January 2016 onwards.

Accounting records and financial statements

The Vietnamese Law on Accounting stipulates that the accounting records and financial statements of all enterprises established in Vietnam should be prepared in accordance with the following fundamental requirements:

Accounting records

- Framework: Vietnamese Accounting System
- Language: Vietnamese
- Currency: VND (*)
- The company can use electronic documents as accounting records, but must print and file those electronic papers in hardcopy
- Records retention: five (5) years for accounting documents; ten (10) years for accounting data, accounting books and permanently for documents that are significant in term of economics, national security and defence

(*) Foreign -invested entities are allowed to select and use another currency in recording transactions and maintaining their accounting records, provided that they can clearly demonstrate that the receipts and disbursements are mainly denominated in such other currency. However for statutory reporting, entities using another currency as functional currency must convert their financial statements prepared under such other currencies into VND under certain prescribed regulations.

Financial statements

- Framework: Vietnamese Accounting Standards and System (VASs)
- Financial year: An accounting period is generally 12 months in duration. Enterprises must select the fiscal year-end which could be either at the end of the calendar year or at the end of each quarter (i.e. 31 March, 30 June and 30 September). A notice to the local tax authority is required to be submitted if an enterprise selects a quarter date other December(**)
- Language: Vietnamese
- Reporting currency: VND (***)
- Approval: The financial statements must be approved by the Chief Accountant and the Legal Representative.

(**) For newly incorporated enterprise, the first accounting period must not be more than 15 months after the enterprise's date of incorporation.

(***) If an enterprise selects a foreign currency to be used as functional currency in recognising transactions, maintaining its accounting records and preparing its financial statements, its financial statements are required to be translated into VND for statutory reporting purposes.

The MOF also issued Circular 202/2014/TT-BTC dated 22 December 2014 to guide, amend and supplement on the methods how to prepare and present consolidated financial statements.

Auditing standards

There are forty seven (47) Vietnamese Standards on Auditing ("VSA") which were issued by the MOF. Of these, 37 standards were issued in 2013 and 10 standards were newly issued in 2015. The VSA were essentially adopted from ISA. All audit activities and practices of audit firms and auditors are required to be in accordance which VSA and the Law on Independent Audit, which was released on 29 March 2011 and took effect on 1 January 2012.

Audit requirements

Under the Law on Independent Audit, annual financial statements of foreign invested entities and public interest entities (i.e. listed entities, banks, insurance companies, securities companies and financial institutions), and any other entities involved in special circumstances such as mergers and acquisitions, changes in ownership, termination and bankruptcy must be audited by an audit firm legally operating in Vietnam.

Under the prevailing regulations certain entities such as banks, non-banking credit institutions and branches of foreign banks have to rotate or replace their audit firm by another audit firm after five (5) consecutive years. There is no similar requirement for rotation of audit firms and auditors for other business entities. However, the Law on Independent Audit mandates that signing auditors (licensed auditors signing the auditor's report along with the legal representative of the audit firm) have to be rotated or replaced after three (3) consecutive years.

Foreign invested entities are required to have their annual financial statements audited. Those entities must appoint an audit firm from the list of practicing auditors and audit firms qualified to provide audit services as approved and published by the MOF annually. There were 150 audit firms in the list of firms who are approved and authorised by the MOF in 2016.

Public interest entities are required to submit "reviewed" semi-annual financial statements and "audited" annual financial statements. Such review and audit should be carried out by auditors and audit firms qualified to provide such services to Public Interest Entities (PIE) as approved by the State Securities Committee ("SSC"). The list of approved auditors and audit firms is reviewed and published annually on the websites of the MOF, SSC and Vietnamese Association of Certified Public Accountants ("VACPA").

Currently, there are 30 audit firms in that list which includes Grant Thornton Vietnam.

Audit contracts should be signed with the independent auditors no later than 30 days before the end of the entity's financial year in accordance with Decree 105/2004/ND-CP dated 30 March 2004 and the Law on Independent Auditing with effect from 1 January 2012.

Filing/publication requirements

Foreign invested entities are required to submit statutory audited financial statements to its applicable licensing body, Department of Finance in provinces and cities under the jurisdiction of the central government where such enterprise's head offices are located, local tax authority and department of statistics within 90 days from their reporting date. For enterprises located in an Export Processing Zone or Industrial Zone, financial statements will be filed with Export Processing Zone or Industrial Zone Management Board if required.

Public interest entities are required to submit and publish their half-year reviewed financial statements and year-end audited financial statements within 45 days and 90 days respectively from the balance sheet date.

Tax System

The tax system of Vietnam has undergone crucial reforms since Doi Moi in 1986.

In particular, since Vietnam obtained memberships of international organizations e.g. ASEAN (1995) and WTO (2007), tax policy and tax reform has become more aligned with international rules and practices, and at the same time tax collection and administration processes have been improved. In 2007, the Law on Tax Administration was first implemented. The Law provides rules on tax administration, management of information, tax collection and enforcement, and has provided guidance in areas previously open to wide interpretation. Later in 2007, the National Assembly also passed the first Law on Personal Income Tax, covering taxation of all income of individuals in Vietnam for the first time. This Law introduced the concept of personal and family deductions in determining taxable income of individuals.

In 2008, three major tax laws were amended: Corporate Income Tax, Value Added Tax and Special Sales Tax. All of these laws were implemented in 2009 and were further amended in 2014, 2015 with various changes for implementation in 2014 and 2015 onwards.

Tax administration is controlled by the General Department of Taxation, which operates under the Ministry of Finance. Tax affairs may also be handled by local provincial Tax Departments.

Foreign investors are likely to be subject to the following common taxes:

- Corporate Income Tax
- Value Added Tax
- Personal Income Tax
- Foreign Contractor tax
- Others (e.g. Special Sales Tax, Environmental Tax, Import and Export Duties, Natural Resources Tax, Environmental Tax, Property Tax, etc.).

CORPORATE INCOME TAX ("CIT")

Scope

Organizations conducting business and earning taxable income in Vietnam, which do not benefit from tax exemptions, are subject to CIT, comprising:

- Enterprises established pursuant to the law of Vietnam
- Foreign enterprises earning income in Vietnam with or without a resident establishment in Vietnam
- Enterprises established pursuant to the Law on Co-Operatives
- Professional entities established pursuant to the law of Vietnam
- Any other organization conducting activities of production or business that earns income from activities, in Vietnam.

A company is a tax resident if it is incorporated in Vietnam or has a permanent establishment ("PE") in Vietnam. In these cases, the foreign enterprise must pay tax on its worldwide income. If the company is not either a tax resident or does not possess a PE, it is only required to pay tax on income arising in Vietnam.

CIT rate

Currently, the CIT standard rate is 20%. For corporations with total revenues of less than VND20 billion, a 17% CIT rate shall be applied.

Certain industries are liable to a higher tax rate:

- Companies operating in the oil and gas industry are subject to rates ranging from 32% to 50%, depending on the location and specific project.
- Any companies engaging in prospecting, exploration and exploitation of mineral resources are subject to CIT rates of 40% or 50% depending upon location.

CIT may be reduced under investment incentive schemes.

Deductible vs. non-deductible expenses

Deductible expenses

Expenses are CIT deductible if they meet the following requirements:

- Relevant to business activities;
- Having sufficient legitimate invoices and vouchers;
- Settlement via forms of non-cash payment for transactions from VND20 million and above; and
- Not specifically identified as being non-deductible.

Non-deductible expenses include:

- Depreciation of fixed assets which is not in accordance with the prevailing regulations;
- Employee remuneration expenses which are not actually paid, or are not stated in a labour contract or collective labour agreement;
- Staff welfare (including certain benefits provided to family members of staff) exceeding a annual cap of one month's average salary;
- Reserves for research and development not in accordance with the prevailing regulations;
- Provisions for severance allowance and payments of severance allowance in excess of the prescribed amount per the Labour Code;
- Overhead expenses allocated to a PE in Vietnam by the foreign company's head office exceeding the amount under a prescribed revenue-based allocation formula;
- Interest on loans corresponding to the portion of charter capital not yet contributed;
- Interest on loans from non-economic and non-credit organizations exceeding 1.5 times the interest rate set by the State Bank of Vietnam;
- Provisions for stock devaluation, bad debts, financial investment losses, product warranties or construction work which are not in accordance with the prevailing regulations;
- Unrealised foreign exchange losses due to the year-end revaluation of foreign currency items other than accounts payable;
- Donations except certain donations for education, health care, natural disaster or building charitable homes for the poor;
- Administrative penalties, fines, late payment interest;
- Contributions to voluntary pension funds and the purchase of voluntary pension for employees exceeding VND 1 million per month per person;
- Certain expenses directly related to the issuance, purchase or sale of shares;
- Creditable input value added tax, corporate income tax and personal income tax.

The previous cap on the tax deductibility of advertising and promotion expenses was abolished from 2015

For certain businesses such as insurance companies, securities trading and lotteries the Ministry of Finance provides specific guidance on deductible expenses for CIT purposes.

Taxable Income

Taxable income is defined as the difference between total revenue and deductible expenditures, plus other assessable income.

Business Units are required to prepare an annual CIT return which includes a section for making adjustments to accounting profit to arrive at taxable profit.

Losses

Businesses that incur losses after tax finalization are entitled to carry forward those losses to be offset against the assessable income of future years for maximum of five consecutive years before they expire.

Losses on incentivised activities can be offset against profits from non-incentivised activities, and vice versa.

Losses from the transfer of real estate and the transfer of investment projects can be offset against profits from other business activities.

The carry-back of losses is not permitted.

Tax Incentives

(i) New investment project

Investment projects with an Investment License or Investment Certificate prior to 1 January 2014 but are still in the investment stage, neither generating revenue, nor commencing operations, are subject to tax incentives applicable to a new project investment.

(ii) Tax incentives for the following cases

- Expansion projects licensed or implemented during the period from 2009 to 2013.
- Investment projects commencing operations in industrial zones during the period from 2009 to 2013.
- Investment projects located in geographical areas eligible for investment incentives.
- Hi-tech companies.

Applicable tax incentives include preferential tax rates, tax exemption and tax reduction. Based on each case as stated above and depending on the conditions to be met, the applicable incentives will be determined.

(iii) Tax incentives for large scale manufacturing projects

The preferential CIT rate of 10% for 15 years, CIT exemption for 4 years, and 50% CIT reduction for 9 subsequent years will be applicable for three cases:

- Large scale manufacturing projects with minimum investment capital of VND6,000 billion, disbursement within 3 years from the date the first investment certificate is granted.
- Large scale manufacturing projects with a minimum investment capital of VND12,000 billion, using advanced technology and disbursing capital for no more than 5 years from the date of the investment certificate.
- Investment projects manufacturing products which belong to the list of supporting industry products under Decision 1483/QD-TTg dated 26 August 2011 of the Prime Minister.

(iv) Options to apply tax incentive for expansion investment project with less than 12 months of operations

In case the first tax year of the tax incentive entitlement for expansion project is less than 12 months, companies are allowed to:

- Enjoy the tax incentives in that first tax year; or
- Register with the tax authority to start enjoying the tax incentives from the following tax year.

Administration

Taxpayers subject to CIT are obliged to file tax declarations on an annual basis.

The tax payment shall be on a quarterly basis on the estimated profit, and on an annual basis based on the finalization. The quarterly CIT shall be paid no later than the 30th day of the following quarter. Timeline for both filing the annual CIT finalization returns and paying taxes is no later than 90 days from the end of the fiscal or calendar year. The final tax payment at year-end finalization stage is required not exceeding 20% of the accumulated CIT liabilities paid during four quarters, otherwise, the shortfall in excess of 20% is subject to penalty calculated at 18% per year for late payment counting from the deadline for payment of CIT in the 4th Quarter.

The standard tax year is the calendar year. For enterprises that apply a fiscal year different from the calendar year, the tax period shall be determined according to the applied fiscal year. An enterprise may change the tax year period but the period chosen cannot exceed 12 months and it is required to notify the tax authorities prior to implementation

Firms must pay tax in the province where their main head office is located. If an enterprise has a "dependent accounting production establishment" in another province or city, then the amount of CIT assessable and payable will be determined in accordance with a ratio of expenses incurred by each manufacturing establishment over the total expenditure of the company.

Capital gains

Vietnam does not operate a separate 'capital gains tax' regime. Capitals gains will therefore form a part of a firm's taxable income and will be taxed at the standard CIT rate.

There are specific rules for CIT imposed on the transfer of capital in an enterprise or the sale of securities by investors. The purchase price and transfer expenses are generally deducted from the transfer price in order to calculate the taxable capital gain. This tax is known as the Capital Assignment Profits Tax. Where the vendor is a foreign entity, the Vietnamese purchaser is required to withhold the tax due and account for this to the tax authorities. Where the purchaser is also a foreign entity, the Vietnamese enterprise in which the interest is transferred is responsible for the administration of the Capital Assignment Profits Tax.

For the transfer of shares in a Vietnamese Joint Stock Company, gains derived by the resident entity are taxed at 20 per cent.

Groups

There are no provisions within the corporate tax law addressing the concept of group consolidation. Nevertheless, current regulation stipulates that profits and losses cannot be offset between companies within a group.

Thin capitalisation rules

At present, there are no thin capitalization rules. However, certain restrictions to that effect can be found in the regulations on foreign loans and corporate income tax (permitted borrowing capacity and excessive interest rates)

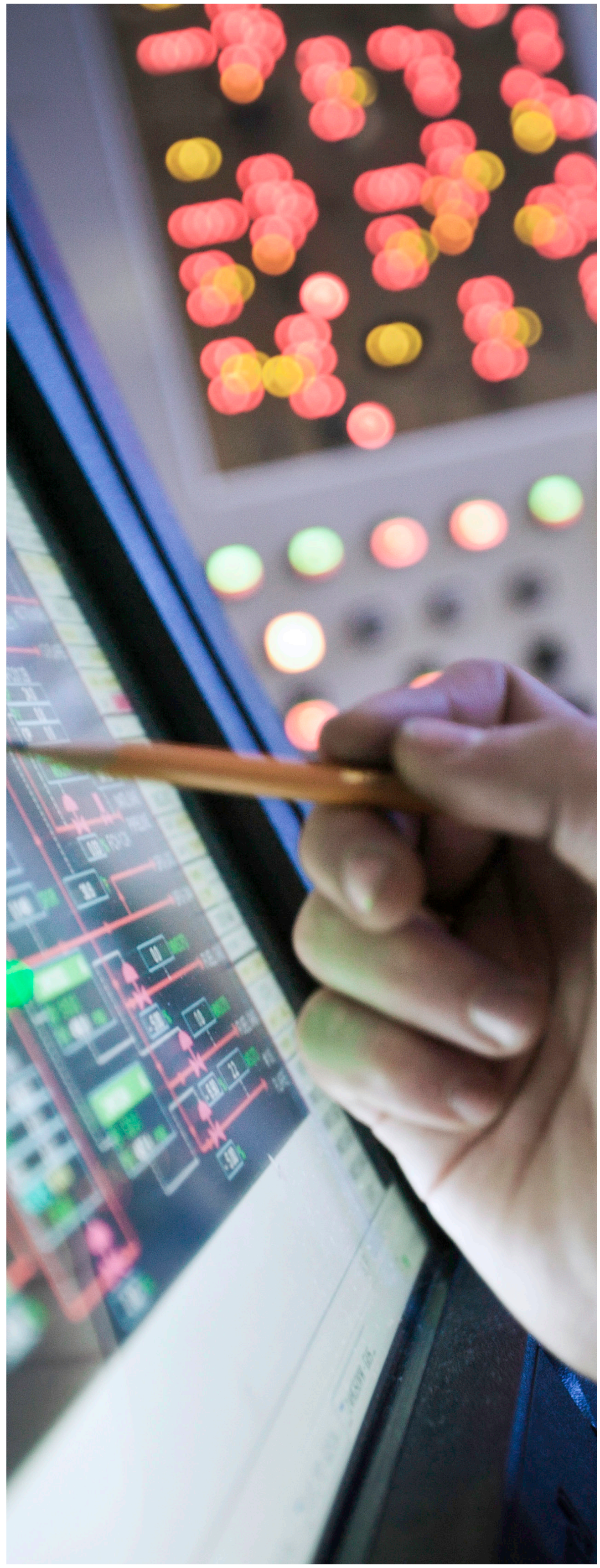
Dividend Income

Dividends paid to corporate shareholders are generally exempt from CIT, if the paying firm has fulfilled its CIT obligations before payment. Dividends received from foreign companies are credited against CIT payable in Vietnam but not exceed the income tax calculated under the CIT Law of Vietnam.

Profit Remittance

Foreign investors are allowed to remit their profits either on annual basis or on termination of the investment, in Vietnam, provided that they have profit based on the audited financial statements.

The foreign investors or their investee companies at the foreign investors' authorization are required to notify the local tax authorities the plan to remit profits at least 7 working days prior to the scheduled remittance.



Transfer pricing

Enterprises that have transactions with their related parties are required to prepare compliance matters in order to document and provide evidence that these related party transactions are arranged and conducted based on an arm's length principle.

In this respect, according to the newly issued Vietnamese Transfer Pricing (TP) regulations, which takes effective from 01 May 2017 and applied for tax year 2017 onward, enterprises shall be considered associated in a tax period under four (4) general conditions as follows:

i. Equity/ownership control, which is defined as 25% direct or indirect capital ownership of one entity toward another;

ii. Management control, including the existence of 50% of the Management board in these entities;

iii. Economic control, being the significant control of actual operations and business toward the other entity; and

iv. Other conditions (including family relationship, permanent establishment, business corporation contracts, etc.)

The TP legal regime in Vietnam is generally established from the foundation of Organization for Economic Co-operation and Development (OECD) TP guidelines. The current regulations mandate the three (3) acceptable categories of TP methods of examining the arm's length principle, i.e. comparable uncontrolled price method, comparable profit margin methods (including cost plus method, resale price method, comparable profit method) and profit allocation method.

Taxpayers who incur related party transactions are required to disclose their transactions under the annual TP Disclosure Forms (TPFs), which are filed together with the annual Corporate Income Tax return and provides details of related party transactions, methodologies adopted and other required information regarding to the operations at Group level. In addition, taxpayers are also required to prepare the contemporaneous TP Documentation (TPD) report in Vietnamese before the disclosure of the TPFs, which provide consistent information with the TPF and proper analysis to prove that the related party transactions are conducted in line with the arm's length principle and to confirm the arm's length price on the transfer pricing declarations. Taxpayers shall maintain the TPD report in their facility and submit to the Tax authorities for further investigation upon written request. Comparing to the submission deadline of the TPD report at 30 working days from the written request in the previous regulations, the new TP regulations specifically reduce this submission deadline to be 15 working days during TP audit and remained the 30-working-day period for other circumstances.

Of note, the Ministry of Finance has recently introduced the Advance Pricing Agreement ("APA") mechanism in accordance with Circular 201/2013/TT-BTC dated 20 December 2013. The General Department of Taxation is working through process of guidance which will allow both the taxpayers and the tax authorities to seal the advance agreement on the pricing methods and outcomes.

Controlled foreign companies (CFC)

There is no anti-controlled foreign company legislation.

VALUE ADDED TAX ("VAT")

VAT is an indirect tax, the cost of which ultimately falls on the consumer. The majority of transactions involving the supply of goods, the provision of services and imports will be subject to this tax.

Broadly, VAT is levied on the value added, at each stage of the production and distribution supply chain. Registered businesses act as collection points for the Value Added Tax department.

VAT rates

The standard rate is **ten percent** (10%). In addition, there are other rates of 5% and 0% and VAT exemption, as below:

• **0%** : This rate applies to exported goods/services including goods/services sold to overseas/non-tariff areas and consumed outside Vietnam/in the non-tariff areas, goods processed for export or in-country export (subject to conditions), goods sold to duty free shops, certain exported services, construction and installation carried out for export processing enterprises, aviation, marine and international transportation services.

• **5%** : This rate applies generally to areas of the economy concerned with the provision of essential goods and services. These include: clean water; teaching aids; books; unprocessed foodstuffs; medicine and medical equipment; various agricultural products and services; technical/ scientific services; rubber latex; sugar and its by-products; certain cultural, artistic, sport services/products and social housing.

• **VAT exemption**: Under this treatment, no output VAT shall be charged and the input VAT shall be uncreditable, but considered as deductible expenses for CIT purposes, comprising the following:

- Certain agricultural products;

- Supply of fertilizer, feed for livestock, poultry, seafood and other animals

Goods/services provided by individuals having annual revenue of VND 100 million or below;

- Imported or leased drilling rigs, airplanes and ships of a type which cannot be produced in Vietnam;

- Transfer of land use rights (subject to limitations);

- Financial derivatives and credit services (including credit card issuance, finance leasing and factoring); sale of VATable mortgaged assets by a borrower under the lender's authorization, in order to settle a guaranteed loan and provision of credit information.

- Various securities activities including fund management;

- Capital assignment;

- Foreign currency trading;

- Debt factoring;

- Certain insurance services (including life insurance, health insurance, agricultural insurance and reinsurance);

- Medical services;

- Teaching and training;

- Printing and publishing of newspapers, magazines and certain types of books;

- Public passenger transport;

- Transfer of technology, software and software services except exported software which is entitled to 0% rate;

- Gold imported in pieces which have not been processed into jewellery;

- Exported unprocessed mineral products such as crude oil, rock, sand, rare soil, rare stones, etc., or processed into other products in which the total value of such natural resources and minerals plus the energy cost are at least 51% of production costs

- Imports of machinery, equipment and materials which cannot be produced in Vietnam for direct use in science research and technology development activities;

- Equipment, machinery, spare parts, specialized means of transport and necessary materials which cannot be produced in Vietnam for prospecting, exploration and development of oil and gas fields;

- Goods imported in the following cases: international non-refundable aid, including from Official Development Aid, foreign donations to government bodies and to individuals (subject to limitations).

In addition, there are regulated **cases that goods and services are not required to declare and pay VAT**, it means that no output VAT has to be charged but input VAT paid on related purchases may be credited. These supplies include:

- Compensation, bonuses and subsidies, except those provided in exchange for marketing/promotional services;

- Transfers of emission rights and other financial revenues;

- Certain services rendered by a foreign organization which does not have a PE in Vietnam where the services are rendered outside of Vietnam, including repairs to means of transport, machinery or equipment, advertising, marketing, promotion of investment and trade to overseas; brokerage activities for the sale of goods and services overseas, training, certain international telecommunication services;

- Sales of assets by non-business organizations or individuals who are not registered for VAT;

- Transfer of investment projects;

- Sale of agricultural products that have not been processed into other products or which have just been through preliminary processing;

- Capital contributions in kind;

- Certain asset transfers between a parent company and its subsidiaries or between subsidiaries of the same parent company;

- Collections of compensation/indemnities by insurance companies from third parties;

- Collections on behalf of other parties which are not involved in the provision of goods/services (e.g. if company A purchases goods/services from company B, but pays to company C and subsequently company C pays to company B, then the payment from company C to company B is not subject to VAT);

- Commissions earned by (i) agents selling services, including postal, telecommunications, lottery, airlines/bus/ship/train tickets, at prices determined by principals; and (ii) agents for international transportation, airlines and shipping services entitled to 0% VAT; and (iii) insurance agents;

- Commissions from the sale of exempt goods/services.

VAT calculation methods

There are two VAT calculation methods:

- **Credit method** applies to business establishments maintaining full books of account, invoices and documents in accordance with the relevant regulations, including: (i) Business establishments with annual revenue subject to VAT of VND1 billion or more, and (ii) Certain cases voluntarily registering for VAT declaration under the deduction method.

Accordingly, VAT payable = Output VAT – Input VAT.

Input VAT is creditable if it meets the requirements of:

- Relevant to business activities;
- Having sufficient legitimate invoice and vouchers;
- Settlement via forms of non-cash payment for transaction more than VND20 million; and
- Paying under the bank account.

- **Indirect method** applies to:
  - Business establishments with annual revenue subject to VAT of less than VND1 billion;
  - Individuals and business households;
  - Business establishments which do not maintain proper books of account and foreign organizations or individuals carrying out business activities in forms not regulated in the Law on Investment; and
  - Business establishments engaging in trading in gold, silver and precious stones.

1%
distribution, supply of goods

3%
the production, transportation, service exclusive of materials

5%
service, construction exclusive of material

2%
other business activities

Accordingly, VAT payable = revenue x ratio for direct VAT calculation.

Ratios for direct VAT calculation vary upon the business activities, as below:

- 1%: this ratio is for the business of “distribution, supply of goods”;
- 3%: this ratio is for “the production, transportation, service associated with goods, construction exclusive of the materials;
- 5%: this rate is for “service, construction exclusive of material”; and
- 2%: this ratio is for other business activities.

VAT administration

All organizations and individuals producing VAT liable goods and supplies must register for VAT. Also, branches must register separately and declare VAT on their own transactions.

The Business Units shall file and pay their VAT returns on a monthly basis by the 20th day of the subsequent month, or on a quarterly basis by the 30th day of the subsequent quarter (for companies with prior year annual revenue of VND 50 billion or less).

Invoices and payment vouchers

Entities may use pre-printed invoices, self-printed invoices or electronic invoices to declare their VAT liability. There are stipulated items that must be included and strictly reflected onto the invoice.

Since 24 Dec 2014, the General Department of Taxation regulates invoices, contracts, payment vouchers and the related documents,which must be consistent and the payment voucher must state clearly the payment for the reference contract. Otherwise, it shall not be creditable for VAT purpose.

VAT refunds

From 01 July 2016, VAT refunds will no longer be allowed. Enterprises have to carry forward input VAT instead.

For exporters, where excess input VAT credits exceed VND300 million, a refund may be granted on a monthly/ quarterly basis however, the amount of input VAT relating to export sales to be refunded must not exceed 10% of export revenue . Newly established entities in the pre-operation investment phase may claim VAT refunds on a yearly basis or where the accumulated VAT credits exceed VND300 million.

VAT refunds are not granted to enterprises that import goods then export.

VAT refunds are not granted for investment

projects of enterprises whose charter capital has

not yet been completely contributed.

Newly established entities and certain investment projects which are in the pre-operation stage may be entitled to refunds for VAT paid on imported fixed assets based on shorter timelines than normal, subject to certain conditions.

PERSONAL INCOME TAX (“PIT”)

The new Law on PIT took effect on 1 January 2009. This replaced the previous ordinance and regulations covering Income Tax on High Income Earners in Vietnam.

Individuals liable to PIT and tax resident status

Individuals are subject to Vietnamese PIT based upon their tax resident status, i.e. PIT on their worldwide incomes for tax resident or PIT on Vietnam sourced income for non-tax resident.

Any foreign individual shall be considered a PIT resident if he/ she meets one of the following conditions:

- Being present in Vietnam for a period of 183 days or more within either a western calendar year or for 12 consecutive months counting from the first arrival date;
- Having a permanent residence in Vietnam (including a registered residence which is recorded on the permanent/ temporary residence card in case of foreigners);
- Having a leased house in Vietnam with a term of 183 days or more in a tax year and unable to prove tax residence in another country

A non-resident is any individual who does not satisfy the above conditions.

Taxable income

Taxable income generally comprises 10 main types of income: employment income, business income, income from capital investments, income from capital transfers, income from real property transfers, winnings or prizes, royalties, income from franchises, income from inheritances and receipts of gifts.

Income not subject to tax generally includes:

Employment

- one-off regional transfer allowances for: (i) foreigners moving to reside in Vietnam, (ii) Vietnamese holding other country nationality working in Vietnam, and (iii) Vietnamese working overseas;
- Once per year home leave round trip airfare for expatriates and Vietnamese working overseas;
- employee training fees paid to training centres;
- School fees up to high school in Vietnam/overseas for children of expatriates/Vietnamese working overseas;
- Mid-shift meals (subject to a cap if the meals are paid in cash);
- Taxable housing benefit including utilities: being the lower of the actual rental paid and 15 per cent of the employee’s gross taxable income (excluding taxable housing);
- that part of night shift or overtime salary payable that is higher than the day shift or normal working hours salary stipulated by the Labour Code;
- compensation for labour accidents; and

- Income of Vietnamese vessel crew members working for foreign shipping companies or Vietnamese international transportation companies

To apply the PIT exemption on the above, there are a range of conditions and restrictions.

Non-Employment

- Interest earned on deposits with credit institutions/banks and on life insurance policies;
- Retirement pensions paid under the Social Insurance law (or the foreign equivalent);
- Income from transfer of properties between various direct family members;
- Inheritances/gifts between various direct family members;
- Monthly retirement pensions paid under voluntary insurance schemes;
- income from life insurance policies;
- foreign currency remitted by overseas Vietnamese
- scholarships
- compensation payments from life and non-life insurance contracts

PIT deductions

Tax deductions include:

- Contributions to mandatory social, health and unemployment insurance schemes;
- Contributions to local voluntary pension schemes;
- Personal and family relief: Personal relief of VND9 million/month, and family relief of VND3.6 million/month/dependent. The dependent allowance is not automatically granted, and the taxpayer needs to register qualifying dependents and provide supporting documents to the tax authority; and
- Contributions to certain approved charities.

PIT administration

- **Individual tax code**: Any individual present in Vietnam who has taxable income must obtain an individual tax code. Those who have taxable employment income must submit the tax registration file to their employer; the employer will subsequently submit this to the local tax office. For individuals with taxable non-employment income, they must submit their tax registration file directly to the district tax office.

- **PIT declaration and payment**:

- For employment income, Employers must deduct and withhold employees' PIT and submit/ pay it to the tax authority, alongside the relevant social security contributions on monthly basis with the timeline no later than the 20th of following month or on a quarterly basis by the 30th day following the reporting quarter. The total income withheld must be finalized no later than 90 days after the end of the western calendar year.

Expatriate employees are also required to carry out a PIT finalization on termination of their Vietnamese assignments before exiting Vietnam. Tax refunds due to excess tax payments are only available to those who have a tax code.

- For non-employment income, the individual is required to declare and pay PIT in relation to each type of taxable non employment income. The PIT regulations require income to be declared and tax paid on a regular basis, often each time income is received.

- **PIT credit**: For tax residents who have overseas income, any PIT paid in a foreign country is creditable against tax paid in Vietnam subject to certain percentage and tax administration procedures.

- **PIT year**: The Vietnamese tax year is the calendar year. However, in the calendar year of first arrival, his/her first tax year is the 12 month period from the date of arrival. Subsequently, the tax year is the calendar year.

Progressive PIT rates on employment income

Annual employment Income for resident		PIT rate (%)
From (VND)	To (VND)	
0	60	5
60	120	10
120	216	15
216	384	20
384	624	25
624	960	30
960+	-	35

Brief of PIT rates and bands – 2016

No.	Type of PITable incomes	PIT rate	
		resident	non-resident
1	Employment income	Progressive rate as above (*)	20%
2	Business income		
	Goods distribution/ supply	0,5%	
	Service, construction exclusive of building material	2%	
	Particularly: Asset lease, insurance brokerage, lottery brokerage, multi-level marketing brokerage	5%	
	Manufacturing, transportation, service associated with goods, construction inclusive of building material	1,5%	
	Other business activities	1%	
3	Capital investment	5%	
4	Capital assignment	20% on net gains	0.1% on gross sale proceeds
	Particularly: Security transfer	0.1% on gross sale proceeds	
5	Real property transfer	2% on gross sale proceeds	
6	Royalties/ Technology transfer/ Franchising	5% on amount over VND10 million	
7	Winnings/ Prizes/ Inheritance/ Gifts	10% on amount over VND10 million	

FOREIGN CONTRACTOR'S TAX ("FCT")

FCT imposed on foreign business individuals and foreign organizations earning Vietnam-sourced income (herein referred as "foreign contractor" or "FC"), except: (i) "pure supply of goods" under INCORTERMS., i.e. where title passed at or before the border gate of Vietnam and there are no associated services performed in Vietnam, (ii) services performed and consumed outside Vietnam. It includes two kinds of taxes: VAT-FCT and CIT-FCT at varied FCT rates.

There are three methods of FCT payment at the FC's selection:

- Deduction method:

This method allows the FC declaring: (i) VAT under the approach of crediting the input VAT against the output VAT, and (ii) CIT based on the declaration of revenue and expense similar to the local enterprises' application. Of note, FC is required to meet some criteria, including FC's adoption of the Vietnamese Accounting System.

- Direct method:

Under this method, FCT is the mechanism to withhold taxes. The FC's VAT and CIT will be withheld by the Vietnamese customers at prescribed rates from the payments made to the FC. Various FCT rates are regulated under the nature of activities performed (please kindly see our below table briefing the FCT rates for each activities).

- Hybrid method:

This method is a mixed-up between the deduction method and direct method, i.e. allows the FC declares VAT based on the creditable approach and CIT at direct method.

FCT rates – 2017

Ratio for FCT (%)			
	Type of business activities	Deemed VAT-FCT rate	Deemed CIT-FCT rate
1. Trades:	(i) Distributing, supplying goods; (ii) Distributing, supplying goods associated with services rendered in Vietnam (including the form of on-spot export and import); (iii) Supplying goods under INCOTERMS where the seller bears risk relating to goods in Vietnam.	1/Exempt	1
2. Services:	Services	5	5
	Restaurant/ hotel/ casino management services	5	10
	Service associated with goods supply (if contract doesn't separate the value of goods and service)	3	2
3. Insurance:	Insurance	5 /Exempt	5
	reinsurrance abroad, commission of the reinsurrance transfer	Exempt	0.1
4. Leasing:	Leasing machinery and equipment	5	5
	Leasing aircraft, airplane engines/ spare parts, vessels (for aircraft and vessel cannot be produced in Vietnam)	Exempt	2
5. Banking:	Derivative financial services	Exempt	2
	Loan interest	Exempt	5
6. Capital Investment:	Transferring securities/ deposit certificates	Exempt	0.1
7. Oil and Gas:	Supply of goods and/or services for oil & gas exploration and development	Standard: 10 (or 5%/ exempt)	5
	Leasing drilling rigs	Exempt	5
8. Construction:	Construction, installation including supply of materials, machinery, equipment	3	2
	Construction, installation excluding supply of materials, machinery, equipment	5	2
9. Transportation:	Transport (including the transport by seaway, by airway)	3/0	2
10. Royalty:	Royalty/ Licence fee (*):Software licenses, transfer of technology, transfer of intellectual property rights are VAT exempt	Exempt (*)	10
11. Others:	Other production	3	2
	Other Business activities	2	2

Vietnam has entered into more than 70 DTAs with other countries for the avoidance of Double Taxation (note that the DTA with the United States of America is still not effective). FCs, and individuals working in Vietnam being nationals of the countries who have entered into Tax Treaties with the Vietnamese Government can apply for either FCT exemption for the part of CIT only or the PIT provided that these FCs/ individuals satisfy certain conditions of the Tax Treaty, i.e. (i) the FCs do not create or have a PE, (ii) the individuals do not become tax resident and receive income from a PE in Vietnam.

The Vietnamese Government has given more guidance on the application of DTAs effective since 2014. The most notable changes relate to beneficial ownership and general anti-avoidance provisions. DTA entitlements will be denied where the main purpose of the arrangements is to obtain beneficial treatment under the terms of the DTA (treaty shopping) or where the recipient of the income is not the beneficial owner. The guidance dictates that a substance over form analysis is required for the beneficial ownership and outlines the factors to be considered:

- Where the recipient is obligated to distribute more than 50% of the income to an entity in a third country within 12 months;
- Where the recipient has little or no substantive business activities;
- Where the recipient has little or no control over or risk in relation to the income received;
- Back to back arrangements;
- Where the recipient is resident in a country with a low tax rate;
- The recipient is an intermediary or agent.

OTHER TAXATION

Import Duty

Generally, all goods crossing Vietnamese borders are subject to import duties. In particular:

- Goods imported through Vietnamese border gates or border by road, river, seaport, airport, international railway, international post and other locations for customs procedures clearance
- Goods transferred from the local market to non-tax areas or vice versa
- Other goods traded or exchanged that are considered as imports.

The following goods are not subject to import duties:

- Goods transited and transported by mode of border gate trans-shipment through Vietnam's border gates or borders under the customs law
- Humanitarian aid goods
- Goods imported from abroad into non-tariff zones and only used therein
- Goods brought from one non-tariff zone to another

Import duty rates are classified into 3 categories: ordinary rates, preferential rates and special preferential rates.

Preferential tax rates are applicable to imports originating from countries or groups of countries or territories that grant most-favoured-nation treatment in trade relations with Vietnam. Taxpayers declare the origin of goods themselves and are held responsible for declarations regarding the origin of goods.

Particularly-preferential tax rates are individually specified for each item covered by decisions released by the Minister of Finance.

Ordinary tax rates are applicable to imports originating from countries, groups of countries or territories that do not grant most-favoured-nation treatment or special import tax preferences to Vietnam. The ordinary tax rate is equal to 150 per cent of the preferential tax rate.

Apart from being subject to import tax, in certain situations Vietnam also imposes an anti-dumping tax, anti-subsidy tax and anti-discrimination tax or safeguard tax, in accordance with existing rules.

Import and export duty rates are subject to frequent changes and it is always prudent to check the latest position.

Export Duty

Export duties are charged on a limited number of items, generally natural resources such as sand, chalk, marble, granite, ore, crude oil, forest products, and scrap metal. Export duty rates range from 0-50 per cent.

Special Sales Tax (SST)

Special sales tax is a form of excise tax levied on the production or import of certain goods and the provision of certain services:

- Goods generally subject to SST include: cigarettes, cigars and other products processed from tobacco; spirits and beer; certain passenger vehicles; two-wheel motor vehicles with a cylinder capacity above 125cm3; aircraft and yachts; various types of petrol; air-conditioners with a capacity of 90,000 BTU or less and playing cards.
- Businesses subject to SST include: dancehalls, massage lounges and karaoke parlours, casinos, slot machines and other similar types of machines, betting businesses, golf

and lotteries.

Taxpayers producing SST liable goods from SST liable raw materials are entitled to claim a credit for the SST amount paid on raw materials imported or purchased from domestic manufacturers

The SST payable is computed by the taxable price multiplied with the SST rate, which ranges from 10 per cent to 70 per cent depending on the kinds of taxable goods or services.

Also, there are various anti-avoidance rules which specify minimum prices for SST purposes. For example where a manufacturer produces goods subject to SST and sells such goods through an agent, the minimum price for calculation of SST is 90% of the average selling price of the agent.

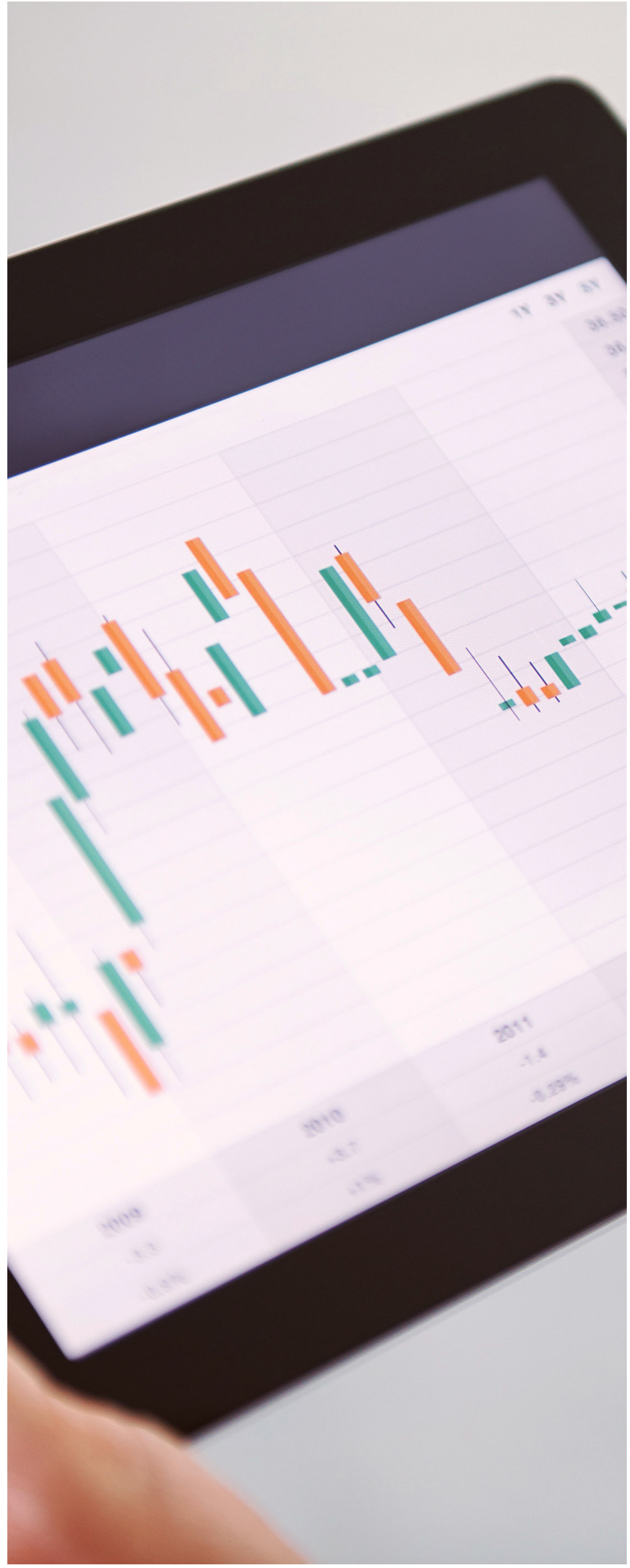
Natural Resources Tax ("NRT")

NRT is also known as production royalty tax. All organizations and individuals engaged in exploiting or mining natural resources in compliance with the laws of Vietnam, irrespective of their industry, scope and operational form, are liable to register, declare and pay royalties.

Taxable resources means all natural resources existing in the land, islands, internal waters, sea territory, exclusive economic zones (including maritime areas common to both Vietnam and a neighbouring country) and the continental shelf under the sovereignty of the Socialist Republic of Vietnam, including: metallic mineral resources; non-metallic mineral resources including soil, stone, sand, gravel, coal, gemstones, mineral water and natural thermal water; oil; gas or natural gas; natural forest products; natural marine products; natural water including surface water, ground water and other natural resources under the law on natural resources.

The taxable value of a resource is the selling price of each item or unit of resource at the place of mining in accordance with the principle of market price. The royalty rates vary from 0 per cent to 40 per cent, whilst petroleum, natural gas and coal gas are taxed at progressive tax rates depending on the daily average production output.

Exemptions or reductions in NRT include offshore fishing by high-capacity vessels; natural water used for generation of hydropower that is not fed into the national power grid; and soil or combined soil products for ground levelling or construction works.



Property tax

Property tax in Vietnam is levied in the form of three taxes: land-use fee, land rental and non-agricultural land-use tax.

- The land-use fee applies to organizations which are allocated land by the State to develop infrastructure for sale or for lease and who are subject to the payment of land-use fee. The duration of land usage under this category should be "long term stable use".

- Land rental is the amount an investor may lease (or rent) land in Vietnam. The amount varies depending on a number of factors including the location, infrastructure and the industrial sector in which the business is operating. Payment of the lease can be for a long fixed period of time or annually.

- Non-agricultural land-use tax applies to

- Residential land in rural/urban areas and non-agricultural land used for business purposes. The calculation of tax liability is based on the land area, price of land and tax rate.

In addition, owners of houses and apartments have to pay land tax under the law on non-agricultural land use tax. The tax is charged on the specific land area used based on the prescribed price per square meter and progressive tax rates ranging from 0.03% to 0.15%.

Environmental protection tax

Environmental tax is an indirect tax, collected on products and goods that, when used, are deemed to cause negative environmental impacts. The tax is levied on the production or importation of certain goods, based on the Absolute tax rate. Export products are exempted from environmental protection tax.

Anti-avoidance measures

While Vietnam does not have any specific anti-avoidance rules, the tax authorities have the power to carry out tax audits of any taxpayer. Tax inspections can be conducted on a regular basis but no more than once a year. Tax inspection durations must not exceed thirty days from the date of notification of the tax inspection decision; however these may be extended for an additional period not exceeding thirty days.

A taxpayer who pays tax later than the deadline is to pay the full tax amount plus a fine equal to 0.03 per cent per day for late payment 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 undeclared tax or return the excess refund, and will also pay a fine equal to 20 per cent (%) of the under-declared or excess refunded tax amounts, together with a fine for late payment of the tax.

A taxpayer that commits an act of tax evasion or tax fraud is liable to pay the full amount of tax according to regulations and a fine will be imposed of between one and three times the evaded tax amount. The general statute of limitations for imposing tax is ten years and for penalties is five years.

Grant Thornton (Vietnam) Limited

Head office in Hanoi

18th Floor
Hoa Binh International Office Building
106 Hoang Quoc Viet Street
Cau Giay District, Hanoi
Vietnam
T +84 24 3850 1686
F +84 24 3850 1688

Office in Ho Chi Minh City

14th Floor
Pearl Plaza
561A Dien Bien Phu Street
Binh Thanh District, Ho Chi Minh City
Vietnam
T +84 28 3910 9100
F +84 28 3910 9101

Kenneth Atkinson

Executive Chairman
T +84 28 3910 9108
E ken.atkinson@vn.gt.com

Nguyen Chi Trung

Managing Partner
T +84 24 3850 1616
E chitrung.nguyen@vn.gt.com

Hoang Khoi

Partner
T +84 24 3850 1618
E khoi.hoang@vn.gt.com

Nguyen Thi Vinh Ha

Partner
T +84 24 3850 1600
E vinhha.nguyen@vn.gt.com

Le Minh Thang

Partner
T +84 28 3910 9219
E minhthang.le@vn.gt.com

Pham Quoc Hung

Partner
T +84 24 3850 1621
E hung.pham@vn.gt.com

Nguyen Hung Du

Partner
T +84 28 3910 9231
E hungdu.nguyen@vn.gt.com

Le The Viet

Partner
T +84 24 3850 1622
E viet.le@vn.gt.com

Nguy Quoc Tuan

Partner

T +84 28 3910 9180

E tuan.nguy@vn.gt.com

Nguyen Manh Tuan

Partner

T +84 28 3910 9184

E manhtuan.nguyen@vn.gt.com

Nguyen Dinh Du

Partner

T +84 24 3850 1620

E du.nguyen@vn.gt.com

Alan Dy

Partner

T +84 28 3910 9191

E alan.dy@vn.gt.com

Nguyen Tuan Nam

Partner

T +84 24 3850 1617

E tuannam.nguyen@vn.gt.com

Nguyen Hong Ha

Partner

T +84 24 3850 1601

E hongha.nguyen@vn.gt.com