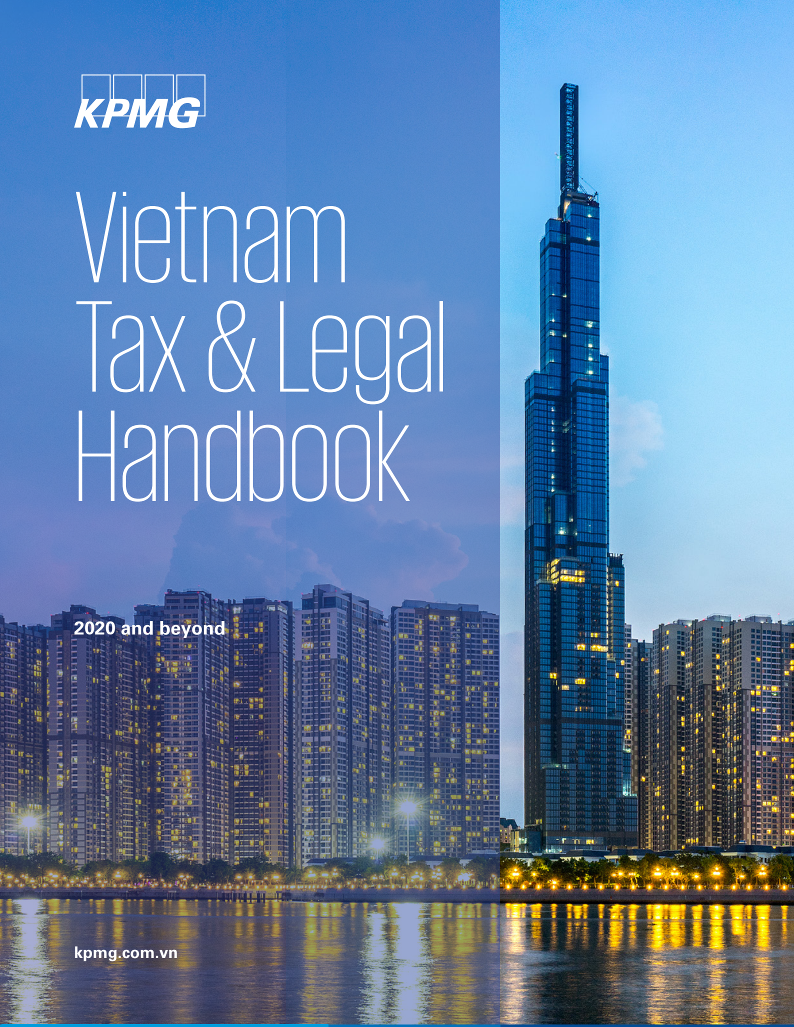
KPMG

Vietnam Tax & Legal Handbook

2020 and beyond



kpmg.com.vn

Table of Contents

Foreword

Warrick Cleine
Chairman & CEO
KPMG Vietnam
warrickcleine@kpmg.com.vn

It gives us great pleasure to introduce the first edition of KPMG Vietnam's Tax & Legal Handbook.

Since major political and economic reforms introduced in 1986 under Doi Moi, Vietnam has developed as a strong and vibrant economy and is projected to become one of the twenty largest global economies by 2050. Currently it is one of the most dynamic countries in Southeast Asia.

According to recent World Bank and IMF statistics, Vietnam achieved GDP growth in 2018 of 7.1% (6.8% in 2017) with government debt to GDP of 57.5% in 2018 (58.2% in 2017) and inflation running at between 2% - 3% annually.

This remarkable growth story is supported by Vietnam's continued willingness to embrace global trade through its membership into the World Trade Organisation in 2007 and its participation in numerous free trade agreements. Vietnam signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership on 8 March 2018 which will result in the removal of many tax barriers. In addition Vietnam and the European Union signed the EU-Vietnam Free Trade agreement on 30 June 2019. This sets Vietnam apart from its regional neighbours.

The information contained in this 2020 Vietnam Tax & Legal Handbook is based on current administrative practice applied to laws, decrees and circulars in force on 31 December 2019.

Please note this handbook is limited in its scope and may not include all relevant information. Accordingly any information contained herein should not be relied upon without first obtaining separate independent confirmation based on individual facts and circumstances.

We hope you find this 2020 Vietnam Tax & Legal handbook useful.

As the largest professional services firm in Vietnam, KPMG has prepared this Tax & Legal Handbook as an introductory guide to doing business in Vietnam. We hope your find this handbook helpful and wish you every success with your business endeavours in Vietnam.

Taxation

Tax Law in Vietnam

The legislative framework of tax law in Vietnam is based on laws passed by the National Assembly of the Socialist Republic of Vietnam, as well as Decrees, Circulars and Official Letters issued by the Ministry of Finance ("MOF"), the General Department of Taxation ("GDT") and/or local provincial taxation authorities (including customs authorities).

A range of different tax laws exist in Vietnam which may seek to levy tax on assets, capital gains, turnover, profits or earnings. Withholding taxes also apply in a range of circumstances. Tax laws are supplemented by the Law on Tax Administration, which regulates the administration elements of taxation in Vietnam.

The following taxes may be applicable in Vietnam:

- Corporate Income Tax ("CIT");
- Foreign Contractor Tax ("FCT");
- Value Added Tax ("VAT");
- Special Sales Tax ("SST")
- Customs duties;
- Personal Income Tax ("PIT"); and
- Employment taxes including, Social Insurance ("SI"), Unemployment Insurance ("UI") and Health Insurance ("HI").

In addition, a range of other taxes may be applicable in certain circumstances:

- Natural Resource Tax ("NRT");
- Property Tax ("PT");
- Environment Protection Tax ("EPT"); and
- Export Duties.

The territorial limits of Vietnamese taxation are hampered by loosely defined rules on residency, source and the place of supply for the provision of goods and services. The application of these tax laws is of course subject to the application of international agreements where relevant.

Vietnam has also recently adopted a substance over form rule on tax administration. The application of this rule raises many questions and uncertainties as it was only introduced in 2019.

Tax penalties for the incorrect payment of taxes or duties are generally 20% of the primary tax not paid, plus a late payment interest of 0.03% per day. Higher penalties may be applied for cases of fraud or evasion. The statute of limitations is generally ten years. Where a taxpayer has not registered for tax there is no statute of limitations.

Tax Administration

Vietnam has a consolidated tax administration law which contains statutory provisions governing the administration of various tax laws including customs and personal income tax. However Vietnam has 64 autonomous regional provinces and each province has a local tax authority which is responsible for the collection and administration of taxation from taxpayers registered within each respective province. Accordingly the administration of taxation law in Vietnam is decentralised and this can and often results in different administrative practices, or interpretations of law.

Taxpayers are required to register, file and pay taxes in the provincial location of their commercial registration or place of residence. Taxpayers with multiple registered locations (e.g dependent or independent branches) will therefore be subject to tax administration by the provincial tax authority in each separate registered location.

Tax rulings

Tax rulings may be requested by taxpayers via an application to the relevant tax authority. Ruling requests may be referred by the relevant tax authority to the GDT or the MOF. In some cases, the Prime Minister of Vietnam may be called upon to consider tax ruling requests.

Tax audits and penalties

Tax audits are a feature of the Vietnamese tax landscape. Tax periods remain open until audited. Tax audits usually cover a number of years and may cover a range of different taxes and are typically carried out by the provincial tax authority where a taxpayer is registered. The tax audit process is also subject to a range of mandated procedural deadlines making compliance with the audit process challenging especially when tax disputes arise.

The GDT, the MOF and the State Auditor also have the power to audit taxation matters in specific circumstances.

The tax administration law also contains tax penalties for all sources of revenue. Briefly speaking, tax shortfalls identified during the audit process may be subject to a 20% penalty plus late payment interest of 0.03% per day. We note for completeness that a tax penalty of between 100% to 300% may be applied to cases of fraud or evasion. On the other hand, a voluntary disclosure of underpaid tax will likely only attract late payment interest.

Recent changes to the tax administration law have included penalty protection where taxpayers have followed official guidance. The circumstances under which this penalty protection will be applied in practice remains unclear however. It is also unclear if this will apply to historical tax shortfalls or tax shortfalls relating to tax periods commencing on or after 1 July 2020.

Other considerations

There is no general anti-avoidance rule in Vietnam, but a substance over form rule has been introduced with effect from 1 July 2020.

The tax authorities have broad powers to undertake tax audits of any taxpayer, withholding or customs agent. There is a ten-year statute of limitations for tax audits in Vietnam.

Vietnam is not an OECD member and is therefore not bound by OECD guidelines.

Corporate Income Tax (CIT)

The standard CIT tax year is the twelve-month period ending 31 December. A substituted (i.e., different) tax year-end may be adopted via an application process.

CIT is levied on all companies (and other business activities) registered in Vietnam based on worldwide income. Branches are also subject to CIT on any profits attributable to the Vietnamese branch, although this is not usually applied in practice.

CIT is typically collected from foreign enterprises (and foreign individuals) via the application of a withholding tax called Foreign Contractor Tax (refer below).

Tax rates and tax incentives

The standard CIT rate is 20%.

Reduced CIT rates may apply in limited circumstances e.g., the education sector (10%). Conversely, higher CIT tax rates may also apply in other limited circumstances e.g., extractive industries like the mining or energy sectors (32%, 50%).

New investment projects or expansion activities (which qualify for tax incentives) may be eligible for a temporary CIT rate reduction. Generally speaking eligible investment activities or criteria may include:

- Geographic location;
- Sector-specific activities; or
- Investment size.

More specifically, tax incentives may be available based on activities that are:

- Located in encouraged special economic zones or areas with difficult socio-economic conditions; or
- Sector specific activities including high-tech, software, infrastructure development, environmental protection, health care, education, publishing, newspaper printing, social housing and/or afforestation; or
- New investment activities (projects) with large investment capital.

Taxpayers must self-assess the application of tax incentives to their activities in accordance with current tax regulations. It is worth highlighting that tax incentive rules have be subject to continuous modification and are also subject to different administrative interpretations by provincial tax authorities resulting in inconsistent application and interpretation. Tax incentives can also be withdrawn if the conditions or criteria applicable to tax incentives have changed. This may include a change in location or activity.

A detailed description of tax incentives is beyond the scope of this handbook and advice based on individual facts and circumstances is strongly recommended.

CIT returns and payments

CIT returns are due on the last day of third month after fiscal year end. For a 31 December year end this is 31 March of the following calendar year.

CIT is collected in a unified way for all CIT payers (excluding foreign contractors) and is not based on the size, turnover or complexity of the taxpayer. CIT is collected as follows:

Four (4) quarterly installments payable by the 30th day following the end of each quarter; and

The balance (if any) payable by the 90th day following year end.

The law on how to calculate quarterly tax payments depends on whether the taxpayer is required to prepare quarterly financial statements or not.

CIT may also become payable at different times including for cessation of business. In such cases CIT is due and payable by the 45th day following the relevant event. Late payment interest 0.03% (per day) may be applied if total tax payments for the fiscal year are not at least equal to 80% of the total tax liability due and payable for the fiscal year.

Calculation of taxable profit

Taxable profit is calculated by reference to accounting profit (based on Vietnamese accounting standards) after tax adjustments. Tax adjustments will include the addition of other assessable income less non-deductible expenditure. Taxable profit is also calculated by reference to worldwide income.

Capital gains are included within taxable profits.

Non-deductible expenditure

Expenses are non-deductible for CIT purposes if they do not meet certain subjective tests including, but not limited to, expenses which are not relevant to the business of the taxpayer, do not provide an economic benefit to the taxpayer or are considered to be duplicate expenses (e.g. management fees).

The following (non-comprehensive) list of expenses may not be deductible for CIT purposes:

- Expenses not supported by documentation including transfer pricing documentation (where relevant)
- Depreciation which exceeds nominated depreciation rates
- Interest (exceeding 20% of EBITDA)
- Interest where registered charter capital is not fully contributed
- Interest where the rate exceeds one and a half times the relevant State Bank of Vietnam rate
- General accounting provisions (including inventory obsolescence and loss, bad or doubtful debts, warranties, employee entitlements etc)
- Employee remuneration which is not documented in labour contracts, company employment policies or labour agreements
- Employee welfare costs which exceed nominated thresholds
- Unrealised foreign exchange gains and losses
- Donations and gifts
- Payment of taxes (including input VAT).
- Administrative fines and penalties

Taxable permanent establishments ("PE") in Vietnam may also be subject to additional CIT expense deduction rules including, but not limited to, the deduction of head office expenses allocated to the Vietnamese PE.

All expenditure is subject to a new substance over form rule with effect from 1 July 2020.

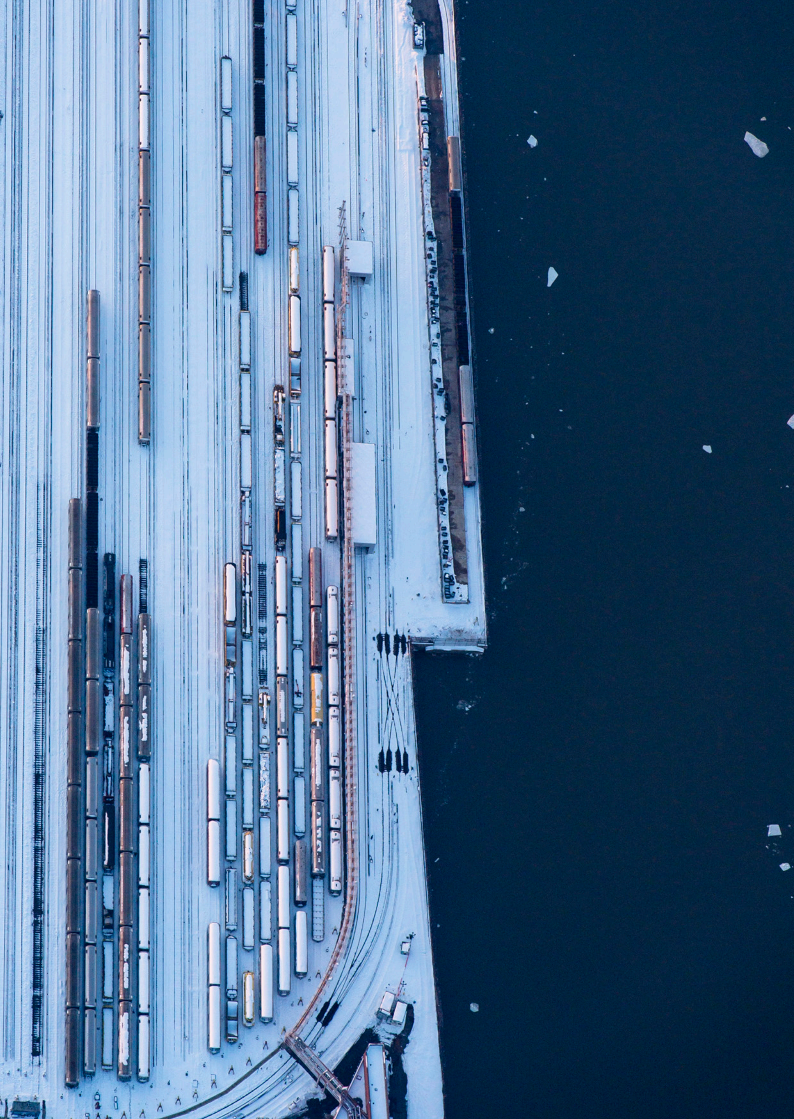
Other considerations

Vietnam does not have a CIT consolidation or grouping regime, nor can accumulated losses be surrendered or transferred to members of the same corporate tax group. Accordingly profits and losses cannot be offset between companies with common ownership.

Tax losses may be carried forward and offset against taxable income for five years from the end of the year in which the tax loss arose. Tax losses may not be carried back and offset against profits in earlier tax years. There are no continuity of ownership, or continuity of business tests applicable to the recoupment of carry forward tax losses.

Eligible research and development ("R&D") expenditure (capped at 10 percent of annual taxable profit) can be deducted from taxable profit. R&D expenditure must be reported to the tax authority annually as part of the tax return filing process. Eligible R&D expenditure must arise from R&D activities conducted in Vietnam and must be substantiated by proper invoices and supporting documents.

Please note for completeness that different tax rules may apply to certain industries like upstream oil and gas exploration, development and production.



International Tax

Vietnam is not an OECD member and is therefore not bound by OECD rules. However Vietnam was the 100th jurisdiction to join the OECD's Inclusive Framework on Base Erosion and Profit Shifting ("BEPS") in June 2017. That said, Vietnam has not yet formally agreed to adopt the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS.

Withholding Tax - dividends, interest, and royalties

Dividends, interest and royalties paid to non-residents are subject to domestic withholding taxes as follows:

Category	Domestic withholding rate
Dividends	Zero
Interest	5%
Royalties paid for the right to use or license patents, inventions, industrial property, designs, trademarks, copyrights and technical know-how (broadly referred to as the "transfer of technology")	10%

These domestic rates of withholding tax are subject to the application of a double tax agreement (refer below). Where an international tax agreement nominates a lower rate of withholding tax and the domestic treaty application process has been adopted, the tax treaty rate can be applied by the withholding agent.

Please also refer to Foreign Contactor Tax (below) which applies in other circumstances.

International tax agreements

While domestic tax laws are, in theory subject to the application of international agreements, this is sometimes not applied in practice.

The application of international tax agreements in Vietnam is also subject to a domestically imposed treaty application process and the application of international tax agreements may therefore be subject to a five year limitation period (i.e., where a valid treaty application has not been made). Integrity rules also exist in relation to beneficial ownership and treaty abuse. In situations where income is received or gains are realised by recipients who cannot evidence beneficial ownership, treaty benefits may be denied.

Refer to Appendix 2 for a list of international tax agreements and specified withholding tax rates.

Foreign Contractor Tax

In addition to the application of withholding taxes to the payment of dividends, interest and royalties, Vietnam also levies a withholding tax on numerous cross border payment arrangements. This expansive withholding tax arrangement is referred to as 'Foreign Contractor Tax' ("FCT") and is intended to collect Vietnamese CIT and VAT[1] from non-residents who supply or sell goods and services into Vietnam.

The regime applies to payments made to non-resident enterprises or individuals who are referred to as 'foreign contractors'. It does not apply to a payment for the importation of goods where that importation of goods is not accompanied with the provision of associated services (like installation or logistics services).

[1]VAT is also collected on the importation of goods into Vietnam via the customs declaration process. However VAT on importation is calculated on the declared customs value, whereas VAT under the FCT regime is calculated on the payment amount. Accordingly VAT may be collected twice on the same imported good.

FCT comprises two elements, namely CIT and VAT. The rates of withholding vary depending on the nature of the underlying goods or services imported into Vietnam. Contracts that combine different elements with different rates of FCT withholding may give rise to complexities and advice should be sought. Refer to Appendix 1 for rates of FCT withholding.

The primary FCT withholding obligation rests with the resident payor, unless the non-resident foreign contractor has a tax registration in Vietnam and has elected to self-declare and pay FCT. Non-resident foreign contractors can choose one of three different methods for the payment of FCT as follows:

- Direct method;
- Deduction method; and
- Hybrid method.

The key distinguishing feature between these three different methods is the registration and reporting obligations imposed on the non-resident foreign contractor.

1. Direct method

The simplest and most commonly applied method is the direct method, whereby the non-resident is not required to register in Vietnam, but is instead subject to a traditional withholding tax arrangement collected and remitted by the Vietnamese payor. This method only applies where the payor can act as a withholding agent.

This is the default method and would apply regardless of any action, or inaction taken by the non-resident foreign contractor. That is to say, the compliance obligations associated with this method rest entirely with the payor.

2. Deduction method

This method imposes registration and tax compliance obligations on the non-resident enterprise. Under this method the non-resident registers for VAT and CIT as would be required for a local enterprise. It also results in CIT becoming due and payable based on taxable profits at 20%. Accordingly, this method results in the imposition of a significant CIT compliance and payment obligation and is rarely elected in practice, but this method may become necessary in certain contractual situations.

3. Hybrid method

This method is a combination of the direct and the deduction method. That is to say, the non-resident enterprise is required to register for VAT purposes and report and pay VAT according to normal domestic rules, but is not required to register and pay CIT. CIT would be collected under the direct method as a withholding tax via the payor.

Controlled foreign company tax rule

Vietnamese CIT rules described (above) include a defacto Controlled Foreign Company regime by taxing the 'income' of foreign subsidiaries if not remitted to Vietnam in accordance with rules relating to foreign investment.

Attributed foreign income is subject to a 20% CIT rate even if the Vietnamese parent taxpayer currently enjoys a concessional tax rate (say due to the application of a tax holiday). Where the foreign subsidiary has been subject to any foreign tax which is "similar" to Vietnamese CIT, a foreign tax credit will be available (in principle) to offset the Vietnamese tax payable on the foreign subsidiary's income up to the level of the Vietnamese tax payable on that income.

The conversion of foreign income, gains and tax credits into VND remains unclear. That is to say, it is not clear whether a spot FX rate is required on the transaction date, or whether a weekly, monthly or yearly average can be adopted for currency conversion purposes.

Accordingly the attribution and taxation of foreign profits is complex and is subject to considerable uncertainty.

Transfer pricing

Vietnam has detailed rules applicable to transfer pricing arrangements between related parties. However, unlike other jurisdictions, these rules also apply to domestic and foreign related parties alike.

Vietnam is not an OECD member and is not therefore bound by OECD guidelines but Vietnamese transfer pricing regulations broadly align with the OECD guidelines with certain unique local adaptations.

Related party definition

In principle, a related party is any entity deemed to have control over another entity via common ownership (more than 25% direct or indirect holding), or through other arrangements as defined under the law.

Reporting obligations

Taxpayers who are subject to transfer pricing rules are required to disclose a range of financial and non-financial data as part of the annual CIT return. The information to be disclosed is extensive and preparation of the forms can be relatively complex.

These forms are:

- Form 01 – Information on related parties and related party transactions;
- Form 02 – List of information, documents required in Local File;
- Form 03 – List of information, documents required in Master File; and
- Form 04 – Country by Country report (only applicable to Vietnamese multinational group).

These forms are required to be submitted along with the annual CIT return on or before the 90th day after tax year end. For a 31 December year end this is 31 March of the following calendar year.

Documentation obligations

In addition to the above-mentioned declaration process, Vietnam requires the maintenance of a Local File, Master File and Country-by-Country report unless exempted (refer below). That is to say, a three-tiered documentation approach is required in Vietnam and such documentation must be maintained in Vietnamese and retained locally. Care should be taken to ensure transfer pricing documentation meets local requirements.

Similarly, for declaration requirements (above), transfer pricing documentation is also required to be prepared on or before the 90th day after tax year end. It is also required to be submitted upon the request of a tax authority.

A taxpayer is exempted from transfer pricing documentation requirements in the following circumstances:

- Revenue below VND50 billion AND related party transactions below VND30 billion; or
- Has an Advance Pricing Agreement ("APA") and has submitted the annual APA report in accordance with the APA regulations; or
- Revenue below VND200 billion <u>and</u> performs simple functions <u>and</u> meets nominated profit ratios.

Documentation including benchmarking analysis must be updated on an annual basis.

Penalties and interest

Where a taxpayer is deemed to be non-compliant with the transfer pricing reporting and documentation obligations, the tax authorities have the right to use secret comparables to make transfer pricing adjustments.

A transfer pricing adjustment that results in additional CIT may be subject to a penalty of 20% tax shortfall penalty plus late payment interest.

Methodology considerations

Comparable uncontrolled price, resale price, cost plus, profit split and comparable profits method are permissible. However, Vietnam does not allow a lump sum or year end downward 'transfer pricing adjustment' as this may be subject to challenge. Accordingly a 'transfer pricing adjustment' may result in a transfer pricing dispute and a non deductible expense for CIT purposes.

This issue is extremely controversial and remains an area of considerable uncertainty. Advice should be sought on the local implementation of global transfer pricing policies.

Non-resident capital gains tax rules are different depending on whether the Vietnamese company is defined as Public or Non-public pursuant to Law on Securities

Non-public

Capital gains realised on the direct (or indirect disposal) of shares in a Vietnamese incorporated and tax resident company by a non-resident are considered to be taxable in Vietnam pursuant to domestic tax law. This position is subject to the application of an International Tax Agreement. The tax rate applied to any realised capital gain is 20%.

There is currently no group roll-over relief and all transfers remain subject to tax. Numerous proposals to modify these rules have been announced and are currently under consideration.

The capital gain is calculated by reference to consideration paid less the cost base of the shares. The cost base of the shares is usually calculated by reference to the contributed share capital (called charter capital), however complexities may arise where a previous share transfer has occurred resulting in a different cost base value for the current owner. Consideration is required to be calculated by reference to a market value consideration and is usually documented via a share purchase agreement. It should be noted that internal group reorganisations and other transaction forms (e.g. share for share exchanges) may give rise to a range of additional issues including valuation considerations.

When the vendor is a non-resident, the Vietnamese company is required to report and pay the capital gains tax on behalf of the non-resident. The timing of these reporting and payment obligations varies depending on the nature of the transaction, but is likely to be either ten days after the parties conclude legal documentation (e.g., a signed share purchase agreement), or ten days after government approval has been obtained where such approval is required.

Any treaty claim made by or on behalf of a non-resident (in relation to a treaty protected capital gain) must be made via a separate treaty clearance process.

When the vendor is a Vietnamese tax resident, the Vietnamese company being transferred is relieved of these reporting and payment obligations.

Listed securities-Public

The disposal of securities (shares in public joint stock companies and certain bonds) by non-residents are subject to capital gains on a deemed basis. The tax payable in such situations is calculated as 0.1% of the consideration received and is retained and remitted to the relevant tax authority by the purchaser.

In contrast, the disposal of securities by residents remains subject to tax at 20% of the realised capital gain.

Indirect Taxes

Vietnam levies a range of different indirect taxes, duties and fees on many different transactions as follows.

Value Added Tax

Value Added Tax ("VAT") is a broad-based tax imposed on most goods, services and other items sold or consumed in Vietnam. Vietnam adopts a traditional VAT system where imported goods and services are subject to VAT, whereas exported goods and services are not subject to VAT in most cases. As a result, the supply of goods and services is subject to VAT at nominated rates of tax, unless otherwise exempted (or zero rated).

VAT calculation

VAT is generally calculated as follows: VAT payable = Output VAT - Input VAT

Output VAT is calculated as the taxable value (sales price) of VATable goods or services sold or supplied multiplied by the relevant VAT rate. Input VAT is calculated by reference to VAT paid on the purchase of goods and services and is documented via invoices. This method of calculating VAT is referred to as the deduction method.

Taxpayers with annual revenue below VND 1 billion, may elect the direct method where VAT is calculated and paid on the taxable value (sales price) of VATable goods or services sold or supplied multiplied by the relevant VAT rate. No input VAT is credited against output VAT. This method of calculating VAT is referred to as the direct method.

VAT rate

VAT is levied on the supply of most goods and services in Vietnam at the standard output VAT rate of 10%.

An output VAT rate of 5% may apply to the supply of goods and services which are considered essential. Essential goods and services include, but are not limited to: water, unprocessed foods, pharmaceuticals, medical equipment, agricultural products and services, educational services and educational books, certain cultural, artistic, sporting services, social housing and other various goods and services.

An output VAT rate of zero (0%) applies to the export of goods and services which are consumed outside Vietnam. A zero rate may also apply to the supply of goods and services into a domestic export processing zone. However it is worth highlighting that the meaning of consumed outside Vietnam is not clearly defined and remains a controversial issue.

Input VAT is collected as described below

Exported goods

Exported goods are zero rated allowing input VAT to be credited against output VAT or refunded in certain situations and providing numerous conditions have been satisfied.

Exported services

Vietnam does not have a place of supply rule which is used to determine or identify when a service has been exported or where it has been supplied. Instead, it is necessary to assess whether the services has been "consumed" outside Vietnam. No statutory guidance is provided in respect of the place of consumption, although various official letters have been published addressing particular factual circumstances for individual taxpayers.

Exported services, which are considered to have been consumed outside Vietnam may be zero rated. This allows input VAT (i.e., paid on the purchase of goods and services) to be claimed as an input VAT credit.

Certain exported services remain subject to VAT in Vietnam however. These services include, but are not limited to, advertising and hotel management services, tourism and entertainment and other related activities. VAT on exported services is highly contentious and advice should be sought on this matter.

Imported goods

VAT on imported goods is collected via the customs declaration process[2] , as well as via a reverse charge system on payments made to non-residents. That is to say, VAT is typically collected via two different processes in relation to the importation of goods. Please refer to the Foreign Contractor Tax section for more details on payments made to non-residents.

Input VAT on imported goods is calculated at the relevant VAT rate on the declared import value plus import duty (if any) plus other applicable taxes like special sales tax, or environmental tax (if applicable). It is paid at the time of importation. If not exempled, the rate of VAT due on imported goods will vary from 0% to 10%.

Imported services

VAT on imported services is collected via a reverse charge system on imported services via the Foreign Contractor Tax regime. This is akin to a reverse charge system where the payor collects VAT and remits the tax to the relevant taxation authority. Different rates of VAT will apply to the importation of services unless otherwise exempted or zero rated. The rate of VAT due on imported services will vary from 0% to 5%. Please refer to the Foreign Contractor Tax section for more details on payments made to non-residents.

Exempt goods and services

The following supply of goods and services may be exempt from VAT:

- Sale of land use rights (within limits)
- Education services
- Financial services relating to lending (loans and credit cards), leasing, financial derivatives, foreign currency trading, debt factoring
- Fund management services
- Insurance and reinsurance services
- Medical services
- Aged care services
- Public transport services (buses)
- Transfer of technology
- Sale of share capital (transfer of shares)
- Media publishing (sale of newspapers and magazines etc)
- Various agricultural product sales
- Various natural resource sales
- Other (numerous other items are also exempt)

Input VAT paid in relation to the supply of exempt goods and services will not be creditable or refundable subject to limits.

Mixed supplies of goods and services

Input VAT is only allowed to be credited (or refunded subject to limits) against the supply of goods and services which are subject to VAT at a rate of 10%, 5% or 0%. Input VAT cannot be credited against the supply of exempt goods and services.

Input VAT may be claimed (or refunded subject to limits) in part where there is a mixed supply of goods and services which are subject to VAT and goods and services which are exempt. Input VAT can be claimed in proportion to the goods and services which are subject to VAT.

Reporting and payment

All enterprises and individuals who supply VATable goods and services must register for VAT reporting and payment purposes in the location where they are licensed or tax resident. If an enterprise is registered in more than one location in Vietnam (i.e., a branch) they will be required to register for VAT purposes in each branch location.

Once registered, each taxpayer with annual revenue of VND 50 billion or more is required to register and pay VAT on a monthly basis. VAT must be paid by the 20th day in the following month. For taxpayers with revenue below this threshold, VAT must be paid on a quarterly basis by the 30th day following quarter end.

Refunds

VAT refunds are subject to strict conditions and limitations. For example, VAT refunds can only be claimed in relation to exported goods where input VAT exceeds VND 300 million.

[2]Goods imported into non-tariff areas (e.g. export processing zones) may not be subject to import VAT.

Special Sales Tax ("SST")

Special Sales Tax ("SST") is a multi-stage sales tax but is only applied to a nominated list of goods and services imported or sold within Vietnam. That is to say, its application is somewhat limited in its scope of application, but SST is payable in addition to VAT and not as a substitution for VAT.

Any SST paid on the purchase of goods and services is creditable against sale of goods and services subject to SST.

Different tax rates apply to the sale of different goods and services and the rates are outlined in Appendix 5.

Goods subject to SST

The following goods are subject to SST: tobacco products (cigarettes & cigars), beer, wine, spirits, cars (less than 24 seats), motorcycles, airplanes, boats air-conditioners (less than 90,000 BTUs), playing cards and petrol.

SST is collected at import and/or the subsequent sale of these goods, and as a result, the tax base used to calculate SST will depend on the nature of the transaction. For example, SST is levied and collected on the declared import value, but will also be levied and collected on the wholesale price (when resold into the Vietnamese market). Similarly, SST may be levied on manufacturing inputs as well as upon the sale of the finished good (e.g., cigarette manufacturing).

The import or sale price used to calculate and collect SST is subject to certain anti-avoidance rules to ensure that prices used in related party transactions (defined within the SST law) are not set low to reduce the payment of SST.

Services providers (and services) subject to SST

The following service providers are subject to SST: Golf clubs, discoteque, massage, karaoke, casino, jackpot games, betting, and lotteries.

SST is collected upon the sale of all goods and services provided by taxpayers who are licensed to operate in the above-mentioned service sectors. For example, the golf green fees and food and beverages by a golf club would be subject to SST.

Import/Export Duties

Vietnam joined the World Trade Organisation on 11 January 2007 and applies a unified customs declaration process for the levy and collection of import (and export) duties as well as other taxes due at the time of customs clearance. Once completed, goods will be released for free circulation.

Vietnam also has a range of other customs declaration and payment procedures for goods that are imported but destined for bonded storage, free trade zones or trans-shipment between free trade zones. Separate customs declaration procedures apply for importation into free trade zones or in relation to temporary imports.

Customs declarations can be lodged electronically or on paper for some certain cases and must be completed by the importer of record or his appointed agent.

Import duty exemptions

The following imported goods are exempt from import duty, but may remain subject to customs clearance procedures in Vietnam:

- Machinery & equipment, special means of transportation, materials (which cannot be produced in Vietnam) imported to form fixed assets of an encouraged investment project;
- Five-year import duties exemption for raw material, supplies and components (which cannot be produced in Vietnam) imported for manufacturing activities of special projects, e.g. manufacturing of medical equipment, projects established in special difficult socio-economic locations;
- Raw material, supplies, components, goods, machinery & equipment imported for the processing of export goods under processing contracts;

- Raw materials, components, supplies or consumables used for the manufacture or production of good to be exported.
- Goods or equipment temporarily imported for special purposes, e.g. exhibition, product testing, warranty repairs or warranty replacements; and
- Other (there are many other exemptions).

Import duty calculation

Import duty is typically collected at the location and time of importation.

Import duty = HS classification code (to determine the correct duty rate) multiplied by the declared dutiable value (unless a different value is applicable) plus any taxes that are also applicable on import (e.g., environmental tax or special sales tax). This import duty calculation process may be subject to the application of a free trade agreement (refer below).

Please note that customs valuation rules are applicable and various anti-avoidance rules (relating to under-declared dutiable values) may be applicable in certain situations.

Import VAT is excluded from the customs duty calculation methodology.

Import duty rates fall into three categories as follows:

- Ordinary duty rates;
- Preferential duty rates (MFN rates); and
- Special preferential duty rates (FTA rates).

A list of duty rates is beyond the scope of this publication.

Free trade agreements ("FTA")

Imported goods may be subject to the application of a FTA. The application of a FTA may result in a special or preferential duty rate being applicable. Goods that qualify for the application of a FTA would necessarily need to satisfy the relevant certificate of origin rules.

Please refer to Appendix 3 for a list of free trade agreements.

Exported goods

Some exported goods may also be subject to export duties.

Free trade zones, special economic zones and export processing centres

Vietnam has a number of special economic zones and export processing centres. Goods imported into these areas will be subject to customs clearance procedures, but may be exempted from/ not subject to import duties.

Temporary import regime

Vietnam has a temporary import regime and this is applicable to the import of machinery and other goods intended for a temporary stay in Vietnam. This typically applies to goods which are temporarily imported for special purposes e.g. construction activities, exhibition, product testing, warranty repairs etc.

Goods temporarily imported for trading purposes are allowed to be retained in Vietnam for no more than 60 days from the date of completion of the temporary import customs procedures. Extension of time limits may be applied, but such extensions are limited (i.e., two times per a shipment and only 30 days per an extension).

Different duty exclusions will apply depending on the type of temporary import. For example, goods temporarily imported for trading purposes may be exempted from customs duty provided a guarantee from a credit institution (or a deposit equivalent to import duties) is provided. In other situations, customs duty may be imposed, but a refund may be claimed on re-export.

Import of used machinery and equipment

Only used machinery and equipment with age not exceeding ten years and some certain types with age not exceeding 20 years are allowed to be imported into Vietnam provided that such used machinery and equipment meets the standards of national regulations on safety, energy-saving, environmental protection and other applicable requirements.

Employment Taxes

Employers are responsible for collecting and remitting personal income tax (on behalf of employees) as well as paying numerous insurance and trade union contributions in relation to employees. These obligations are explained below.

Social, Health and Unemployment Insurance (SHUI)

Vietnam imposes various contribution obligations for Social, Health and Unemployment insurance (collectively referred to as SHUI) on employers and employees alike, but the employer remains solely responsible for collecting and remitting these employer and employee contributions as detailed below.

Please note unemployment insurance is only applied to payments made to Vietnamese citizens.

SHUI is levied on salary and wages as well as specified employee benefits as per their labour contract, but in any event is capped by reference to mandated minimum wages (refer below).

Vietnamese citizens

Employer and employee contributions for SHUI for Vietnamese citizens working under a registered labour contract are as follows:

	Social	Health	Unemployment	Total
Employer contribution	17.5%	3%	1%	21.5%
Employee Contribution*	8%	1.5%	1%	10.5%

*** Deductible for PIT purposes.**

The social insurance contribution of 17.5% is split between Sickness & Maternity funds, Occupational Disease and Accident funds, and Retirement and Death funds.

Social and health insurance contributions are capped at 20 times the statutory base salary. From 1 July 2019 the statutory base salary is VND1,490,000 per month. Whereas unemployment insurance contributions are capped at 20 times the statutory minimum regional salary. From 1 January 2019 the statutory minimum regional salaries are:

- For employees working in region I: VND 4,180,000
- For employees working in region II: VND 3,710,000
- For employees working in region III: VND 3,250,000
- For employees working in region IV: VND 2,920,000

Foreign workers

Only social and health insurance applies to payments made to foreign workers but at different contribution rates for employers and employees. Accordingly, payments to foreign workers may be subject to insurance contribution obligations as follows:

	Social insurance	Health Insurance
Application	Foreigners working in Vietnam with: A work permit, practicing certificate, or practicing license granted by the Vietnamese authorities; or Under and indefinite term labour contract or a contract with a term of one full year	Foreigners working under an indefinite term labour contract, or labour contracts exceeding three months Business managers who receive salaries and remuneration under the laws
Exemption	Foreigners under intra corporate transfer. Foreigners reaching retirement age (55 for women and 60 for men)	Not applicable

Social and health insurance contributions for foreign workers are as follows:

		Social	Health	Unemployment	Total
From 1 December 2018 to 31 December 2021	Employer contribution	3.5%	3%	Not Applicable	6.5 %
	Employee Contribution*	0%	1.5%	Not Applicable	1.5 %
From 1 January 2022 onwards	Employer contribution	17.5%	3%	Not Applicable	20.5 %
	Employee Contribution*	8%	1.5%	Not Applicable	9.5 %

* Deductible for PIT purposes.

The social insurance contribution of 17.5% is split between sickness and maternity funds, occupational disease and accident funds, and retirement and death funds.

Social and health insurance contributions for foreign workers are also capped as for local employees (above).

Please note that from 1 January 2022 social insurance contributions will rise significantly, but these are in any event (currently) capped.

Reporting and payment obligations

Employers must self-assess the application of the above-mentioned insurances obligations to their employment arrangements in accordance with current regulations. Employers are also responsible for remitting payments of SHUI generally on a monthly basis for employee and employer contributions. SHUI contributions are due for payment on the last day of the month.

The SHUI registration for new employees is due on the last day of the month when the employee signs labour contract and contributes SHUI. The SHUI de-registration for terminated employees is due on the last day of the month before the termination month.

Personal Income Tax (PIT)

Employers are obliged to withhold personal income tax on amounts paid to employees and contractors. In addition, PIT may also be levied on employee or contractor reimbursements which are recharged into a local Vietnamese company by a foreign affiliate.

PIT is due for payment on the 20th of the following month following payment to the employee. PIT is reported via a quarterly return which is due on the 30th day after quarter end. The annual company finalization return for PIT is due 90 days following the end of the tax year.

Trade union contributions

Companies with or without a trade union are required to contribute a trade union fee of 2% based on their social insurance contribution.

Employees who are trade union members are also required to contribute a trade union fee of 1% (which is capped at 10% of statutory base salary i.e., VND 1,490,000) from 1 July 2019. Normally this amount is also withheld through the payroll.

Personal Income Tax ("PIT")

Individuals who are tax residents in Vietnam are subject to PIT on worldwide income. Income includes income from all sources including what may be understood to be of a capital nature. Individuals who are not tax residents in Vietnam are only subject to PIT on Vietnamese sourced income.

Domestic PIT rules are subject to the application of a relevant international tax agreement.

Tax residency

Tax residency in Vietnam is determined by reference to meeting one of the following criteria:

- Residing in Vietnam for more than 183 days in a calendar year or 12 consecutive months following the date of arrival; or
- Present in Vietnam for less than 183 days in a tax year, but maintains a permanent residence in Vietnam and cannot prove tax residency in another country.

Otherwise, they will be treated as a tax non-resident.

Tax rates

Different PIT rates apply to tax residents and non-residents.

Vietnam applies a progressive rate scale to employment income as well as different fixed rates to other categories of income (e.g. capital gains realized on the sale of real estate or other investments).

The rates of tax applicable to different categories of income are outlined in Appendix 4.

PIT returns and payments

The ordinary tax year end is 31 December. However, the first year of tax residency is determined as a 12-month period commencing on the date of arrival. The second year of residency is a short period aligned with the calendar year. All other years are 1 January to 31 December except the final tax return which is for the period from 1 January to the departure month.

Individuals are required to file quarterly tax returns unless all their income is declared and paid by their Vietnamese employer as detailed above. Quarterly tax returns are required to be filed and tax paid by the 30th day following the quarter end.

The PIT annual or finalization return is due by the 90th day following the year end. For a calendar year this will be 30th or 31st March depending on the year.

From July 2020, the deadline for annual PIT filing for all tax resident individuals directly declaring PIT with the tax authorities is 30th April), instead of the current 90-day deadline.

Resident expatriate employees are required to declare and pay their final Vietnamese PIT liability upon assignment termination and departure from Vietnam. The final return is due 45 days following the day of departure from Vietnam.

Any additional PIT which is due for payment as a result of the annual tax return is also due for payment no later than the 90th day after the tax year or 45 days for a finalization return.

Exempt income

The following items may be classified as exempt (employment) income and not subject to PIT in Vietnam:

- Lunch/Mid-shift allowance
- Tuition fees for children of expatriate employees working in Vietnam or Vietnamese employees working overseas
- Car rental to pick up employee from home to work and vice-versa
- Mobile phone allowance
- One-off relocation allowance

- Home leave airfare
- Clothing allowance
- Per diem for business trips paid in accordance with company's policy
- Allowance benefit for wedding/funeral

If income is not classified as exempt it is fully taxable.

Foreign income

Tax residents are subject to PIT on worldwide income. Accordingly, foreign income or gains earned by Vietnamese tax residents which may have already been subject to taxation in a foreign jurisdiction are also taxable in Vietnam. However, Vietnam may allow a foreign tax credit in relation to foreign income. The amount of tax creditable should not exceed the amount payable in accordance with the Vietnamese scale, assessed and allocated to that part of the income arising overseas.

The ratio of allocation shall equal the ratio between the amount of income overseas and the total amount of assessable income.

Excess foreign tax credits cannot be carried forward and offset against future foreign income.

The foreign exchange (FX) rate used to convert the income in foreign currency into VND for PIT calculation will be as follows:

- For individual tax payers having a bank account in Vietnam, actual buying FX rate announced by the bank where the individual opens the account at the time of deriving income; and,
- For individuals having no bank account in Vietnam, the Joint Stock Commercial Bank for Foreign Trade of Vietnam's ("Vietcombank") actual buying FX rate at the time of deriving income.

Other Taxes

Property Tax

Vietnam does not have an annual property tax based on land value.

All land is owned by the State. Payments to acquire an interest in land are referred to as Land Use Rights ("LURs") in Vietnam. LURs are akin to a long-term lease over land and the duration of these LURs varies depending on the type of land and its location. Typically these LURs are pre-paid for the duration of the associated land use rights and are typically capitalized (as an asset) in the balance sheets of corporate taxpayers. Amortization of LURs may be allowable as a CIT deduction depending on the types of LURs.

Owners of LURs for non-agricultural land are also subject to an annual fee based on land area (not value). This annual fee is payable to the local provincial authority. This fee is calculated based on land area at rates ranging from 0.03% to 0.15% depending on the location of the land.

Natural Resources Tax ("NRT")

Vietnam imposes a tax on the exploitation of natural resources including petroleum, minerals, natural gas, forestry products, and water. Water used for agriculture, forestry, fisheries and cooling purposes may be exempt from NRT provided certain conditions are satisfied.

This tax is imposed at nominated rates for the extraction or use of nominated natural resources. Tax rates vary depending on the natural resource being exploited and range from 1% to 40%. The tax is levied on extraction output (or consumption) at a specified taxable value per unit.

Vietnam also allows for separate Production Sharing Agreements which regulate and tax the extraction of certain natural resources including oil and gas. These arrangements may operate in substitution for and in unison with other Vietnamese tax laws. A discussion of these arrangements is beyond the scope of this tax and legal handbook.

Environment Protection Tax

The importation and production of certain goods or products deemed to be environmentally sensitive may attract an Environmental Protection Tax ("EPT"). For example, the importation of coal, petroleum products (petrol, lubricants, diesel), plastic bags, certain chemicals or gases may attract EPT at different rates.

Please refer to Appendix 6 for tax rates.

Registration Tax

Vietnam does not impose stamp duty on the transfer of assets, however registration tax is levied on the purchase of certain assets like land use rights ("LURs"), motor vehicles, boats, aircraft etc. This tax is payable once in order to register ownership by an individual or other legal entity, and is payable to the provincial tax authority where the individual is resident, or legal entity is registered.

Typically for assets excluding LURs, the tax is calculated on the relevant tax rate multiplied by the asset purchase price and is payable at the time of purchase.

The applicable rates are different depending on the type of assets as follows:

Asset category	Tax rate
Real property (LURs) – based on a value set by the People's Committee and not the price actually paid. There is a cap of VND500 million for the registration of LURs	0.5%
Water-borne vehicles, barges, motorboats, tugboats, ships, yachts and aircraft	1%
Firearms for hunting, training and sporting. Motor Vehicles and Motorcycles not located in centrally graded cities. Trailers or semi-trailers pulled by automobiles and similar vehicles (Except some special cases to which a tax rate of 10% applies)	2%
Motor Vehicles and Motorcycles located in centrally graded cities	5%

Commercial, Labour and Employment Law in Vietnam

Forms of Investment

Foreign investors may carry out the following forms of investment in Vietnam:

Direct investment

- Establishment of a new business entity;
- Investing by way of share/capital acquisition of an existing business entity.
- Investment by way of contractual arrangement such as: Business Cooperation Contracts ("BCC") signed with other local or foreign investors; Public-Private Partnership ("PPP") contracts with Vietnamese state bodies (e.g. Build-Operate-Transfer ("BOT"), Build-Transfer-Operate ("BTO") and Build-Transfer ("BT") Agreements);

Indirect investment

- Purchase of shares, share certificates, bonds and other valuable papers traded on the stock exchanges;
- By way of securities investment funds; and
- Investment through other intermediary financial institutions.

Forms of Commercial Presence

Foreign investors may establish a commercial presence in Vietnam via the following forms:

Representative office ("RO")

A RO is a common form of early or initial establishment for foreign organisations or business entities looking to invest in or do business in Vietnam. From a legal perspective, a RO is a dependent unit of a foreign business entity and allowed to survey the market, act as a liaison office and undertake a number of commercial promotional activities permitted by the laws of Vietnam. The key limitation of the scope of activities of a RO is that it's not allowed to engage in any "direct profit-making" activities. Subject to the business sectors in which a foreign business entity wishes to promote in Vietnam or conduct the market research, the licensing procedures, timelines and authorities will be varied.

Branch

A branch of a foreign business entity in Vietnam is a dependent unit of a foreign business entity, established to conduct commercial activities in Vietnam in accordance with the laws of Vietnam or an international treaty to which Vietnam is a member. Pursuant to the domestic laws, establishment of a branch by a foreign business entity in most of the business sectors is technically allowable. However, in line with international treaties to which Vietnam is a member (e.g. Vietnam's WTO commitments), branching is only opened in certain business sectors such as legal, computer and related services, services related to management consulting, construction, franchising, banking, insurance and finance services. That said, the branch is not a common commercial presence in Vietnam. Similar to a RO, the different licensing processes, authorities and timelines will depend on the business sectors in which the foreign business entity wishes to set up a branch.

Legal entity

The establishment of a legal entity by foreign investors initially requires a registration of an investment project and to complete such formality, the foreign investor needs to have its investment project approved by obtaining an Investment Registration Certificate ("IRC") with the provincial Department of Planning and Investment ("DPI") or the Management Board of special purpose zones. It is important to note that the in-principle approval of the National Assembly, Prime Minister or provincial People's Committee before the issuance of an IRC shall be required where an investment project makes significant economic or social impact as stipulated by law. It is then necessary to go through the procedures to establish an enterprise to implement the investment project by way of applying for an Enterprise Registration Certificate ("ERC") with the Business Registration Office of the provincial DPI.

A legal entity may be established in one of the following forms:

Feature	Limited Liability Company ("LLC")	Joint Stock Company ("JSC")	Partnership
Required number of members/ shareholders	One (for single member LLC); or Two or more members, but not exceeding fifty (for multi-member LLC)	At least three shareholders; No restriction on maximum number of shareholders	Unlimited liability partnership (at least two individual partners); Limited liability partnership (optional) (organisations or individuals)
Liability of members/ shareholders	Limited to the extent of the registered capital contributions into the company	Limited to the extent of the registered capital contributions into the company	Unlimited liability partnership;
			Limited liability partnership limited to the extent of the registered capital contributions into the company
Issuing bonds	Allowed	Allowed	Not allowed
Issuing shares	Not allowed	Allowed	Not allowed
Listing on stock exchange	Not allowed	Allowed	Not allowed

Investment incentives

Investment incentives are granted to investment projects based on the following criteria:

- Location: investment projects located in areas with difficult or especially difficult socio-economic conditions or special purpose zones;
- Business industry: investment projects engaged in encouraged business activities such as high-tech businesses, socialised businesses (e.g. education, medical), infrastructure development businesses, etc.; and
- Other: investment projects with large investment capital or engaging in the manufacture of support industry products.

Investment incentives granted to qualified investment projects include:

- CIT incentives: Preferential CIT rate (i.e., lower CIT rate in comparison with the standard CIT rate of 20%) for a definite period or for the entire duration of the investment project; exemption from CIT and reduction of CIT for a definite period;
- Import duty incentives: Exemption from import duty in respect of goods imported to form fixed assets, raw materials and components for implementation of an investment project; and
- Incentive relating to land rental and land use tax: Exemption or reduction of land rental and land use tax.

Investment by way of share/ capital acquisition

Investment by way of share/capital acquisition requires an application for approval of the share/capital acquisition (M&A Approval) with the provincial DPI. It is important to note that M&A Approval is only required where the target company operates in a conditional business applicable for foreign investors, or as a result of the share transfer, the foreign ownership ratio in the target increases to 51% or more. To complete the share/ capital acquisition, it is necessary to submit an application for updating the member/shareholder register with the Business Registration Office of the provincial DPI and an application for updating the new investor register with the provincial DPI.

Investment by way of contractual arrangement

Investment by way of contractual arrangement typically includes Business Cooperation Contracts ("BCC") and Public-Private Partnerships ("PPP"). The process for registering a BCC initially requires an application for an IRC with the provincial DPI or the Management Board of special purpose zones. Similar to obtaining an IRC for establishment of a legal entity in Vietnam, the in-principle approval of the National Assembly, Prime Minister, or provincial People's Committee before the issuance of IRC shall be required in case of investment projects which make significant economic-social impacts as stipulated at law. For operating purposes in Vietnam, a foreign investor is required to apply for a Certificate of Operation Registration ("COR") of the project office with the Business Registration Office of the provincial DPI.

Conversely, the process for registration of a PPP requires various approvals and assessment from relevant authorities to complete the application for an IRC. Lastly, the application for an ERC is also required.

Licensing Process and Timeline

No.	Investment form	Investment procedure	Licensing authority	Statutory timeframe
1	**Establishment of a corporate entity**	(1) Application for an Investment Registration Certificate ("IRC")	Provincial Department of Planning and Investment ("DPI"); or Management Board of special purpose zones	15 days
		(2) Application for an Enterprise Registration Certificate ("ERC")	Business Registration Office of Provincial DPI	3 working days

Note:

(1) The in-principle approval of the National Assembly, Prime Minister, or provincial People's Committee before the issuance of IRC shall be required in case of investment projects which make significant economic-social impacts as stipulated at law.

2	**Investment by way of share/capital acquisition**	(3) Application for M&A Approval	Provincial DPI	15 days
		(4) Application for updating the new shareholding members	Business Registration Office of Provincial DPI	3 working days
		(5) Application for updating the new investor	Provincial DPI	10 working days

Note:

(3) This step is required in the following cases:

- The target company operates in conditional business for foreign investors; or

- As a result of the share transfer, the foreign ownership ratio in the target increases to 51% or more

No.	Investment form	Investment procedure	Licensing authority	Statutory timeframe
3	**Investment by contractual means**			
	Business Cooperation Contract	(6) Application for an IRC	Provincial DPI; or Management Board of special purpose zones	15 days
		(7) Application for a Certificate of Operation Registration ("COR") for the foreign investors' project offices	Business Registration Office of Provincial DPI	15 days
	PPP	(8) Approval of project proposal	Ministry / Provincial People's Committee	30 days
		(9) Assessment of feasibility study	Assessment Committee of the State, or as assigned by a Minister or Chairman of a Provincial People's Committee	30 - 90 days
		(10) Application for an IRC	Ministry of Planning and Investment; or Provincial People's Committee	25 days
		(11) Application for an ERC	(4) Application for an ERC	3 working days

Note:

(8) The in-principle approval of the National Assembly, Prime Minister, or Provincial People's Committee before the issuance of IRC shall be required in case of investment projects which make significant socio-economic impacts as stipulated in law.

Labour and Employment

Recruitment

Under the Labour Code, a foreign-invested company ("FIE") may either directly recruit Vietnamese employees or recruit via an authorised labour agency. The FIE is then required to register the list of recruited employees with the local labour department and submit reports on the utilisation of and changes to staff to the labour department on a periodic basis.

Labour contract

According to the Vietnamese Labour Code, labour contracts signed by and between employer and employee must be made in one of the following forms:

- Labour contract with an indefinite term;
- Labour contract with a definite term (of no less than 12 months and no more than 36 months); and
- Labour contract for seasonal jobs or specific jobs with a term of less than 12 months.

An employer will be entitled to sign a maximum of two subsequent definite labour contracts with an employee. After that, if the employee continues to work for the employer, an indefinite labour contract must be signed.

Notice for termination

Employers will be entitled to unilaterally terminate labour contracts in the following cases:

- The employee repeatedly failed to perform the work in accordance with the terms of the labour contract;
- The employee is ill or injured and remains unable to work after having received treatment for a period of 12 consecutive months for an indefinite term contract, 6 consecutive months for a definite term contract and more than half of the contractual duration of a seasonal term contract;
- The employer has to narrow production and reduce the number of jobs due to natural disasters, fire or other force majeure reasons as prescribed by law; or
- The employee failed to attend the workplace within 15 days from expiry of temporary suspension of the labour contract.

When unilaterally terminating a labour contract, employers must inform their employees in advance:

- At least 45 days in the case of an indefinite term labour contract;
- At least 30 days in the case of a definite term contract; or
- At least three working days in the case where an employee is ill or injured and remains unable to work for a long time, or in the case of a seasonal or specific job labour contract with a duration of less than 12 months.

Working hours

Normal working hours are eight hours per day (or 48 hours per week based on a six-day working week). Employers are entitled to schedule working hours on an hourly or daily or weekly basis. For heavy, noxious or dangerous jobs, working hours will be six hours per day. Overtime hours will not exceed 50% of the normal working hours or 30 hours per month or 200 hours per year. In case a company wishes to extend the amount of overtime to more than 200 hours a year, it must seek the approval of the local Department of Labour, Invalids and Social Affairs ("DOLISA"). However, any approval is subject to a cap set at 300 hours per year.

Wage rates

Wage costs in Vietnam are generally low. However, the cost of PIT and other mandatory contributions such as Social Insurance, Health Insurance and

Unemployment Insurance as mentioned below may significantly increase total labour costs.

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

The minimum wage of Vietnamese employees working for FIEs or other foreign organisations will vary depending on different zone classifications set forth by the Government.

Annual leave

In addition to having time off for public holidays with full pay, an employee working for a full 12 months under normal conditions is entitled to 12 days of annual leave with full pay, with one additional day for every five years of service. Employees working in certain areas, of a certain age or who have been with an enterprise for a certain time, may be eligible for longer periods.

Severance allowance

From 1 January 2009, the Law on Social Insurance introduced an unemployment insurance scheme to replace severance payments. A company is required to make a severance payment to an employee at the time of termination of employment if an employee has worked for the company for 12 months or more and is not covered by the unemployment insurance scheme (including working periods before 31 December 2008).

Severance allowance paid by the employer will not be less than 50% of the average monthly salary during the six months prior to termination for each year of employment.

Odd lengths of employment will be calculated as follows:

- Period of under one month will not be counted;
- Period of over one month but less than six months will be counted as six months; and
- Period of six full months but less than 12 months will be counted as a full year.

Trade unions

Within six months after an enterprise commences operation, trade unions may voluntarily be organised to represent and protect the legitimate rights and interests of individual labourers and labour collectives. All enterprises, regardless if they are domestic or foreign invested, have to submit a remittance of 2% of their salary fund which is used as the basis for social insurance payments for employees. This salary fund will be the total salaries of employees under payable social insurance in accordance with the law on social insurance. Enterprises can claim back 65% of the fund for its trade union membership activities only if trade unions are organised. All acts of obstructing the setting up and operation of trade unions at enterprises are strictly forbidden.

Visa and temporary residence card

To visit Vietnam, foreigners, except for those from exempted countries like ASEAN, require visas which must be obtained in advance from an overseas Vietnamese embassy or consulate. Visas are only issued at the border gate on entry to the country in exceptional circumstances, such as for funerals of relatives, for visits to seriously ill relatives, urgent technical support for specific programmes, projects or departure from a country that does not have a Vietnamese consulate or any diplomatic representatives. There are certain countries whose citizens are not required to obtain a Vietnamese entry visa for stays of specified periods in accordance with bilateral treaties signed between Vietnam and such countries.

Foreigners who temporarily reside in Vietnam for employment with a valid work permit are able to apply for temporary residence cards which will be issued by the Immigration Division of the Department of Public Security. The duration of each temporary residence card will follow validity of the work permit (maximum two years). A foreigner who has a temporary residence card will be exempted from applying for a visa when entering and leaving Vietnam during the period of validity of the temporary residence card.

Work permits

Foreigners working for business entities and organisations in Vietnam must have a work permit either under the classification of “expert”, “management/executive” or “technician”, except for limited exempted cases stipulated by the law. Enterprises which recruit foreigners must explain their need to recruit an expatriate for each job position before applying for a work permit for at least 30 days before the foreigner commences work in Vietnam.

After obtaining approval on the recruitment of a foreigner, enterprises can apply for a work permit for a foreigner at least 15 working days before the foreigner commences work in Vietnam. The application for the work permit must include amongst other documents, qualifications, experience certificate, criminal record and health check. The work permit remains valid for up to 24 months and may be extended under specific circumstances as indicated by law. Also, in case an expatriate is exempt from having to apply for a work permit, the employer is still required to notify the local DOLISA for administrative management purposes.

Banking and Foreign Exchange Control

Bank accounts – direct investment

FIEs, foreign parties to a BCC and foreign parties entering into PPP contracts without setting up a project company must open a direct investment capital account (DICA) at a licensed credit institution to undertake certain transactions (e.g. receipt of capital contributions, funds from assignment of capital contribution, and receipt of foreign loan; disbursement outside Vietnam of capital, profit and other legal revenue of a foreign investor and other revenue and disbursement transactions relating to foreign direct investment activities, etc.).

Of note, FIEs may open current accounts and transaction accounts in foreign currency and Vietnamese Dong at licensed credit institutions for their daily business transactions. In addition, FIEs may be permitted to open offshore foreign currency bank accounts subject to approval by the State Bank of Vietnam ("SBV").

Bank accounts - indirect investment

A non-resident foreign investor must open an Indirect Investment Capital Account (IICA) in Vietnamese Dong at a licensed credit institution to conduct indirect investment in Vietnam. Investment capital in a foreign currency must be converted to Vietnamese Dong before the indirect investment is carried out.

Foreign exchange control

The Vietnamese Dong is not freely convertible and the market is still heavily dependent on foreign currencies, especially the U.S. dollar. The Government has implemented measures to gradually reduce its reliance on the dollar.

All monetary transactions in Vietnam must be made in Vietnamese Dong, except for a limited number of transactions allowed by law to be made in foreign currencies (e.g. salary payment to foreign employees). Foreign invested enterprises may, subject to certain conditions, buy foreign currency from banks to carry out a number of obligations in foreign currencies from their transactions.

Generally speaking, the inflow of foreign currencies into Vietnam is less constrained by the SBV compared to the outflow, which has been restricted to certain transactions such as payment for imports of goods and services, repayment of loans contracted abroad and payment of interest accrued thereon.

Only banks, non-bank credit institutions and other authorised institutions are eligible to provide foreign exchange services.

Profit remittance regulations

Lawful revenue in VND derived from foreign direct investment as well as foreign indirect investment will be permitted to be converted into foreign currency for the remittance abroad via licensed credit institutions. There is no tax imposed on profit remittance.

A foreign investor is required to submit a notification of profit remittance abroad to the tax authority at least seven working days prior to the date of profit remittance. Accordingly, the foreign investor may go to its bank in Vietnam and buy foreign currency to repatriate the profits. Please note that although it has a right to buy foreign currency, the bank does not have an obligation to sell. The availability of foreign currency would depend on the market liquidity from time to time. Having a good relationship with a bank is therefore important and this is an issue that should be negotiated when selecting which bank to use in Vietnam.

Land

The Vietnamese Constitution stipulates that land in Vietnam belongs to the people with the State acting as the representative owner and exerting its control over the land in practice on the people's behalf.

Although private ownership of land is technically not permitted, legal ownership can in essence be derived through the right to use land (i.e., the land use right ("LUR")). The State may allocate or lease LURs to individuals, households and organisations to use land for a defined or undefined term.

The ownership of LUR and other assets attached to land is evidenced by a Certificate of Land Use Right, Ownership of House and Other Assets Attached to Land (the "LURC"). This LURC sets out fundamental information on land use, including the term and purpose of land use, and the assets attached to the land (if any).

In order to be a "land user" and be allocated, leased or recognised to hold a LUR, a foreign investor must establish a FIE in Vietnam, which may be granted ownership and quasi-ownership interests in respect of land and assets attached to land. A FIE can be a wholly owned subsidiary, a joint venture company ("JVC") or a majority stake acquired in a Vietnamese company. The choice of FIE will depend on the investment being considered.

A FIE may obtain LURs in the following ways:

- Allocation of land from the State for investment purposes;
- Lease of land from the State;
- Lease of land from specified lessors (including local or FIE developers licensed to engage in infrastructure development for sub-lease);
- Assignment of the LUR by way of capital contribution to a JVC by the local Vietnam partner; and
- Acquisition of the LUR as part of the purchase of an entire real estate project or project encompassing a LUR.

Intellectual Property

Types of intellectual property rights protected by Vietnam law

Under the Law on Intellectual Property, "Intellectual Property Rights" ("IPRs") are the rights of an organisation or individual (either a Vietnamese or foreign organisation/individual who satisfies the conditions stipulated by the laws) to possess intellectual assets comprising copyright and copyright related rights, industrial property rights and rights to plant varieties.

Intellectual property that is protected under Vietnamese laws include:

- Copyright in literary, artistic and scientific works, and derivative works; copyright-related rights in performances, audio and visual recordings, broadcasting programs, satellite signals carrying encrypted programs;
- Industrial property including inventions, industrial designs, layout-designs of semi-conductor integrated circuits, business secrets, trademarks, trade names and geographical indications; and
- Rights to plant varieties including reproductive and harvested materials.

Protection of IPRs

The protection of IPRs is further reinforced under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP"). In addition to civil and administrative remedies, the CPTPP insists the application of criminal procedures and penalties to protect IPRs. Accordingly, each member country shall ensure that criminal liability for aiding and abetting is available under its law. Geographical indications may be protected through a trademark or sui generis system or other legal means.

Appendices

Appendix 1 – Foreign Contractor Tax Withholding

Nominated rates of withholding tax are specified for foreign contractor tax as of 31 December 2019:

Payment type	VAT withholding	Income tax withholding*
Import of goods into Vietnam with associated supply of services	Exempt	1%
Imported services	5%	5%
Services associated with imported machinery	3%	2%
Restaurant, hotel and casino management services	5%	10%
Services associated with installation or construction (with the supply of assets)	3%	2%
Services associated with installation or construction (without the supply of assets)	5%	2%
Leasing	5%	5%
Transportation	3%	2%
Interest	Exempt	5%
Financial derivatives	Exempt	2%
Reinsurance	Exempt	0.1%
Insurance	Exempt or 5%	5%
Royalties	Exempt or 5%	10%
Transfer of securities	Exempt	0.1%
Other activities	2%	2%

Appendix 2 - International Tax Agreements for the Avoidance Of Double Taxation

Nominated rates of withholding tax are specified within the following international tax agreements:

Country	Interest	Dividends	Royalties
Non-Treaty Rate	**5%**	**0%**	**10%**
Treaty Rate			
Algeria *	15	**	15
Australia	10	**	10
Austria	10	**	7.5 / 10
Azerbaijan	10	**	10
Bangladesh	10	**	15
Belarus	10	**	15
Belgium	10	**	5 / 10 / 15
Brunei Darussalam	10	**	10
Bulgaria	10	**	15
Canada	10	**	7.5 / 10
China, People's Republic	10	**	10
Cuba	10	**	10
Croatia	N/A	**	N/A
Czech Republic	10	**	10
Denmark	10	**	5 / 10
Egypt *	15	**	15
Estonia *	10	**	7.5 / 10
Finland	10	**	10
France	0	**	10
Germany	10	**	7.5 / 10
Hong Kong	10	**	7 / 10
Hungary	10	**	10
Iceland	10	**	10
India	10	**	10
Indonesia	15	**	15
Iran	10	**	10
Ireland	10	**	5 / 10 / 15
Israel	10	**	5 / 7.5 / 15
Italy	10	**	7.5 / 10
Japan	10	**	10
Kazakhstan	10	**	10

Country	Interest	Dividends	Royalties
Korea (North)	10	**	10
Korea (South)	10	**	5 / 15
Kuwait *	15	**	20
Laos	10	**	10
Latvia *	TBC	**	
Luxembourg	10	**	10
Macau	10	**	10
Macedonia *	10	**	10
Malaysia	10	**	10
Malta	10	**	5/ 10/ 15
Mongolia	10	**	10
Morocco	10	**	10
Mozambique	10	**	10
Myanmar	10	**	10
Netherlands	10	**	5 / 10 / 15
New Zealand	10	**	10
Norway	10	**	10
Oman	10	**	10
Pakistan	15	**	15
Panama	10	**	10
Palestine	10	**	10
Philippines	15	**	15
Poland	10	**	10 / 15
Portugal	10	**	7.5 / 10
Qatar	10	**	5 / 10
Romania	10	**	15
Russia	10	**	15
San Marino	10 / 15	**	10 / 15
Saudi Arabia	10	**	7.5 / 10
Serbia	10	**	10
Seychelles	10	**	10
Singapore	10	**	5 / 10
Slovakia	10	**	5 / 10 / 15
Spain	10	**	10
Sri Lanka	10	**	15
Sweden	10	**	5 / 15
Switzerland	10	**	10
Taiwan	10	**	15
Thailand	10 / 15	**	15
Tunisia	10	**	10
Turkey *	10	**	10
UAE	10	**	10

Ukraine	10	**	10
United Kingdom	10	**	10
United States of America *	10	**	5 / 10
Uruguay	10	**	10
Uzbekistan	10	**	15
Venezuela	10	**	10

** Not in force as of 30 June 2019*

*** The payment of dividends to non-residents are exempt from withholding tax pursuant to domestic law.*

Appendix 3 – Free Trade Agreements

Free Trade Agreements 30 September 2019:

No. FTA	Signed date	Effective date	C/O	Member states
FTAs in effect				
AANZFTA	27 February 2009	01January 2010	Form AANZ	ASEAN, Australia, New Zealand
ACFTA	29 November 2004	July 2005	Form E	ASEAN, China
AIFTA	24 October 2009	01 January 2010	Form AI	ASEAN, India
AJCEP	01 April 2008	01 December 2008	Form AJ	ASEAN, Japan
AKFTA	24 August 2006	June 2007	Form AK	ASEAN, South Korea
ATIGA	26 February 2009	17 May 2010	Form D	ASEAN
CPTPP	08 March 2018	14 January 2019	Form CPTPP	Vietnam, Canada, Mexico, Peru, Chile, New Zealand, Australia, Japan, Singapore, Brunei, Malaysia

No. FTA	Signed date	Effective date	C/O	Member states
VCFTA	11 November 2011	01 January 2014	Form VC	Vietnam, Chile
VJEPA	25 December 2008	01 October 2009	Form VJ	Vietnam, Japan
VKFTA	05 May 2015	20 December 2015	Form VK	Vietnam, South Korea
VN – EAEU FTA	29 May 2015	05 October 2016	Form EAV	Vietnam, Russia, Belarus, Armenia, Kazakhstan, Kyrgyzstan
AHKFTA	12 November 2017	11/06/2019 in Hong Kong (China), Laos, Myanmar, Thailand, Singapore, & Vietnam	Form AHK	ASEAN, Hong Kong (China)
Signed FTAs, not yet in effect				
EVFTA	30 June 2019	Not ratified yet	not available	Vietnam, European Union (EU)
FTAs under negotiation				
RCEP	Negotiations commenced in Mar. 2013		not available	ASEAN, China, South Korea, Japan, India, Australia, New Zealand
Vietnam – EFTA FTA	Negotiations commenced in May 2012		not available	Vietnam, EFTA (Switzerland, Norway, Iceland, Liechtenstein)
Vietnam – Israel FTA	Negotiations commenced in Dec. 2015		not available	Vietnam, Israel

Appendix 4 - Personal Income Tax

Vietnamese tax **resident** individuals as subject to PIT rates on employment income as of 30 June 2019 as follows:

Employment income Amount (VND million)	USD Exchange Equivalent (1:23,000) Estimate	Tax rate
0 – 60m	0 - $2,600	5%
60m – 120m	$2,600 - $5,200	10%
120m – 216m	$5,200 - $9,400	15%
216m – 384m	$9,400 - $16,700	20%
384m – 624m	$16,700 - $27,100	25%
624m – 960m	$27,100 - $41,700	30%
> 960m	> $41,700	35%

Vietnamese **non-resident** individuals are subject to a flat 20% PIT rate on employment income as at 31 December 2019

Vietnamese tax **resident** and **non-resident** individuals as subject to PIT rates on other (non-employment) income at 30 September 2019 as follows:

Category of taxable income	Tax rate
Sale of securities (listed shares)	0.1% of sale proceeds
Business income	0.5% - 5%
Real estate sales	2% of sales proceeds
Interest, dividends, royalties	5%
Gifts and prizes and lottery winnings and inheritance	10%
Sale of non-listed shares	20% of capital gain

Appendix 5 - Special Sales Tax Rates

Special Sales Tax rates as of 30 June 2019:

Goods or services	Tax rate
Tobacco products (cigarettes and cigars)	75%
Beer, wine and spirits (depending on alcoholic content)	65%, 35% or 65%
Automobiles, motorcycles (> 125cc)	10% - 150%, 20%
Airplanes, boats	30%
Petroleum	7% - 10%
Air conditioners (< 90,000BTUs)	10%
Cards (playing cards for gaming in Casinos)	40%
Lottery, casino, jackpot games	15%, 35%, 35%
Discotheque, karaoke, massage services	40%, 30%, 30%
Entertainment services with gambling	30%
Golf services	20%

Appendix 6 - Environmental Protection Tax Rates

Environmental Protection Tax rates as of 30 June 2019:

Goods or products	Unit of tax	Tax rate (VND)/unit
Petroleum products	Litre or KG	300 - 3,000
Coal	ton	10,000 - 20,000
Gasses (specified)	kg	4,000
Chemical (specified)	kg	500 - 1,000
Plastic bags (non biodegradable)	kg	40,000

KPMG in Vietnam

KPMG was established in Vietnam in 1994, at a time when Vietnam was opening its doors to foreign investment.

KPMG is the largest professional services firm in Vietnam with offices in Hanoi, Ho Chi Minh City, and Da Nang. KPMG also has an office in Cambodia's capital city Phnom Penh. With more than 1,400 professionals in Vietnam, KPMG is proud of its ability to deliver international standard professional services encompassing:

– Audit
– Deal Advisory, Tax & Legal
– Management Consulting

KPMG has also received awards and accolades from the Vietnamese government for its contribution to the nation's audit, tax, legal and advisory professions.

As a leader in the professional services industry, KPMG regularly advises the Government of Vietnam and international organisations in support of Vietnam's reform and integration programmes.

Contact Us

KPMG Tax and Advisory Limited

Warrick Cleine
Chairman & CEO Vietnam and Cambodia
Managing Partner of Deals, Tax and Legal

Hanoi
46th Floor, Keangnam Hanoi Landmark Tower, 72 Building, Plot E6, Pham Hung Street, Cau Giay New Urban Area, Me Tri Ward, South Tu Liem District, Hanoi, Vietnam

T: +84 (24) 3946 1600

F: +84 (24) 3946 1601

E: kpmghanoi@kpmg.com.vn

Do Thi Thu Ha, Office Senior Partner
E: htdo@kpmg.com.vn
Hoang Thuy Duong, Partner
E: dthoang@kpmg.com.vn
Le Thi Kieu Nga, Partner
E: nkle@kpmg.com.vn
Nguyen Thu Huong, Partner
E: hnguyen52@kpmg.com.vn
Giovanni Marino, Managing Director
E: giovannimarino@kpmg.com.vn

Ho Chi Minh City
10th Floor, Sunwah Tower
No. 115, Nguyen Hue Street
Ben Nghe Ward, District 1
Ho Chi Minh City, Vietnam
T: +84 (28) 3821 9266
F: +84 (28) 3821 9267
E: kpmghcmc@kpmg.com.vn

Bui Thi Thanh Ngoc, Partner
E: ntbui@kpmg.com.vn
Andrea Godfrey, Partner
E: andreagodfrey@kpmg.com.vn
Ho Thi Bich Hanh, Partner
E: hbho@kpmg.com.vn
Huynh Nhan, Partner
E: nnhuynh@kpmg.com.vn
Nguyen Thanh Hoa, Partner
E: hnguyen23@kpmg.com.vn
Ninh Van Hien, Partner
E: ninhvanhien@kpmg.com.vn
Richard Stapley-Oh, Partner
E: rstapleyoh@kpmg.com.vn
Ta Hong Thai, Partner
E: thta@kpmg.com.vn
Joseph Vu, Partner
E: josephvu@kpmg.com.vn

KPMG Offices

Hanoi

46th Floor, Keangnam Hanoi Landmark Tower,
72 Building, Plot E6, Pham Hung Street,
Cau Giay New Urban Area, Me Tri Ward,
South Tu Liem District, Hanoi, Vietnam
T: +84 (24) 3946 1600
F: +84 (24) 3946 1601
E: kpmghanoi@kpmg.com.vn

Ho Chi Minh City

10th Floor, Sunwah Tower,
No. 115, Nguyen Hue Street,
Ben Nghe Ward, District 1,
Ho Chi Minh City, Vietnam
T: +84 (28) 3821 9266
F: +84 (28) 3821 9267
E: kpmghcmc@kpmg.com.vn

Danang

Unit D3, 5th Floor, Indochina Riverside Tower,
No. 74, Bach Dang Street, Hai Chau 1 Ward,
Hai Chau District, Danang, Vietnam
T: +84 (236) 351 9051
F: +84 (28) 3821 9267
E: kpmgdanang@kpmg.com.vn

kpmg.com.vn