

Law, Work Permits & Residency Updates & Changes in Vietnam

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Your Presenter



Matthew Lourey is an Australia Chartered Accountant with over 26 years professional work experience, over 15 of those in Vietnam.

- Managing Partner of Acclime Vietnam (previously Domicile Corporate Services),
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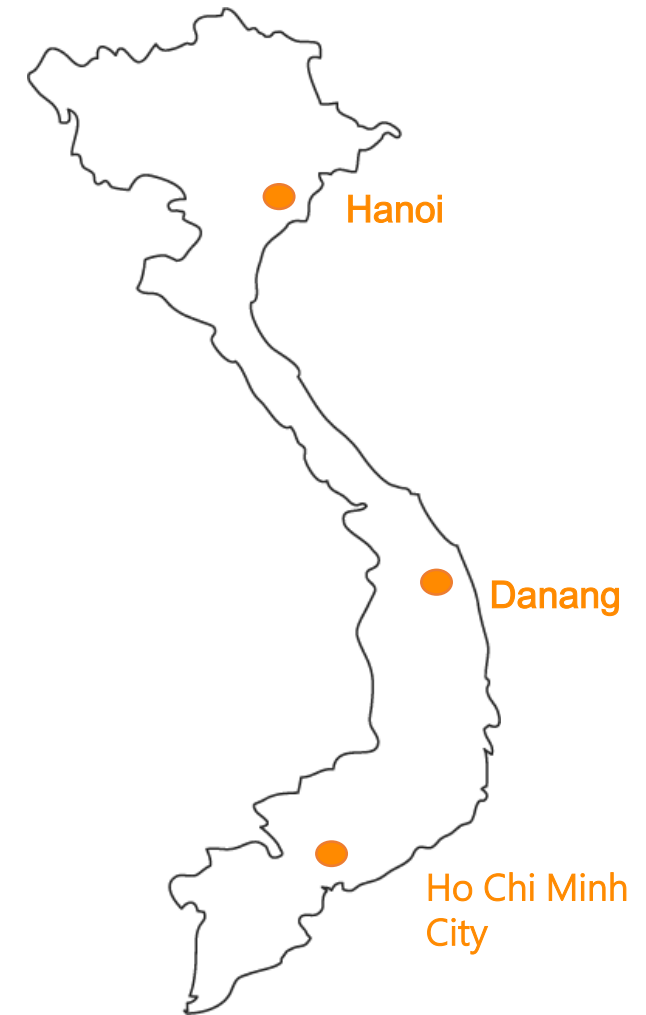
Matthew has extensive experience with foreign investment in Vietnam, combining strong technical knowledge of accounting, tax, labour and investment laws, with significant practical experience in market entry, transactions and ongoing compliance. In the past, Matthew has held positions in Vietnam as head 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. Matthew was founder and Managing Partner of Domicile Corporate Services before it rebranded as part of the Acclime Group.

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With **70 staff** across **3 offices** in **HCMC, Hanoi & Danang**, the company focusses on market entry, outsourcing, compliance, reporting and due diligence.

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Labour Law Changes

Key Changes from 1 January 2021, arising from the new Labour Law

Immigration Changes

Visas, Temporary Resident Cards and Issuance Periods

Work Permits

Work Permit Process, Exemptions and Issues

Taxation / Insurances

Taxation on Employment, Tax Residency and Compliance

Current Situation (Covid-19)

Border Closures, Issuing Visas and Work Permits – current updates

Labour Law Changes:

Key Changes from January 2021 under new Labour Law (Labour Law 2019)

General Changes from 1 January 2021

Under the new Labour Code 2019 (Labour Law 2019), effective from 1 January 2021, a number of changes arise that impacts workplaces. These include:

1. Requirement to issue **PAY SLIPS** to each employee for each pay run.
2. Labour regulations (required for all companies with at least 10 staff) will likely need amending, to cover changes to Labour Code 2019 – including prohibition/definition of sexual harassment in the workplace and how this is handled, job reassignment, etc
3. Violations of Labour Rules, now have 4 clear disciplinary measures
 - Reprimand
 - Deferment of Pay Rise for up to 6 months
 - Demotion
 - Dismissal

Labour Contracts

New Labour Law 2019 removes the concept of **SEASONAL CONTRACTS**

Definition of Labour Contract is much broader too: The New Labour Code 2019 extends the scope and object to individuals who do not necessarily have a specific Labour Contract. In the new Code, an individual will be classified as an employee if they meet the following 3 conditions:

- i) the individual has an agreement to perform a job;
- ii) the individual is receiving monetary payment; and
- iii) the individual is working under the supervision of an employer.

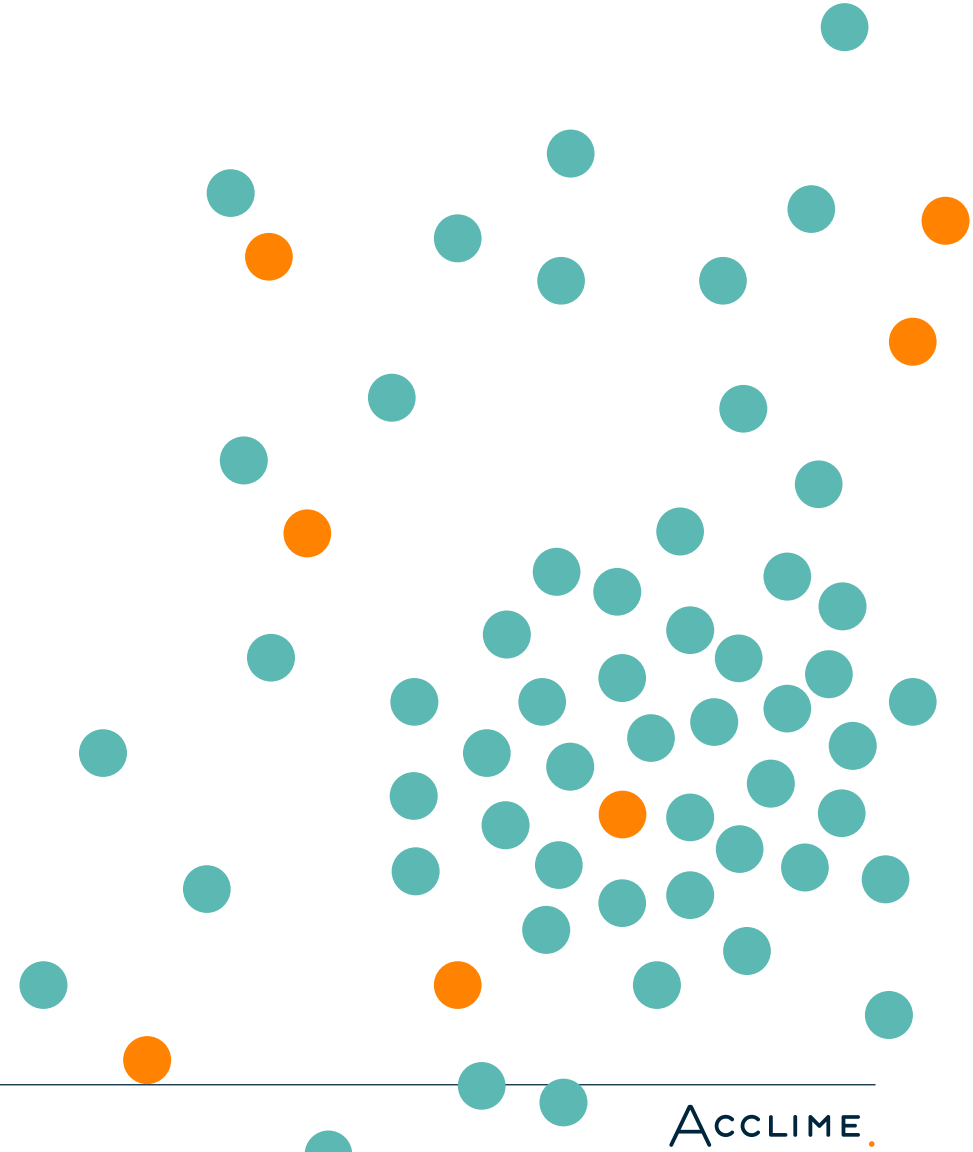
(Essentially limiting the common use of “Service Contracts” to avoid Labour Law requirements and protections)

Crisis Management

- > Under the new Labour Law 2019, an employer may temporarily assign an employee to perform a work which is not prescribed in the employment contract for an accumulated period of up to 60 working days within 1 year, unless otherwise agreed in writing by the employee.
- > Must provide 3 days notice of the temporary reassignment, and if the new salary is lower than the previous salary, the previous salary shall be maintained for 30 working days. The new salary shall be at least 85% of the previous salary and not smaller than the minimum wages.
- > Under old laws, if due to a natural disaster, pandemic or similar, employers would have to negotiate salaries for employment suspension (but not less than minimum monthly wage). However, under the new Labour Law 2019:
 - a) If the suspension does not exceed 14 working days, the salary shall not fall below the statutory minimum wages;
 - b) If the suspension is longer than 14 working days, the salary shall be negotiated by both parties and the salary for the first 14 days must not fall below the statutory minimum wages.

Immigration Changes

Visas & Temporary Residence



Visas & Temporary Resident Cards

- > The new Immigration Law came into effect from 1 July 2020. *The Law on Entry, Exit, Transit, and Residence of Foreigners in Vietnam, issued on 25 November 2019 (Law 51/2019/QH14)*
- > This law implements a number of changes to Visas and Temporary Residence Cards, which may change how investors and employees operate in Vietnam.
- > Examples of changes include:
 - Visa types can now be changed in-country without requiring the holder to leave Vietnam and return.
 - Business Visas can be for up to 5 years in length
 - Corporate Investors can nominate an individual to represent them in Vietnam and receive an investor Visa
 - Investor Visas are now linked to the value of capital introduced, with smaller investors now having lesser periods for Visas.

Visas Categories & Validities

Visa types	Subject	Validity period
ĐT1	Issued to foreign investors in Vietnam and representatives of foreign organisations investing in Vietnam, with total investment capital of VND100 billion (\$4.35 million) upwards or investing into sectors and professions with incentives and geographical areas with priorities determined by the government.	5 years
ĐT2	Issued to foreign investors in Vietnam and representatives of foreign organisations investing in Vietnam, with total investment capital of between VND50 billion and VND100 billion (\$2.17-\$4.35 million), or investing into sectors and professions with encouragement determined by the government.	5 years
ĐT3	Issued to foreign investors in Vietnam and representatives of foreign organisations investing in Vietnam, with total capital of between VND3 billion and VND50 billion (\$130,500-\$2.17 million).	3 years
ĐT4	Issued to foreign investors in Vietnam and representatives of foreign organisations investing in Vietnam, with total capital of less than VND3 billion (\$130,500).	12 months
LĐ1	Issued to foreign individuals who work in Vietnam using work permit exemption certificates.	2 years
LĐ2	Issued to foreign individuals who work in Vietnam using work permits.	2 years
LS	Issued to foreign lawyers practicing in Vietnam.	12 months
EV	Electronic visas	30 days

Temporary Resident Cards

Current Law	New Law
<p>1. The duration of a temporary residence card is at least 30 days shorter than the remaining duration of the passport.</p>	<p>1. The validity of temporary residence cards is shorter than the remaining validity of the passport by at least 30 days.</p>
<p>2. The duration of a NG3, LV1, LV2, ĐT or DH temporary residence card shall not exceed 5 years.</p>	<p>2. Temporary residence card with the symbol ĐT1 is valid for not more than 10 years.</p>
<p>3. The duration of a NN1, NN2, TT temporary residence card shall not exceed 3 years.</p>	<p>3. Temporary residence cards with symbols NG3, LV1, LV2, LS, ĐT2 and DH are valid for not more than 5 years.</p>
<p>4. The duration of a LĐ or PV1 temporary residence card shall not exceed 2 years.</p>	<p>4. Temporary residence cards with symbols NN1, NN2, ĐT3, TT are valid for not more than 3 years.</p>
<p>5. Expired temporary residence cards may be extended.</p>	<p>5. Temporary residence cards with symbols LĐ1, LĐ2 and PV1 are valid for not more than 2 years.</p>
	<p>6. Expired temporary residence cards are considered for granting new</p>

Impacts of Changes for Investors

Small investors (less than 300b VND / \$130k USD) are no longer permitted to obtain a Temporary Resident Card based upon their investment status in Vietnam. They will have to utilise 12 month business visas (DT4).

> Small investors may consider applying for a Temporary Residence Card based upon Labour Laws (ie, a Work Permit or exemption) rather than investment laws

Very large investors, or their nominated individual representative if a corporate investor, can have a Temporary Residence Card for up to 10 years (DT1)

Other Changes to Note for Visas

Tourist Visas now have a validity of 30 days per entry, and a maximum period of 90 days.

The authorities have stated that Tourist Visas can be extended in country (the 30 day period) by way of stamping at a local Immigration Office, however we have not seen guidance on what happens after 90 days (ie, required departure from Vietnam, and any minimum stay outside of country), due to Covid border restrictions.

This measure is partly intended to assist authorities monitor and control the use of long-term stays through tourist visas.

Business Visas are also more strictly controlled, with the sponsoring party (ie, the Vietnamese company) likely to be monitored as to the purpose of support for the visa.

This is again intended to reduce the reliance on 3rd party agents from sponsoring ineligible people on business visas, but will also allow tax and other authorities better insight into who is in country and for what purpose.

Work Permits

New Labour Law

New Labour Code & Work Permits

- > All foreign individuals seeking to work in Vietnam are required to hold a Work Permit, or a Work Permit Exemption Certificate, prior to undertake employment in Vietnam. A Work Permit (or Exemption Certificate) is applied for by an employer for an employer to work in a specific role for that employer, and multiple Work Permits can be held by an individual for different employers.
- > Limited exemptions exist under current laws for those coming to offer services (ie, preparing bids or travelling sales people) for up to 90 days, or experts entering Vietnam for 30 days per visit with a maximum 90 days per year. These specific exemptions do not require an Exemption Certificate in advance, whilst other exemptions generally require a Work Permit Exemption Certificate.
- > New Labour Law (2019 Labour Code), which applies from 1 January 2021, introduces changes to Work Permits and Exemptions, and reduces gaps in laws.

Note: the penalties for working without a Work Permit in Vietnam includes deportation for up to 3 years (individual), and fines, operation suspension and exclusion from employing foreign employees for employers.

Common Exemption Categories

Labour Code 2012	Labour Code 2019
Capital-contributing members or owner of limited liability companies.	Capital-contributing members or owners of a limited liability company with the value of capital contribution under the Government’s regulations. (having added the criteria of the capital contribution value). <i>The Draft Decree released by the Ministry of Labour Invalids and Social Affairs (“MoLISA”) indicates that the prescribed capital contribution for this provision will be VND 1 billion (approx. USD43,000)</i>
Members of the Board of Directors of joint-stock companies.	Members of the Board of Directors of joint-stock companies with the value of capital contribution under the Government’s regulations. (having added the criteria of the capital contribution value).
Head of representative offices, projects of international organizations, non-governmental organizations in Vietnam.	Head of representative office, project or the individual that takes the main responsible for the operation of international organizations and foreign non-governmental organizations in Vietnam. (having added the new criteria: the individual that takes the main responsibility for the operations).
<p>Foreign individual entering Vietnam for a period of less than 3 months to do marketing of a service, or to a resolve complicated technical or technological issue which (i) affects or threatens to affect business operation and (ii) cannot be resolved by Vietnamese experts or any other foreign experts currently in Vietnam.</p> <p>The Draft Decree released by MoLISA for the new Labour Code 2019 requires that the employer informs the relevant Department of Labour Invalids and Social Affairs (“DoLISA”) office of the foreign employee’s information and employment at least 3 days before his or her expected first working day in Vietnam for this exemption to be available.</p>	
A foreign lawyer who has been granted a Lawyer’s Practicing Certificate in Vietnam in accordance with the Law on Lawyers.	
A foreign individual in one of the cases specified in an international treaty to which the Socialist Republic of Vietnam is a signatory.	
Foreign students who are studying and working in Vietnam	The Labour Code 2019 removes this case
	Adding new case that foreign employees who are married to a Vietnamese individual and live in Vietnam.

Probation Periods & Work Permits

The issue of “Probation” for foreign employees has often been a problem, as the old labour law required the obtaining of a Work Permit prior to signing a labour contract or undertaking any employment, which resulted in probation requiring a Work Permit. Given the time period to obtain a Work Permit, service contracts were often used (and, some argue the 90 day work permit exemption was also available) to utilise whilst obtaining a Work Permit – essentially acting as a probation period, and allowing the foreign individual to commence employment as soon as an employment offer was accepted.

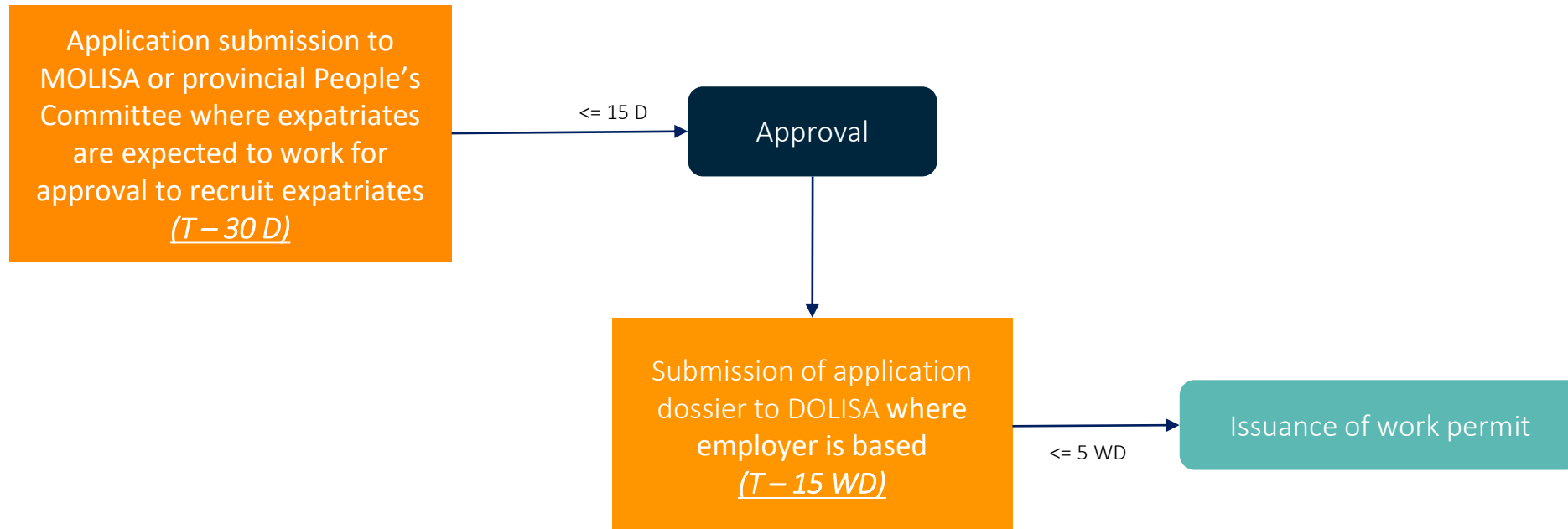
The new Labour Law will result in most “service contracts” being deemed labour contracts, and the authorities being likely (under draft implementations) to require registration in advance in order to utilise the 90 day exemption.

Therefore, under the new Law

- Probation will require a Work Permit, and
- Work Permits will need to be obtained before foreign employee commences any work, including probation

BUT, probation periods can potentially be longer now.

Work Permit Process



Documents Required for a Work Permit

Most “Expert” applications (the most common Work Permit) require:

	Document	Discussion
1	University Degree	At least 3 year Bachelors Degree, relevant to the role being employed for
2	Experience Evidence	At least 3 year’s experience
3	Criminal Check	Home country, or Vietnam if previously resided in Vietnam (<i>not more than 6 months old</i>)
4	Health Check	From approved hospital (<i>not more than 12 months old</i>)
5	Passport & Visa	
6	Job Description	
7	Draft Labour Contract	

Documents - Issues

These are one of the more difficult elements of current Work Permit requirements.



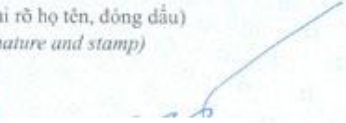
Standard expert application requires evidence of 3 years **relevant, senior** (managerial) experience.

- **Letter from previous employer(s)**
or
- **Previous Vietnam Work Permits**

Issues:

1. Foreign Documents must be notarized/legalised and consularised. This is time consuming and difficult, especially if previous employers were not left on good terms.
2. Previous employers may have closed/no longer exist
3. Copies of previous Work Permits need to be provided – however, where the originals are returned to DoLISA when employment finishes. Notarised copies are not easy to provide.
4. No database of previous Work Permits currently accessible.

Work Permit Example

	GIẤY PHÉP LAO ĐỘNG WORK PERMIT Số: 5 No SLD-TPHCM
1. Họ và tên:..... <i>Full name</i>	.....
2. Nam (M) Nữ (F):... Nữ.....	.....
3. Ngày, tháng, năm sinh:..... <i>Date of birth (DD-MM-YY)</i>	.....
4. Quốc tịch hiện nay Pháp..... Số hộ chiếu:..... <i>Nationality</i> <i>Passport number</i>	.....
5. Trình độ chuyên môn (tay nghề):Thạc sỹ marketing + Kinh nghiệm làm việc <i>Professional qualification (skill)</i>	.....
6. Làm việc tại doanh nghiệp/tổ chức:..... <i>Working at enterprise/organization</i>	.....
7. Địa điểm làm việc <i>Working place</i>	.....
8. Vị trí công việc: ...Chuyên gia - Chuyên viên Marketing..... <i>Job assignment</i> và quản lý nhân hàng	.....
9. Thời hạn làm việc từ ngày 24.../10.../2016..... đến ngày 01.../10.../2018..... <i>Period of work from</i> <i>to</i>	.....
10. Tình trạng giấy phép lao động: <i>Work permit status</i>	.....
Cấp mới <input checked="" type="checkbox"/> Cấp lại <input type="checkbox"/> Cấp lại lần thứ:..... <i>New issuance</i> <i>Re-issuance</i> <i>Number of re-issuance</i>	.....
TP. Hồ Chí Minh Ngày...09...tháng...11...năm...2016....	.....
GIÁM ĐỐC SỞ LAO ĐỘNG - THƯƠNG BINH VÀ XÃ HỘI TP. HỒ CHÍ MINH..... DIRECTOR OF DEPARTMENT OF LABOUR, INVALIDS AND SOCIAL AFFAIRS (Ký và ghi rõ họ tên, đóng dấu) <i>(Signature and stamp)</i>	.....
	

Foreign Currency and Employment Contracts

Can foreign currency be used in Employment Contracts with foreign employees?

Yes.

Foreign individuals are entitled to receive their salary in foreign currencies or Vietnamese Dong, as detailed in their labour contract.

(Circular 32/2013/TT-NHNN dated December 26th, 2013 from the State Bank of Vietnam, Article 4, Clause 14)

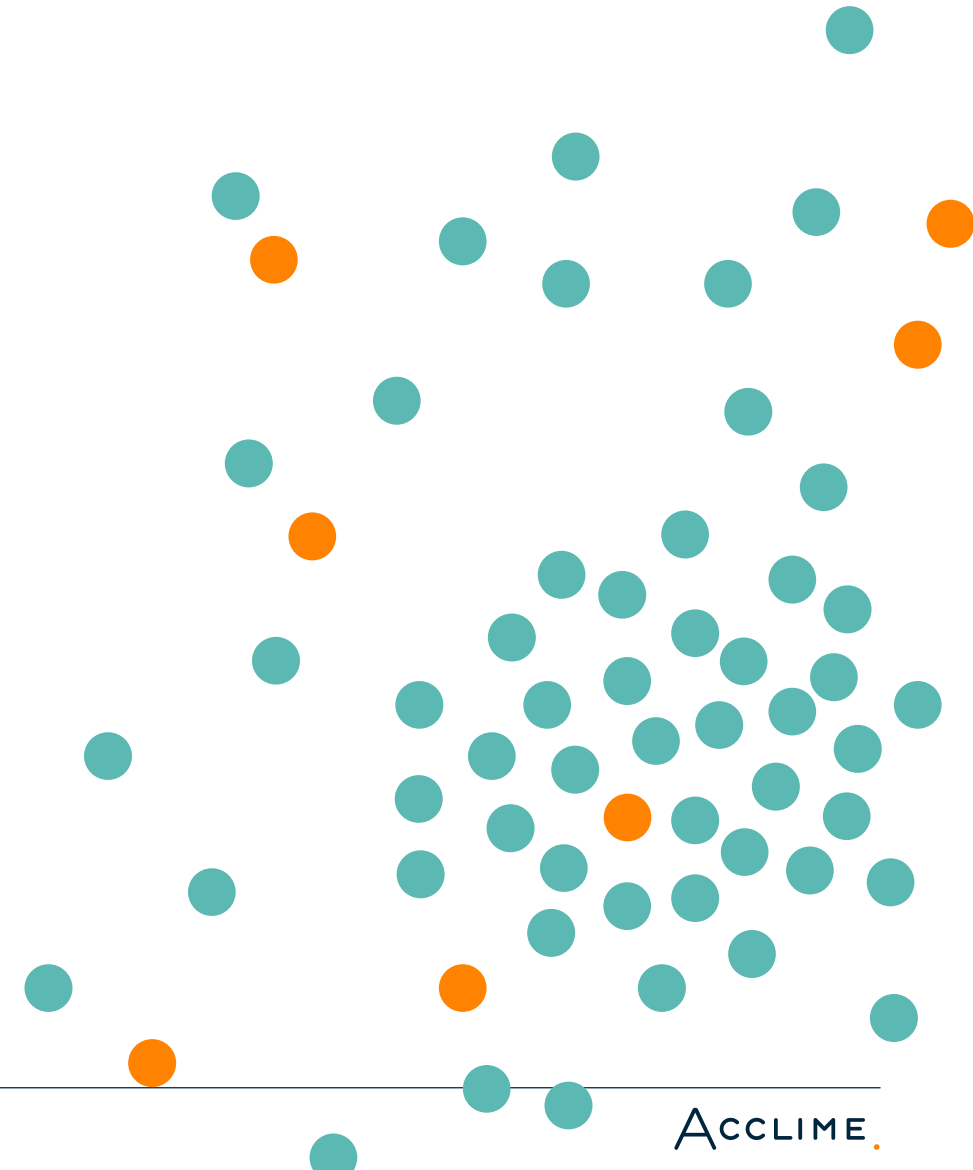
Key aspect here is that employees should be paid in the currency that their contract states.

What about internal payroll issues using foreign currencies?

Published exchange rates at the end of each month which should be used for internal recording and payroll compliance (tax, insurances etc).

Employers should have a process at the end of each month to update the exchange rate in their payroll calculation. Even though a salary may be fixed in a foreign currency, it will vary in VND – which is not desirable for HR teams, and will require additional work, and may result in small variations to net (take-home) salary.

Taxation For Individuals



Labour Law, Work Permits & Residency

Tax Rates – Tax Resident Individuals

Monthly Income (VND)	Personal Income Tax Rates
Up to 5,000,000	5%
Over 5,000,000 to 10,000,000	10%
Over 10,000,000 to 18,000,000	15%
Over 18,000,000 to 32,000,000	20%
Over 32,000,000 to 52,000,000	25%
Over 52,000,000 to 80,000,000	30%
Over 80,000,000	35%

Note: a 11,000,000 VND personal deduction (reduction) in assessable income applies to these tax tables above (increased from 9,000,000 VND per month for payrolls from 1 July 2020), plus additional 4,400,000 VND per dependent (increased from 3,600,000 VND)

The increases actually apply for the entire 2020 year, so employees will be entitled for a refund for the first half of 2020.

Insurances

All employees are subject to Government Health Insurances (1.5% Employee / 3% Employer), subject to caps

Employees are subject to Social Insurance: 8% Employee / 17.5% Employer. However foreign employees are exempt from their contribution and employers pay 3.5% on foreign employees until 2022.

Only local employees pay Unemployment Insurance 1% employer/employer.

Labour Law, Work Permits & Residency

Tax Rates – Non-Tax Resident Individuals

20%

Applies to all payments to non-resident foreign individuals – whether the individual is in Vietnam, or outside (ie contract for services where the services are performed abroad).

Labour Law, Work Permits & Residency

Tax Residency

An individual will be a **Tax Resident** where they:

- a) Reside in Vietnam for more than 183 days or more
 - (i) in a calendar year; or
 - (ii) within 12 consecutive months from the first day of arrival
- or
- b) Have a permanent residence in Vietnam (including where they have an address recorded in a temporary or permanent residence card);
- or
- c) Lease a house/office/hotel for a term of 183 days or more in Vietnam within the tax assessment period (cumulatively).

Note: If an individual has a regular residence in Vietnam, but actually stay less than 183 days in tax year and cannot prove that he/she is the tax resident in another country, he/she will still be treated as Tax Resident in Vietnam

Tax Residents are subject to tax in Vietnam on world-wide income.

Non-Tax Residents are taxed on Vietnam sourced income only

Labour Law, Work Permits & Residency

10% Withholding

- There is no Personal Income Tax rate of a straight “10%”
- Where tax resident individuals enter into “Service Contracts”, the law requires the paying party to withhold Personal Income Tax of 10% and remit this to the tax authorities.
- However, this is simply a temporary tax withholding.
- At the end of the tax year, individuals will need to finalise their taxes and pay any difference on the actual taxes they owe versus any taxes withheld and remitted to the tax authorities during the year, based upon the standard tax scales.

Withholding for Non-Tax Residents

- Non-tax residents will have 20% taxes withheld at source – as a full and final tax, and no tax finalisations are required.

Tax Changes for 2020/2021

- New Law on Tax Administration was passed by the National Assembly in June 2019, but implementing Decrees only come into force from 5 December 2020.
- Introduces changes, including the ability for individuals to be prohibited from leaving Vietnam where certain tax obligations have not been met.
- Combined with the additional information being gathered and shared amongst Vietnamese agencies, this may present a real issue for those earning income in Vietnam and not on top of their tax responsibilities (payments or filings).

End of Year Tax Finalisations

Resident individuals in receipt of salary or service income are generally required to submit an annual finalisation of their Personal Income Tax (“PIT”) with Vietnamese Tax Authorities, where:

- They owe taxes to the Tax Authorities; or
- They wish to claim a tax refund or future tax credit;

Individuals with salary income from a single employer can have their employer finalise their tax on their behalf.

Individuals with more than 1 employer in a year, or with other service income or foreign-sourced income, will generally be required to finalise their own PIT at the end of each year. Finalisations are required within 90 days from year end (ie, 31 March).

Warnings:

If foreign employees leave Vietnam without finalizing their PIT, then there are obligations on their final employer to take financial responsibility for any unpaid taxes and finalisation.

The Tax Authorities know significant information from tax withholdings and salary reports. They have the ability to request immigration authorities to prevent individuals from leaving Vietnam if they have unsettled tax liabilities.

COVID-19

What is happening now?

Work Permits

- New Work Permit applications are being accepted by Labour Authorities
 - Requires an original passport to be handed in
 - Can only be processed if an individual is already in Vietnam
- If Work Permits expire whilst outside of Vietnam, this can present difficulties, but no workaround at present unless individual returns to Vietnam.
- New Labour Law restricts Work Permits to 2 years, and 1 renewal of 2 years. We are yet to see what this means for those seeking renewal after 1 January, where they have previously renewed (there was no limit to the number of renewals in the old Law)

Visas and Borders

Currently, Vietnamese borders are only open to Vietnamese citizens (repatriation flights), foreign diplomats and foreign experts.

There are no inbound commercial flights at present, but many airlines are flying in for cargo only flights that will accept foreign experts (with approvals). These need to be booked via the Vietnamese ticket offices, and cannot be booked through normal websites or channels. Outbound flights exist, and these aircraft are flying to Vietnam without passengers.

Vietnamese nationals are able to get a limited number of seats on repatriation flights into Vietnam, with these co-ordinated by the embassies in the respective countries.

All people entering Vietnam require 14 day compulsory quarantine, however there is an exception for those business experts wishing to enter for a period of less than 14 days – where they can do 5 days quarantine, and then have limited freedom (although we have not seen these approvals yet in practice).

Entry, Visa & TRCs

- There is a process, at the Provincial level, where an employer can request the Department of Labour (on behalf of the People's Committee) to approve that the individual (and their family) can enter as an expert. Approval is then required from immigration department, flight bookings, Covid testing, quarantine arrangements etc.
- If someone holds a TRC, they still need immigration approval, but can use the TRC to enter Vietnam (or otherwise they will need to collect a 3 month visa at an Embassy or on arrival).
- TRCs can be arranged in country, once an expert is here and holds their Work Permit.
- Visa renewals in country have not been an issue (through agents), provided there is a valid purpose. Warning: there have been many placed on "blacklists" for incorrect visa purposes.

Thank you.

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