



Investing in Vietnam

Going for Gold

2017 and beyond

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

KPMG is the largest professional services firm in Vietnam with offices in Hanoi, Ho Chi Minh City, Da Nang, and Thanh Hoa. KPMG also has an office in Cambodia's capital city Phnom Penh. With more than 1,000 professionals in Vietnam, KPMG is proud of its ability to deliver international standard professional services encompassing:

- Audit
- Tax & Legal
- Consulting
- Deal Advisory

KPMG is recognised by the Ministry of Finance (MOF) and Vietnam Association of Certified Public Accountants (VACPA) as Vietnam's largest Audit and Advisory firm in terms of revenue, partner numbers, and overall human resources. 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.



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Land area

Approximately

330,000

square kilometer

Provinces & Cities

63

Capital

Hanoi

Coastline

Approximately

3,400 km

along the Pacific Ocean

Neighboring countries

**China, Laos,
Cambodia**

Major cities

**Hanoi,
Ho Chi Minh City,
Hai Phong,
Da Nang,
Can Tho**

Landscape

Mainly mountainous country, with mountains and forests covering

75% of the land area

Main cultivated areas

Red River Delta (North)

15,000 square kilometer

Mekong River Delta (South)

40,000 square kilometer

Climate

Vietnam is located in the tropical monsoon zone

North

temperate climate with four distinct seasons: spring (from February to April); a hot and humid summer (from May to July); autumn (from August to October) and a cold and humid winter (from November to January)

South

tropical climate with only two major seasons: a rainy season from May to October and a dry season from November to April

(Source: General Statistic Office)

Introduction to vietnam

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The Socialist Republic of Vietnam is a Southeast Asian country with a rich history and a long track record of political, civil and commercial achievements.

Warrick Cleine

Chairman & CEO

KPMG Vietnam and Cambodia



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A key turning point was Vietnam’s accession to the World Trade Organization (“WTO”) in 2007, followed by its participation in the ASEAN Economic Community (“AEC”) in December 2015, Trans-Pacific Partnership (“TPP”) and many other bilateral trade agreements further boosts its integration into the global economy. Today Vietnam is seen as an emerging market belonging to the world’s most dynamic economies, offering a variety of attractive business opportunities to both domestic and foreign investors.

1.1 Key Factors

Located in the heart of South East Asia and along the coastline of the Pacific Ocean, Vietnam offers numerous advantages in providing access to the world’s major trade routes.

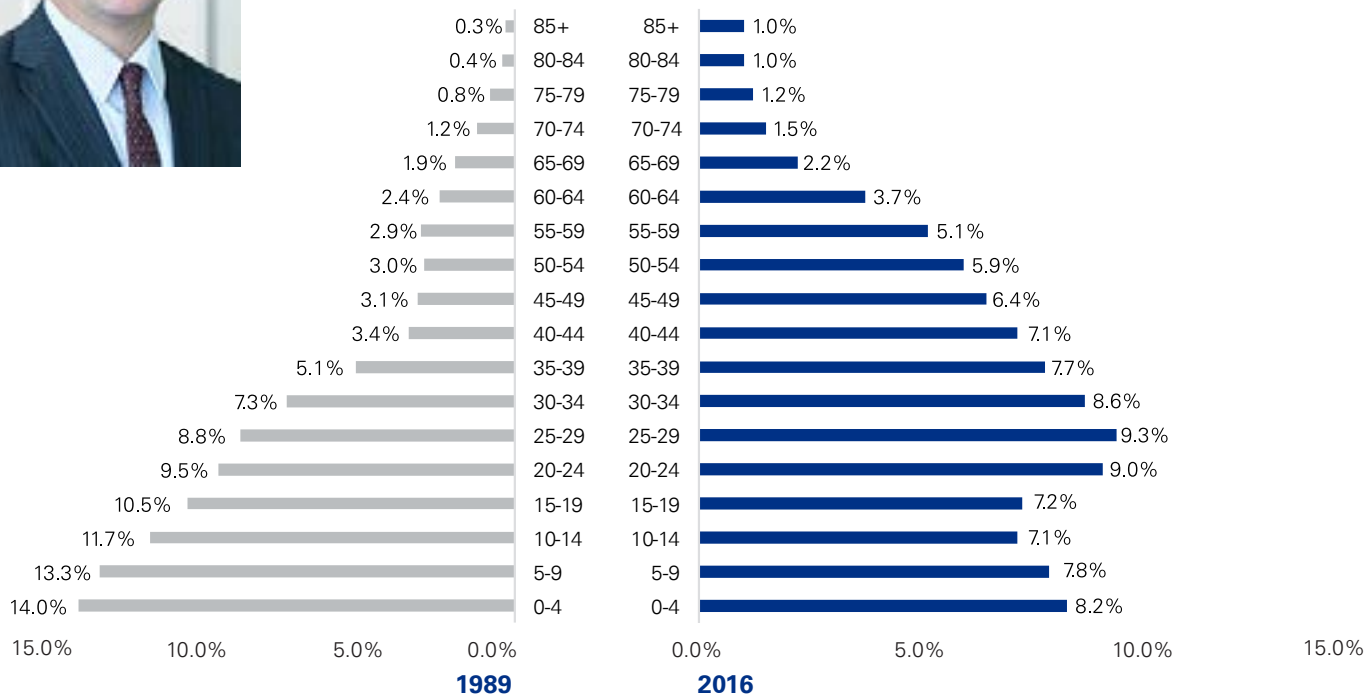
Natural conditions, including the differentiation in conditions of topography and soil, allow Vietnam to develop the fundamental and seasonal structure of agricultural products and application of different cultivation in regions. Although agricultural activities

account for over 60% of the total workforce (2014), the economy is gradually shifting towards industry, manufacturing and services.

The South has been the traditional centre of manufacturing and trade, and is home to Vietnam’s major logistics hubs. However, the northern region has become an increasingly popular destination for foreign manufacturers looking to diversify their production bases, notably for South Korean and Japanese companies.

1.2 Population

Vietnam’s total population reached 91.1 million in 2015, presenting a steady increase of 1.1 % per year on average in the period 2011-2015 and is estimated to increase to 98 million by 2020. Vietnam enjoys what is known as the “golden population structure”, which means for every two people or more working, there is only one dependent person. This demographic bonus provides Vietnam with a unique socio-economic development opportunity to take advantage of the young labour force and push its economic growth.



POPULATION AGE PYRAMID

The average population density is about 277 people per square kilometer. In 2015, approximately 64% of the population resides in rural areas, while most of the remainder resides in Hanoi, Ho Chi Minh City, Hai Phong, Da Nang and Can Tho.

Vietnam is a multi-nationality country with 54 ethnic groups, of which 86% are Viet (Kinh) and the remaining 14% are ethnic minorities, for instance the Tay, Thai, Hoa (Chinese), Khmer, Hmong and others.

1.3 Language and Religion

The national language is Vietnamese, which is widely spoken throughout the country by all ethnic groups. More than 90% of the Vietnamese population aged 15 and older is literate, as a result of the Government's continued efforts to prioritise development of a quality training and educational system.

English is the most popular foreign language and is commonly used in major urban areas. English study is obligatory in most schools. Other common foreign languages are French, Chinese and Japanese.

Vietnam's population practices a variety of religions. These include religions based on popular beliefs, religions brought to Vietnam from other countries, and several indigenous religious groups. Buddhism is the largest of the major world religions in Vietnam, followed by Catholicism, Cao Dai, Hoa Hao and others.

1.4 Government

Vietnam is a one party state. The Politburo and Central Committee of the Communist Party of Vietnam decide on major policy issues, which are then implemented by the Government. Constitutional and legislative powers are vested in the National Assembly, which is "the highest organ of state power". The National Assembly has the power to approve and revise the Constitution and Laws, make important decisions on national matters (policies on internal and foreign affairs, socio-economic factors, political factors, security factors, operations of state bodies) and supervise all operations of state bodies.

The President, as Head of State, represents the Socialist Republic

of Vietnam in internal and foreign affairs. The Government is the highest administrative state body, and responsible for executing and managing political, economic, cultural, social, national defense, security and foreign affairs of the country.

Ministries are responsible for the execution of state power in a certain industry or sector. The People's Committee (province, district and commune) governs management affairs within its administrative location. The People's Committee manages, directs and operates daily activities of local state bodies, and executes policies issued by the relevant People's Council and higher state bodies.

Political Stability

Vietnam, as a single-party country, enjoys political stability and certainty that supports economic growth and development and is a major attraction for foreign investments. According to the World Bank, Vietnam exhibits a high level of political stability with an average political stability index of 0.15 for the period 2010-2014, relatively high compared to other Asian countries such as Thailand (-1.2), India (-1.19), Philippines (-1.19), Indonesia (-0.61), China (-0.57), and Malaysia (0.12).

1.5 Infrastructure

The Vietnamese Government recognises the importance of an efficient infrastructure for economic development. Recent years witnessed ambitious plans from the Government to expand and upgrade the existing transportation infrastructure system.

Road Infrastructure

In addition to the major national road, Highway No. 1A, stretching from the border with China in the north to the Mekong Delta Provinces in the south via Ho Chi Minh City and the Trans-Asia highway, the country is also progressing with the completion of Ho Chi Minh Road (known as Ho Chi Minh Trail during war time).

This 3,167 km long road will run parallel to the existing national road No. 1A to connect the North with the South. Other notable highways linking key economic regions have also been upgraded.

Railway Infrastructure

Vietnam's railway is 2,600 km long, 60% of which is in the Northern provinces. The rail network includes 15 main routes and branches connecting 35 provinces and cities, of which the North-South route is the longest and most important route. In addition, several railway lines have been proposed for construction in recent years, notably the high speed North-South Express Railway.

The Metro systems which are under construction in Hanoi and Ho Chi Minh City are expected to alleviate pressure on existing road transportation and boost economic growth. The first metro lines are expected to commence operation in Ha Noi by 2017 and in Ho Chi Minh City by 2020.

Airport Infrastructure

In recent years, the country has also witnessed a significant increase in air transportation. As the economy expands both domestically and internationally, the volume of freight and passengers carried by air transport has been increasing sharply. The government is expanding and modernising the airport infrastructure, most notably the construction of Long Thanh airport in the southern province of Dong Nai. Long Thanh Airport will become the largest airport in Vietnam accommodating up to 25 million passengers and 1.2 million tons of cargo a year when it becomes operational in 2025.

Seaport Infrastructure

Sea transportation remains a significant component of the Vietnamese infrastructure system. There are over 100 ports throughout the country, of which the major ones are located in Hai Phong, Da Nang and Ho Chi Minh City. In an effort to address the increasing demand of exporters, plans to upgrade and expand the existing capacity are underway, most notably the plan to develop the mega-port Hon Khoai in Ca Mau province, which is expected to be completed by 2020. Once completed, the port will accommodate ships with a capacity of up to 250,000DWT.



Vietnam economy

2.1 Overview

Vietnam is considered to be one of the fastest and relatively stable-growing economies in Asia over the past years. The country was seen to have weathered the global financial crisis well with encouraging macro-economic indicators observed in 2009 and 2010.

Recent years observed the effort of the Vietnamese Government in boosting international economic integration through the participation into many free trade agreements/communities such as the World Trade Organization (WTO), the Eurasian Economic Union, the European Union, the ASEAN Economic Community (AEC) and the Trans-Pacific Partnership (TPP). This led to a significantly increasing FDI year on year.

With a stable political environment, low labour and operating costs, as well as promising economic prospects, Vietnam presents a dynamic market and an attractive destination for both foreign and private investors to participate in the economy.

2.2 Economic growth

Vietnam's real GDP achieved an average growth rate of 7.3% in period of 2005-2009 before it declined to 5.3% in 2009 due to the global financial crisis which started in 2008. Recovery began in 2012, with GDP growth gradually increasing and reaching 6% in 2014. Despite the global trade recession and China's economic growth slowing down, which impacted most parts of Southeast Asia, Vietnam proved to be resilient to the turbulences and still scored a growth rate of 6.7% in 2015, 6.2% in 2016.

Vietnam's economic growth prospects are forecast to remain positive in the forthcoming years. According to the EIU report, the growth rate is forecast to accelerate at a rate between 6.6% and 6.8% during the period of 2017-2018. The country's economic growth will be underpinned by rising consumption, increased foreign direct investment, robust export performance, deeper integration into global economy and improvements of the regulation system.

2.3 Inflation

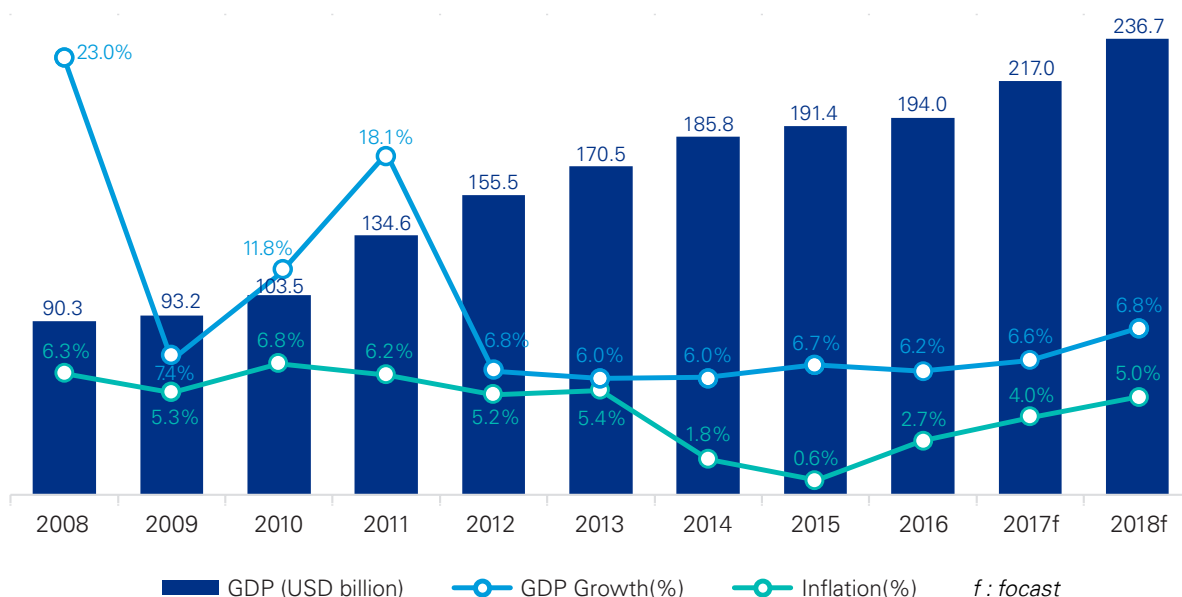
Recent years saw considerable success of the Vietnamese Government in its effort to combat high inflation.

The consumer price index increased to a record 22.9% in 2008 due to the effects of the global financial crash and internal imbalances. The Vietnamese Government had implemented various monetary and credit tightening measures.

This coupled with a drop in the world's food and fuel prices after the crisis resulted in a slower growth rate of CPI of 7.4% in 2009. The economy was once again under great inflation pressure in 2011 with an inflation rate at year-end standing at 18.1% before reducing down to 6.8% in 2012, and 6.6% in 2013 as various inflation control measures from the Government came into effect. The rate further fell to 0.6% in 2015 and 2.7% in 2016 on the back of the drop in the oil price.

Inflation is estimated to accelerate slightly in 2017-2018 due to low base

GDP, GDP GROWTH, INFLATION



Source: Economist Intelligence Unit & Asian Development Bank (2017)

effects, and a muted recovery in non-oil global commodity prices. However, the average rate of price rises between 2016-2020 will be estimated to remain modest at 4% which is well below the figure of 7% in 2011-2015.

2.4 Economic structure

Over the years, Vietnam has seen a boom in the number businesses in - and an increase in the role of - the private sector in the economy, especially since the promulgation of the Enterprise Law and Investment Law in 2005. Compared to State Owned Enterprises (SOEs) and FDIs, there are currently 500,000 enterprises (90% of total enterprises in Vietnam) which contribute approximately 40% of the country's GDP and own 51% of the workforce.

The economic structure has seen a gradual shift from agriculture to industry-services. This transition has resulted in wealth creation growth and rising consumption which is a fundamental indicator to attract foreign investors to expand business in Vietnam, particularly in the domestic retail market.

2.5 Labour force

Labour force remains a key competitive advantage of Vietnam to attract foreign investment as well as sustaining future growth. Vietnam is famous for its young, hard- working, highly a literate and easy-to-train labour force.

In 2015, Vietnam's work force counted about 54.61 million people, an increase of 1.7% from 53.7 billion in 2014. However, better quality training provided by professional experts is required for Vietnamese workers to meet increasingly sophisticated requirements of investors.



Integration to global economy

Vietnam officially became the WTO's 150th member on 11 January 2007. WTO accession has created both opportunities and challenges for Vietnam to become an attractive investment destination. In addition, Vietnam's participation in the ASEAN Economic Community (AEC), as well as the Trans-Pacific Partnership agreement (TPP) and the conclusion of several free-trade agreements (FTAs) such as the EU-Vietnam FTA (EVFTA) and the Vietnam – Korea FTA has shown the nation's efforts to further integrate into the world economy.

3.1 Goods schedule, services schedule and Vietnam's further liberalised market

Under TPPs commitments, Vietnam will further enforce mutual market access to member countries by lowering tariffs and easing the restrictiveness of non-tariff measures, such as import licensing requirements, customs valuations, pre-shipment inspections, rules of origin to qualify for preferential tariffs, local content requirements for investment incentives, and local sourcing for government procurement.

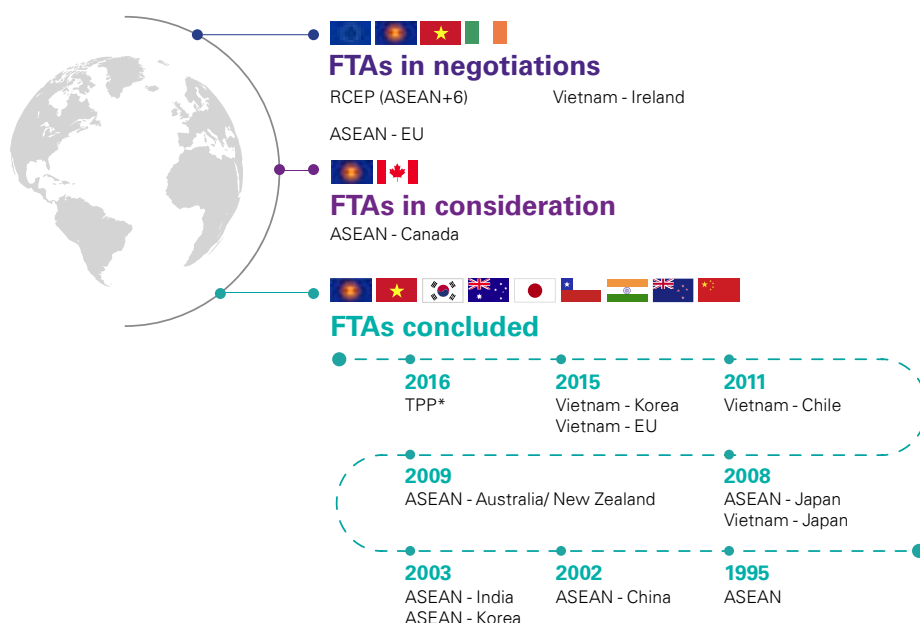
Under the EU-Vietnam Free Trade Agreement (EVFTA) concluded in February 2016, both the EU and Vietnam have pledged to abolish over 99 per cent of import duties on a wide range of goods. Depending on the goods, Vietnam will have 10 years to liberalise its tariff regime, while the EU will liberalise over a seven-year period.

3.2 Moving up the value chain

FTAs also play an important role in helping Vietnam move up the value chain in a number of sectors and supporting high-skilled jobs and knowledge transfer. Vietnam is expected to have a more significant contribution to the global and regional manufacturing landscape with regards to textiles, garments and apparel, as well as hi-tech sectors like electronics. Yet, moving up the value chain will further increase the sophistication of production processes, require additional capital investment, cause a growing demand for high-skilled labour, and an array of other considerations to take into account such as sourcing.

3.3 Regulatory reform

Policy development will be focused on further economic liberalisation. During preparations for accession to the WTO and other FTAs, Vietnam revamped



* Countries remaining in the TPP are exploring ways to move the trade deal forward after the U.S. formal withdrawal.

much of its legal system, making revisions to major legal frameworks, specifically the Labour Code, Land Law, Competition Law, Enterprise Law, Investment Law and Tax Laws in order to make the investment environment more transparent. Indeed, - further integration into the global economy with associated challenges relating to MNC's market entries has helped revise the Vietnamese legal framework toward more transparency to conform with international standards.

Recently, the residential property market and the stock market went through major reform to open up for foreign investment. Under the new regulations, foreigners are now allowed to purchase rights in land, apartments and houses and hold a 100% stake in public companies in most industries. The new laws on investment and enterprises provide a more business friendly regulatory framework for both domestic and foreign players. Although some restrictions remain, the regulatory changes illustrate a progressive approach, which is typical for developing countries.

Policy is also built around strengthening the banking sector, with focus on restructuring nonperforming loans (NPLs), transparency in reporting, and consolidation of the lenders towards international standards in reporting, and consolidation of the lenders towards international standards.



Investment climate for foreign direct investment

4.1 Investment climate

Vietnam is one of the leading investment destinations in Southeast Asia. With the advantages of geography, natural resources, and an affordable labour force, Vietnam attracts a large amount of capital each year. Vietnam has a number of unexplored sectors and a growing consumer market.

In 2007, Vietnam's FDI increased to more than US\$21 billion from US\$12 billion in 2006. The country's FDI hit a record high in 2008, trebling 2007's figure, reaching almost US\$72 billion in registered capital. Due to the global financial crisis, the FDI registered in the 2009 – 2012 period decreased, yet the disbursement - both in terms of value and percentage - improved compared to 2007, indicating the continued confidence of foreign investors in Vietnam. Vietnam experienced a decline in FDI in 2012.

Following the decline in 2012, FDI in Vietnam increased again from 2013 and reached US\$22.8 billion in 2015. The FDI sector in 2015 contributed US\$ 115.1 billion to Vietnam's total export turnover of US\$162.4 billion. While there was a FDI sector export surplus of US\$17.1 billion, the domestic enterprises sector import also reached a surplus of US\$20.3 billion. In 2015, FDI sector contributed 20% of GDP of Vietnam.

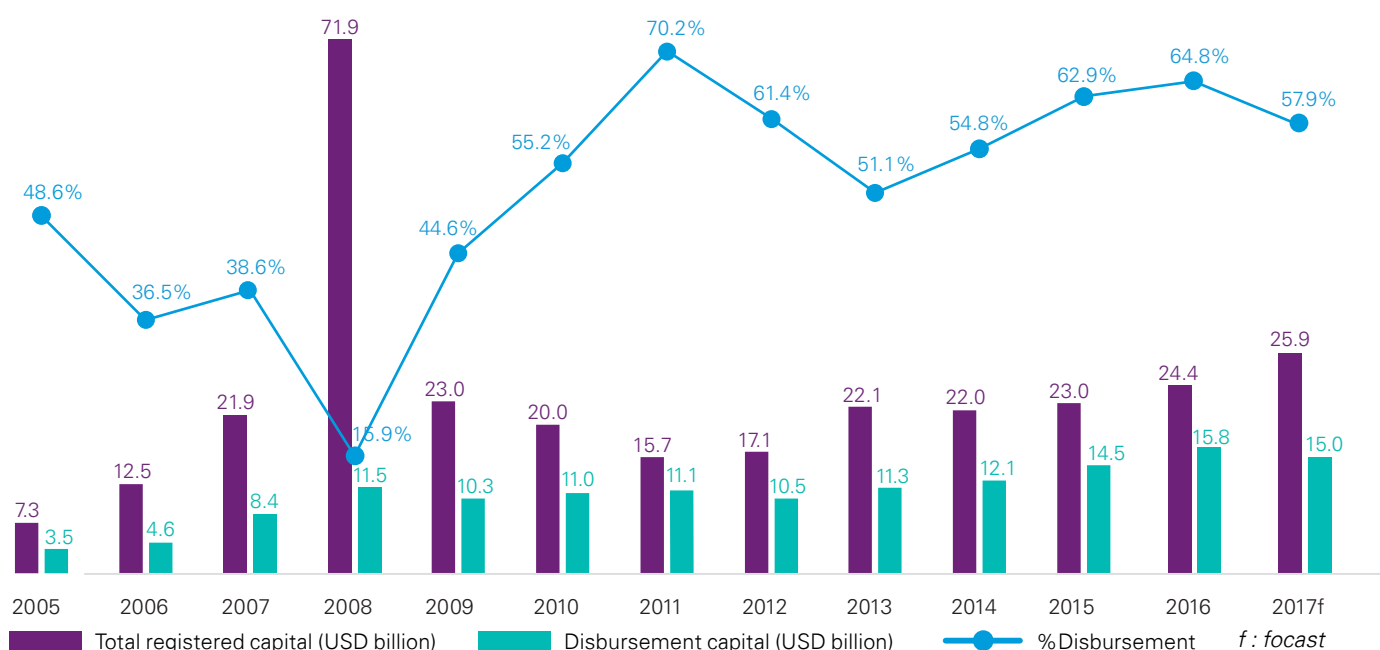
The Vietnamese Government has made considerable efforts to improve the business and investment climate in Vietnam, for example by issuing favourable laws and regulations. Combined with the accession to the WTO in January 2007 these efforts have significantly paved the way for FDI in the country.

Vietnam's success in attracting FDI should be measured not only by the amount of registered capital or disbursements but also by the efforts to improve the investment climate.

At the end of August 2013, the Prime Minister issued Resolution 103/NQ-CP in order to realise the commitment to improve the investment climate and business community for investors. A revised Law on Corporate Income Tax has been included in the terms of the expansion project that are also investment incentives. Investment incentives on industrial parks have been restored. The adjusted tax rate of Corporate Income Tax has been reduced to 20%, effective 1st January 2016.

The role of the private sector and foreign investors in the Vietnamese economy has increasingly been emphasised. "Business forum" meetings and dialogues between the Government and the private sector and foreign investors are frequently held, and provide great opportunities for businesses - especially in the foreign sector - to make themselves heard on important legislative issues.

FOREIGN DIRECT INVESTMENT IN VIETNAM (2005 – 2016)



Source: General Statistics Office (2017)

4.2 Forms of investment

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

Direct investment	Indirect investment
<ul style="list-style-type: none"> – Establishment of a new legal entity; – Investment by way of contractual arrangement: – 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); and – Invest by way of share/capital acquisition of an existing entity 	<ul style="list-style-type: none"> – 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.

4.3 Forms of commercial presence

The forms of commercial presence that foreign investors are allowed to take in Vietnam are the following:

Representative Office (RO)

A RO is a common form of early or initial establishment for foreign organisations looking to invest or to do business in Vietnam. From a legal perspective, the RO is a dependent unit of a foreign business entity, and allowed to survey the market and undertake a number of commercial promotion activities permitted by the laws of Vietnam. The key limitation of the scope of activities of the RO is that it's not allowed to engage in any "direct profit-making" activities.

Branch

A branch of a foreign business entity in Vietnam is a dependent unit of the foreign business entity, established and conducting commercial activities in Vietnam in accordance with the law of Vietnam or an international treaty to which Vietnam is a member.

The establishment and operation of the ROs and branches of foreign business entities need to be in line with Vietnam's commitments in the international treaties of which Vietnam is a member.

In case the foreign business entities come from countries/territories that are not members of the international treaties of which Vietnam is a member,

or the scope of operation of the ROs/branches are not in line with Vietnam's commitments in such international treaties, the licensing authorities must seek evaluation opinions from the specialised ministries before a Licence for establishment of the RO/branch of such foreign business entities is granted.

Legal entity

Depending on the business industry, the number of investors, and whether there is any intention to list the entity, a foreign entity may establish its presence in Vietnam as a limited-liability company, a joint-stock company, or a partnership.

Feature	Limited liability company (LLC)	Joint stock company (JSC)	Partnership
Required number of members/ shareholders	One (for single member LLC); Two or more members, but not exceeding fifty members (for multi-member LLC)	At least three shareholders; no restriction on maximum number of shareholders	<ul style="list-style-type: none"> – Unlimited liability partners: At least 02 general partners (individuals) – Limited liability partners (optional): (organizations 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	<ul style="list-style-type: none"> – Unlimited liability partners: Unlimited – Limited liability partners: 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

4.4 Conditional business lines

The new Law on Investment, which came into effect on 1 July 2015, as amended on 22 November 2016, provides a consolidated and unified list of 243 conditional business lines, amongst which there are ones especially conditional for foreign investors such as trading/distribution, logistics services. This list, together with the business conditions thereof are publicly posted in the National Portal on Business Registration at <https://dangkykinhdoanh.gov.vn/> and <https://dautunuocngoai.gov.vn/>

Companies doing business in conditional business industries are required to fully satisfy the applicable conditions (i.e. minimum capital, foreign ownership limitation, requirement on facilities and personnel, operation license, etc.). Failure to

comply with these requirements will result in the penalties imposed by the state bodies and unfavorable tax treatment to expenses incurred from these businesses.

4.5 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.;
- Others: investment projects with large investment capital or engaging

in the manufacture of support industry products.

Investment incentives granted to qualified investment projects include:

Corporate income tax (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 (see table below);

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.

No.	Condition	CIT incentive
1.	Investment projects engaging in socialised businesses and located in areas with <u>difficult</u> or <u>especially difficult</u> socio-economic conditions	Tax rate of 10% for the whole project life Exemption: 4 years Reduction: 9 years
2.	Investment projects engaging in socialised businesses and located in areas with <u>normal</u> socio-economic conditions	Tax rate of 10% for the whole project life Exemption: 4 years Reduction: 5 years
3.	Investment projects located in areas with specially difficult locations, economic zones and high-tech zones; hi-tech; Investment projects of manufacturing in large scale; Investment projects engaged in manufacturing or processing agricultural products in areas with difficult socio-economic conditions; Investment projects engaged in manufacturing supporting industry products of prioritised development	Tax rate of 10% for 15 years Exemption: 4 years Reduction: 9 years
4.	Investment projects of manufacturing or processing agricultural products located in areas with normal socio-economic conditions	Tax rate of 15% for whole life
5.	Investment projects located in areas with normal socio-economic conditions Investment projects in steel industry, energy, machinery for agriculture	Tax rate of 20% (17% from 2016) for 10 years Exemption: 2 years Reduction: 4 years
6.	Investment projects located in industrial zones/ export processing zones (except for those in with favorable socio economy conditions)	Exemption: 2 years Reduction: 4 years No preferential tax rate is given

4.6 Investment procedures

Foreign investors who invest in Vietnam for the first time must have investment projects. The investment procedures vary, depending on each investment form:

No.	Investment form	Investment procedure	Licensing authority	Statutory timeframe(*)	Note		
1	Establishment of a legal entity	(i) Application for an Investment Registration Certificate (IRC)	– Investment Registration Division of provincial Department of Planning and Investment (DPI); or – Management Board of special purpose zones	15 days	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.		
		(ii) Application for an Enterprise Registration Certificate (“ERC”)	Business Registration Division of provincial DPI	3 working days			
2	Investment by way of contractual arrangement	BCC	(i) Application for an IRC	Investment Registration Division of provincial DPI; or Management Board of special purpose zones	15 days	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.	
			(ii) Application for a Certificate of Operation Registration (“COR”) for the foreign investors’ project offices	Business Registration Division of provincial DPI	15 days		
		PPP	(i) Application for an IRC	– Ministry of Planning and Investment; or – Local People’s Committee	25 days		
			(ii) Application for an ERC	Business Registration Division of provincial DPI	3 working days		
		3	Investment by way of share/capital acquisition	(i) Application for approval for share/capital acquisition	Investment Registration Division of provincial DPI	15 working days	This step is required in the following cases: (i) The Target operating in conditional business industries applicable to foreign investors; or (ii) As a result of the acquisition, the share held by foreign investors in the enterprise increases from less than 51% to 51% or more, or from 51% or more to a greater percentage.
				(ii) Application for updating the new shareholding members	Business Registration Division of provincial DPI	3 working days	
(iii) Application for updating the new investor	Investment Registration Division of provincial DPI			3 working days			

(*)Where the investment projects are subject to the In-principle approval of the National Assembly, Prime Minister or provincial People’s Committee; and/or subject to evaluation by various competent authorities, the above timeline will be longer

Taxation

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Investors should consider conducting a comprehensive risk assessment and readiness analysis for the regulatory change related to domestic and international tax treaties.

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Do Thi Thu Ha

Senior Partner

KPMG Vietnam



5.1 Overview

The Vietnamese taxation system has undergone (and is expected to continue undergoing) many major transformations that include major changes in Corporate Income Tax, Value Added Tax, Foreign Contractor Tax and Personal Income Tax. The changes generally occur frequently, however, the enforcement mechanism as well as the ruling process is often limited in capacity.

The main categories of tax imposed in Vietnam are as follows:

- Corporate Income Tax (“CIT”);
- Value Added Tax (“VAT”);
- Personal Income Tax (“PIT”);
- Foreign Contractor Tax (“FCT”);
- Special Sales Tax (“SST”); and
- Import and Export Duties (“IED”).

Furthermore, other taxes may apply to certain businesses:

- Natural Resources Tax;
- Property Tax; and
- Environmental Protection Tax.

All taxes are national taxes and administered locally. There are no local, municipal or provincial taxes in Vietnam.

5.2 Corporate Income Tax

The Law on CIT applies to all domestic and foreign entities that invest in Vietnam. The Law expands the taxpayer pool to include all foreign enterprises that have income from Vietnam, regardless of whether they have a permanent establishment in Vietnam or not.

5.2.1 Tax Year

A Corporate Tax-payer can elect to adopt a calendar year, or a fiscal year ending on a quarter of a calendar year, as the basis for the tax year.

5.2.2 Taxable Income

Taxable income is defined as income derived from production, operation, trade of goods and services and other sources from all business sectors and industries.

5.2.3 Deductions

In general, deductible expenses for corporate income tax purposes are reasonable expenses actually incurred that relate to the activities of production and business of the enterprise and are accompanied by legal and complete invoices and vouchers as required by law.

5.2.4 Losses Carried Forward

Tax losses may be carried forward for a maximum of five (5) consecutive years. Ordinary losses may be offset against income that does not enjoy tax incentives and vice versa. Losses from transfer of real estate, transfer of investment projects and transfer of the right to participate in investment projects can be offset against profits from the main business activities. After offsetting, any losses from such activities will be consecutively carried forward for a maximum period of five years to taxable income of those activities in the following years.

Losses of prior years may be rolled over and offset against provisional quarterly taxable income of the subsequent year, subject to year-end reconciliation.

Carry-back of losses is not permitted and there is no provision for transfer of losses within the group.

5.2.5 Tax Rates

The corporate tax rates are classified into the following three categories:

From 1 January 2016	
Standard tax rate	20%
Preferential tax rates	17%, 15% or 10%
Other tax rates (e.g. oil & gas operations, natural resources industry)	32% - 50%

5.2.6 Tax Incentives

Preferential tax treatments such as tax exemption, tax reduction, and preferential rates (17%, 15% or 10%) are limited to:

- Encouraged sectors such as: healthcare, education, training, sports, art activities, environment, scientific research, high-tech, infrastructure development and software.
- Economic zones, industrial zones without favourable conditions or locations with difficult socio-economic conditions.

In particular, CIT rate of 10% for 15 years will be applied to:

- Income of enterprise from performance of new investment project in the area with extremely difficult socio-economic conditions.
- Income of enterprise from performing new investment project in the high technology field.
- Income of enterprises from performing new investment projects in the field of environmental protection.
- High-tech enterprises and agricultural enterprises applying high-tech.

The income of an enterprise from the implementation of a new investment

project in production if the conditions on scale of investment, disbursement time and total annual revenue or labour usage are satisfied.

Enterprises currently applying a CIT rate of 20% as mentioned above will apply a CIT rate of 17% from 1 January 2016. Tax exemption for 4 years and a 50% reduction of tax payable for 9 subsequent years will also be applied in such cases.

And, a CIT rate of 20% for 10 years will be applied to:

- Income of an enterprise from performing a new investment projects in the areas with difficult socio-economic conditions.
- Income of an enterprise from performing a new investment project in production of equipment, high-quality steel and other products.

Tax exemption for 2 years and a 0% reduction of tax payable for the 4 subsequent years will be applied in such cases.

Effective from 1 January 2012, following Vietnam's WTO commitments, export-based tax incentives are no longer available to exporters. Exporters who have lost export-based tax incentives may elect an alternative tax incentive scheme (if eligible) and must notify the tax authorities of the election. The taxpayer must self-assess the applicable incentives in accordance with the current tax regulations.

5.3 Value Added Tax

The VAT system in Vietnam applies to goods and services used for production, business and consumption in Vietnam. Two methods can be used to calculate VAT payable. Taxpayers

meeting the requirements can apply the credit method. VAT payable under the credit method is calculated on the difference between output VAT (VAT collected for sales) and input VAT (VAT paid on purchases). Taxpayers that do not qualify for the credit method can apply the direct method. Under the direct method, the taxpayer will pay VAT by applying a deemed rate on the added value of the transaction. A Corporate Tax-payer is required to file and pay VAT on a monthly basis, or on a quarterly basis if relevant conditions are met. The standard VAT rate is 10%, but the rates are classified into four groups: exempt, 0%, 5% and 10%.

5.4 Special Sales Tax ("SST")

Special Sales Tax is imposed on a selected number of goods and services, either at the stage of production, provision of services or import. Export products are exempted from SST. The tax is calculated based on the selling price at the place of production excluding this tax and VAT.

Imported goods liable to SST shall also be subject to SST upon importation from overseas and sales to the domestic market, accordingly:

- SST taxable price at the import stage = taxable price for import duty calculation + import duty

$$\begin{array}{r}
 \text{SST taxable price at the trading stage} \\
 = \frac{\text{Selling price exclusive of VAT} - \text{Environmental protection tax (if any)}}{1 + \text{SST rate}}
 \end{array}$$

Taxpayers producing SST goods from SST inputs are entitled to claim a credit for the amount of SST paid on the materials imported or purchased from local suppliers.

5.5 Personal Income Tax (“PIT”)

Both foreigners working in Vietnam and Vietnamese citizens are subject to PIT. For tax residents, a progressive taxing system, where the marginal rate ranges from 5% to 35%, is applied to worldwide income.

For tax non-residents, a flat rate of 20% is applied to the income derived from Vietnam. In general, a tax resident is a person:

- Present in Vietnam for at least 183 days in a tax year; or
- Having a regular place of abode in Vietnam, i.e. an individual rents a house in Vietnam according to legislation on housing under a contract that lasts 183 days or longer in the tax year; or
- Not a tax resident of another country (subject to applicable double tax agreement).

If an individual has a regular place of abode in Vietnam, but is actually only present in Vietnam for less than 183 days in the tax year and fails to prove their residence in any other country, that individual will be considered to be a tax resident of Vietnam.

5.6 Import and Export Duties

All goods entering Vietnam are generally subject to import duty. Import duty rates vary depending on the nature of goods involved and origin of the goods. There are three import duty rates applicable (ordinary, preferential and especially preferential), based on the trading relationship between Vietnam and the exporting country.

A partial or full exemption from import duty may be granted on application. Raw materials and components imported into Vietnam for the manufacture of goods for export are usually exempt from import duty provided that the goods are actually exported within 275 days.

Enterprises with foreign-invested capital and parties to a BCC in especially encouraged projects are exempt from import duty in respect of certain imported goods which form part of their fixed assets.

Most exports are duty-free, except for a certain natural resources such as sand, chalk, marble, granite, ore, crude oil, forest products and scrap metal.

5.7 Foreign Contractor Tax

Foreign organisations and individuals carrying out permitted businesses in Vietnam without a legal entity are subject to Foreign Contractors Tax (“FCT”) comprising VAT and CIT.

Applicable tax rates vary depending on whether a foreign contractor registers to use the Vietnamese Accounting System (“VAS”) or not. The standard FCT rate is 10% but different rates can apply depending on the transactions and taxpayer’s tax filing status.

5.8 Natural Resources Tax

Natural Resources Tax (also known as royalty tax) is imposed on the exploitation of Vietnam’s natural resources including petroleum, mineral resources, forest products, seafood and natural water. Tax rates vary depending on the specific classification of natural resource and are applied to the production output at a specified taxable value per unit.

5.9 Property Tax

Property Tax in Vietnam is levied in the form of a “land use fee” or “land rental”. A foreign investor requiring land for an investment project may apply to the land management authority by way of an allotment and paying the land use fee or by way of lease and paying the land rental. The land rental rates vary depending on the location, infrastructure and industrial sector where the business operates.

Effective from 1 January 2012, owners of houses and apartments are required to pay land tax charged on a square metre basis at progressive rates from 0.03% to 0.15%.

5.10 Environment Protection Tax

Effective from 1 January 2012, Vietnam introduced Environment Protection Tax (“EPT”) which is aimed to impose tax on goods that may cause damage to the environment.

EPT is in effect an indirect tax applicable to the production and importation of certain goods such as petroleum, coal, plastic bags and restricted chemicals.

5.11 Relief from tax

Vietnam has now signed DTAs with 73 countries, out of which 61 DTAs are currently in force. Generally, these DTAs follow the basic principles contained in the OECD Model Convention.

For a country which has a DTA with Vietnam, a foreign tax credit is also available to resident taxpayers in respect of foreign taxes paid.

Under current regulations, if a taxpayer fails to submit the DTA notification dossier within 3 years from the tax payment deadline, the DTA entitlements will be forfeited.

Generally, provisions of DTAs prevail over the domestic tax laws. The amount of credit given is the lower of the tax suffered in the foreign country and Vietnamese CIT attributable to the foreign income. There is no provision in Vietnamese tax law allowing excess foreign tax credits to be carried forward.

The application of a DTA clause is not automatic. An official approval for tax relief must be obtained from the tax authorities.



Banking and foreign exchange control

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Foreign banks can immediately take advantage of the local bank's network, operating systems, and existing customer portfolio.

”

Tran Dinh Vinh

Partner

KPMG Vietnam



6.1 Bank accounts

6.1.1 Direct investment

Foreign invested enterprises and foreign parties to business co-operation contract must open a foreign currency account at an authorised credit institution to undertake the following transactions:

- Receipt of charter capital contributions, receipt of other capital and receipt of foreign loan;
- Disbursement outside Vietnam of principle, interest and fees on a foreign medium or long-term 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.

Of note, all transfer of capital for a direct investment project in Vietnam and to other countries must be conducted via a capital account in foreign currency opened at an authorised credit institution.

Foreign invested enterprises may open current accounts and transaction accounts in foreign currency and Vietnamese Dong at authorised banks in Vietnam for their daily business transactions.

In addition, foreign invested enterprises may be permitted to open offshore foreign currency bank accounts subject to approval by the State Bank of Vietnam (“SBV”).

6.1.2 Indirect investment

Non-resident foreign investor must open a capital Vietnamese Dong account at an authorised 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.

An indirect investment capital Vietnamese Dong account will be used to implement carry out the following transaction:

- Receipt of funds from a sale of foreign currency to an authorised credit institution;
- Receipt of salary, bonuses and other lawful items of income by a non-resident being a foreign investor;
- Receipt of funds from the assignment of capital contribution and shareholding, from the sale of securities, dividends and other items of revenue arising from indirect investment activities;
- Disbursement being a capital contribution, purchase of shareholding, purchase of securities or payment of other expenses relating to indirect investment activities;
- Disbursement for purchase of foreign currency at an authorised credit institution in order to remit the foreign currency exchange overseas;
- Disbursement being payment of other expenses arising in Vietnam; and
- Other revenue and disbursement transactions relating to indirect investment in Vietnam.

6.2 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.

As a general rule, all monetary transactions in Vietnam must be made in Vietnam Dong. Foreign investment enterprises may, subject to certain conditions, buy foreign currency from banks to carry out a number of obligations in foreign currency from their transactions.

Generally speaking, the flow 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.

6.3 Foreign currencies and exchange rate

The VND is the country's official currency and may be chosen as a means of payment and remittance.

- Payment and remittance of money relating to import and export of goods and services;
- Short term commercial credit loans and bank loans;
- Income generated from direct and indirect investments;
- Money transfers when the decrease of direct investment capital is permitted;
- Payments of interest on and installment repayments of principal of foreign loans;

- One-way payments for consumption purposes; and
- Other similar transactions.

Residents and non-residents will be responsible for presenting supporting documents in accordance with the regulations of credit institutions when conducting any currency transactions. Individuals are allowed to buy foreign currencies from banks to settle current transactions and other permitted transactions only if relevant documents proving their demand for foreign currencies are fully submitted.

From early 2016 onwards, the SBV has announced a central exchange rate every day for the VND/USD, which would be used by financial institutions authorised to trade in foreign currencies with margin limit remain at +/-3%.

This new regime will facilitate stronger performance in the foreign currency derivatives market, meeting the requirements for risk prevention in exchange rates and increase liquidity in the market.

6.4 Capital transactions of foreign investors in Vietnam

Foreign invested enterprises are required to open direct investment capital accounts (DICAs) in VND, or foreign currencies, at banks permitted to operate in Vietnam or foreign banks with the approval of the SBV, which is a bank account used for all transactions in regard to capital transactions, foreign loans, profits and other legitimate types of income of foreign investment.

Foreign investors are now permitted to open payment accounts in a foreign currency at an authorised bank in Vietnam. Through this account, foreign investors will transfer money

to Vietnam in order to conduct pre-investment activities before the issuance of an investment certificate.

Offshore borrowings may now be used to finance certain circumstances and only offshore medium or long term loans are required to be registered with the SBV.

All foreign loan transactions that a foreign invested firm undertakes must be conducted via the DICAs.

6.5 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 authorised credit institutions. There is no profit remittance tax.

Circular 186/2010/TT-BTC of MOF stipulates that profit remittances can be made as follows:

- Annual remittance of all profits at the end of financial year; and
- Profit remittance upon termination of business activities and investment projects in Vietnam.

A foreign investor is required to submit a notification of profit remittance abroad to tax authority at least 7 working days prior to the date of profit remittance. Accordingly, the foreign investor may go to its banks 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.

Accounting and reporting

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Enterprises need to establish an effective internal control system to ensure its assets are safeguarded and protected.

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Chong Kwang Puay

Managing Partner

KPMG Vietnam



7.1 Accounting requirements

7.1.1 Vietnamese accounting standards and system

Enterprises with foreign-owned capital, foreign parties to business co-operation contracts and foreign contractors that have a resident base in Vietnam (collectively “FIE”) are required to adopt Vietnamese Accounting Standards, the Vietnamese Accounting System for enterprises and their interpretive guidance (“VAS”). The Vietnamese Accounting System for enterprises is issued by the Ministry of Finance in the form of a bookkeeping manual that provides a standard chart of accounts, financial statements template, accounting books and voucher templates as well as detailed guidance on accounting double entries for each specific account.

The requirements of VAS include:

- The use of Vietnamese language or both the Vietnamese language and another widely used language approved by the Ministry of Finance in the preparation of accounting records;
- VND is the default currency unit in accounting. An FIE is permitted to use a “foreign currency” as the currency unit in their accounting records if certain criteria are met. However, in such cases the financial statements submitted to local authorities must be converted into VND and must be audited.
- Electronic vouchers and accounting books are not required to be printed out for retention. However, enterprises must ensure information security and ensure data is accessible during the retention period; The enterprises shall print the electronic accounting

documents and have them signed and stamped by the legal representative or chief accountant (or acting chief accountant) whenever a competent authority requests them for inspection or audit purposes.

- Accounting documents and accounting books of an FIE must be stored at the enterprise’s premises in Vietnam or in an external archive facility in Vietnam over its operating period specified in its certificate of investment, certificate of enterprise registration, etc. When the enterprises ceases its operation in Vietnam, its legal representative will decide the place where the accounting documents are stored, unless otherwise prescribed by law.
- Companies, and branches of foreign companies that are required to submit financial statements to parent companies or use the same management software with the parent companies, are allowed to use the comma (,) as the digit grouping symbol and the dot mark (.) as the decimal symbol. However, for those financial statements to be submitted to the tax authority, statistical authority and government agency, the dot mark (.) must be used as the digit grouping symbol and the comma (,) must be used as the decimal symbol.
- The prescribed VAS chart of accounts and forms of financial statements must be complied with.

There are some industry-specific VAS besides the general one for enterprises such as those for credit institutions, insurance companies, securities companies, fund managers and investment funds.

7.1.2 Fiscal year

The fiscal year applicable to FIEs in Vietnam is normally 12 months, commencing on 1 January and ending on 31 December. FIEs with specific operation characteristics may adopt their own 12-month fiscal year, commencing from the first day of a solar calendar quarter and ending on the last day of the previous solar calendar quarter in the following year and have to inform the local tax authority of the adoption of such a fiscal year.

Where the first fiscal year is of shorter duration than 90 days, it will be permitted to add this period to the following fiscal year in order to make up one fiscal year.

7.1.3 Accounting staff

The enterprise is required to appoint a Chief Accountant who must satisfy the criteria and conditions stipulated by the Law on Accounting and guiding regulation.

A foreigner may be appointed to act as the Chief Accountant of the enterprise, provided that they have a certificate of accounting expertise or an accounting/auditing certificate issued by a foreign professional body recognised by the MOF; or an accounting/auditing professional practicing certificate issued by the MOF; or a Chief Accountant certificate obtained after having passed the chief accountant's training course as prescribed in regulations of the MOF; and they must have at least 2 years' working experience in practicing accounting with at least 1 year experience in practicing accounting in Vietnam. The Law on Accounting prohibits any individual responsible for direction and

management of the entity to assume the role as accountant, storekeeper, cashier or the responsibility for purchasing and sales.

7.1.4 Internal control system

The enterprise must establish an internal control system to ensure its assets are safeguarded and protected from inappropriate and inefficient use; and transactions are approved by authorised persons and completely recorded to serve as the basis for preparation and presentation of the financial statements that give a true and fair view.

7.2 Auditing requirements

The annual financial statements of FIEs have to be audited once a year in accordance with Vietnamese regulations. The audit must be carried out by an independent auditing company that is permitted to operate in Vietnam. Audit contracts should be signed with the independent audit companies no later than 30 days before the end of the FIEs' fiscal year. The enterprise is legally responsible for providing timely and sufficient information, as well as explanations to the auditor.

There are more stringent auditing requirements for public/listed companies, securities business entities and credit institutions (banks).

In addition to the auditing requirement, the competent authority may conduct accounting inspections at accounting units including FIEs.

Employment

8.1 Recruitment

Under the Labour Code, an 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.

8.2 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; 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 two subsequent definite labour contract with an employee. After that, if that employee continues to work for the employer, an indefinite labour contract must be signed.

8.2.1 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 contracts, 6 consecutive months for definite term contracts

and more than half of contractual duration of seasonal term contracts;

- 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; and
- The employee failed to attend the workplace within 15 days from expiry of suspension of the labour contract

When unilaterally terminating the labour contracts, employers must inform the 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; and
- At least 3 working days in case the employee is ill or injured and remains unable to work for a long time and in the case of a seasonal or specific job labour contract with a duration of less than 12 months.

8.2.2 Working Hours

Normal working hours are eight hours per day (or 48 hours per week based on a six-day working week). Enterprises are entitled to schedule the working hours daily or weekly but must notify the employees in advance. For heavy, noxious or dangerous jobs, working hours will be 6 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 from the local Department of Labour, Invalids and Social Affairs (“DOLISA”). However, any approval is subject to a cap at 300 hours a year.

8.2.3 Wage Rates

The wage costs in Vietnam are generally low. However, the cost of Personal Income Tax (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.

8.2.4 Annual Leave

In addition to having time off on 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.

8.2.5 Severance Allowance

From 1 January 2009, the Law on Social Insurance has introduced the unemployment insurance scheme to replace severance payments.

The 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 twelve (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 6 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 6 months; and
- Period of from six full months but less than 12 months will be counted as a full year.

8.3 Other issues

8.3.1 Trade Unions

Within six months after an enterprise commences operation, trade unions could 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, have to submit a remittance of 2% of their salary fund which is used as the basis for social insurance payment for employees. This salary fund will be the total salaries of employees under objects 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.

8.3.2 Statutory Insurance

Regulations state that both employers in Vietnam and Vietnamese employees with a labour contract of three months or more (this will change to one month effective 1st January 2018) are required to make statutory Social Insurance ("SI"), Health Insurance ("HI") and Unemployment Insurance ("UI") contributions.

- Expatriates contractually employed by a local entity for 3 (three) months or more are required to make statutory HI contribution only.
- Expatriates who have work permits or licences will be required to make SI contribution effective 1 January 2018.
- The basis for statutory SI and HI contributions is the contractual salary and is capped at 20 (twenty) times the national statutory minimum monthly salary (currently a maximum of VND 24,200,000).
- The basis for calculating statutory UI contribution is contractual salary and is capped at 20 (twenty) times of the regional statutory minimum monthly salary (currently a maximum of VND 75,000,000).
- Statutory SI, HI and UI contributions should be deducted, withheld and paid to the local social insurance authority on a monthly basis by the employer.

The rates for statutory SI, HI and UI contributions are as below:

Contributed by	SI	HI	UI
Employee	8%	1.5%	1%
Employer	18%	3%	1%
Total	26%	4.5%	2%

8.3.3 Visa/Temporary Residence Card

To visit Vietnam, foreigners require visas which must be obtained in advance from an overseas Vietnamese embassy or consulate. Visas are only issued 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 the 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 (TRC) which will be issued by the Immigration Division of the Department of Public Security ("DOPS"). The duration of each temporary residence card will follow validity of the work permit (maximum 2 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.

8.3.4 Work Permits

Decree 11/2016/ND-CP of the Government that took effect on 1 April 2016 features several key changes relating to work permits. As such, foreigners working for business entities and organisations in Vietnam must be issued with a work permit except in specific cases stipulated by the law.

Enterprises must confirm and explain their need to recruit an expatriate for each job position by submitting a standard form to the municipal committee. It will take 30 days for the municipal committee to confirm their acceptance, before a company can apply for work permit.

To apply for a work permit, an application dossier must be submitted at least 15 working days prior to the day on which the foreign worker intends to start working in Vietnam for approval to the local DOLISA where the company's head office is located. It takes 10 business days to process the application for a work permit. 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.





9.1 Land used by foreign invested enterprises

The Vietnamese constitution stipulates that land belongs to all people with the State being the representative owner. However, the law allows the ownership of the right to use land on a lease basis ("LUR"), evidenced by a LUR Certificate ("LUR Certificate") which set out the term and purpose of the land use.

Issues in relation to the use of land are mostly governed by the revised Land Law and its guiding regulations. The revised Land Law, that took effect in July 2014, features several significantly important new points. As such, the law brings in equal opportunities for Vietnamese and foreign investors, allowing foreign investors engage in housing projects (residence, lease or sale) as well as providing many choices for foreign investors to pay land rental in either short or long periods. In addition, the Civil Code as the principal source of law and the Law on Housing also cover many issues relating to land use.

Foreign invested enterprises ("FIEs") are not technically allowed to purchase the LUR while the domestic enterprises are allowed to do so. Instead, foreign investors could obtain the LUR by the way of either (i) leasing land from the State or other permitted lessors or (ii) receipt of capital contribution in the form of value of the LUR from the Vietnamese parties to joint venture companies ("JVC").

9.1.1 Lease land from the state or other permitted lessors

In case land is leased directly from the State, the FIE can choose to pay land rental by either the annual payment or lump-sum payment method. Under

the annual payment method, the FIE only has rights to use the land and to transfer assets attached to the land, but is not permitted to transfer, sub-lease or mortgage the LUR. Whereas, with the lump-sum payment method, the FIE is entitled to transferring, sub-leasing (applicable for FIE engaging in real estate development only), contributing, mortgaging and guaranteeing LURs and assets attached to the land. In case land is leased from other permitted lessors rather than from the State, the FIE may sub-lease lease-only- land in industrial zones from local or foreign organisations engaged in the business of industrial zone infrastructure development for sub-lease.

9.1.2 Obtaining LUR by the way of receipt of capital contribution

Pursuant to the prevailing law, the Vietnamese party to a JVC is permitted to make capital contribution in the form of value of the LUR if it is in any of the following circumstances:

- It has obtained the land under the allocation regime and fully paid the land use fee; or
- It has obtained the land under the lease regime including the LUR transfer from another organisation and fully paid the land rental for the entire lease term.

9.2 LUR lease contract

The current law provides that the lease term will be determined based on the term of investment projects, but should not exceed fifty (50) years. In some special circumstances, the term may be extended up to seventy (70) years. Upon expiry, the lease term may be extended if the lessee wishes to continue using the land.

Under the current regulations, leasing the LUR by the FIE is to be substantiated by a contract entered into by the lessee and the lessor. The LUR lease contract must be in written form and notarized by a notary public or the Board of Industrial Zone Management for the land in industrial zones.

9.3 LUR transfer

The current law provides that the lease term will be determined based on the term of investment projects, but should not exceed fifty (50) years. In some special circumstances, the term may be extended up to seventy (70) years. Upon expiring, the lease term may be extended if the lessee wishes to continue using the land.

9.4 LUR Mortgage

The current laws permit the LUR owners to mortgage all or part of their LURs and assets attached to the land at credit institutions licensed to operate in Vietnam. To be eligible to execute this right, it should be noted again that the land users are required to pay land rental fees in advance for the duration of the lease term in a lump-sum. The mortgage of LUR and assets attached to the land is currently listed into secured transactions and is required to be registered at the LUR Registration Offices at provincial level, district level or communal People's Committees.



Intellectual property

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To become integrated into the world economy, Vietnam has taken many steps to modernize legal systems with the help of international donors.

”

Richard Arthur Mark Stapley-Oh

Partner

KPMG Vietnam



10.1 Protection of intellectual property

10.1.1 Types of intellectual Property Right to be protected in Vietnam

Under the Law on Intellectual Property, “Intellectual Property Rights” (“IPRs”) means 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 the prevailing 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.
- Rights to plant varieties including reproductive and harvested materials.

The protection of IPRs is further reinforced under the TPP Agreement including the following obligations:

- In addition to civil and administrative remedies, the TPP 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.
- Member nations must establish policies on monitoring Internet service providers to prevent IPRs infringement transmitted through network
- Reduction/simplification of administrative procedures and conditions for registration of IPRs.

10.1.2 Term of protection on a number of typical IPRs

(i) Patent

Patent means a technical solution in the form of a product or process which is intended to solve a problem by application of natural laws. The patent will be protected for 20 years commencing from the date of submitting application but such protection period will not be extended.

(ii) Copyright

Copyright means rights to the works created or owned by an organisation or an individual. “Works” means a creation of the mind in the literary, artistic or scientific sector, expressed in any mode or form.

Copyright will comprise moral rights and economic rights. The copyright will enjoy the following terms of protection:

Copyrights to cinematographic works, photographic works, applied art works and anonymous works will have a term of protection of 75 years from the date it was first published. If a cinematographic work, photographic work or applied art work has not been published within 25 years from the date of its formulation, the term of protection will be 100 years calculated from the date of its formulation.

Copyright to any works not subject to the above mentioned list will be protected during its author's life plus 50 years after their death. In case the works have been created by joint authors, the term of protection will expire in the 50 years after the death of the last surviving co-author.

Works whose term of protection has expired shall belong to the public. All organisations and individuals shall have the right to use such works with respect to moral rights of the author.

(iii) Trade name

Trade name means the designation of an organisation or individual used in business activities in order to distinguish the business entity bearing the trade name from other business entities in the same business sector and geographical area. Industrial property right to trade name is established on the practice usage responding to the business territory and area without registration procedures. The trade name protection is for the duration of use of said trade name.

(iv) Mark

Mark means any sign used to distinguish goods or services of different organisations or individuals. A certificate of registered mark will be valid from the grant date until 10 years after the filing date and may be renewed for an unlimited number of consecutive terms, each of 10 years. For well-known marks, the industrial property right is established based on the actual widespread use of such a mark without having gone through.

(v) Industrial design

Industrial design means the outward

appearance of a product embodied in three dimensional configurations, lines, colours or a combination of such elements. An industrial design patent will be valid for 5 years from the date of filling the application dossier for registration of such a design and may be renewed for two consecutive terms, each of 5 years. Under the prevailing laws, each type of intellectual property protected under the laws of Vietnam, must satisfy the appropriate conditions provided by the laws.

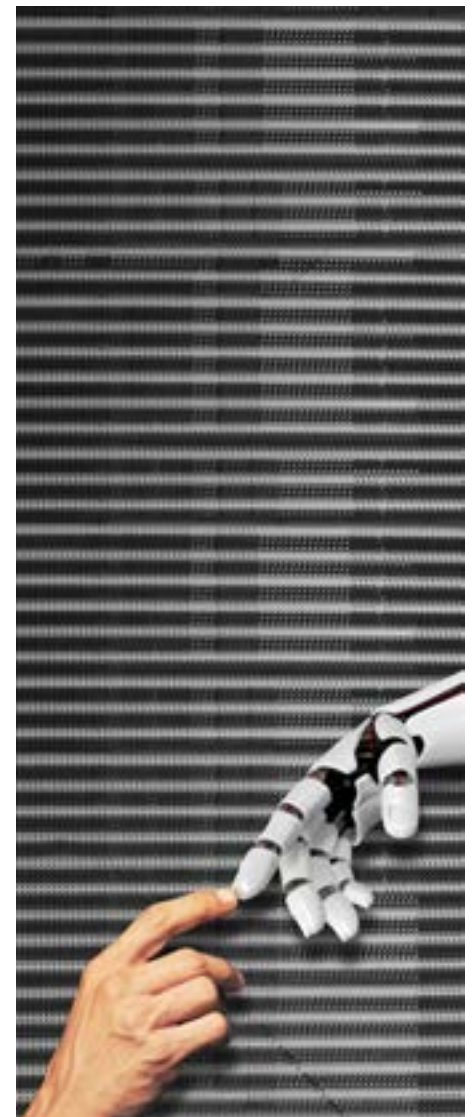
10.2 Registration of IPRs in Vietnam

To be protected against IPRs infringement, it is mandatory for the IPR holders to register their IPRs, except for copyright, with the competent authorities.

Copyright will be protected under the principle of automatic protection. This means that copyright will arise the moment a piece of work is created and presented in a particular material form regardless of its content, quality or format, and whether or not it has been published or registered. However, to protect a piece of work effectively, it is highly recommended that authors or copyright owners register the works at the relevant Department of Copyright under the Ministry of Culture Sports and Tourism, or Department of Culture, Sports and Tourism.

For other IPRs, the holders are only protected on their IPRs by law upon having been granted the protection certificate for the same, as a result of regulatory formal and substantial examination on their proper filing to respective licensing authorities. In Vietnam, the Ministry of Science and Technology, via the National Office of Intellectual Property, will be

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