DOING BUSINESS
IN VIETNAM 2017

AUDIT | ACCOUNTANCY | ADVISORY SERVICES | TAX | LAW

MAZARS

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MAZARS IN VIETNAM

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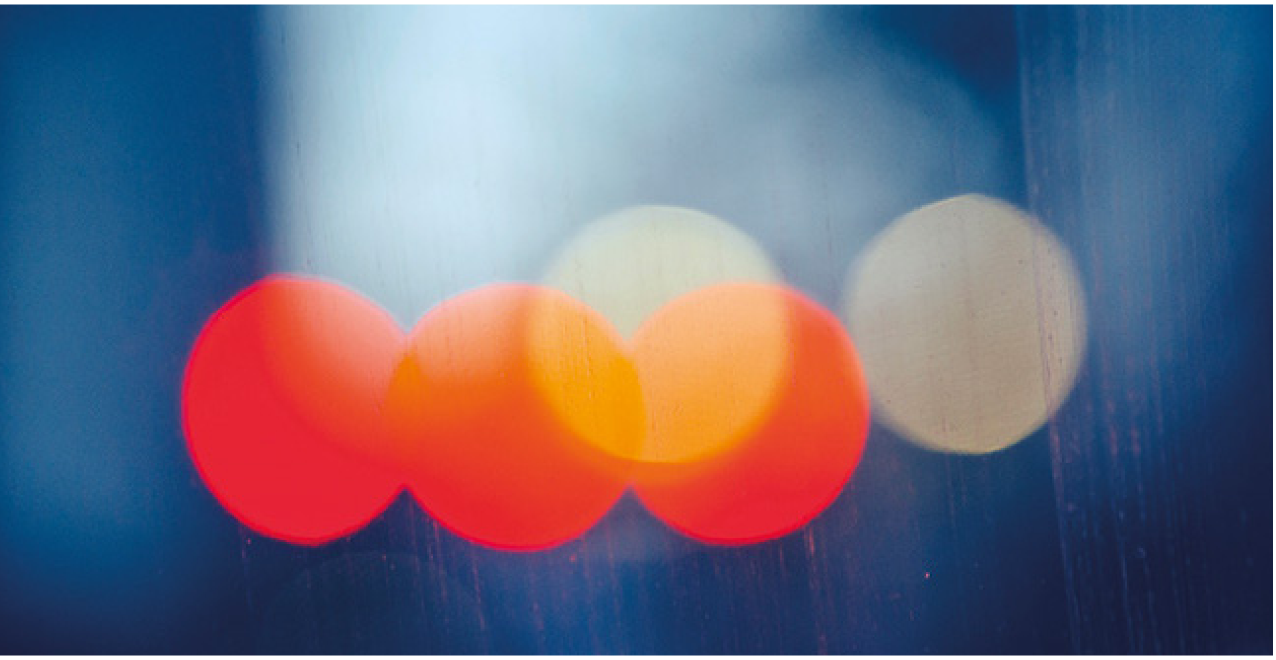
With around 160 staff, our multi-disciplinary team of professionals comprises Chartered Accountants, Certified Public Auditors, Tax Lawyers, Masters in Accounting and Finance, Masters in Business and Administration and Cost Accountants, who are all well equipped with the requisite business and technical skills, experience and knowledge base to deliver customised solutions to our clients. With their respective competencies, our professionals are capable of developing competitive advantages and sustainable values for a wide range of businesses.

MAZARS IS AN INTERNATIONAL, INTEGRATED AND INDEPENDENT ORGANISATION, SPECILAISING IN AUDIT, ACCOUNTANCY, TAX, LEGAL AND ADVISORY SERVICES. THE GROUP DRAWS ON THE EXPERTISE OF OVER 17,000 PROFESSIONALS TO ASSIST MAJOR INTERNATIONAL GROUPS, SMES, PRIVATE SECTORS AND PUBLIC BODIES IN THE 77 COUNTRIES THAT ARE PART OF ITS INTERGRATED PARTNERSHIP.



GENERAL INFORMATION

DEMOGRAPHY

Vietnam, with the official name as the Socialist Republic of Vietnam, is a S-shaped country, completely in the tropical zone with a total area of 331,210 square kilometer. It has 58 provinces and 5 municipalities (Hanoi City, Ho Chi Minh City - still often referred to as Saigon, Hai Phong City, Can Tho City and Da Nang City). Hanoi is the capital, where most Government bodies are located, while Ho Chi Minh City is the commercial hub of the country. Da Nang is thought to be the 3rd biggest city of Vietnam.

Vietnam's landmass forms the shape of the letter S on the east side of the Indochinese Peninsula in Southeast Asia. It borders China to the north, Laos and Cambodia to the west, the East Sea and Pacific Ocean to the east and south. Its eastern border consists of more than 3,400 kilometer of beautiful coastline which is ideal for development of maritime industries, trade and tourism and for its emergence as a shipping hub for South East Asia and the world in general.

It is predominantly a mountainous country, with mountains and forests covering three quarters of the land area. Its two main cultivated areas are the Red River Delta (15,000 square kilometer) in the north and the Mekong River Delta (40,000 square kilometer) in the south.

Vietnam is located in the tropical and temperate zone. Because of differences in latitude and the marked variety in topographical relief, the climate tends to vary considerably from place to place. Northern Vietnam has all four seasons while southern and central regions are characterised by just dry and rainy seasons.

POPULATION SIZE & DENSITY

As of April 2017, the population of Viet Nam reached 95,224,537, based on the latest United Nations estimates (ranking number 14 in the list of countries (and dependencies) by population), with an average population density of 287 people per square kilometer. With an annual growth rate of 1.03%, Vietnam is expected to grow to 100 million people by 2020. Nearly 70% of the total population resides in rural areas while the other 30% are located in HCMC, Hanoi, Hai Phong, and Da Nang. The Annual urbanisation rate is estimated to be 3% (2010-2015). Over 50% of the population is under the age of 25 years and employed in agriculture. Currently, the Government has given priority to developing quality training and education systems for workers serving in highly skilled industries such as information technology, pharmaceuticals, and financial services. Literacy in Vietnam reached 97.3 percent for those aged 15-50 as of January 2016. This demographic is often quoted as being a huge advantage to future prosperity.

The Vietnamese Government recognises 54 ethnic groups with its own lifestyle, cultural heritage and language. The largest ethnic groups are: Kinh (Viet) 86.2%, Tay 1.9%, Tai Ethnic 1.7%, Muong 1.5%, Khmer Krom 1.4%, Hoa 1.1%, Nung 1.1%, Hmong 1%, others 4.1% (according to the latest census in 1999). Viet (Kinh) accounts for the majority of the country's population but gathers and inhabits a little less than half of Vietnam in major cities.

The national language is Vietnamese, which is widely used by all ethnic groups. English is increasingly favoured as a second language and has been adopted as the official language for business. Other spoken languages include French (which is still very common due to Vietnam's history), Chinese, and mountain area languages.

Vietnam has a youthful and well-educated labour force. The median age in Vietnam is 29. Average wage costs tend to be lower than those of bordering countries such as China. Factory workers are thought to earn around two thirds of the amount earned by their Chinese equivalents, although the effects of inflation and minimum wage laws may have moved this statistic recently.

A recent report claims that Vietnam has around 20 million people with 'middle income or better spending power. As a result there has been considerable investment in the retail sector, with many new shopping malls and brands entering the market. Initial signs were good, but retail growth seems to have stalled in recent times. In the long term though it is generally felt that the growing urban middle class will continue to fuel consumer spending.

RELIGION & BELIEFS

For much of Vietnamese history, Mahayana Buddhism, Taoism and Confucianism have been the dominant religions considered as folk religions, strongly influencing the national culture, practiced by 45.3% Vietnamese people.

Other religious practices in Vietnam include Christianity, Catholicism, and Cao Dai.

Vietnam has a rich and wide variety of religions which include religions based on popular beliefs, religions brought to Vietnam from outside the country, and several indigenous religious groups. Buddhism is the largest of the major world religions in Vietnam while the second largest foreign religion is Catholicism.

INFRASTRUCTURE

In the past decade, the Vietnamese infrastructure system has experienced major expansion in both scale and quality. Service roads, inland waterways and railways received major upgrades while effort has also gone into the improvement of management and maintenance. Seaports and airports have gradually expanded and been upgraded to meet transport requirements. The Government recognised the impact of an efficient infrastructure system on economic development so many important projects for industrialisation and modernisation such as highways in key economic areas, urban roads, international airports and seaports are being constructed.
The main national road is the trans-Vietnam highway No.1A which runs the length of the country.
Vietnam Railways is the state-owned operator in Vietnam, which has about 3,200 kilometer of track, 60% of which is in the Northern provinces. It is slow and cumbersome to the eyes of Westerners but is effective nonetheless. Moreover, Vietnam is pushing ahead with the construction of its first urban metro projects in both Hanoi and Ho Chi Minh City. It is expected that the first metro lines in Hanoi will be completed and put into operation in 2018 and the expected time for the same in Ho Chi Minh City is 2020 This is a part of an integrated development program for urban transport by the Vietnam Ministry of Transport, aiming to reduce the use of private transports to address the problems of congestion, protracted journey times and extreme pollution. The projects are financed by ODA loans.
Airports are numerous, but the two largest ones are Noi Bai (Hanoi) and Tan Son Nhat (Ho Chi Minh City), which are both major international hubs.
Marine transportation in Vietnam in the last years was largely renovated. A huge number of ports spreading over a total length of 40,000m has greatly supported both economic and tourism development of Vietnam in recent years.

GOVERNMENT

The Socialist Republic of Vietnam is a single-party state under the leadership of the Vietnam Communist Party. The Party holds a national congress every five years to outline the country's overall direction and policies for the future.
The National Assembly is the highest representative body of the people and the highest body of State power. The President and Prime Minister are elected by the National Assembly which exercises supreme control over all activities of the State.
The Government is the effective executive body of the National Assembly, the highest organ of state administration. It carries out overall management of work for the fulfillment of political, economic, cultural, social, national defense, security and external duties of the State.
Being the Head of State, the President represents Vietnam internally and externally, and is elected by the National Assembly from among its members.

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THE ECONOMY OF VIETNAM

OVERVIEW

Vietnam is a developing country, known to have a dynamic and emerging market economy. GDP has constantly increased at the level of around 5.98% in 2014, 6.68% in 2015 and 6.21% in 2016. Besides, the consumer price index (CPI) was stabilized with 4.09% in 2014, 0.63% in 2015 and 2.66% in 2016. Together with other factors such as favourable demographics, political stability, Vietnam has been becoming an attractive destination in South East Asia for the foreign investors.

POPULATION SIZE & DENSITY

The Vietnamese Dong ("VND") is the official currency of Vietnam. Bank notes are available in denominations of 500,000; 200,000; 100,000; 50,000; 20,000; 10,000; 5,000; 2,000; 1,000 and 500 VND.

The exchange rates to some foreign currencies (as announced by Vietcombank) are as follows:

Curency Code	Curency Name	Buy	Transfer	Sell
AUD	AUST.DOLLAR	16,986.88	17,089.42	17,241.83
CAD	CANADIAN DOLLAR	16,519.82	16,669.85	16,885.92
CHF	SWISS FRANCE	22,616.59	22,776.02	23,071.25
DKK	DANISH KRONE	-	3,296.34	3,399.72
EUR	EURO	24,716.84	24,791.21	25,012.31
GBP	BRITISH POUND	28,881.49	29,085.09	29,344.48
HKD	HONGKONG DOLLAR	2,883.11	2,903.43	2,946.95
INR	INDIAN RUPEE	-	353.05	366.91
JPY	JAPANESE YEN	201.57	203.61	205.42
KRW	SOUTH KOREAN WON	18.62	19.60	20.83
KWD	KUWAITI DINAR	-	74,637.05	77,566.91
MYR	MALAYSIAN RINGGIT	-	5,187.96	5,255.21
NOK	NORWEGIAN KRONER	-	2,619.11	2,701.25
RUB	RUSSIAN RUBLE	-	368.68	451.00
SAR	SAUDI RIAL	-	6,054.88	6,292.56
SEK	SWEDISH KRONA	-	2,567.70	2,632.39
SGD	SINGAPORE DOLLAR	16,136.66	16,250.41	16,428.16
THB	THAI BAHT	648.18	648.18	675.23
USD	US DOLLAR	22,720.00	22,720.00	22,790.00

EXCHANGE CONTROLS

Throughout the country, only US Dollars and certain other currencies are accepted for transactions with Credit Institutions and other transactions in big cities and provinces permitted by the Prime Minister. In general, the inflow of foreign currency into Vietnam is welcome with minimum restrictions while the transfer of foreign currency abroad has also been significantly liberalised. Foreign investors and foreigners working in Vietnam are permitted to transfer their earnings abroad after completing all their financial liabilities to the Vietnamese Government. However, on leaving Vietnam individuals are not allowed to take more than USD 5,000 or equivalent in other currencies in cash (including debit notes and travelers cheques) without declaration to the Vietnamese Customs and permission from the State Bank of Vietnam or another eligible bank.

Up to now, the Vietnamese Government has issued a range of regulations regarding Foreign Exchange Management in Vietnam which investors are required to follow when doing business in Vietnam.

LABOUR FORCE

Vietnam is well-known for its abundant, young, hard-working, and very fast-learning work force. As end of 2016,statistic shows that the country has 54.44 million people above the age of 15. In which, men accounts for 28.02 million (51.5%) and women accounts for 26.42 million (48,5%). Its labour force is estimated to be around 47.88 million people.

WTO AND TRADE AGREEMENTS

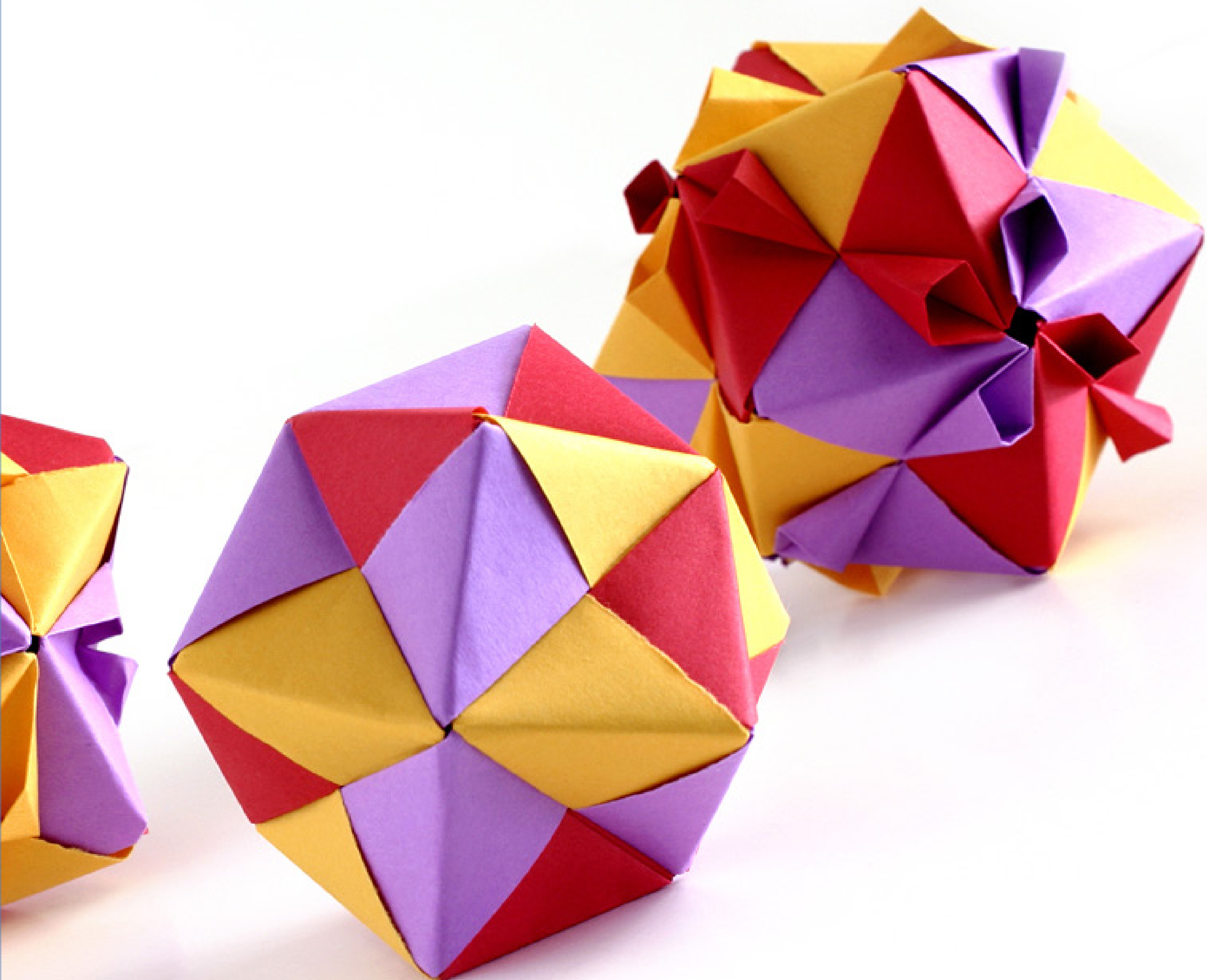
Vietnam officially became the 150th member of the WTO on 11th January 2007 as a result of continuous efforts to improve the investment environment, market liberalisation and the nation's GDP growth rate. The accession of Vietnam to the World Trade Organisation has provided a boost to the domestic economy. However, it also forced Vietnam to launch a wide variety of reforms regarding policies and laws in line with WTO principles, especially in the areas of investment and trading in goods and services.

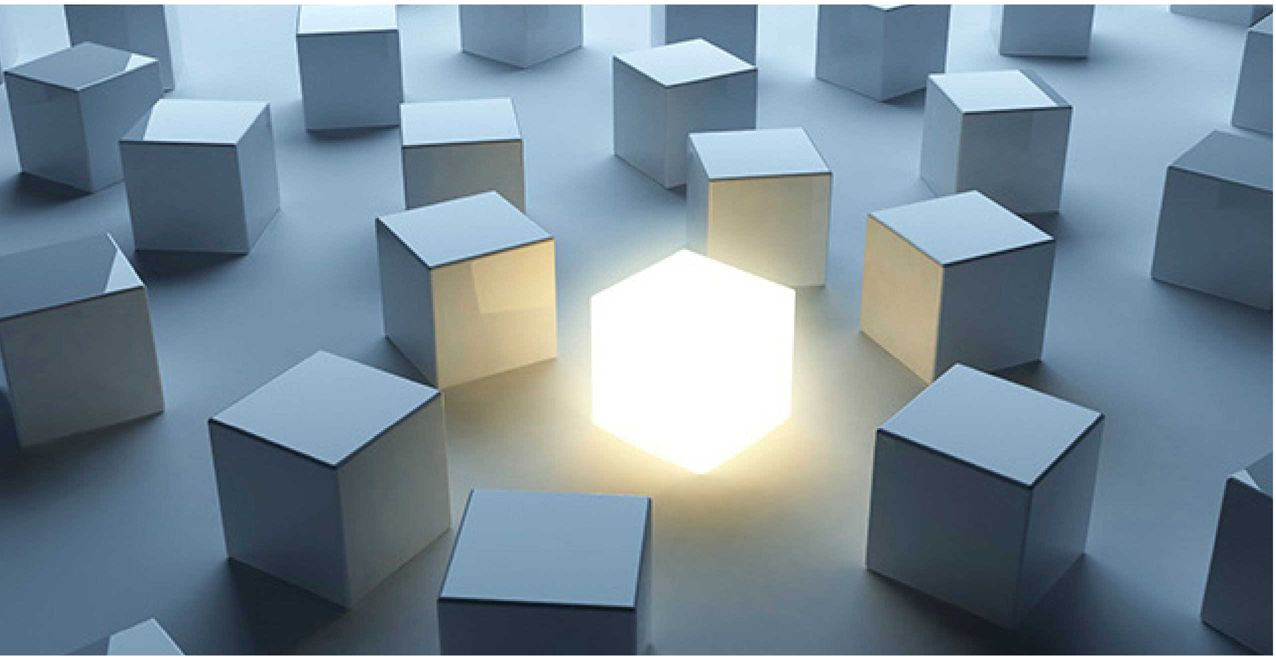
Furthermore, Vietnam has also signed, and is negotiating, a variety of bilateral and multilateral trade agreements with other nations and regions in the areas of export and import, manufacturing for trade; sales and purchase agencies; logistic services; trade promotion activities; establishment and operation of representative offices; branches of foreign companies, and companies with foreign capital engaged in trade activities in Vietnam; goods inspection; origin of goods; and franchise. Thanks to this regional and international cooperation, foreign investors in Vietnam may in the future enjoy more favourable conditions when doing business here.

The highlight of 2015 includes the official signing of the bilateral trade agreements between Vietnam and Eurasia Economic Union, between Vietnam and Korea and between Vietnam and EU.

DEVELOPMENT TRENDS

In recent years the Private Sector has become far more influential.
The Vietnam Stock Exchange came into being in 2000 and the Government's policy of privatising State Owned Enterprises made room for foreign investors to invest in the Vietnamese market. Vietnam has become a strong base for manufacturing and IT related services with low and reasonable employment costs. However the weak copyright laws are thought to deter 'High added value' industries from bringing too much intellectual property into Vietnam for fear of losing it to clone competitors. Thus at present there is an abundance of 'low–tech' industry and the Government would like to be able to attract more 'higher added value' businesses.





INVESTMENT INCENTIVES AND GUARANTEES

The present investment legal framework in Vietnam is regulated by two basic areas of legislation: the Enterprises Law, which sets out provisions on the establishment, organisational management and operation of different types of enterprises, and the Investment Law, which covers provisions on investment activities, rights and obligations of investors, investment guarantees and investment incentives.

Foreign Invested Enterprises (FIEs) play a key role in the development process of Vietnam. FIEs are an effective force contributing to economic growth, by improving the balance of payments, promoting technological innovation, introducing modern business management methods, creating jobs and bringing competitiveness to the market.

The Government is looking to attract investment across a wide array of sectors. Sectors receiving preferential treatment are outlined in every new five-year Government plan. Key sectors currently targeted for Investment Incentives include:

- High-tech activities, high-tech ancillary products; research and development;
- Production of new materials, new energy, clean energy, renewable energy; productions of products with at least 30% value added; energy-saving products;
- Production of key electronic, mechanical products, agricultural machinery, cars, car parts; shipbuilding;
- Production of ancillary products serving textile and garment industry, leather and footwear industry, and the products in the third point above;
- Production of IT products, software products, digital contents;
- Cultivation, processing of agriculture products, forestry products, aquaculture products; afforestation and forest protection; salt production; fishing and ancillary fishing services; production of plant varieties, animal breads, and biotechnology products;
- Collection, treatment, recycling of waste;
- Investment in development, operation, management of infrastructural works; development of public passenger transportation in urban areas;
- Preschool education, compulsory education, vocational education;
- Medical examination and treatment; production of medicines, medicine ingredients, essential medicines, medicines for prevention and treatment of sexually transmitted diseases, vaccines, biologicals, herbal medicines, orient medicines; scientific research into preparation technology and/or biotechnology serving creation of new medicines;
- Investment in sport facilities for the disabled or professional athletes; protection and development of cultural heritage;
- Investment in geriatric centers, mental health centers, treatment for agent orange patients; care centers for the elderly, the disabled, orphans, street children;
- People's credit funds, microfinance institutions

The Government also provides some basic investment guarantee commitments as follows:

- Lawful assets of investors shall not be nationalized or confiscated by administrative measures.
- Where an asset is bought or commandeered by the State of reasons of national defense and security, national interests, state of emergency, prevention or recovery of natural disaster, the investor shall be reimbursed or compensated in accordance with regulations of law on property commandeering and relevant regulations of law.
- Investors are not required by the State to give priority to buying, using domestic goods/-services; or only buy, use goods/services provided by Vietnamese producers/service providers; achieve a certain export target; restrict the quantity, value, types of goods/-services that are exported or produced/provided in Vietnam; import a quantity/value of goods that is equivalent to the quantity/value of goods exported; or balance foreign currencies earned from export to meet import demands; reach a certain rate of import substitution and a certain level/value of domestic research and development; provide goods/service at a particular location and have the headquarter situated at a location as requested.
- Depending on the orientation of socio-economic development, foreign exchange management policies, and the ability to balance foreign exchange in each period, the Prime Minister shall decide the assurance of fulfillment of demands for foreign currencies of investment projects the investment policies subject to issuance of decisions on investment policies by the National Assembly, the Prime Minister, and other important projects of investment in infrastructural development.
- Foreign investors are permitted to transfer capital and liquidations; income from business investment and money and other assets under the lawful ownership of the investors to abroad.
- The Prime Minister shall decide the provision of guarantees for contract execution by competent authorities or state-owned companies participating in investment projects subject to issuance of decisions on investment policies by the National Assembly, the Prime Minister, and other important projects of investment in infrastructural development
- Where a new law that provides more favorable investment incentives, the investors shall enjoy the new incentives for the remaining period of the incentive enjoyment of the project. However, if new law provides less favorable investment incentives, the investors shall keep enjoying the current incentives, except for the case of change for the reason of national defense and security, social order and safety, social morals, the health of the community or environmental protection. Where the investors are not permitted to continue to enjoy the investment incentives, they shall be considered for resolution by any one or more of the following measures, provided that the investors so request in writing in the period of three years from the effective date of the new law: (i) deduct actual loss and damage suffered by the investors from taxable income, (ii) change the operational objectives of the investment projects, (iii) support the investor to remedy loss and damage.

“The Government is looking to attract investment across a wide array of sectors.”

BUSINESS ORGANIZATIONS AVAILABLE TO FOREIGNERS

The Law on Foreign Investment of Vietnam, which was introduced in 1987, was the first basic framework for foreign investment. Many businesses came here to invest during the '90's but it is really only since 2005, when the new Law on Investment and Law on Enterprises was released, creating a fair and consistent environment for both foreign and local investment, that the country has become a more attractive destination for foreign investment. In 2014, the National Assembly of Vietnam passed new Law on Investment and Law on Enterprises, which both took effect from 01 July 2015.

FOREIGN INVESTMENT

Foreign Investment can be made as follows:

1 Establishment of business organisations with 100% capital from foreign investor(s). Sometimes this is referred to as a WFOE (Wholly Foreign Owned Enterprise)

2 Establishment of joint venture business organisations between domestic and foreign investors.

3 Investment in the forms of Business Co-Operation Contract (BCC); Public-Private Partnership (PPP) Contract. These are quite technical definitions and we do not seek to examine them in much detail in this publication.

4 Capital Contribution, share purchase or merger / acquisition.

We set out below the various types of organisations that a market entrant can consider.

Limited Liability Company

A company where the investor's liability on the company's liabilities and other financial responsibilities is limited to the amount of capital (known as Charter Capital) as stipulated in the company's Articles of Incorporation. There are two distinct types;

- Limited Liability Company with One member, which is a company owned by one investor (individual or organisation). A Limited Liability Company with One member can be converted into a Limited Liability Company with Two members or more, by (i) adding new capital from other investors; or (ii) the investor transferring part of its capital to others.
- Limited Liability Company with Two members or more, which could be a joint venture (between foreign and local investors) or a 100% foreign owned enterprise (set up by two foreign investors or more). The number of investors must be below fifty.

Joint Stock Company (JSC)

The shareholders can be individuals or organisations, with a minimum number of three and the main difference to an ordinary company is that a JSC can issue shares and securities to the public. The shareholders are responsible for the enterprise's liability up to the limit of capital contributed to the enterprise. There are several hundred JSC's on the two Stock Markets in Vietnam and it is generally thought that the standard of Governance within these companies is continuing to develop.

Partnerships

A Partnership is an enterprise where there are at least two individual partnership owners (partnership members), jointly doing business under a common name and having unlimited responsibility over the enterprise's liability. In addition to partnership members, a partnership may also have capital contribution members whose responsibility is limited to the capital amount contributed to the enterprise. A partnership is not allowed to issue any type of securities.

Private Enterprises

A private enterprise (rather like a Sole Trader) is an enterprise owned by one individual who is liable for all activities of the enterprise to the extent of all his or her assets. A private enterprise is not allowed to issue any type of securities. Each individual may only establish one private enterprise.

Business Co-operation Contract (BCC)

A BCC means a form of investment where investors enter into a contract in order to co-operate in business and to share profits or products without creating a legal entity. The contract stipulates the co-operating parties, contents and duration of the co-operation, rights and obligations of each party, and the management structure as agreed by both parties.

Capital Contribution, Share Purchase, Merger and Acquisition

Investors are allowed to contribute capital to, purchase shares in, merge with and acquire enterprises in Vietnam. The maximum ratio of foreign investors' capital is regulated in a number of sectors and industries.

OTHER MARKET ENTRY OPTIONS

Other than the above investment forms, foreign investors may consider the following market entry (commercial presence) options in Vietnam.

Branch

The establishment of a branch must be made in accordance with Vietnam's WTO commitments and local regulations. For normal foreign merchants, a branch is permitted to carry out the activities stipulated in its license.

If a branch operates in sectors where there are rules and regulations in Vietnam then the Branch must demonstrate that it is compliant with them. In order to get the license you may have to demonstrate the following: certificate of satisfaction of business conditions, practising certificate, certificate of professional indemnity insurance, legal capital requirement, or other requirements stipulated under the laws.

Representative Office

The establishment of a representative office is permitted for foreign companies for market research, sales promotion activities (and therefore not for trading). In order to set up a representative office, the foreign company must satisfy certain conditions including, amongst others, that the company is already legally recognised in the country of its business registration and has been in operation for at least one year from the establishment date. The functions of a representative office include:

- Exercising the function of a liaison office.
- Market research to promote business opportunities for the foreign company that it represents.

The obligations of a Representative Office to the authorities are the same as for all trading organisations, but no Financial Statements need to be submitted anywhere and there is no requirement for local audit. Clearly any Financial Statements will be consolidated into the Parent organisation's Financial Statements.

Foreign Contractor/Cross-border supplies

Foreign companies can perform a number of cross-border supplies in accordance with Vietnamese laws and WTO commitments. Particularly, any foreign investor who wishes to trade goods (e.g. import and distribute the goods to local customers) in Vietnam does not usually need to establish a legal entity in Vietnam, subject to certain conditions and approvals. For construction and related activities, foreign contractors can do business by directly entering the construction contract with the Vietnamese project owner and earning income from it. However, the foreign contractor must apply for a Construction Operating License, and set up what is known as a Project Management Office.

ESTABLISHMENT OF FOREIGN INVESTED ENTERPRISES

Limitations of foreign ownership

In most cases, foreign investors are allowed to own 100% of the share capital of a company in Vietnam. However, there are some circumstances where foreign ownership is limited, which is stated in (i) Vietnam's bilateral and international agreements such as WTO commitments, and (ii) particular local laws and regulations.

Investment Procedures

The establishment of a Foreign Invested Enterprise (FIE) involves the procedure to obtain an Investment Registration Certificate from the licensing authorities, either:

- The provincial people's committee (for project located outside of industrial zones, export processing zone, high-tech zones and economic zones)
- The provincial industrial zone management authority or economic zone management authority (for project located in industrial zones, export processing zones, high-tech zones and economic zones).

After the issuance of the Investment Registration Certificate, the foreign investors must conduct procedures with the licensing authorities to obtain an Enterprise Registration Certificate.

However, certain investment projects must undergo a procedure to obtain an “in principal” approval from the competent state authorities prior to licensing to guarantee national benefit, such as:

1 THE NATIONAL ASSEMBLY

in respect of projects having great effect or serious environmental impact (including nuclear power plant projects, project with a requirement for relocation and resettlement of 20,000 people or more in mountainous areas or 50,000 people or more in other areas and project with a requirement for conversion of land use purpose for wet rice cultivation on two harvests relating to an area of 500 hectares or more);

2 THE PRIME MINISTER

in respect of project with a requirement for relocation and resettlement of 10,000 people or more in mountainous areas and 20,000 people in other areas, airport projects, seaport projects, project of exploration, production and processing of petroleum, project that include a casino business, projects for the production of cigarettes, golf-course construction projects, project with total investment capital of 5,000 billion Vietnamese dongs or more and projects of foreign investors in sea transportation, telecommunications with network infrastructure, afforestation, publication, press; and

3 THE PEOPLE’S COMMITTEES

on a provincial level in respect of projects to which the state allocates or leases out land without tendering, auction or transfer and project using technology belonging to the list of technology restricted for transfer..

The laws also specify the number of days which the licensing authorities can take to process the foreign investors’ application. However well-intentioned this was designed to be, in reality things take longer, and patience is often required mainly due to many additional requests from the authorities.

Licensing Authorities

Normally the application for issuance of the Investment Registration Certificate is subject to assessment by the Provincial People’s Committee (Department of Planning and Investment) or the Management Board of Industrial Parks, Export Processing Zones, High-Technology Zones, and Special Economic Zones in the relevant city/province. With respect to the Enterprise Registration Certificate, the competence belongs to Business Registration Office under Department of Planning and Investment.

TERMINATION OF ENTERPRISES

Dissolution

Following the Law on Enterprises, an enterprise can be dissolved in the following cases:

- The duration of operation stipulated in the charter of the enterprise expires and there is no decision to extend;
- As decided by the enterprise owner in the case of a private enterprise; by all unlimited liability partners in the case of a partnership; by the Members' Council or the company owner in the case of a limited liability company; by a General Meeting of Shareholders in the case of a JSC;
- The enterprise does not have the minimum number of members stipulated by Law on Enterprises for a period of six consecutive months without following procedures for business conversion; and
- The business registration certificate is revoked.

An enterprise can only be dissolved when it has paid all debts and other property obligations as well as not involved in any dispute at a court or arbitral tribunal.

Bankruptcy

According to the prevailing Law on Bankruptcy (effective from 1 January 2015), an enterprise is considered as being insolvent if it fails to pay a due debt after 3 months from its due date. A creditor's request is no longer required to trigger the insolvent status of the insolvent enterprise.
The following persons are entitled to file a request for initiation of bankruptcy process against an insolvent enterprise: (i) Any unsecured or partly secured creditor to which a due debt remain unpaid for 3 months from the due date; (ii) The employees to whom the insolvent enterprise failed to pay salaries and other debts within 3 months from the due date or relevant trade unions; (iii) Any shareholder or any group of shareholders owning at least 20% of ordinary shares for at least 06 consecutive months in case of a joint-stock company, or any shareholder or any group of shareholders owning less than 20% of ordinary shares for at least 06 consecutive months if it is mentioned in the joint-stock company's charter.
The following persons are liable to file a request for initiation of bankruptcy process: (i) The legal representative of the enterprise; (ii) The owner of any private enterprise, the Chairman of the Board of Directors of any joint-stock company, Chairman of the Members' Council of any multi-member limited liability company, the owner of any single limited liability company or any general partner of any partnership.
Generally, the bankruptcy procedures includes: (1) Filling the request for initiation of bankruptcy process with the court; (2) Negotiations to withdraw the petition between the petitioner and the insolvent enterprise – result in court accept/reject petition; (3) Commencement of bankruptcy process by the court; (4) Creditors' meeting; (5) implementation of the rehabilitation plan; (6) Declaration of bankruptcy by the court; (7) Liquidation (assets disposal) procedures. Simplified procedures are applied in certain cases as stipulated by the laws.

"In most cases, foreign investors are allowed to own 100% of the share capital of a company in Vietnam."

TAXATION

This chapter presents an overview of the Vietnamese tax system, Vietnam's major taxes as well as the tax treaties between Vietnam and other countries which may have a significant impact on the activities of a foreign investor in Vietnam.

OVERVIEW

Vietnam applies a common set of tax regulations on a nationwide basis which over recent years has become equal between local and foreign enterprises. Tax regulations include laws/ordinances/resolutions from the highest level and sub-law guidance such as decrees, decisions, circulars and numerous official letters.

LICENSE FEE

License fee is imposed on enterprises, representative offices (only when performing business activities), business individuals, and foreign contractors doing business in Vietnam on an annual basis. The fee amount depends on the registered capital of the taxpayers, or fixed amount in certain cases.

CORPORATE INCOME TAX (CIT)

CIT is imposed on the income (Profit) of enterprises or any kind of organisations established under Vietnamese or foreign laws doing business in Vietnam or earning income from Vietnam.
CIT declaration and payment are required on (i) an annual basis; (ii) upon incurrence (for some special cases); and (iii) upon division, M&A, conversion, dissolution or shut down of the company. Quarterly CIT declaration is no longer required (however provisional CIT payment is still to be made on a quarterly basis).

Tax Rates

Starting from 2016, the standard CIT rate is 20%. Taxation for oil and gas businesses is applied within the range from 32% to 50%. Natural resources industry may have a higher tax rate (i.e. 40% or 50%).

Tax Incentives

CIT incentives are available, including a preferential tax rate (10% or 17%) and tax holidays (some years of tax exemption and some subsequent years of 50% tax reduction) which are granted to investment projects based on their business activities (businesses encouraged by the Vietnamese Government such as healthcare, education, high-tech, infrastructure development, and software production) or their location (within special economic zones or areas with difficult socio-economic conditions). Some additional CIT incentives are also available for enterprises operating in the manufacturing, construction and transportation fields with a high ratio of female employees or ethnic-minority employees.

Taxable Income (Profit)

Taxable income is defined as the difference between total taxable revenue and total deductible expenses of the enterprise during the tax year.
Taxable revenue includes all income from sales, provision of services and other incidental income accruing to the enterprise from any business activities, irrespective of whether the revenue was derived in Vietnam or overseas and has been collected or not.
Generally, expenses are tax deductible on the basis that they are business related and supported by legitimate invoices/documents and are not specifically identified as being non-deductible. For the purchase of goods or services valued from VND 20 million (VAT inclusive) and above, evidence of non-cash payment is also required.

Losses Carried Forward

An enterprise is allowed to carry forward fully and continuously the operating loss of a financial year to offset against future taxable income for a period of up to five years counting from the year after the year of loss.

Transfer Pricing

Vietnam released Transfer Pricing regulations from 2005 which provide the primary regulatory framework for the determination and audit of Transfer Pricing activities in Vietnam. It has been few years already that Transfer pricing ("TP") is a top priority for both companies, and tax authorities.

The principle is that, transactions between related parties must be made on an arm's length basis. Failure to comply with the arm's length principle implies an exposure to a reassessment of prices or profits for tax purposes which may be accompanied by penalties and interest charges (to some extent, this literally implies that the tax authorities may set transfer prices for the company if there is no supporting transfer pricing documentation). The adjustments entail wider consequences in terms of an altered tax profile and possible adverse publicity.

In terms of required documents, an enterprise which has related party transactions must submit a disclosure form of the related party transactions during the year (to be lodged annually to the tax authority together with a year-end CIT return) and preparation of Transfer Pricing documentation as evidence of the arm's length principle.

In 2017, it should be of even greater importance with the new TP guidelines and the increased controls. The Ministry of Finance released Decree No. 20/2017/ND-CP dated 24 February 2017 ("the Decree") which is the largest development of domestic Transfer Pricing regime since the implementation of Circular 66/2010/TT-BTC in 2010, including some impacting points as follows:

- The Decree adopts parts of the new guidelines of the Organization for Economic Cooperation and Development's Action Plan on Base Erosion and Profit Shifting ("BEPS"), whereby a TP Documentation to be presented to the Vietnamese tax authorities must cover not only local reports of the Vietnamese taxpayer, but also Global Master Files and Country by Country ("CbC") report for the whole group if its overseas ultimate parent company is obliged to prepare and submit such documents to the respective tax authorities, or if taxpayer is a Vietnamese ultimate parent company with worldwide consolidated revenue exceeding VND18,000 billion in a fiscal year. The Decree also clearly required such three-tiered TP documentation to be available before the year-end corporate income tax return's filing date.
- The Decree also include guidance on interest deductibility as well as tax deductibility for related party expenses, and a new set of TP declaration forms with much more detailed disclosure requirements.

For certainty on methodology of setting up the arm's length range, enterprises might consider applying for the Advanced Pricing Agreement ("APA"), which is proved a vital tax planning tool. Vietnam has released Circular 201/2013/TT-BTC providing detailed guidance on the application of APA in tax administration. Under APA, taxpayers agree with tax authorities on the pricing of related party transactions in advance for a maximum effective period of five years (with a renewal period of another five years in some cases). The overall application process is conducted through various phases (evaluation of APA strategy, pre-filling consultation, preparation of formal APA documentation, submission and negotiation with tax, and finalizing the APA).

Profit Remittance

The enterprise is permitted to transfer its after-tax profits abroad (tax on remittance of profits abroad is no longer applied) either at year-end after fulfillment of financial obligations and the filing of a CIT return and audited financial statement to the tax authority, or at the end of the project in Vietnam.

VALUE ADDED TAX (VAT)

Generally, goods and services used for production, business and consumption in Vietnam are subject to VAT. Different VAT rates (0%, 5% and 10%) or VAT exemptions are applied to different kinds of goods and services:

VAT EXEMPTIONS	Some goods and services are exempted from VAT such as medical or veterinary exempt services, certain kinds of insurance services, certain financial operations.
VAT 0%	Mainly applied to exported goods/services.
VAT 5%	Generally applied to areas of the economy concerned with the provision of essential goods and services.
VAT 10%	This is the 'standard' rate.

There are two methods of VAT filing:

- Direct method, where VAT would be imposed as a percentage directly on revenue (for a number of cases) or on added value of the Company.
- Credit method (also known as Deduction method), where the taxpayer shall have its input VAT on expenses and output VAT on sales of goods and services, and only the exceeding amount of the output VAT over the creditable input VAT shall be paid to the Tax Department.

An enterprise if applying credit method must satisfy certain conditions, such as complying with current accounting and invoicing regulations, and having annual revenue of VND 1 billion (or above) which enables the company to apply the credit method automatically; while others can still voluntarily register to apply the credit method with some additional conditions (such as investment in fixed assets, machinery, tools, etc.; or having business location rental contract) and the company itself manages to submit the registration form to the managing tax department in due course.

INVOICES

An enterprise can use pre-printed invoices, self-printed invoices or electronic invoices. The tax invoice template must contain stipulated items and be notified to the local tax authorities before coming into use.

PERSONAL INCOME TAX (PIT)

PIT is applied to taxable income received by individuals. Therefore, as a general rule, PIT is a liability of individuals, however the PIT regulations encompass the concept of tax withholding at source, in which the Company is required to temporarily withhold tax prior to paying incomes to its employees and remit the withheld tax to the tax authority.

Where individuals are remunerated on a gross basis, the income-payer is liable to withhold PIT payable before making payments to the individuals and remitting the tax withheld to the tax office. If the remuneration is on a net basis, the income-payer shall be liable to gross up the net income, calculate the PIT amount and pay such PIT to the tax office.

Residency Status

The taxation of a foreigner under the current Vietnamese regulations turns entirely on physical presence in Vietnam for the relevant tax year. In general, there are two categories of foreign taxpayer under the Vietnamese regulations:

Residents: A foreigner is considered tax resident if he/she stays in Vietnam for 183 days or more during a tax year, or if he/she has a regular residential location in Vietnam in one of the following cases (this rule is not applicable if the taxpayer refers to an effective double tax treaty with Vietnam):

- Holding of residence card; or
- A residential location for which permanent residence has been registered pursuant to the law on residence in Vietnam; or
- A leased residence to stay in Vietnam pursuant to the law on residential housing, where the lease contract has a term of 183 days or more within the tax year.

A resident taxpayer is subject to PIT at marginal rates with a top marginal rate of 35% on his/her worldwide income.

Non-residents: A foreigner is considered non-tax resident in Vietnam if he/she does not fall into the above conditions of resident taxpayers. A non-resident foreigner in this circumstance is only taxed at 20% on his/her Vietnamese-sourced income.

Taxable Income

Taxable income includes employment income, business income, income from capital investment, income from capital transfer, income from transfer of immovable properties, and other taxable income.

Employment income, in particular, includes income in the form of salaries, wages, remuneration, allowances (excluding the allowance for toxicity and danger, incentive allowance, regional allowance, severance allowance, termination allowance, other allowances paid by the Social Insurance Fund, etc.), income from membership of business associations, boards of management, boards of control, management councils and other organisations, and other benefits in cash or in-kind.

Allowable Deductions

An allowable deduction is available for resident taxpayers having taxable employment income, including compulsory insurance contributions, charity and humanitarian contributions, and family deduction. Particularly, family deduction includes deduction for the taxpayer themselves (VND9million per month) and deduction for their dependents (VND3.6million per dependent per month).

Tax Rates

Tax residents' employment income is taxed using progressive tax rates:

Band	Taxable income per year (in millions VND)	Approx in USD	Tax income per month (in millions VND)	Approx in USD	Tax rate (%)
1	Up to 60	2650	Up to 5	220	5
2	Over 60 and up to 120	2650-5300	Over 5 and up to 10	220-440	10
3	Over 120 and up to 216	5300-9525	Over 10 and up to 18	440-790	15
4	Over 216 and up to 384	9525-16935	Over 18 and up to 32	790-1410	20
5	Over 384 and up to 624	16935-27520	Over 32 and up to 52	1410-2300	25
6	Over 624 and up to 960	27520-42340	Over 52 and up to 80	2300-3530	30
7	Over 960	42340+	Over 80	3530 +	35

Note: Assessable employment income means the income after allowable deductions or expenses.

Other incomes are taxed at flat rates:

No.	Income Category	Residents	Non-residents
1	Business income	0.5%-5% of revenue (depending on type of business income)	
2	Gain on capital transfer	20%	0.1% on sales proceeds
3	Gain on securities transfer	0.1% of sales proceeds	
4	Gain on real estate transfer	2% of sales proceeds	
5	Income from prize-winning/heritance/gifts	10% on portion exceeding VND10 mil	
6	Income from royalty/franchising	5% on portion exceeding VND10 mil	
7	Interest/Dividend	5%	

FOREIGN CONTRACTOR TAX (FCT)

FCT, normally referred to as the Withholding Tax regime is very comprehensive, comprising VAT and CIT (or PIT), and is imposed on foreign entities/individuals not having a legal entity status in Vietnam but carrying out business here or earning income here as a foreign contractor.
Basically FCT is imposed in the following circumstances:

- A foreign entity's sale of goods/commodities within Vietnam (i.e. the delivery place is within the territory of Vietnam or whereby the foreign entity still controls the ownership/quality/pricing or bears some costs related to the distribution of the goods in Vietnam);
- A foreign entity's sale of goods/commodities which are associated with services to be performed in Vietnam, including but not limited to installation, commissioning and maintenance;
- A foreign entity's provision of services in Vietnam (with certain exceptions);
- Other income received in Vietnam in any form (irrespective of the location where the business is carried out).

Current regulations provide three methods for FCT filing, which results in different positions of tax payable with, each party's responsibility on tax administration as well as other accounting compliance requirements to be undertaken by the foreign contractor and the Vietnamese party.

DECLARATION METHOD (previously known as VAS Method)	The foreign contractor applies the Vietnamese Accounting System (VAS), pays VAT by the credit method and is liable to pay CIT on their net profit earned from the project/contract at the applicable rate, similar to a Vietnamese enterprise.
DIRECT METHOD (previously known as Withholding Method)	The foreign contractor pays FCT on a deemed withholding basis. FCT applies at various rates, depending on the nature/scope of the contract. It is the responsibility of the Vietnamese contracting party to register the contract with the local tax department, and to withhold and pay the applicable FCT to the local tax department.
HYBRID METHOD	This is a combination of the above two methods. VAT is declared using the credit method (same as Declaration Method), while CIT is declared on a deemed basis (same as Direct Method).

The FCT deemed tax rates are as below:

Business activity	VAT rate	CIT rate
Trading: distribution, supply of goods, raw materials, supplies machinery and equipment; distribution of goods, raw materials, supplies, machinery and equipment attached to services in Vietnam (including those provided in the form of domestic exports, except for goods processed under processing contracts with foreign entities); supply of goods under Incoterms	N/A	1%
Service, machinery and equipment leasing, insurance, lease of oilrig	5%	5%
Restaurant/Hotel/Casino management services	5%	10%
Lease of aircraft, aircraft engines, aircraft spare parts and sea going vessels	5%	2%
Construction and installation WITH supply of materials, machinery and equipments	3%	2%
Construction and installation WITHOUT supply of materials, machinery and equipments	5%	2%
Production, transportation and service with supply of goods	3%	2%
Transfer of securities, certificates of deposit, ceding reinsurance abroad, reinsurance commission	N/A	0.1%
Derivatives financial services	N/A	2%
Loan interest	N/A	5%
Income from royalties	N/A or 5%	10%
Others	2%	2%

IMPORT AND EXPORT DUTY

Export duties are primarily applied on agricultural products (e.g. rice, forest products and fish) and natural minerals. Rates may be up to 40% and are imposed on the F.O.B price of exported goods. Import duties are charged on a much wider range of goods. Rates are calculated taking product type and origin into account. There are three categories of duty rate as follows:

- Preferential rates are applied to goods imported from countries which have Most Favoured Nation (MFN) status with Vietnam;
- Ordinary rates apply to goods imported from other countries. These are 150% of the preferential rates applicable to MFN countries; and
- Special preferential rates apply to goods imported from countries which have a special preferential agreement with Vietnam, e.g. the ASEAN member countries under the CEPT and EU member countries under the Textile-Garment Treaty between Vietnam and the EU.

Vietnam is in the process of promoting imports, and co-operation with a number of countries (including ASEAN countries, India, Australia/New Zealand, Korea, Japan, China, Chile, Eurasia, EU) via various bilateral and multilateral trade agreements in order to reduce customs duty rates and the abolition of non-tariff trade barriers based on the relevant treaties.

OTHER TAXES AND FEES

Special Sales Tax

Special sales tax is only imposed on some kinds of goods and services, such as cigarettes, beer, alcohol, cars, motorbike, airplane, yacht, air-conditioner, gasoline, etc. The rate of special sales tax ranges from 5% to 70% (and in the milestone to increase up to 150% for automobile of some specific categories).

Natural Resources Tax

Natural Resource Tax is imposed on organisations or individuals exploiting natural resources such as oil, minerals, forest resources, marine products and natural water etc. Tax rates range from 0% to 35%, and in some cases tax is calculated using a progressive tariff dependent on the exploitation volume.

Environmental Protection Tax

Environmental Protection Tax is imposed on products that are considered to have any negative impact on human health or the environment such as coal, petrol, plastic bags, oil etc. It is not charged on goods in transit through the Vietnamese border, goods temporarily imported for re-export within the allowed time limit or goods directly exported or entrusted to export by manufacturers. Environmental Protection Tax is paid once either at the production or importation stage.

Losses Carried Forward

The Law on non-agricultural land use tax was effectively introduced from 1st January 2012, replacing the old 1992 Ordinance on Housing and Land Tax and its amendment in 1994 and governs the three following objects: (1) Residential land in rural and urban areas; (2) Non-agricultural production and business land, including land for the construction of industrial parks; land for the construction of production and business establishments; land for mineral exploitation and processing; and land for the production of construction materials and pottery articles; (3) Non-agricultural land which is used for commercial purposes.

Non-agricultural land which is used for non-commercial projects is not subject to this kind of tax. In addition, the regulations also provide nine cases of tax exemption and four cases of 50% tax reduction.

Basically, those who are responsible for tax declaration and tax payment are organisations, households and individuals that have the right to use tax-liable land. Where organisations, households or individuals have not yet been granted certificates of land use rights and/or certificates of ownership of houses and other land-attached assets, the current land users have to be the taxpayers.

The bases for calculation of non-agricultural land use tax are both the tax rate and the taxable price. The tax rate is differentiated between types of land, land with different pur- poses and land in excess of the set quota.

Tolls and Fees

Other than the above, there are some other tolls and fees such as leasing fees for land use.

Tax Audits and Penalties

Enterprises are audited by the tax authorities on a regular bas is, typically once in every three to five year period. In addition, the enterprise may also be subject to many other kinds of inspection from different Vietnamese authorities (for example, the Customs Department, General Department of Taxation, Ministry of Finance, State Audit). The time and scope of the inspection are notified by a written notice which is sent to the enterprise prior to the inspection.

Such tax audit or inspection may result in tax re-collections, interest on late tax payment and penalties. The penalties may include administrative penalties for breaches in tax filing procedures and penalties for incorrect tax declarations/tax fraud. The statute of limitation on tax penalties is two and five years respectively, counting from the date of breach to the date of issuing decision on imposing the penalty; for collection of under-declared or unpaid tax and interest on late tax payment, the time limit for collection is ten years backward as from the date of issuing tax violation minute (however no time limit if the taxpayer fails to do tax registration).

DOUBLE TAX AGREEMENTS

Overview

Vietnam has now concluded Double Tax Agreement (DTA) on avoidance and prevention of double tax with over 70 countries and others are at various stage of negotiation. Generally all of the DTAs benefit taxpayers by providing tax exemptions or tax credit schemes as a measure to avoid double taxation. The DTAs also provide restriction of tax rates on some specific kinds of income (see below) and the tax sparing system for developing countries in their initial economic development stage, such as Vietnam.

Tax Rates

The DTAs set out the maximum rates of tax applied to some kinds of income and if the tax rate stipulated by domestic Vietnamese law is different from that in the DTA, the lower rate shall be applied.

Recipient	Interest (%)	Royalties (%)	Dividend (%)	Notes
Algeria	10	7.5/10	5/10/15	2
Australia	10	10	10	1
Austria	10	7.5/10	5/10/15	1
Azerbaijan	10	10	10	1
Bangladesh	15	15	15	1
Belarus	10	15	15	1
Belgium	10	5/10/15	5/10/15	1
Brunei Darussalam	10	10	10	1
Bulgaria	10	15	15	1
Cambodia	(*)	(*)	(*)	3
Canada	10	7.5/10	5/10/15	1
China	10	10	10	1
Croatia	(*)	(*)	(*)	3
Cuba	10	10	5/10/15	1
Czech Republic	10	10	10	1
Denmark	10	5/15	5/10/15	1
Egypt	15	15	15	2
Estonia	10	10	5/10	2
France	Nil	10	5/15	1,EU/OECD
Finland	10	10	5/10/15	1
Germany	10	7.5/10	5/10/15	1
Hong Kong	10	7/10	10	1
Hungary	10	10	10	1
Iceland	10	10	10/15	1
India	10	10	10	1
Indonesia	15	15	15	1
Iran	10	10	10	1
Israel	10	5/7.5/15	10	1
Italy	10	7.5/10	5/10/15	1,EU/OECD

Recipient	Interest (%)	Royalties (%)	Dividend (%)	Notes
Ireland	10	5/10/15	5/10	1
Japan	10	10	10	1
Kazakhstan	10	10	5/15	2
Korea (South)	10	5/15	10	1
Korea (North)	10	10	10	1
Kuwait	15	20	10/15	1
Laos	10	10	10	1
Latvia	(*)	(*)	(*)	3
Lithuania	(*)	(*)	(*)	3
Luxembourg	10	10	5/10/15	1
Macedonia	(*)	(*)	(*)	2
Malaysia	10	10	10	1
Malta	10	5/10/15	5/15	1
Mauritius	(*)	(*)	(*)	3
Mongolia	10	10	10	1
Morocco	10	10	10	1
Mozambique	10	10	10	2
Myanmar	10	10	10	1
Netherlands	10	5/10/15	5/10/15	1,EU/OECD
New Zealand	10	10	5/15	1
Norway	10	10	5/10/15	1
Oman	10	10	5/10/15	1
Oriental Republic of Uruguay	(*)	(*)	(*)	2
Pakistan	15	15	15	1
Palestine	10	10	10	1
Panama	10	10	5/7/12.5	2
Philippines	15	15	10/15	1
Poland	10	10/15	10/15	1
Portugal	10	10	5/10/15	1,EU/OECD
Qatar	10	5/10	5/12,5	1
Romania	10	15	15	1
Russia	10	15	10/15	1
San Marino	10/15	10/15	10/15	1
Saudi Arabia	10	7,5/10	5/12,5	1
Serbia	10	10	10/15	1
Seychelles	10	10	10	1
Singapore	10	5/15	5/7/12,5	1
Slovakia	10	5/10/15	5/10	1
South Africa	(*)	(*)	(*)	3
Spain	10	10	10	1,EU/OECD
Sri Lanka	10	15	10	1
Sudan	(*)	(*)	(*)	3
Sweden	10	5/15	5/10/15	1
Switzerland	10	10	7/10/15	1
Taiwan	10	15	15	1
Thailand	10/15	15	15	1

Recipient	Interest (%)	Royalties (%)	Dividend (%)	Notes
Tunisia	10	10	10	1
Turkey	(*)	(*)	(*)	2
UAE	10	10	5/15	1
Ukraine	10	10	10	1
United Kingdom	10	10	7/10/15	1,EU/OECD
United States	10	5/10	5/15	2
Uzbekistan	10	15	15	1
Venezuela	10	10	5/10	1

Note

(1) Effective
(2) Not yet in force upon this publication
(3) Under negotiation

(*) The content of the DTAs is not available upon this publication
(EU)/(OECD) - Special treatment as further agreed under Protocol and Exchange of Notes between Vietnam and the concerned countries: As such, if Vietnam has signed an Agreement or Convention for the avoidance of double taxation with a third State which is a member of the European Union (EU) or Organization for Economic Cooperation and Development (OECD) (depending on the Agreement), under which Vietnam agrees to rates of taxation on interest/royalty/dividend (depending on the Agreement), including exemption from tax, at lower rates compared to those agreed with the concerned countries, the lower rates shall be applied.

- In a number of cases the limits set by the DTA are not lower than the present withholding rate under domestic law. Therefore the domestic rates will apply.
- Interest derived by certain government bodies is exempt from withholding tax.
- Royalty withholding tax rates vary for certain types of royalties.

Tax exemption for a short-term stayer

Generally, a short-term stayer is exempt from tax in the country where the income is earned by virtue of the Tax Treaty if the following three conditions are met:

- The number of days in Vietnam is less than 183 calendar days;
- The source of remuneration is not a resident of Vietnam; and
- The remuneration is not borne by the permanent establishment in Vietnam. However, the rules of the tax treaty are not automatically applied without any conditions and the tax payer needs to make specific application to the tax authority if tax exemption is claimed.

Tax sparing credit system

In order not to diminish existing tax incentives given by the Vietnamese Government, some tax DTAs recognise the tax sparing credit system (i.e. exemption of deemed foreign tax) by a specific tax treaty due to strong requests from developing countries as well as from political considerations of economic co-operation with such countries. Accordingly, the tax exemptions according to Vietnam law are entitled to the tax sparing credit where the resident of the other country shall be entitled to credit the Vietnamese tax that would have been paid according to the laws of Vietnam (and the treaty) if the Vietnamese tax had not been reduced or relieved in accordance with the special incentive measures designed to promote economic development in Vietnam. This tax sparing credit system normally terminates a certain number of years after the tax treaty is effective.

ACCOUNTING & AUDIT

LEGAL FRAMEWORK OF THE VIETNAMESE ACCOUNTING SYSTEM

The Legal framework of the Vietnamese accounting system was stipulated in the Accounting Law issued by the National Assembly of Vietnam in 2003. New regulation was approved in late November 2015 and shall take effect from 01 January 2017.

The Accounting Law provides the legal framework for accounting, and corporate reporting in Vietnam. Under Accounting Law, all companies are required to prepare their financial statements in accordance with Vietnamese Accounting Standards (VAS), Vietnamese Accounting Regimes and detailed guidelines of the Ministry of Finance.

The Accounting Law endorses the alignment of Vietnamese Accounting Standards with International Standards for the preparation of corporate Financial Statements.

Between 2000 and 2006, the MOF released 26 Vietnamese Accounting Standards (VAS) and 37 Vietnamese Standards of Auditing (VSA) based on international accounting and auditing standards. Circular No. 200/2014/TT-BTC dated 22 December 2014 issued by the MOF which came into effect since the fiscal year 2015 provides new guidelines for enterprise accounting regimes. One of the most important points is that Enterprises are now allowed to construct and design their own accounting voucher in compliance with the requirement of the Accounting Law, their management needs and operational characteristics. In case the enterprises cannot create the vouchers on their own, they can apply the accounting voucher forms guided in the Circular.

THE ACCOUNTING SYSTEM IN VIETNAM

Enterprises with foreign-owned capital and foreign parties to business co-operation contracts (collectively FIE's), are required to adopt the Vietnamese accounting system, Vietnamese Accounting Standards and their interpretive guidance. Generally, companies do not need to register their accounting system if they are fully complying with the standard accounting system. However, when a company wishes to adopt any supplement or revision to the standard, they must register and get approval from the MOF before implementation.

The general requirements of the Vietnamese Accounting System include:

- The use of Vietnamese language or both Vietnamese language and another widely used language in the preparation of accounting records.
- The use of Vietnamese Dong as the currency unit in accounting. Only in limited cases can FIEs use a 'foreign currency' as the currency unit in their accounting records.
- Chart of accounts must comply with the Vietnamese Accounting Regulations. If business enterprises wish any changes in chart of accounts, they must register and get approval from the MOF before application.
- Numerous reports must be produced as specified in the Vietnamese Accounting Regulations.

THE VIETNAMESE ACCOUNTING STANDARDS (VAS)

Accounting treatments are not always clearly stipulated in the Vietnamese Accounting Standard and may therefore be made based on the International Accounting Standard. The reason is that it is considered as the implicit policy of the MOF to use the International Accounting Standard is to fill the gaps left by the not-yet-fully developed "fair accounting practice" in Vietnam. Needless to say, its application should be pre-approved by the MOF.

ACCOUNTING CURRENCY

As noted above, it is required that companies in Vietnam (including foreign invested com- panies) must use Vietnamese Dong as the currency unit in accounting. However, where the company mainly receives income and makes payments in a foreign currency, the company could use a foreign currency regulated by the MOF as its accounting currency. The company must be self-responsible for this and notify the tax authority upon implementation.
Companies with foreign capital established and operating in Vietnam and using foreign currency as the accounting monetary unit shall concurrently make financial statements in the accounting monetary unit (foreign currency) and convert these statements into Vietnam Dong for submission to state management agencies.

FISCAL YEAR

The fiscal year applicable to FIEs in Vietnam is normally a calendar year i.e. 1st January - 31st December. FIEs may notify to the local tax authority their own 12-month fiscal year, commencing from the first day of a quarter and ending on the last day of the previous quarter in the following year.

ACCOUNTING STAFF

Every enterprise is required to employ a Chief Accountant who must satisf y the criteria and conditions stipulated by the Law on Accounting. A foreigner may be appointed to act as the Chief Accountant of the enterprise, provided that he/she meets the prescribed conditions and he/she has a certificate of accounting expertise or an accounting/auditing certificate issued by a foreign organisation recognised by the MOF; or an accounting/auditing professional practising certificate issued by the MOF; or a Chief Accountant certificate obtained after having passed the chief accountant's training course as prescribed in the regulations of the MOF.
Mazars offers a Chief Accountant service whereby we take the post of Chief Accountant and our client outsources some or all of the Accounting to us. It is not possible for a firm to be both Auditor and Chief Accountant.

AUDIT

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 permitted to operate in Vietnam.
FIEs are required to submit audited financial statements to the authorities (e.g. licensing authority, local tax authority, etc.) within 3 months from the date the fiscal year ends.
Representative Offices and Project Management Offices are not subject to audit and only have to produce Financial Statements to meet the obligations of the parent. However they are required to keep the accounting records under simplified VAS

LABOUR & IMMIGRATION

SALARY

Enterprises directly employ and agree salaries with their employees. However, they must comply with the regulations on minimum wages. The Government approves the base salary (previously known as common minimum salary) and regional minimum salary applicable from time to time.
In respect of expatriates, these costs would depend on the residency status and the remune- ration structure of the expatriate. There are other administrative costs associated with the employment of expatriate staff such as work permit, residency registration, insurance, etc.

OVERTIME

Overtime working is allowable upon satisfying the following conditions:

- With the consent of the employee;
- Ensuring the overtime hours of the employee do not exceed 50% of the normal working hours in a day. In case of weekly basis application, the total normal working hours and the overtime hours cannot exceed 12 hours in a day or 30 hours in 1 month and the total cannot be more than 200 hours in a year, except for some cases stipulated by the Government when it can be extended to 300 hours;
- After an overtime working period over successive days in a month, the employer must arrange for the employee to take compensatory leave.

Employees who work overtime are paid at least 150% of the base salary unit on weekdays, 200% at weekends, and 300% in respect of holiday and paid-leave. Employees working at night will also get some additional payment.

In some special cases such as national defense, protecting human life, preventing and working on the consequence of natural disasters, fire, epidemics, etc., the employer has the right to require the employee to work overtime on any day and the employee is not entitled to decline.

COMPULSORY INSURANCE

Generally, the employer and the local employee when entering into a labour contract are required to make contributions to the social insurance, health insurance and unemployment insurance funds (except for some cases such as contracts with a term less than three months). Expatriates working for organisations operating under the laws and regulations of Vietnam are subject to compulsory Health Insurance contribution.

Compulsory insurance includes:

- Social insurance: 18% of the salary contributed by the employer and 8% of the salary contributed by the employee. The mentioned salary includes basic salary and allowance as stipulated in the labor contract, but capped at 20 times of base salary. From 1 June 2017, the portion contributed by the employer shall be reduced to 17.5%.
- For health insurance: 3% of the salary contributed by the employer and 1.5% of the salary contributed by the employee. The salary used for health insurance is same as for social insurance calculation.
- For unemployment insurance: 1% of the salary contributed by the employer and 1% of the salary contributed by the employee. The mentioned salary includes basic salary and certain allowances as stipulated in the labor contract, but capped at 20 times of regional minimum salary.

TRADE UNION

All Enterprises are subject by Law to Trade Union fund contributions. Setting up Trade Union is optional and enterprises have to satisfy certain conditions for this.

WORK PERMITS

Foreigners working in Vietnam must obtain a work permit. The term of a work permit shall not exceed 2 years, and these are renewable subject to certain conditions. Work permit exceptions are applied in certain cases as stipulated by the laws and the foreigners must obtain a certification of work permit exemption which has a term of 2 years as maximum

> “FIEs have to be audited once a year in accordance with Vietnamese regulations. The audit must be carried out by an independent auditing company permitted to operate in Vietnam.”

LAND

OVERVIEW

In relation to land issues, the Government in Vietnam has issued many regulations to create a stable and long-term basis to facilitate advantages to Foreign Invested Enterprises (FIEs); particularly that FIEs have the right to enjoy a return on investment in land; have the right to a mortgage, have the ability to renew the lease on the land from the Government upon expiry. In addition, the new Law on Land of 2013 extended the rights of FIEs in areas such as land lease options, especially in situations where both domestic and foreign investors have co-invested in a development and require equal rights.

Issues in relation to the use of land are mostly governed by the Law on Land and its guiding documents. In addition, the Civil Code also covers general issues relating to land, real estate and property. Besides, FIEs doing business in real estate business sector also have to comply with the system of law on real estate business and/or residential housing.

LAND USE RIGHTS (LUR'S)

Normally, foreign investors can obtain LURs (a) by way of a JVC to which a local Vietnamese partner contributes an LUR as a capital contribution, or (b) by way of land leased directly from certain permitted lessors such as the State. Nevertheless, FIEs implementing investment projects for the construction of houses for sale or for a combination of sale and lease may also be allocated land with land use levy.

LAND LEASE

A foreign investor may lease the land directly from the Government after he/she establishes an FIE in Vietnam. Previously FIE's in Vietnam could only lease land from the Government or sublease land from an infrastructure developer. The current Land Law also allows FIE's to lease land from:

- Vietnamese economic organisations, including State owned companies, private joint stock companies and limited liability companies;
- Overseas Vietnamese (Viet Kieu); or
- An existing foreign invested company which leases land from the Government and develops infrastructure facilities on the land, provided that this existing foreign invested company has paid land rental for the whole land lease term.

LEASE TERM

The lease term must be consistent with the duration of the approved project provided that it does not exceed 50 years or, in some circumstances, 70 years. The extension of the lease term may be allowed by the Government upon expiry if the lessee wants to continue to use the land.
To lease an LUR, there must be a suitable written contract notarised by the State notary public. In respect of family and single dwelling homes, certification may be effected by either the State notary public or the People's Committee of the commune, ward or township where the land is situated.

LAND RENT INCENTIVES

Land and water surface rent exemptions and reductions apply to a number of investment projects which satisfy certain conditions such as investment in encouraged sectors or certain fields of business and/or encouraged geographical locations. FIEs and foreign parties to BCCs may enjoy land and water surface rent exemptions of between 3 years to the whole operation period and land and water surface rent reduction in some cases.

NOTARISATION OF LAND CONTRACTS

Under the prevailing Vietnamese Land Law, all land transaction related contracts must be notarised by the notary public office, except for the transfer or lease of a property of which the owner or the landlord is licensed to do real estate business.

HOUSES/APARTMENTS OWNED BY FOREIGNERS

Under the prevailing regulations, the following foreign organisations and individuals are allowed to purchase and own residential houses/apartments in Vietnam (subject to certain conditions and circumstances):

- Foreign entities who invest in project-based housing construction in Vietnam as prescribed in the Law on Residential Housing and corresponding regulations of law;
- Foreign-invested enterprises, branches, representative offices of foreign enterprises, foreign-invested funds and branches of foreign banks operating in Vietnam;
- Foreign individuals who are allowed to enter Vietnam.

"Vietnam has now concluded Double Tax Agreement (DTA) on avoidance and prevention of double tax with over 70 countries. The application of such DTA is however not automatic and should be subject to appropriate notice to the relevant authorities."

FOREIGN EXCHANGE CONTROL

BANK ACCOUNTS

Companies are required to open and operate a VND currency account at a commercial bank licensed to operate in Vietnam. They can also open a foreign currency account if the operation requires. Organisations acting in Vietnam as a foreign contractor or their registered office may also open a bank account in Vietnam.

The procedure and required dossier to open a bank account varies from bank to bank.

FOREIGN EXCHANGE CONTROL IMPLICATIONS

The foreign exchange regulations of Vietnam require all transactions within the country and between Vietnam residents be made in VND. The laws prescribe the number of transactions which a company can conduct in a foreign currency. These often include:

- payment for the purchase of goods and services from individuals and organisations outside Vietnam;
- repayment of foreign loans and interest;
- collection of turnover from the provision of goods and services to foreign customers outside Vietnam; and
- payment of salaries, bonuses, and allowances to expatriate employees.

OVERSEAS REMITTANCE

Under current regulations, FIE's are only permitted to transfer after-tax profits abroad (tax on remittance of profits abroad is no longer applied) either at the end of the fiscal year or upon termination of the investment in Vietnam. The Enterprise must fulfill its tax and financial obligations to the State of Vietnam and submit its audited financial report. It is also a requirement that the CIT position must be finalised.
FIE's are required to submit a Notification of remittance of profit abroad to the relevant tax authority seven business days in advance of the remittance date.

PRACTICAL INFORMATION

TRANSPORTATION

In the cities there are thousands of taxis. Stick to reputable firms and maybe get advice on which ones to use before you travel. Taxi fares are metered and should be low by western standards. From HCMC airport to the city it should be no more than 8 USD and from Hanoi Airport (Noi Bai) to the city should be no more than 20 USD. There are regular flights between all major cities in Vietnam. There are ATM's at the airport to get local currency.

It is relatively inexpensive to hire a car and driver for the day if it is necessary to visit an outlying town or an industrial park well away from the city.

Bus transport dominates for long distances and you will find that there are literally millions of motorbikes (below 125cc) and these are everywhere! Motorways (or Expressways) are a new concept for the Vietnamese, and traffic is growing rapidly. The major roads are dangerous due to outdated design, an inappropriate mix of traffic (do not be surprised to see farm animals on major roads) and no Highway Code to speak of.

According to the International Air Transport Association (IATA), Vietnam is projected to be the third fastest-growing market for freight and international passengers behind the People's Republic of China and the United Arab Emirates, at 10.2% annually until 2014.

TIME RELATIVE TO GREENWICH MEAN TIME (GMT)

Vietnam is seven hours ahead of GMT year round, but does not operate daylight saving time. So the time difference to the UK changes between 6 and 7 hours (France 5 and 6 hours) depending on the time of the year.

BUSINESS HOURS

Businesses in Vietnam generally operate an eight-hour day between 8:00am and 5:00pm. A one-hour lunch period is usually taken between midday and 1:00pm. Most business offices are closed on Saturday and Sunday. Retail hours are considerably longer.

PUBLIC HOLIDAYS

Vietnamese people celebrate 10 public holidays a year.

01 Day / **01 January | International New Year's Day**

05 Days / **Normally late January or February | Vietnamese New Year's Days**

The date of Tet Nguyen Dan is based on the lunar calendar and takes 5 days.
During these holidays, local public services, shops, and restaurants are often closed, and consumer prices tend to increase significantly.

01 Day / **Based on the Lunar Calendar | Vietnamese Kings' Commemoration Day**

A traditional holiday commemorating
the Mythical Hung Kings - The first king of Van Lang or Lac Viet.

01 Day / **30 April | Liberation Day**

Celebrates the reunification of Vietnam in 1975.

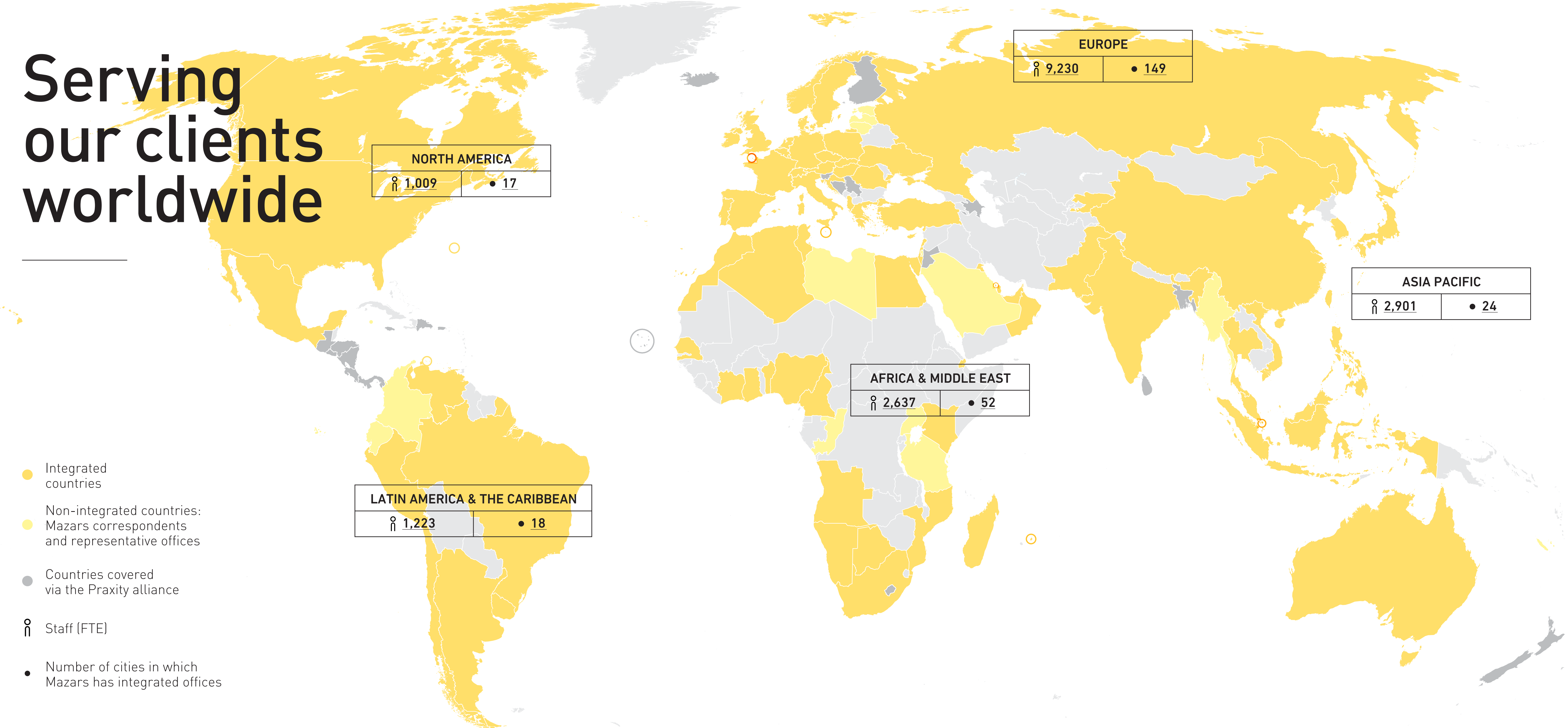
01 Day / **01 May | International Worker's Day**

Celebrates the workers' economic and social achievements.

01 Day / **02 September | Independence Day**

Celebrates the declaration of Vietnamese Independence.

Serving our clients worldwide



- Integrated countries
- Non-integrated countries: Mazars correspondents and representative offices
- Countries covered via the Praxity alliance
- Staff (FTE)
- Number of cities in which Mazars has integrated offices

These figures are valid as of August 31st, 2016. For up-to-date information, please visit www.mazars.com/worldwide

Mazars is present in 5 Continents.

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