



Thinking beyond borders: Management of extended business travelers - Vietnam

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Contents

1	Key message	4
2	Income Tax	6
3	Social Security	10
4	Compliance obligations	12
5	Other issues	16

01

Key message

Tax residents of Vietnam are taxed on worldwide income, whereas tax non-residents are taxed on Vietnam-sourced income only. Foreigners will be subject to Vietnamese personal income tax (PIT) based on their physical presence/permanent residential place in Vietnam and/or the source of income derived by the individual.

1 Key message

Employees who are present in Vietnam, independent of the length of stay, are taxed on both their employment income and their non-employment income, based on their tax residence status and source of income.

02

Income tax

2 Income Tax

2.1 Liability for income tax

A foreign person's liability to Vietnamese tax is determined by tax residence status. If a foreigner is present in Vietnam for more than 182 days in a tax year, or the individual has a rented house or similar residence in Vietnam with a term of 183 days or more in a tax year or holds a Temporary Resident Card ("TRC") and cannot prove that the individual is a tax resident under another jurisdiction during the same period, then the individual is treated as a tax resident of Vietnam and is taxed on the individual's worldwide income. A tax non-resident of Vietnam is an individual who does not meet the above criteria for a tax resident and is subject to tax on Vietnam-sourced income only.

Vietnamese nationals with a regular residential location are deemed to be tax residents of Vietnam.

Foreign individuals from countries/jurisdictions without a Double Tax Agreement with Vietnam who stay in Vietnam for 183 days or more in the first calendar year are required to report their pre-arrival income from the beginning of the year of arrival (i.e., 1 January) for Vietnamese tax purposes. For individuals from countries/jurisdictions with a Double tax agreement who stay in Vietnam for 183 days or more in the first calendar year, only income from arrival month is required to be reported. For individuals who stay in Vietnam for less than 183 days in the first calendar year, their first date of arrival is the start date of their first tax year, ending 12 months from such start date, the subsequent tax year is calendar year.

2.2 Definition of source

Vietnam-sourced income is income earned or received in relation to the employment of that foreign individual in or for Vietnam (in case the individual does not present in Vietnam), regardless of origin or country/jurisdiction where the remuneration is paid. Worldwide income and working time in and/or for Vietnam can be used to determine Vietnam sourced-income in cases where no specific Vietnam-sourced income is provided.

2.3 Tax trigger points for employment income

Technically, there is no specific rule regarding when to calculate PIT of an assignee entering Vietnam before the his/her assignment. Where the assignee is a tax resident, personal income tax shall be calculated from the month the individual arrives in Vietnam.

In practice, the tax authority issued some guidance whereby they accept that the official assignment date is the first day the assignee earns income in Vietnam provided that their pre-assignment arrival was not for business purposes. However, the guidance is issued for specific cases and therefore not automatically applicable in general.

2.4 Types of taxable income

For employees with an extended presence, the types of income that are generally taxed include employment income, income from the operation of a household business, income from capital investments, income from capital transfers, income from real estate transfers, income from winnings or prizes, income from royalties, income from franchises, income from inheritance, and income from gifts.

The above types of income are assessed at different tax rates and subject to different tax compliance procedures.

2.5 Tax rates

The tax rates and tax thresholds for employment income vary depending upon whether the individual is a resident of Vietnam or non-resident for tax purposes.

Tax residents of Vietnam are taxed at progressive tax rates ranging from 5 percent to 35 percent. The top marginal rate is 35 percent on monthly taxable income over 80 million Vietnamese dong (VND) for tax residents of Vietnam (including both Vietnamese nationals and expatriates). Tax non-residents of Vietnam are subject to tax at a flat rate of 20 percent on their Vietnam-sourced income.

03

Social Security

3 Social Security

3.1 Liability for social security

Vietnamese employees are subject to compulsory social insurance (SI), health insurance (HI), and unemployment insurance (UI). Foreign individuals, on the other hand, have to date only been subject only to HI and SI depending on their working status in Vietnam (e.g., intra-corporation transfer versus local employment contract).

On 20 November 2014, the National Assembly issued Law 58/2014/QH13, broadening the applicable “objects” of compulsory SI. The Vietnamese SI scheme provides coverage for illness, maternity, occupational diseases and accidents, retirement, and death. The objects include expatriate employees working in Vietnam under local employment contracts with term of 01 year or more with Vietnamese entities and having work permits/practicing licenses/certificates issued by Vietnamese competent authorities. However, SI not applicable to those who are international assignees working in Vietnam under intra-corporation transfer scheme (i.e. transferred from the head office overseas to a subsidiary in Vietnam).

The current SI contribution rate for employers and employees are 3.5 percent and 0 percent, respectively from December 2018 to December 2021. The maximum applicable rates are 8 percent for employees and 17.5 for employers, applicable from January 2022. Especially, during the Covid-19 pandemic, the authority decreased the SI rate of employers by 0.5% from 1 July 2021 to 30 June 2022.

From 1 October 2009, a foreign individual who signs a Vietnam employment contract for 3 months or more with an entity in Vietnam is subject to the statutory HI contribution. The applicable rates from 1 January 2017 are 1.5 percent for employees and 3 percent for employers.

The foreign individuals are not subject to UI and therefore entitled to severance allowance upon termination of local employment contract with the Vietnamese entity.

The base level used for calculation of the compulsory social and health insurances above is capped at 20 times of the base salary, VND36,000,000 at present. The base level for calculation of unemployment insurance varies from VND65,000,000 to VND93,600,000 depending on regional location from 01 July 2022 to present.

If the foreign individuals are not covered by the statutory SHI scheme, they may participate in the voluntary SHI which requires self-registration with the district-level SI authorities.

04

Compliance obligations

4 Compliance obligations

4.1 PIT compliance obligations

4.1.1 Employee compliance obligations

Each employee is required to obtain an individual tax code and to declare the individual's dependents qualifying for tax relief. In addition, an employee must complete a quarterly tax return if they receive income from overseas and a tax finalization return where the tax liability of an individual at year-end is greater (or less) than the sum of tax paid during the year.

Quarterly income tax returns are due by the last day of the next month of the relevant quarter and annual income tax returns are due by the last day of the 4th month from the tax year-end for individual returns form (i.e. 30 April). In addition, if the individuals are subject to the first tax year finalisation (i.e., first 12-consecutive-month period from the first arrival month to Vietnam), the due date is 90th day from the end of the tax year. When the individuals complete their assignments in Vietnam and subject to tax finalisation, they are required to lodge the final tax return to the tax authority within 45 days from the departure date from Vietnam.

Tax non-residents are required to declare their Vietnam-sourced income on a quarterly basis. Annual income tax returns are not required.

4.1.2 Employer reporting and withholding requirements

The employer must withhold the relevant percentage from income paid to its employees and remit such tax withheld to the State Treasury on a monthly/quarterly basis. The deadline for monthly and quarterly tax filing is no later than the 20th of the following month and the end of the first month of the following quarter, respectively. Annual tax return of the employer is due by the last day of the 3rd month from the tax year-end (i.e. 31 March).

The employer finalizes PIT on behalf of its employees, provided that the employees either:

- have income only from the employer; or
- have irregular income from other non-employment contracts with average amount not exceeding VND10 million/month and 10 percent PIT of which has been withheld
- are transferred from a former Company to current one due to merger/ consolidation/ separation/ transformation of enterprise form and these two companies are in the same system and have income from only one of these employers

and authorize the employer to finalize tax on their behalf.

4.2 Immigration compliance obligations

4.2.1 Work permit/visa requirements

Other than certain limited cases where a work permit is exempted, foreigners working in Vietnam are required to apply for a work permit to legally work in Vietnam. Further, for the exempted cases, depending on the nature of exemption and the supporting documents, a work permit exemption certificate must be obtained, or a work permit exemption notification must be submitted.

Foreigners are required to have a valid immigration document before entering Vietnam. Depending on the nationality, length of stay and the purpose of the individual's entry into Vietnam, they may choose to enter Vietnam by (i) visa-free, obtaining (ii) electronic visa or (iii) business visa. Length of visa-free depends on

the unilateral visa free policy of Vietnam toward the country of passport holder or the bilateral visa free agreement between Vietnam and the country in concern. Electronic visa is valid for up to 90 days and can be obtained without the invitation of the sponsoring organisation in Vietnam. Meanwhile, business visa is valid to up to 90 days and can only be applied by a sponsoring organisation in Vietnam.

A work visa with term of up to 12 months can be obtained after a valid work permit/work permit exemption certificate is issued. Another option is that the foreigners can apply a temporary resident card (duration up to 2 years but not exceed the validity of the work permit) if they already enter Vietnam (with a suitable visa) and have a valid work permit/work permit exemption certificate to legally stay in Vietnam during the term of the temporary resident card

4.2.2 Other reporting requirements

Depending on the nature of the business trip and the immigration documents of the business traveler, a Company must also consider reporting to the competent labour authority certain details for the business traveler. Failure to report timely and correctly on the status of working of the business traveler to Vietnam might be subject to penalty for noncompliance.

05

Other issues

5 Other issues

5.1 Double taxation treaties

In addition to Vietnam's domestic arrangements that provide relief from international double taxation, Vietnam has entered into double taxation treaties with more than 70 countries/jurisdictions to prevent double taxation and allow cooperation between Vietnam and overseas tax authorities in enforcing their respective tax laws. To eliminate the double taxation, the treaties provide the principles/ conditions to apply for tax exemption and tax credit in one Contracting State. In Vietnam, this application is not an automatic process.

A notification of the application for a tax exemption under a double tax treaty has to be filed with the Vietnamese tax authority at the beginning of the assignment to Vietnam and in each calendar year and subject to assessment of tax authority.

Documentation, including a certificate of tax residence in the home country/jurisdiction, is required in order to claim a tax exemption.

Tax paid overseas for foreign-sourced income which has been included in the worldwide income declared in Vietnam can be credited under the domestic Vietnamese regulations. At present, domestic regulations only mention tax credit on employment income only and are silent on tax relief on other types of income.

5.2 Permanent establishment implications

There is the potential that a permanent establishment (PE) could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has.

Where a PE is considered as having been constituted, the foreign entity would be subject to Vietnamese Foreign Withholding Contractor Tax (FWCT) on their income derived in Vietnam and the tax exemption for its business travels under tax treaty with Vietnam will not be explored.

5.3 Indirect taxes

Before February 2022, Value-added tax (VAT) is applicable at 10 percent on taxable supplies. Lower rates of 0 percent or 5 percent may be applied to some goods or services. A VAT rate of 0 percent is applicable for goods and services sold or provided to organizations and individuals overseas and consumed outside Vietnam or in non-tariff zones. A legal establishment in Vietnam that applies the Vietnamese accounting system is required to have a VAT registration.

Applicable from 1 February 2022 to 31 December 2022, the VAT for certain goods and services previously subject to the rate of 10% is reduced to 8% and back to 10% from 01 January 2023 to 30 June 2023. The VAT rate for such goods and services is again reduced to 8% from 1 July 2023 to 30 June 2024. No change of rate is applied to goods and services with 0/5% VAT.

5.4 Transfer pricing

Transfer pricing, which applies to assessments from the 2006 tax year, gives the tax authority extensive powers to make transfer pricing adjustments to non-arm's length related-party transactions, or where a taxpayer fails to comply with disclosure requirements. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the

benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature and complexity of the services performed.

5.5 Local data privacy requirements

On 17 April 2023, Vietnamese Government passed the Decree No. 13/2023/ND-CP providing guidance on personal data protection which came into force on 1 July 2023. Briefly, Decree 13 applies to any domestic, and foreign entities and individuals that are involved in or relate to the processing of personal data, in or outside Vietnam. This Decree lays down rules relating to the protection of data subjects with regard to the processing and movement of their personal data. To some extent, provisions under Decree 13 are fairly similar to those of the General Data Protection Regulation of EU (“GDPR”).

The Decree set out the principle of personal data being processed lawfully and in a transparent manner. Therefore, they require data controller/data processor to obtain the consent of data subject before processing his/her personal data or when there is any change in the data processing. This requirement would ensure that personal data would be treated for specified, explicit and legitimate purposes that are fully aware of and agreed by the data subjects.

5.6 Exchange control

Foreign currencies remitted out of the country/jurisdiction are strictly controlled, and permits must be obtained from the State Bank of Vietnam. Foreigners can take out up to 5,000 US dollars (USD) (or the equivalent in a foreign currency) without having to declare the amount to customs. Amounts in excess of this must be declared. Generally, foreign currency can be remitted out of the country/jurisdiction with proof of payment of applicable taxes.

5.7 Non-deductible costs for assignees

Non-deductible costs for both an employee and an employer include social security contributions that are not mandatory according to the regulations of the employee’s home country/jurisdiction, and certain benefits for specific employees. Voluntary contributions to a pension fund established in accordance with Vietnamese regulations within the regulatory cap are deductible for tax purposes.

[Back to top](#)

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