



Work Permit, Employment, Payroll & Foreign Employees in Vietnam

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Domicile
Corporate Services 

A partner of Acclime.

Work Permits, Employment, Payroll & Foreign Employment in Vietnam

Your Presenter

Matthew Lourey is an Australia Chartered Accountant with over 24 years professional work experience, over 14 of those in Vietnam.



- Founded and is Managing Partner of Domicile Corporate Services,
- Past President and Treasurer, and current Director, of the Australian Chamber of Commerce in Vietnam (AusCham Vietnam)

Matthew's has extensive experience with foreign investment in Vietnam, combining strong technical knowledge of accounting, tax, labour and investment laws, with significant practical experience in market entry, transactions and ongoing compliance. In the past, Matthew has held positions in Vietnam as head of Corporate Finance with an international advisory firm in Vietnam, CEO of a diverse manufacturing and retail group, and has held numerous executive and non-executive board positions with international companies in Vietnam.

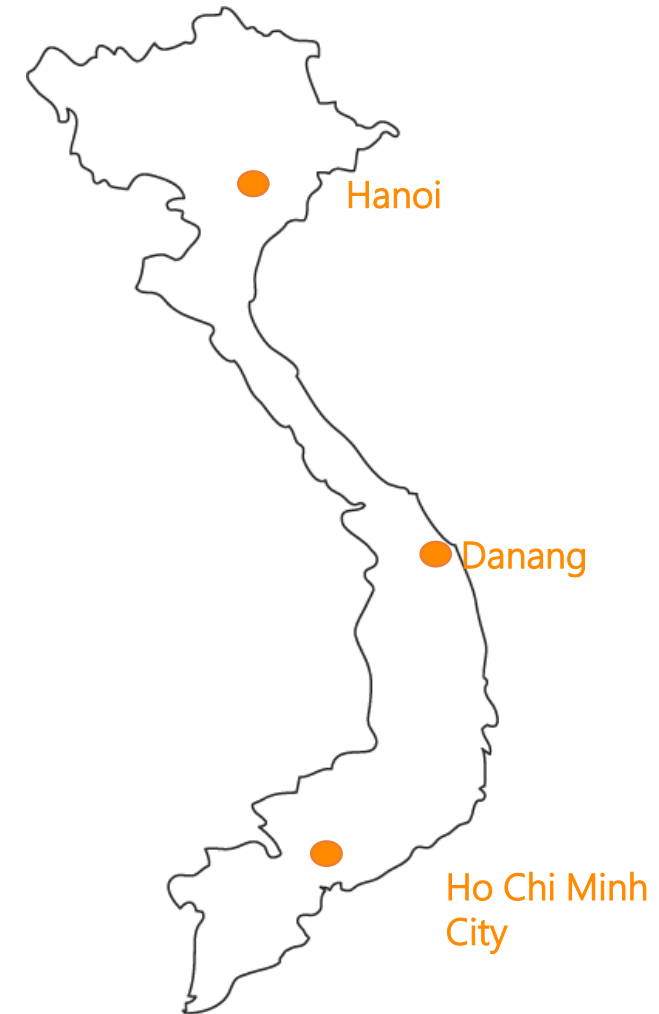
Work Permits, Employment, Payroll & Foreign
Employment in Vietnam

Domicile Corporate Services

Domicile Corporate Services provides accounting, taxation, payroll, corporate establishment and advisory services to foreign-invested companies (and local companies with an international perspective) in Vietnam.

With **65+ staff** and **3 offices in HCMC, Hanoi & Danang**, the company focusses on market entry, outsourcing, compliance, reporting and due diligence.

Domicile's HR & Payroll Services Team provides advice, assistance and full payroll outsourcing in Vietnam.



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“Work Permits, Employment, Payroll & Foreign Employment in Vietnam”

Work Permits for Foreign Individuals

How do the Work Permit requirements work in practice

Insurances in Vietnam

How Insurances apply to Vietnamese and Foreign Individuals in Vietnam

Payroll & Compliance

Understanding the Compliance requirements and the intricacies of Vietnamese taxation.

Taxation & Employment

Taxation and Employment issues, implications and how to Manage these in Vietnam

Employment & Labour Issues

Employment laws, and practical issues for Employment.

Work Permits

For Foreign Individuals in Vietnam

Labour Laws & Foreign Individuals

- General basis is that a Labour Contract cannot be signed without a Work Permit.
- Not all positions are available for foreign employees.
"Enterprises....shall be entitled to employing foreign citizens only in the positions of managers, executive directors, specialists and technical workers, in which Vietnamese workers cannot meet the demands of production and trade." (Vietnam Labour Code 2012, Article 170)
- Working without a Work Permit (or an Exemption) is a breach of Law:
*"Any foreign employee working in Vietnam without a work permit shall be deported from Vietnam's territory as regulated by the Government.
An employer who hires a foreign employee without a work permit shall be sanctioned as regulated by the law."
(Vietnam Labour Code 2012, Article 171)*

Work Permits

For Foreign Individuals in Vietnam

Exemptions from Work Permits

1. Owners of LLCs or BOM members of JSCs (aka. BOD members in some common law jurisdictions)
2. Chief Reps, Heads of Vietnam-based projects of international organizations or NGOs
3. Staying in Vietnam for less than 3 months: *(does not require a physical Exemption Certificate)*
 - for offering services; or
 - for handling unexpected technical problems which have a significant affect to business or manufacturing
4. Registered foreign lawyers in Vietnam
5. Foreign students studying and working in Vietnam – satisfying notification condition
6. Secondees moving inside group – only in 11 service areas under Vietnam’s WTO Commitments, including: *business*, communication, construction, distribution, education, environment, finance, health, tourism, culture, entertainment and transportation
7. Consultants, experts and technicians working for ODA projects

Work Permits

For Foreign Individuals in Vietnam

Exemptions from Work Permits (cont.)

8. Journalists or reporters licensed by Vietnam's MOFA
9. Teachers, lecturers and researchers appointed to relevant positions in international schools or permitted by the MOET to teach or research in local schools
10. Volunteers certified by other countries' foreign affairs authorities or Vietnam-based int'l organizations
11. Experts, managerial level employees or technicians working less than 30 consecutive days for a particular period and accumulatively less than 90 days per year (*does not require a physical Exemption Certificate*)
12. Foreign students studying in foreign schools and interning in Vietnam-based enterprises or organizations under an agreement
13. Persons in charge of establishing a physical presence in Vietnam of a foreign company
14. Others as permitted by the Government or the PM.

Work Permits

For Foreign Individuals in Vietnam

Proposed Changes to Work Permits

	2012 Labour Code	2 nd Draft Amendment of Labour Code
Those Exempted from Work Permits	Owners of LLC's or BOM Members of JSC's	Owners of LLC's or BOM Members of JSC's - Only where they have contributed at least VND 1 billion (~USD43k) to the company
	Foreign Students Studying and working in Vietnam	Removed
	N/A	Foreign individuals that have married a Vietnamese citizen and reside in Vietnam

Work Permits

For Foreign Individuals in Vietnam

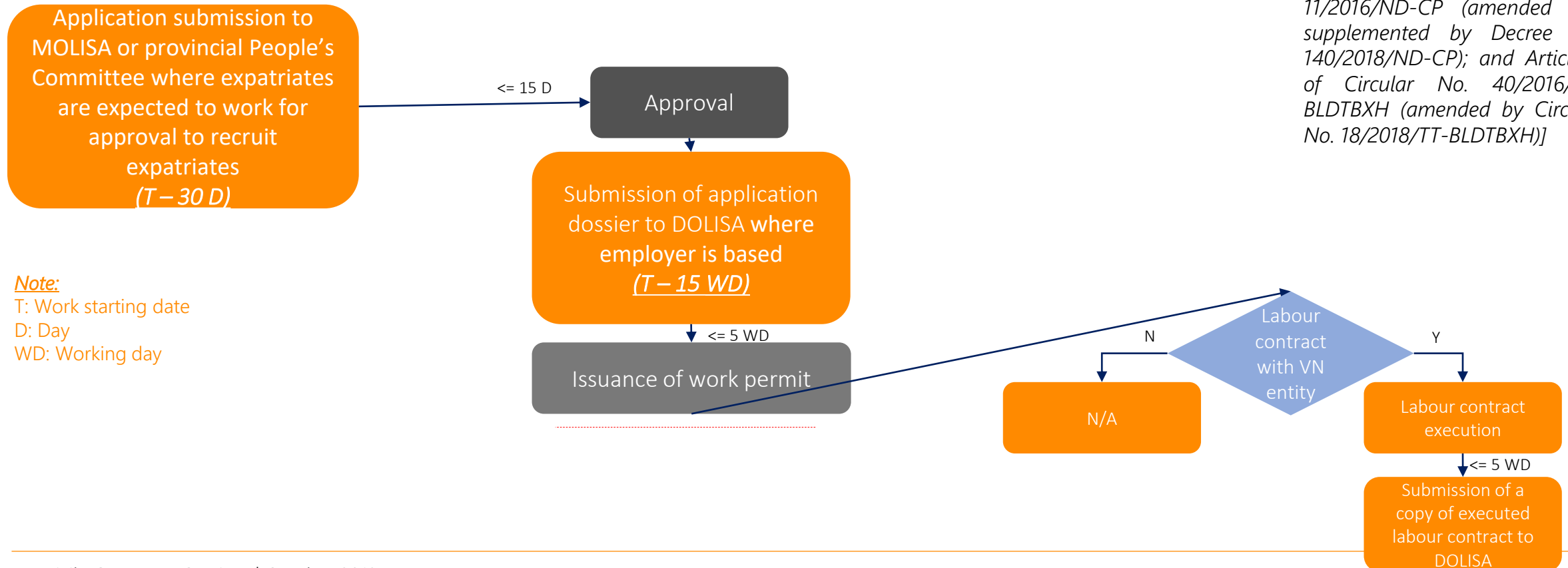
Application Documents for Work Permits

1. Application form
2. Health check results (issued within 12 months prior to the submission date)
3. Criminal record (issued within 6 months prior to the submission date)
4. Passport
5. Photos
6. Documents evidencing qualifications and working experience for managerial level employees, experts or technicians
 - For qualifications: bachelor degrees or higher education degrees
 - For working experience: e.g. (i) work permit under the name of, or (ii) labour contract with, or (iii) appointment decision of, or (iv) confirmation letter of, the former employer(s) of employees specifying that he/she previously held manager position(s).

Work Permits

For Foreign Individuals in Vietnam

Application Process Work Permits



[cf. Article 170 of Labour Code 2012; Article 12 of Decree No. 11/2016/ND-CP (amended and supplemented by Decree No. 140/2018/ND-CP); and Article 4 of Circular No. 40/2016/TT-BLDTBXH (amended by Circular No. 18/2018/TT-BLDTBXH)]

Note:

T: Work starting date

D: Day

WD: Working day

Work Permits

For Foreign Individuals in Vietnam

Proposed Changes to Work Permits

Maxi		2012 Labour Code	2 nd Draft Amendment of Labour Code
Work Permit Procedures	Issuance	Maximum Term of 2 Years	Maximum Term of 2 Years
	Renewal	N/A	Only 1 Renewal for a Maximum Term of 2 Years
	Re-Issuance	Applicable to Work Permits Lost, Damaged, Changed and About to Expire	Not mentioned in Law. Guiding Decrees will have flexibility to determine these.

Work Permits

For Foreign Individuals in Vietnam

Penalties for Working Without a Work Permit

Violations	Sanctions
Working without a Work Permit	Foreign Employee: Expelled Employers: VND 60m – VND 150m (and operation suspension for 1-3 months)
Failing to report or report fully in a timely manner the status and use of foreign employees to the authorities (Quarterly reports are required to DOLISA)	Employers: VND 4m – VND 2m

Employment Insurances

Social, Health & Unemployment



Employment Insurances

Social, Health & Unemployment

Insurance Rates & Caps *(as at 1 July 2019)*

Vietnamese Nationals

Insurance	Employee Portion	Employer Portion	Maximum Cap VND ⁽¹⁾
Social Insurance	8.0%	17.5%	29,800,000
Health Insurance	1.5%	3.0%	29,800,000
Unemployment Insurance	1.0%	1.0%	83,600,000
Totals	10.5%	21.5%	

Foreign Nationals

Insurance	Employee Portion	Employer Portion	Maximum Cap VND ⁽¹⁾
Social Insurance	0.0%	3.5%	29,800,000
Health Insurance	1.5%	3.0%	29,800,000
Unemployment Insurance	0.0%	0.0%	
Totals	1.5%	6.5%	

Notes:

1. The Maximum Cap is the maximum monthly salary at which insurance is calculated. Earnings above this cap are not included in insurance calculations. These caps are based upon minimum salaries, and change as mandated minimum salaries change.
 2. The monthly Unemployment Insurance cap varies depending on the Zone of the employment. The displayed calculation is for Zone 1 employees (the highest minimum zone)
 3. Insurances withheld from employee gross salaries are deductible for PIT (ie, not subject to tax), and the employer contributions are not regarded as a taxable benefit for the employee.
- Health Insurance has been applicable to foreign employees for some time.
 - Social Insurance for most foreign employees commenced (partially) from 1 December 2018.
 - Full implementation of Social Insurance for foreign employees from 1 January 2022.

Employment Insurances

Social, Health & Unemployment

Insurance – Example Calculations

Example of Vietnamese National, with a salary of VND 15,000,000 per month

Insurance	Employee Portion	Employer Portion
Social Insurance	1,200,000	2,625,000
Health Insurance	225,000	450,000
Unemployment Insurance	150,000	150,000
Totals	1,575,000	3,225,000
	10.5%	21.5%

Example of Vietnamese National, with a salary of VND 45,000,000 per month

Insurance	Employee Portion	Employer Portion
Social Insurance	2,384,000	5,215,000
Health Insurance	447,000	894,000
Unemployment Insurance	450,000	450,000
Totals	3,281,000	6,559,000
	7.3%	14.6%

Employment Insurances

Social, Health & Unemployment

Insurance – Example Calculations

Example of Foreign National, with a salary of
VND 150,000,000 per month

Insurance	Employee Portion	Employer Portion
Social Insurance	-	1,043,000
Health Insurance	447,000	894,000
Unemployment Insurance	-	-
<i>Totals</i>	<i>447,000</i>	<i>1,937,000</i>
	<i>0.3%</i>	<i>1.29%</i>

Employment Insurances

Social, Health & Unemployment

What Benefits do Insurances Provide

Unemployment Insurance

- Unemployment payments from the Unemployment Fund

Health Insurance

- Health Card, for use at Vietnamese Hospitals

Social Insurance

- Workers Compensation for workplace accidents
- Maternity Benefits (up to 6 months paid leave)
- Sick Leave reimbursement
- Retirement (Pension) benefits.

After 20/15 years (male/female) of contributions, upon retirement a Pension is available. From 45% - 75% of average monthly Insurance Premium Income.

Employment Insurances

Social, Health & Unemployment

Foreign Individuals & Insurances

- Social Insurance applicable from 1 December 2018, at 3.5% for Employers and 0% for Employees (subject to caps)
- Full Social Insurance rates to apply from 1 January 2022 (17.5% for Employers and 8% for Employees, subject to caps)
- From 2022, Foreign individuals having contributed to the Pension Fund will be able to claim back the contributions when they depart Vietnam.
- Social Insurance applies to Foreign employees that meet all the below conditions:
 - Foreign individuals employed with Work Permits or Practice Certificates
 - Labour contract of at least 1 year in length
 - Males under 60 years old, and Females under 55 years old (these are planned to be increased...for all in Vietnam).
 - Not an intra-company transfer reassigned to Vietnam

Employment Insurances

Social, Health & Unemployment

Foreign Individuals & Insurances

- Unemployment Insurance does not apply to foreign individuals, and there is no intention to do so.
- Health Insurance continues to apply at 1.5% Employee and 3% Employer (subject to caps).

Payroll & Employment Compliance & Issues

Taxable Benefits Excluded from Payroll Calculations

- The provision of Taxable Benefits to staff can result in Personal Income Tax being attributable and payable by staff on the “income”.
- Where Accounting/Finance and the Payroll teams work in separate “silos”, it is common that additional payments or provision of benefits are provided within companies, but the benefits are not advised for the payroll calculations.
- Authorities know these breakdowns occur (deliberately or accidentally) and look for them during inspections.
- Provision of Goods (including gifts), Travel, Memberships, Cars, etc are what they look for.
- Unless the provision is stated in labour contracts, or internal labour policies, they will also be non-deductible to the company.

Business Travel & Personal Income Tax

- For Corporate Income Tax & VAT purposes, business travel is deductible where it has been undertaken by an employee and the appropriate Business Travel Decision documents have been correctly submitted/approved.
- As this revolves around the “employee” concept – individuals who are not employees (family, those on service contracts) cannot meet the definition, and Personal Income Tax will apply on the benefit, regardless of the business nexus.
- An exception exists for commercial contracts where the contract includes for the Vietnamese entity to pay for travel and accommodation for experts under the contract.

Benefits for Foreign Employees - Requirements

- Foreign employees with labour contracts (and therefore Work Permits or Work Permit Exemption Certificates) are entitled to benefits that are excluded from Personal Income Tax, including
 - i. Relocation to Vietnam
 - ii. One return flight per year
 - iii. School Fees (primary & secondary, but not vocational or tertiary/university)
 - iv. Rent for accommodation (15% is included in taxable income)
- To take advantage of these, the costs need to be incurred and paid by the employer (ie, employer provides the benefit) and invoices received in the employers name.
- Care should be taken not to “reimburse” where employees pay – they need to be making payment on the employers behalf, and internal documents need to evidence this.

Benefits for Employees

- Once per year round-trip airfares for expatriate employees returning home, or Vietnamese working abroad returning.
- School fees (excluding tertiary) for children of expatriate employees or for Vietnamese working abroad.
- Mid-shift meals (subject to a cap in provided in cash).
- One-off relocation costs for expatriates coming to Vietnam for employment, and for Vietnamese working abroad.
- Uniforms (subject to a cap if provided in cash).
- Benefits provided in kind on a collective basis (eg, memberships) where an individual is not identified as beneficiary.

Probation – What is Permitted

Probation Periods before entering into a Labour Contract (or as part of a Labour Contract)

- Roles with University Education Requirements – 60 days
- Roles with Vocational Education, Technical Workers and Professional Workers – 30 days
- Other Workers – 6 Days

Note that for Foreign Individuals, a Work Permit is generally required before a Probation Period commences – which can be an expensive exercise.

"Basic" (Insurance) Salary – and Planning

From 1 January 2018, the concept of "Basic" Salary or "Insurance" Salary for reducing insurances and paying additional bonuses and allowances was significantly changed.

Laws now, effectively, work so that all payments received by employees are subject to Insurances and Taxes, unless they are specifically exempted.

(Table on next slide shows examples).

The onus is on employers to show that the bonus/allowances paid meet the requirements for exemptions.

Payments	Subject to Social, Health & Unemployment Contributions	Subject to Personal Income Tax
Position Allowance	Yes	Yes
Responsibility Allowance	Yes	Yes
Hardship, Hazardous & Toxic Allowance	Yes	No
Area Allowance	Yes	No
Mobility Allowance	Yes	Yes (with some exceptions)
Attraction Allowance	Yes	No
Other Allowances having a similar nature to the above	Yes	Yes
Bonuses prescribed in Article 103 of the Labour Code (ie, bonuses from annual company profits)	No	Yes
Initiative Bonuses	No	Yes
Mid-shift Meal Allowances	No	Yes (if they exceed the cap)
Payments to Support Petrol, Telephone, Transportation, Housing & Child Care	No	Yes
Payments to Support Employees on Special Occasions (Birthday, Wedding, Funeral, etc)	No	No
Payments to Employees suffering from Work Accidents or Occupational Diseases	No	No
Other Allowances stated in Labour Contract (with exceptions)	No	Yes

Inspections – Be Prepared

Authorities are active with inspections:

- Tax Authorities
- Labour Authorities
- Insurance Authorities

Undertake an internal inspection (via internal audit process – or an external provider) to understand where your compliance risks are, and what you need to do address.

Taxation On Employment

Be Prepared



Personal Income Tax

- Based around the concept of Tax Residency.
- Resident Taxpayer is one who:
 - a) Resides in Vietnam for 183 days or more
 - (i) within 12 consecutive months from the first day of arrival, or
 - (ii) in a calendar year
 - b) Holds a temporary or permanent residence card for Vietnam, or
 - c) Leases a property for a term of 183 days or more in Vietnam in the assessment period

Monthly Taxable Income (VND)	Tax Resident PIT Rates	Non-Resident PIT Rates
0 - 5,000,000	5%	20%
5,000,001 - 10,000,000	10%	
10,000,001 - 18,000,000	15%	
18,000,001 - 32,000,000	20%	
32,000,001 - 52,000,000	25%	
52,000,001 - 80,000,000	30%	
80,000,001	35%	

Resident Taxpayers also have a personal deduction of 9,000,000 VND per month (0% tax), and an additional 3,600,000 VND for each registered dependent.

Personal Income Tax

Taxes form 0-10% apply on other forms of income

Annual finalisation for Personal Taxpayers is required where:

- Insufficient tax has been withheld in a year for a taxpayer, or
- A refund is required for overpaid taxes

For a foreign individual who enters Vietnam for the first time, their first tax year covers the 12 month period from their entry, and the second tax period is up until 31 December of the next period. This can be difficult in practice.

Where a foreign individual finishes employment and leaves Vietnam permanently, and fails to finalise their tax within 45 days of departure, then the employer will be responsible for finalising and tax liabilities (remember: World Wide Income!)

Tax Changes – New Law

New Law on Tax Administration was passed by the National Assembly in June 2019.

Introduces changes with effect from 1 July 2020, including the ability for individuals to be prohibited from leaving Vietnam where personal tax obligations have not been met.

We await further Decrees and Circulars on how this will be implemented, but combined with the additional information being gathered and shared amongst agencies, this will present a real issue for those earning income in Vietnam and not on top of their tax responsibilities (payments or filings).

Service Contracts – The Catch!

Commonly used in Vietnam – Service Contracts present a significant exposure to businesses (and individuals) that use them.

In practice, many employers/employees enter into 90 day Service Contracts, seeking to utilise the Work Permit exemption category (coming to Vietnam to “offer services” for up to 90 days). These are often utilised in conjunction with “border runs” to facilitate another 90 day period.

However, Service Contracts:

- Can easily be deemed “labour contracts” or “employment agreements” by authorities, if they are for the provision of labour (note: deportation and fines for signing a Labour Contract in Vietnam without a Work Permit or Exemption Certificate).
- The Tax Authorities have previously released Official Letters (for example, Official Letter 1019/ TCT-TNCN, dated 25 March 2015, issued by the General Department of Taxation) stating that income received from contracts signed by individuals that have not registered their own business, will be regarded as salary income
- The 90 day exemption is for business individuals – and is much more specific than just signing a Service Contract. The individual needs to be a professional business provider, and have appropriate business registrations.

Service Contracts – The Catch (Part 2)!

Taxes & Insurances.

- Service contracts usually have 10% withholding tax (PIT) applied and remitted on them. However, at the end of the year, an individual is required to pay tax on their income for the year at the progressive tax system (0-35%). Therefore, the 10% can result in significant underpaid tax in certain circumstances.
- Based upon the new Law on Tax Administration, the tax authorities would be able to determine exact situation at borders.
- If the authorities deem the Service Contract to be the provision of labour, then the employer has likely underpaid taxes and insurances. Significant risk / exposure will exist if this occurs.

Practical Issues For Employment in Vietnam

Work Permits – Holding/Returning Documents

Decree 140/2018/ND-CP and Decision 632/QD-LDTBXH from MoLISA has resulted in some recent practical changes for Work Permit documents:

- Work Permits are no longer revoked when employment ends, and the document does not need returning to DoLISA.
- Work Permits are a “Personal Document”, and should be held by the individual (it is arranged by the employer, but issued to the Individual, to permit the individual to undertake a role with the employer) as employers cannot hold personal documents. As they no longer need to be returned to the authority, it makes life easier for the employer.
- Original Work Permits can now be used (and are being requested) by authorities when foreign individuals are applying for new Work Permits as evidence of experience.

Bank Accounts for Expatriates

State Bank changes taking effect from July 2019 that have resulted in:

- Foreign individuals having difficulties to open a bank account if their visa does not give them a right to reside in Vietnam for at least six months, and
- Foreign individuals cannot have a “Bank Card” for ATM/EFT access unless they have a right to reside for at least 12 months in Vietnam

Banks are interpreting these regulations in different ways, and some banks may still be offering bank accounts for short-term visitors, but it is getting more difficult to pay individuals without long-term rights.

Care and consideration should be given regarding these practical issues when seeking to employ Expatriates.

Indefinite Employment for Foreigners?

- Labour Law states that employees have indefinite labour contracts either for the 3rd contract or after 36 months.
- The maximum length of a Work Permit is 2 years, and a labour contract cannot be longer than a Work Permit
- Does this result in foreign employment contracts being in breach of the Labour Law?

THANK
YOU

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