How to Set Up a Representative Office in Vietnam

A Representative Office (RO) offers a low-cost entry for companies seeking to gain a better understanding of the Vietnamese market. As such, this option is among the most common for first-time entrants to the Vietnamese market and often precedes a larger presence within the country.

What are ROs permitted to do?

ROs are permitted to engage in the following activities:

1. Conducting market research;
2. Acting as a liaison office for its parent company;
3. Promoting the activities of its head office through meetings, and other activities, that leads to business at later stages.

Representatives offices are dependent on their parent company and are not allowed to generate their own profits or enter directly into contracts. They are also not allowed to issue invoices.

What do you need to get a license?

Pre-licensing checklist for setting up a RO:

1. File an application for setting up a RO with company chop or seal;
2. Appointment letter of Chief of RO with identification documents and company seal;
3. Power of attorney in favor of consultant to submit the application dossier;
4. Certificate of Incorporation for the Company and/or Business Registration Certificate of the Company;
5. Audited financial report of the company for the latest fiscal year;
6. Memorandum of Understanding (MoU) of leasing office or leasing contract;

7. Documents providing legal rights of landlord regarding the right of leasing office.

For steps 1 to 6, the foreign entity would require one notarized and consularized copy of each document and a translated copy in Vietnamese by a Vietnamese competent authority.

A signed leasing contract is also required before registering a RO in Vietnam.

What do you need to do after you get the license?

Post-licensing checklist for setup a RO:

8. Make a seal for the RO;
    - License on the establishment of RO
    - Passport of Chief of RO if foreigner or passport/ID card if Chief is Vietnamese
9. Register a Tax code for RO;
    - Declaration to register a tax code
    - Power of attorney
    - Certificate of seal registration
    - Certificate of RO in Vietnam
10. Open a bank account of RO;
    - License on the establishment of RO
    - Certificate of seal registration
    - Certificate of tax code registration
    - Letter of authorization appointing the authorized signatories of the bank accounts
11. Announcement of the establishment of RO of Company.

For steps 8 to 10, notarized and translated documents will be required to complete the process.

How long does it take to set up an RO?

ROs can be set up in between six to eight weeks. We recommend hiring a professional service to deal with the myriad of laws and procedures.

Given the absence of in-country revenue and associated licensing requirements, the setup process for this option does not entail as many bureaucratic procedures as others.

An RO license is valid for five years but can be extended for another five years.

What comes next?

Hiring, tax, and reporting.

There is no cap on the number of local and expatriate employees that a representative office can hire as long as their employment is properly documented.

All expatriate hires including the chief representative are required to have a work permit. ROs can hire staff directly or use the assistance of recruiting agencies.

An RO is not subject to Vietnamese corporate income tax (CIT). However, it is responsible for declaring its employees' personal income tax (PIT).

In order to determine payable tax, ROs have to undertake a tax audit that checks all revenues and expenses during the tax term to establish grounds for declaring and paying tax.

The RO also has to send reports of its activities of the previous year to the Department of Industry and Trade before January 30 of each year.

Tax risks if RO viewed as Permanent Establishment

As discussed earlier, an RO is only permitted to do market research activities and act as a liaison office for its parent company. It cannot engage in commercial activities or support the parent company with its commercial activities in Vietnam.

A Permanent Establishment (PE) is defined as per local laws as well as the double tax avoidance (DTA) agreement between Vietnam and other countries. Generally, the PE definition under a DTA takes precedence over domestic regulations.

If a foreign business wants to convert the RO into a PE but has been carrying out activities as per local laws, it could activate a licensing risk. Therefore, foreign businesses should ensure that their RO performs activities as per the DTA guidelines. In addition, if the RO performs activities that are outside its scope, it may be subject to additional tax in Vietnam.

To avoid any licensing or tax risks in case the RO is treated as a PE, businesses are advised to refrain from getting their ROs involved in buying and selling activities between two parties or any other activities generating revenue.

Foreign investors looking to establish a presence in Vietnam should use the services of registered local advisors who can ensure their set up process is accurate while complying with the relevant DTAs and local regulations.

Vietnam Cuts License Fees for 5 Industries to Reduce COVID-19 Burden

Vietnam's Ministry of Finance (MoF) has cut license and administrative fees for several industries to help them recover from the COVID-19 pandemic.

The cut in fees range from 20 percent to 50 percent and took effect on May 5. The reduction will remain in effect until December 31, 2020, following which normal prices will be applicable.

Industries such as construction, banks, financial services, travel, and water resources will benefit.

We highlight the five sectors eligible for the rate cuts.

5 industry types eligible

Banks and credit organizations

The Ministry of Finance (MoF) issued *Circular No 33/2020/TT-BTC,* which sets the rates of collection and payments of fees and operational licenses for new banks and credit institutions. From May 5 until the end of the year new banks and credit institutions will have to pay just 50 percent of licensing fees equivalent to approximately US$3,000 (VND 70 million).

Construction

As per Circular *34/2020/TT-BTC*, there will be a 50 percent reduction in construction fees. In addition, the fees for the construction capacity certificate has been reduced to US$21 (500,000 VND) as compared to the current US$43 (1,000,000 VND). For individual applicants, this certificate will cost US$6 (VND 150,000) as compared to the current US$13 (VND 300,000).

Tourism

For tourism companies license fees for international and domestic firms have been reduced by half from May 6 until the end of the year as per *Circular 35/2020/TT-BTC*. In addition, the fee for a tour guide card has been reduced US$4 (VND 100,000) from the current US$14 (VND 325,000).

Securities

As per *Circular 37/2-2-/TT-BTC*, the securities fees and charges will be reduced to 50 percent for rates as per Article 2 in *Circular 272/2016/TT-BV* with some exceptions.

Water resources

As per *Circular No 36/2020/TT-BTC*, fees for evaluation and issuing new permits for water resources exploration and exploitation will be reduced by 20 percent. The fee for using hydrological data will be cut by 30 percent.

Further incentives in pipeline

Further clarification and details are likely to be issued by the government. Vietnam continues to work towards incentives for different sectors. Further circulars on investment incentives are likely in the coming weeks. Most recently, Vietnam's central bank – the State Bank of Vietnam (SBV), cut policy interest rates from May 13. The refinancing rate was reduced to 4.5 percent from the current 5 percent, while the discount rate was cut to 3 percent from the current 3.5 percent. The cut is the second time for the bank in less than two months.

A Guide to Intellectual Property in Vietnam

Intellectual property (IP) is a key concern for every business, no matter where they are operating. This is no less true in Vietnam; while the country is a signatory to numerous IP conventions, there are still many reasons for foreign companies operating there to keep a close eye out for IP violations. Therefore, it is crucial that foreign investors have a clear understanding of how IP operates in Vietnam and what possible recourses are available should they find themselves dealing with a violation of their property.

A history of IP in Vietnam

In 2005, Vietnam's National Assembly passed the Law on Intellectual Property Rights (IPRs); this law was later amended and supplemented in 2009.

In September 2010, in an effort to strengthen the protection of Intellectual Property Rights after entering into the Bilateral Trade Agreement (BTA) with the United States and participation in the World Trade Organization (WTO), Vietnam's government issued stricter administrative sanctions for violations of industrial property rights, along with some important changes to IP regulations in Vietnam.

Aside from local IP legislation, Vietnam also participates in international IP conventions such as the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention, the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, the World Intellectual Property Organization, the Patent Cooperation Treaty, the Madrid Protocol and the recently signed Hague agreement.

Understanding IP in Vietnam

As per the World Intellectual Property Organization (WIPO), IP is defined as "creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce."

There are two types of IP: registered and unregistered. For registered IP, you must apply to have your rights recognized at an official IP organization, such as the Intellectual Property Office in the United Kingdom. Types of registered IP include patents and registered trademarks. For unregistered IP, you automatically have IP rights over your creation. Types of unregistered IP include copyright, common law trademarks and database rights, confidential information, and trade secrets.

Due to the fact that Vietnam joined the World Trade Organization (WTO) in 2007, the country has had to meet the minimum IP standards set out by that organization – this has also meant that IP in Vietnam has many similarities with IP in more developed countries. As such, Vietnam has divided its IP system into three areas:

- Copyright and related rights – administered by the Copyright Office of Vietnam;
- Industrial property rights – administered by the National Office of Intellectual Property (NOIP); and
- Rights to plant varieties – administered by the Plant Variety Protection Office.

The NOIP holds the role of chief coordinator and is the agency which, under the aegis of the Ministry of Science and Technology, assumes the functions of exercising state management and providing services in the field of IP. This includes administrating the registration of industrial designs, trademarks, brand names, and other industrial property rights, and conducting basic legal appraisals to settle intellectual property disputes.

Before delving into the specifics of each type of IP, it is worth noting that the Paris Convention's "priority rights" can aid in the local registration of patents, designs, and trademarks by allowing rights previously registered elsewhere to become effective in Vietnam. However, this must be completed within the specified time limit.

Copyright

Registration of copyright is conducted at the National Copyright Office. Copyright IP also applies to computer programs that cannot be patented. Vietnam copyright IP is governed by the Berne Convention on copyright which states that the minimum protection from publication will be:

- 75 years for cinematographic works, photographic works, dramatic works, works of applied art and anonymous works; and
- 50 years after the death of the author for other works

While no copyright registration is required in Vietnam, most patent experts suggest registering copyrights with the country's copyright authorities.

Patents

Vietnam's patent law operates under the "first to file" principle. The country makes a distinction between patents and utility solution patents:

- Invention patents have maximum protection of 20 years;
- Utility patents have maximum protection of 10 years; and
- Industrial designs have maximum protection of five years (however, this is renewable for two consecutive periods of five years).

Individual patent registrations (such as industrial designs and inventions) must take place in Vietnam. However, for patent rights for things other than industrial designs, applications can be handled by the Patent Cooperation Treaty.

Trademarks

The trademark system in Vietnam protects symbols, three-dimensional objects, colors, and other visual devices that are used to identify a business's products or services. Trade name rights are established through use rather than being formally registered. With respect to online domains, these are handled on a first-come, first-served basis.

- Trademarks last for 10 years and can be renewed indefinitely for further ten-year periods; and
- Registration can take up to 15 months to complete.

Trademarks can be registered in Vietnam or by using the Madrid Protocol.

IP rights enforcement

Companies seeking to enforce their IP rights in Vietnam have three options:

- Administrative action;
- Civil court action; and
- Criminal prosecution.

Most IP disputes are handled through administrative action. Possible actions that can be taken by the relevant government authorities include the issuance of warnings, fines, the seizure or destruction of the counterfeit goods, etc.

However, Vietnam's government agencies have struggled to keep pace with the changes taking place within the laws. Therefore, many of the best ways to deal with IP issues in Vietnam is to have a good defense so that offensive action will only need to be rarely taken.

Defensive actions include making sure employment contracts have clear IP-related clauses, being on the lookout for production overruns (which could be a sign that your products are being sold elsewhere), talking with other foreign businesses in the same operating field to learn best practices, and registering your IP rights.

As part of the European Union-Vietnam Free Trade Agreement (EVFTA), which is expected to come into effect soon, Vietnam will have to further tighten up its IP protection laws. Additionally, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is pushing Vietnam to meet high standards of IP rights.

Vietnam gets serious on IP protection

Indicating that Vietnam is taking IP issues seriously, it issued *Decree No 22/2018/ND-CP* in April 2018, updating guidelines and numerous articles focusing on copyright under the Civil Code and the Law on Intellectual Property. More recently, in April 2020, the IP office issued *Official Letter No 5360/SHTT-NDHT* on assistance to individuals filing international patent applications.

In August 2019, the Vietnamese government has also issued *Decision No. 1068/QD-TTg* or National IP Strategy on Intellectual Property Strategy with a Vision to 2030. The document will serve as a guideline for ministries, sectors, and state agencies to adopt IP rights – the first time Vietnam has done this as a national strategy.

As Vietnam, becomes more integrated globally, in part through its free trade agreements, IP rights will become an even more important factor in how organizations view the business climate in Vietnam, particularly as the country's economy and technology continue to develop. Fortunately, Vietnam is keen to develop and work on its IP laws to help push it further in the global economy.

Vietnam Introduces Resolution to Deal with Origin Fraud and Transshipment

- *Vietnam introduced Resolution 119/NQ-CP to address increasing cases of transshipment and origin fraud.*
- *The resolution aims to promote cooperation among government agencies and more stringent product origin checks.*
- *The move is in line with Vietnam's desire to satisfy US rules of origin requirements and address the trade surplus with the US.*

The Vietnamese government introduced Resolution 119/NQ-CP *(Resolution 119)* in December 2019 to address increasing cases of origin fraud and illegal transshipment. Origin fraud or transshipment is when exports from one country, such as China, are minimally processed or altered during a brief stop in a third country, such as Vietnam, and then re-exported as a product originating from that country.

Industries particularly susceptible to transshipment include textiles, seafood, agriculture, honey, steel, iron, aluminum, and timber.

With the resolution, the government hopes to enhance important trading partners' trust in Vietnamese goods and regulations of the Vietnamese government in trade.

Origin fraud and transshipment cases

Origin fraud became more widespread in 2019. According to the Trade Remedies Authority of Vietnam, there were 20 investigations of products under suspicion of origin fraud. Particularly, steel exports were investigated in six of those 20 cases.

In October 2019, US$4 billion of aluminum shipment was seized by Vietnam Customs, which was on its way to the US and other countries. While only 15 percent of tax is levied on Vietnam's aluminum exports to the US, China's are subject to 374 percent. This is just one of many cases of origin fraud in Vietnam as a result of the US-China trade war.

The General Department of Vietnam Customs pointed out two main reasons for the prevalence of origin fraud.

First, Vietnam's legal requirement for application of certificate of origin (CO) is not comprehensive enough and the penalty mechanism has little preventive power. Currently, businesses that commit origin fraud are only fined with VND200 million (US$8,625), while they can earn millions on each shipment.

Second, as some countries (including the US) allow exporters to certify and declare the imports' origin themselves (without any further inspection from the authority), some firms take advantage of this to commit origin fraud outside Vietnam's territory.

Origin fraud can have a significant determinantal effect on compliant businesses and consumers' trust in products and services. It can even hinder the prospects of Vietnam joining other free trade agreements (FTAs) due to distrust from trading partners.

In light of Vietnam's participation in FTAs such as the Comprehensive and Progress Agreement for Trans-Pacific Partnership (CPTPP) and Vietnam-EU FTA (EVFTA), the Ministry of Industry and Trade, Ministry of Finance, Vietnam Chamber of Commerce and Industry (VCCI) and General Department of Vietnam Customs came up with *Resolution 119* to address the issue.

Resolution 119

Resolution 119 aims to promote cooperation among ministries in information sharing and the product inspection process. We highlight five main points of the resolution.

1. Related ministries are in charge of monitoring, publicizing and updating information of export goods that are under investigation for origin fraud. The ministries would pay close attention to specific categories of goods which simultaneously have a sudden increase in both import and export. The Trade Remedies Authorities also announced 25 items that need trade remedies investigation, such as plywood, electric bicycles, steel.

2. The Ministry of Industry and Trade (MoIT) should soon introduce policies to encourage research and development and to attract foreign direct investment into the supporting industry, which is striving for a higher localization rate. Higher localization rates in the products would entitle exporters to preferential CO, which allows them to pay lower or no customs duty under relevant FTAs or the Generalized Schemes of Preference (GSP).

3. Vietnam Customs still allows exporting firms to certify the products' origin themselves, and then submit the CO online to the Customs Department. However, the authority would tighten their control over the CO and raise the frequency of their inspection for these firms. Others would still follow the procedure stipulated in *Decision 31/2018/ND-CP.*

4. International cooperation would be further promoted through agreements to monitor Vietnam's goods outside Vietnam's territory.

Resolution for sustainable trade

To ensure a transparent future for Vietnam's international trade, firms also need to proactively adhere to exporting guidelines and make proactive decisions about the production of goods for export.

The new regulations will hopefully ensure the sustainable development of Vietnam's global trade and rights of businesses that are compliant. This is imperative given Vietnam's participation in several FTAs and bilateral agreements which entail applicable guidelines on rules of origin.

If the issue is not addressed, Vietnam could face slower export procedures and outright tariffs and duties, hampering the country's export-oriented economy.

Customs Procedures in Vietnam: Documentation and Processing

Following the relevant customs procedures when importing or exporting goods from Vietnam is one of the most vital aspects of doing business in a country where manufacturing costs are leveraged to its favor.

Goods to be imported or exported are subject to the relevant customs clearance standards, which effectively check the quality, specifications, quantity and volume of the goods. Currently, these standards are set out under Law No. 54/2014/QH13 on Customs as well as numerous implementing decrees and guiding circulars.

Following the standards set by the Vietnamese government, certain imported goods are subject to inspection. For example, imported pharmaceuticals must undergo testing and also include documents detailing product use, dosage and expiration dates (written in Vietnamese), which must also be included in or on the product packaging.

Customs documents required in Vietnam

Companies that import or export goods must submit a dossier of documents to the customs authorities. The dossier must include at least the company's business registration certificate and import/export business code registration certificate.

If importing, it's best to register your business on the National Business Registration Portal website and register customs declaration on the Vietnam National Single Window Portal.

The following are additional documents that may be requested by authorities depending on the imports in question:

Imported goods require the following documents:

- Bill of lading;
- Import goods declaration form;
- Import permit (for restricted goods);

- Certificate of origin
- Cargo release order;
- Commercial invoice;
- Customs import declaration form;
- Inspection report;
- Packing list;
- Delivery Order (for goods imported through seaports)
- Technical standard/health certificate; and
- Terminal handling receipts.

Exported goods need the following:

- Electronic Export Customs Declaration (E-Form HQ/2015/XK)
- Bill of lading;
- Contract
- Certificate of origin;
- Commercial invoice;
- Customs export declaration form;
- Export Permit
- Packing list; and
- Technical standard/health certificate.

Processing times

Export shipment procedures are typically completed on the same day. Import shipments typically take around one to three days to complete for full container loads (FCL) and less than container loads (LCL), respectively.

According to Vietnamese Customs, companies that regularly export and import the same exact goods within a given period may use a single customs declaration form for carrying out the relevant customs procedures if the goods are listed under the same purchase and sales contract and are delivered within the delivery time listed on the purchase contract.

Priority customs treatment

For those seeking to reduce customs compliance costs in Vietnam, it is possible to apply for priority treatment. Under priority treatment, qualifying companies will become eligible for a range of benefits that are sure to reduce customs clearance times and thus reduce costs.

Qualifying for priority treatment

Companies that meet the following standards, outlined under Decree No. 08/2015/ND-CP, will become eligible for preferential customs treatment:

- Compliance with the law on customs and taxation from the date on which the enterprise files a priority application for a period of two years.
- Compliance with the law on accounting and auditing and subsequent compliance with Vietnamese Accounting Standards (VAS)
- Maintenance of a system and process for managing, monitoring and controlling import and export supply chains.
- Maintenance of specific export and import turnover requirements. For those importing and exporting, an annual turnover of US$100 million is required. For those exporting goods made in Vietnam, an annual turnover of just US$40 million has been set while Vietnamese exporters of agricultural goods are only required to show turnover of US$30 million.

Benefits afforded under priority treatment program

According to the *Law on Customs*, companies qualifying for the priority treatment program will be eligible to benefit from the following:

- Exemption from examination of supplementary customs documentation
- Exemption from physical inspection of goods
- Ability to submit incomplete customs declarations. It should be noted that within 30 days from the date of registration of incomplete customs declarations or submission of documentary evidence in substitution of customs declarations, customs declarants will be required to submit complete customs declarations.
- Prioritized access when carrying out tax formalities for goods in accordance with the law on taxation.

Optimizing your customs experience

Vietnamese customs procedures are complex and often subject to change. For up to date information on clearance regulations, processing times, or applying for the priority program, it is best to consult with government officials or professional service firms.

Vietnam’s Import and Export Regulations Explained

Once an investor has set up their trading company within Vietnam, it is important that their workers gain a strong understanding of the country’s import and export regulations and procedures.

Below we lay out the key regulations that companies should be aware of before starting their trading activities in Vietnam.

Import and export licensing procedures

Vietnam does not require a company to have an import or export license to set up a trading company. However, to be able to conduct import or export business, a foreign investor must register with the Department of Planning and Investment (DPI).

Additionally, foreign investors who wish to engage in import or export activities in Vietnam are required to obtain an Investment Certificate. Companies that wish to expand their current business operations to engage in import or export activities must follow the procedures for adjusting their Investment Certificates.

According to *Circular 34/2013/TT-BCT*, there are certain goods that foreign invested enterprises may not export from, or import into, Vietnam. Goods banned for export include petroleum oil. Goods banned from import into the country include cigars, tobacco, petroleum oils, newspapers and journals, and aircraft.

Certain goods require the trading company to obtain import and export permits from the government, as per Appendix II of *Decree 187/2013/ND-CP.* These include:

- Goods subject to export control in accordance with international treaties to which Vietnam is a contracting party;
- Goods exported within quotas set by foreign countries;
- Goods subject to import control in accordance with international treaties to which Vietnam is a contracting party; and
- Chemicals, explosive pre-substances and industrial explosives.

All imports and exports must comply with the relevant government regulations on quarantine, food safety, and quality standards, and must be inspected by the relevant government agencies before clearing customs.

Importers are also required to submit a customs dossier which includes a customs declaration as per Appendix II of *Circular no 38/2015/TT-BTC*. The customs declaration can be filed electronically here.

Duties applied to import and exports

Most goods imported or exported across the borders of Vietnam, or which pass between the domestic market and a non-tariff zone, are subject to import/export duties. Exceptions to this include goods in transit, goods exported abroad from a non-tariff zone, goods imported from foreign countries into non-tariff areas for use in non-tariff areas only, and goods passing from one non-tariff zone to another.

Most goods and services being exported are exempt from tax. Export duties (ranging from zero percent to 45 percent and computed on free-on-board (FOB) price) are only charged on a few items, mainly natural resources such as minerals, forest products, and scrap metal.

Consumer goods, especially luxury goods, are subject to high import duties, while machinery, equipment, materials and supplies needed for production, especially those items which are not produced domestically, enjoy lower rates of import duties, or even a zero percent tax rate.

Duty rates for imported goods include preferential rates, special preferential rates, and standard rates depending on the origin of the goods.

Import/export duties declarations are required upon registration of customs declarations with the customs offices. Export duties must be paid within 30 days of registration of customs declarations. For imported goods, import duties must be paid before receipt of consumer goods.

Depending on the trade conditions, Vietnam imposes several different types of duties on the import and export of goods. Companies wishing to find in-depth information on a range of goods would be well advised to visit the website of Vietnam Customs.

Taxes applicable on imports

Vietnam imposes a tax on almost every type of product that is imported into the country. The import tax rates range depending on the type of product, for example, consumer products and luxury goods are highly taxed while machinery, equipment, and raw materials, tend to receive lower taxes and even tax exemptions. Imports are subject to import tax, Value-added tax (VAT) and, for certain goods, Special Consumption Tax (SCT).

Tax rates applicable to imported goods include preferential tax rates, special preferential tax rates, and ordinary tax rates:

- Preferential tax rates apply to goods originating from countries, groups of countries, or territories, which apply the most favored nation treatment in their trade relations with Vietnam.
- Special preferential tax rates apply to goods originating from countries, groups of countries, or territories, which apply special preferences on import tax to Vietnam. Currently, it is mainly applicable to ASEAN nations under common preferential tariffs (CEPT).
- Ordinary tax rates apply to goods originating from countries, groups of countries, or territories, which do not apply the most favored nation treatment of special preferences on import tax to Vietnam. Ordinary tax rates will be no more than 70 percent higher than the preferential tax rates specified by the government.

VAT rates range from zero to 10 percent, with 10 percent being the most common rate. Detailed information can be found in *Circular No 83/2014/TT-BTC*.

Tax application on exports

Only certain commodities are liable for export tax. Export taxes range from zero to 45 percent. Many goods are also subject to VAT. In addition, the Law on SCT stipulates that exporters who purchase SCT tax-liable goods for export, but instead sell the products domestically, are liable for SCT.

The export tax rates applicable to exported goods are specified for each item in the Export Tariff. For the year 2017, the tax tariff can be found in . Whenever there is an update in the tax tariff, the Ministry of Finance will issue new Circulars which will either replace or supplement the previous ones. VAT on exported goods is zero percent.

Tax exempt goods

In certain situations, imported and exported goods are exempt from tax, these include the following:

- Goods temporarily imported for re-export or temporarily exported for re-import;
- Goods imported for processing for foreign partners then exported or goods exported to foreign; countries for processing for Vietnam then re-imported under processing contracts;
- Goods imported to create fixed assets for projects entitled to investment incentives or investment projects funded with official development assistance (ODA) capital sources;
- Goods imported in service of petroleum activities; and
- Goods imported for direct use in activities of scientific research and technological development.

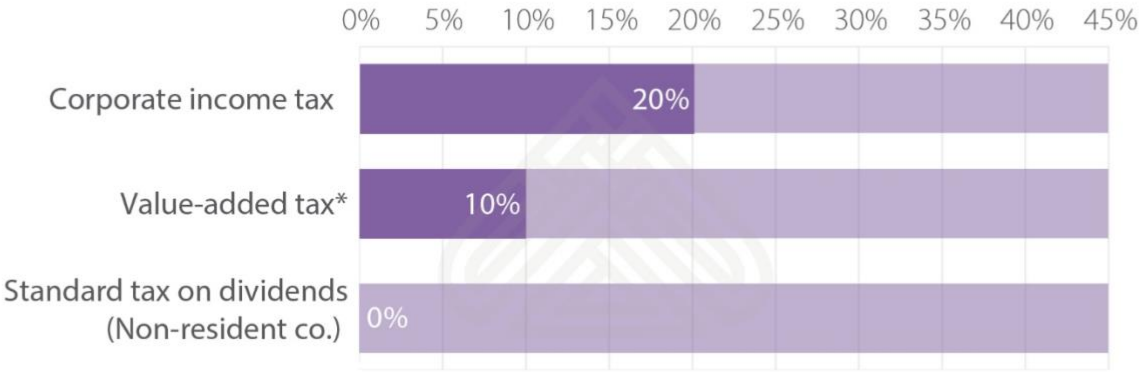
Tax calculation

The payable import/export tax amount is equal to the unit volume of each actually imported or exported goods item. These are inscribed in the customs declarations and are multiplied by the tax calculation price and the tax rate of each item, which is stated in the tariff at the time of tax calculation.

The tax calculation methods are specified below:

- Payable Tax **=** unit volume of each actually imported/exported goods item **x** the tax calculation price **x** the tax rate of each item at time of calculation; and
- For goods items subject to absolute tax: Payable tax **=** unit volume of each actually imported/exported goods item **x** the absolute tax rate provided for a goods unit at time of tax calculation.

Vietnam's Key Tax Rates



*0% on exported goods

Graphic© Asia Briefing Ltd.

An Introduction to Vietnamese Product Labeling Requirements

On the heels of inspections carried out in June, Coca Cola Beverages Vietnam Ltd. has been issued a US$19,300 fine and forced to temporarily suspend select sales for violating food safety licensing and labeling requirements. While seemingly serious in nature, the target of inspections – Samurai Energy Drink – fell afoul of regulators for a simple failure to label levels of folic acid on their beverages and to obtain licensing as a supplementary drink. Although subsequently bringing Samurai Energy into compliance, the experience of Coca Cola underscores the consequences of regulatory uncertainly in Vietnam, and the need for foreign enterprises to be aware of labeling and licensing requirements in the country.

Following its accession to the WTO in 2007, the country has seen major revisions to a number of laws, including those on establishment, investment, and trade. For all companies seeking to sell products within the Socialist Republic, product-labeling laws are of critical importance to successful customs clearance and ultimate sale within the country. Maintaining a firm understanding of recent changes, which include the revision of labeling guidelines for pre-packaged food and additives, as well as pre-packaged genetically modified ingredients, will be of great importance for those seeking to tap into Vietnam's emerging consumer class.

Food Regulation in Vietnam

Since 2006, product labeling is stipulated in Vietnam's *Regulation on Labels* and *Decree No. 89/2006/NĐ-C*. The decree came into effect in March 2007 and replaced the regulations circulated under the Prime Minister's Decision 178/1999/QD-TTg of August 30, 1999, and Decision No. 95/2000/QD-TTg of August 15, 2000. Guidelines outlined in the decree demand the labeling of nationally produced goods designated for domestic usage or export, as well as of goods produced abroad and imported for consumption in the Vietnamese market.

To successfully manufacture and trade in Vietnam, having an understanding of these basic product-labeling laws is of highest importance. Violating these laws might have severe consequences such as a stoppage of the sale of the improperly labeled products and penalty payments.

Vietnamese Product Labeling requirements

The vast majority of consumer goods imported into Vietnam will be required to affix or contain a label with information related to the product, its contents, and its origin. In addition to this, Vietnam also applies a Vietnamese language requirement for those seeking to import goods from jurisdictions where Vietnamese is not the lingua franca.

While most goods produced or imported into Vietnam will require labeling, there are also several exceptions:

- Commodities such as live, fresh foodstuff, processed foodstuff; fuel; raw materials (agricultural products, sea products, minerals); construction materials (bricks, tile, lime, sand, stone, gravel, cement, rich soil, mortar, and commodity concrete mixture); and waste materials (in business, production) without packaging and being sold directly under agreements with consumers;
- Export goods labeled subject to requirements of importers; and
- Goods used for security, national defense or emergency purposes.

The Contents of a Label

The label of goods must include following information:

Name of the goods: The name of a good stated on the label can be freely chosen by the producers, with the requirement that the name does not cause confusion about the nature or use of the good.

Name and Address of Traders Responsible for the Goods: In case the goods are manufactured in Vietnam, the responsible entity is the manufacturer. Goods that will be sold domestically must be affixed with a label stating the address of the production place. If the goods are produced outside of Vietnam, the liability is placed on the manufacturer as well as the importer.

Country of Origin: Applies to goods manufactured in Vietnam which are designated for export, and goods imported into Vietnam. Under prevailing regulation, the labels on these products must include information on the country of origin, preceded by the words “Manufactured in” or “Produced in” or “Origin.” In the event that goods were produced in several countries, Vietnam will apply a rule of “substantial transformation” determine the country of origin. In case the goods were produced in

Vietnam and are designated for local circulation, the information on country of origin does not have to be stated on the label.

Moreover, depending on the nature of the product, other information such as quantity, date of manufacture, technical specifications, hygienic and safety warnings, instructions on use, guidelines on preservation, expiration date and preservation period must be stated on the label. As these requirements can change quickly, it is recommended that companies clarify individual compliance requirements with government officials or legal professionals prior to entering into arrangements with Vietnamese buyers.

Given the increase of compulsory information, companies might face the situation that the content does not fit on the label. In this case, the label only needs to state the name of the goods, the name of the traders responsible for the goods, the quantity, date of manufacture, expiration date and origin. Further compulsory and non-compulsory information must then be given in a separate document together with the product.

Language

As usage of Vietnamese is largely limited to Vietnam, language requirements can present significant compliance issues for those seeking to export from or to Vietnam. The requirements should be carefully followed by exporters from Vietnam as well as importers to the Vietnamese market.

Export goods: Currently, goods designated for export can be labeled in the language of the importing country.

Import goods: Goods determined to be imported must be labeled in Vietnamese. If the label does not declare obligatory information in Vietnamese, a sub-label containing all obligatory information in Vietnamese, responding to these in the original language, must be placed on the good. The responsibility to affix Vietnamese language labels is required to

Conflicts with other Laws and Consequences of a Violation

The Decree explicitly states that in case it conflicts with a treaty to which Vietnam is a party, it is placed in secondary position, meaning that the treaty will prevail over the Decree.

In case an organization or an individual is violating the laws he shall be administratively sanctioned or examined for penal liability, depending on the nature and severity of the violations. Contingent upon if damage has been caused, the violating entity will have to pay compensations therefor according to the provisions of law.

Vietnam’s Tax Administration Law Takes Effect in July 2020

- *Vietnam’s reformed and approved Law on Tax Administration will take effect on July 1, 2020.*
- *The new law will ease tax administration procedures for entities while ensuring strict enforcement to prevent tax evasion.*
- *Vietnam Briefing highlights seven changes that taxpayers should be aware of.*

Vietnam’s new *Law on Tax Administration 38/2019/QH14* will take effect on July 1, 2020. Under the new law, tax authorities have been granted additional enforcement powers. At the same time, the new law has made it a little bit easier for both individuals and entities to file taxes.

The authorities are expected to provide five decrees and eight circulars to guide its implementation. While implementation procedures remain forthcoming, taxpayers can begin to prepare by reviewing the law with their local advisors now.

Seven big changes for taxpayers

1. Increased enforcement and enhanced controls on related-party transactions

Under the new law, tax authorities will have additional power to collect tax, particularly in instances where individuals or companies attempt to evade tax.

This will include instances where companies fail to abide by transfer pricing requirements and transactions where entities intentionally attempt to avoid paying tax.

To help ensure compliance, Vietnamese tax authorities will increase cooperation with international jurisdictions through information exchanges.

Further, businesses that engage in transfer pricing will be required to be filed as a separate return, rather than include this information as part of the corporate income tax return.

2. Tax registration

Tax registration certificates will be issued in three days. This process currently takes 10 days.

3. Filing personal income tax

Personal income tax (PIT) return deadlines have been extended to 120 days from the current 90 days of the calendar year end. This extension is applied for individuals who finalize their annual tax returns directly with the tax authorities.

Individuals will be able to use their citizenship code to file once it has been implemented. At present, individuals are required to have a tax code and an identity card number for filing taxes.

4. Legal representatives

Legal representatives of an entity in Vietnam will need to ensure their companies are tax compliant. Under the new law, authorities may prevent legal representatives from leaving the country if their employer has not paid due taxes.

5. Audits

Business organizations will be allowed to submit additional tax declaration documents after the tax authorities have announced an audit or inspection decision.

The draft law has also introduced two types of audit: tax inspection and tax examination. A tax inspection is longer and focusses on a specific issue. A tax examination is shorter but covers wider issues or anomalies.

The tax examination period has also been increased from five to 10 days.

6. Increased transparency and taxpayer benefits

Taxpayers have the right to know the timeline for processing tax refunds, non-refundable amounts, and the legal basis for such non-refundable tax amounts. Further, they will not be penalized if they declare and pay taxes following the official guidance of tax authorities.

Deadlines for processing tax refunds are applied by the tax authorities. Specifically:

- Tax refund dossiers which are eligible for a refund before examination – six working days upon the receipt of the tax refund application; and

- Tax refund dossiers which are subject to examination before refund – 40 days upon the receipt of the tax refund application.

Taxpayers that want to appeal a decision are required to pay the full tax amount as well as any penalties and late payment interest. However, if the taxpayer wins the appeal, they can request the tax authorities to pay an interest of 0.03 percent per day on the refunded amount.

7. E-commerce, E-tax, and E-invoices

The new law stipulated that tax rules related to e-commerce activities will be implemented in July 2022. Regulations on e-commerce activities still require clarification in the present state; however, some notable highlights include:

- Commercial banks will be required to withhold and pay taxes on behalf of e-commerce companies that do business abroad, but earn income from Vietnam;
- E-commerce companies that do business on digital platforms without a permanent establishment in Vietnam will be required to make appropriate registration, declare and pay tax on Vietnam-source income, either directly or by authorization;
- Business entities that qualify for conducting e-tax transactions will be required to conduct e-tax transactions for tax purposes. This includes tax authorities as well. Further details on e-tax transactions can be found in *Circular 110/2015*; and
- E-invoices will be mandatory for all enterprises from November 2020.

The new law will also affect non-resident businesses that sell goods and services into Vietnam via online platforms. Further details on e-invoices and e-commerce activities can be found in *Decree 119/2018/ND-CP*.

Investors are advised to follow our updates on any forthcoming circulars to help guide the implementation of the new tax administration law.