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# 2017 Guide to Doing Business in Vietnam

Ho Chi Minh City, Dec 2017

# Contents

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# Abbreviations & acronyms



| | |
|---|---|
| SEA | South East Asia |
| GDP | Gross Domestic Product |
| FDI | Foreign Director Investment |
| FX | Foreign exchange |
| ASEAN | Association of South East Asia Nations |
| DTA | Double Taxation Avoidance |
| M&A | Mergers and acquisitions |
| F&B | Food and beverage |
| ODA | Official Development Assistance |
| PPP | Purchasing Power Parity, Public-Private Partnership |
| BT, BOT, BTO, BCC | Build-Transfer, Build-Operate-Transfer, Build-Transfer-Operate, Business Cooperation Contract |
| IRC, ERC | Investment Registration Certificate, Enterprise Registration Certificate |
| OECD | Organisation for Economic Cooperation and Development |
| EBT, EBITDA | Earnings Before Tax, Earnings Before Interest, Tax, Depreciation and Amortisation |

# Country Profile
## In a nutshell

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- Located strategically in SEA, adjacent to China (north), Laos and Cambodia (West), facing South China Sea (East).
- A big population of nearly 93 mil (world's #14) (2016 estimate)
- Land area equivalent to Finland/ Malaysia (world's #66).
- A single-party communist state which has adopted extensive economic reforms since 1986.
- A lower middle income country since 2010 (with GDP per capita above US$1,000).
- Increasingly becomes an important manufacturing base notably for electronics markers and garment producers.
- Key products (of internal strength): rice, coffee, cashew, seafood, furniture and garments.
- Hanoi is the capital city, a cultural and political center (2nd largest city) while HCMC is the largest city and business hub.
- Key national advantages: steady economic growth, political stability, strong investor confidence, rising consumer demand, abundant opportunities.




# Country Profile
## Demographics

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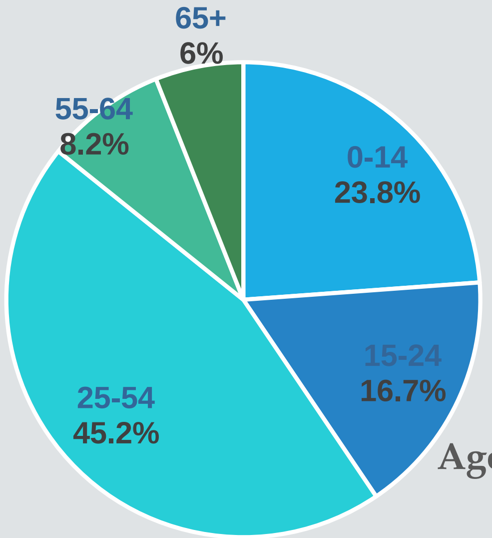
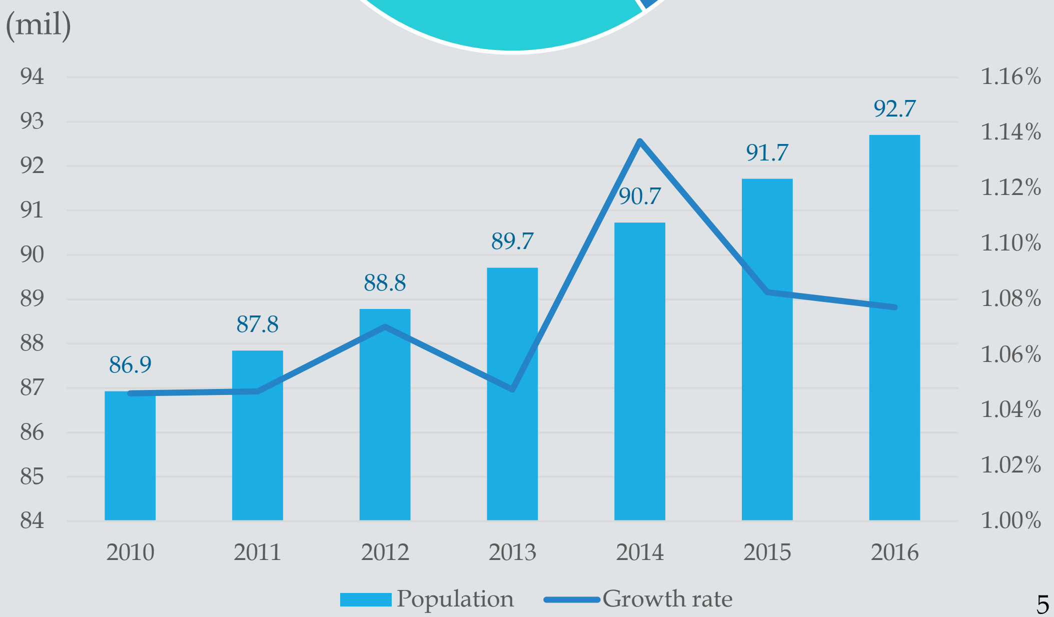
- Population is 3rd largest in SEA (after Indonesia and Philippines). Average pop growth: 1.07%/year (2010-16).
- Number of households: >24 mil; households with 2-4 people: 65%.
- Soaring urbanization: 34.6% urban, 65.4% rural (2015: 32% and 68%).
- A young population though aging quickly: median age of 29.5 (above 50% are younger than 30 years old).
- Shrinking workforce: 47.5 mil (age 15 – 55/60), or 51.2% (2015: 52.6%).
- High longevity: average 73.4 years (ranking No. 2 in SEA, after Singapore).
- High literacy (94.5%).
- 5 Largest cities: HCMC (8.4m pop), Hanoi (7.6m), Haiphong (2.2m), Can Tho (1.6m), Bien Hoa (1.2m) [2016e]
- High internet penetration (52%), and smartphone usage (33%).
- People highly open to Western/foreign lifestyles.

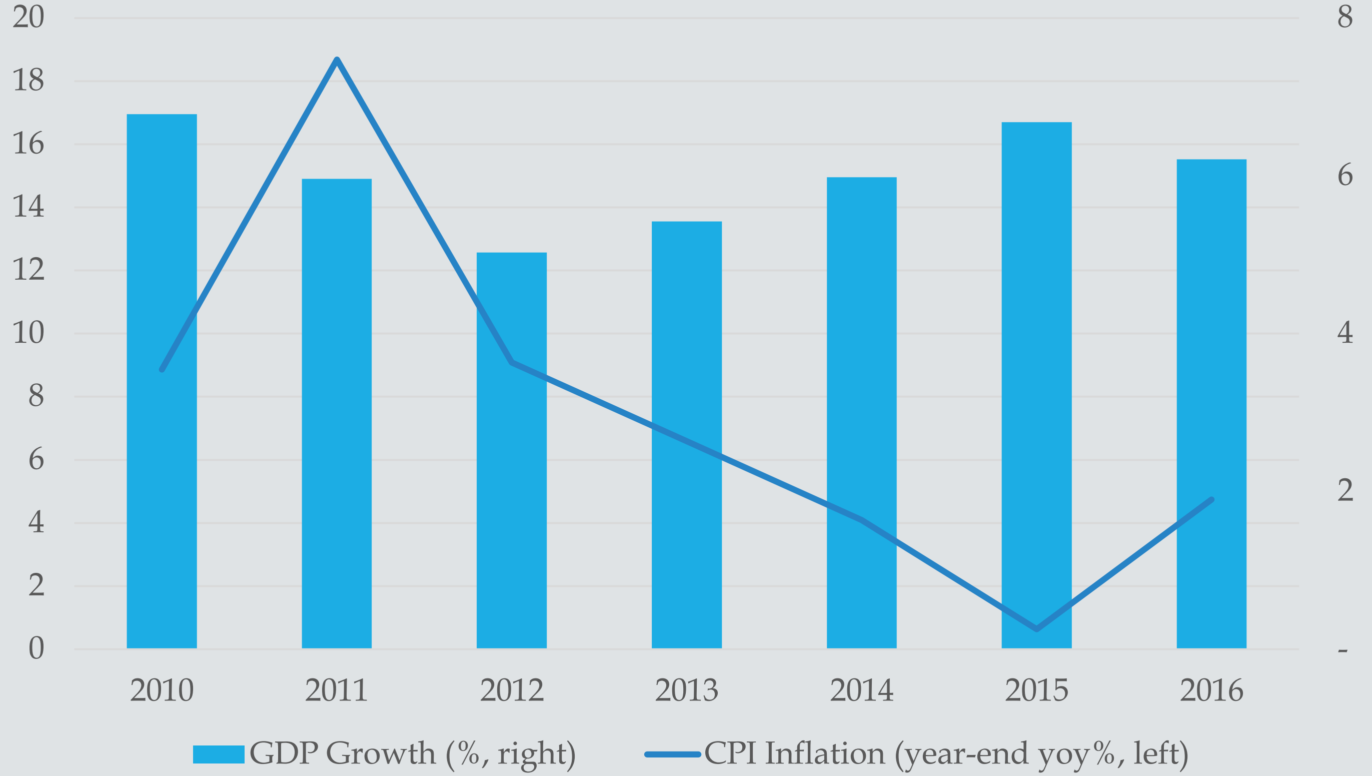



Age Structure 2016



# Country Profile
## Economy – Key parameters

| Parameter | 2016 | 2015 |
|---|---|---|
| GDP (current prices) | $200.5B | $191.4B |
| GDP growth | 6.21% | 6.68% |
| GDP per capita (current prices) | $2,164 | $2,088 |
| GDP per capita (PPP) | $6,422 | $6,024 |
| Inflation (year-end) | 4.74% | 0.59% |
| Unemployment rate | 3.7% | 3.5% |
| Exports/ GDP | 88.1% | 84.7% |
| Imports/ GDP | 86.8% | 86.5% |
| Current account balance/ GDP | 5.3% | 5.1% |
| FDI (registered)/ GDP | 12.2% | 12.6% |
| FDI (disbursed)/ GDP | 7.9% | 7.6% |
| External debt/ GDP | 44.1% | 42.5% |
| FX reserves/GDP | 20.4% | 14.9% |




After hit hard by global financial turmoil in 2008, Vietnam economy had shown strong signs of recovery until it slowed down in 2016, which was mostly attributed to natural and environmental disasters (North Central sea pollution, South Central droughts, storms throughout Central Vietnam, Mekong Delta salinization). However this is believed to be temporary and does not greatly affect the general trend of recovery and stability.

# Country Profile
## Foreign Trade – Highlights

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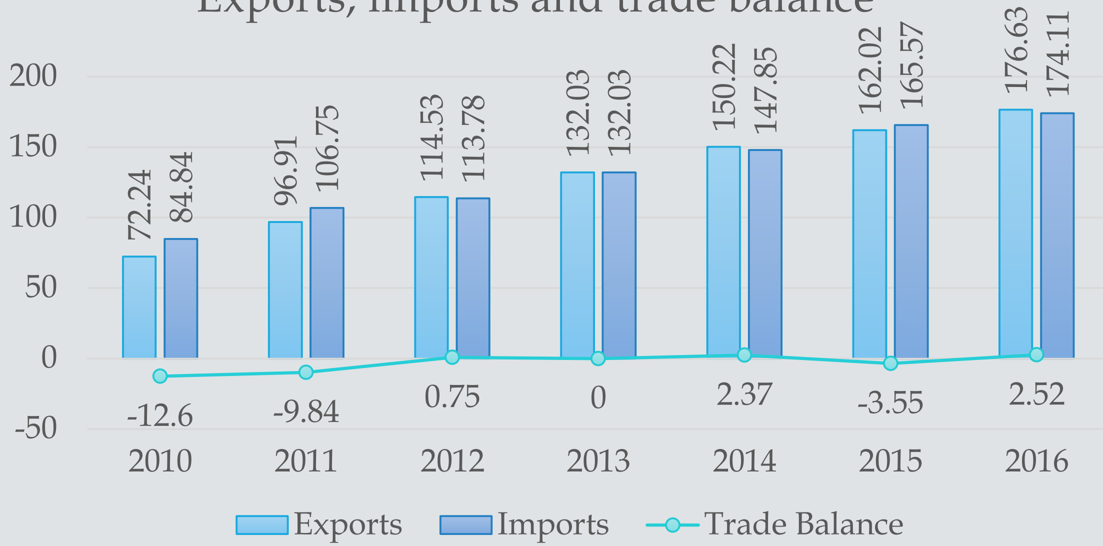
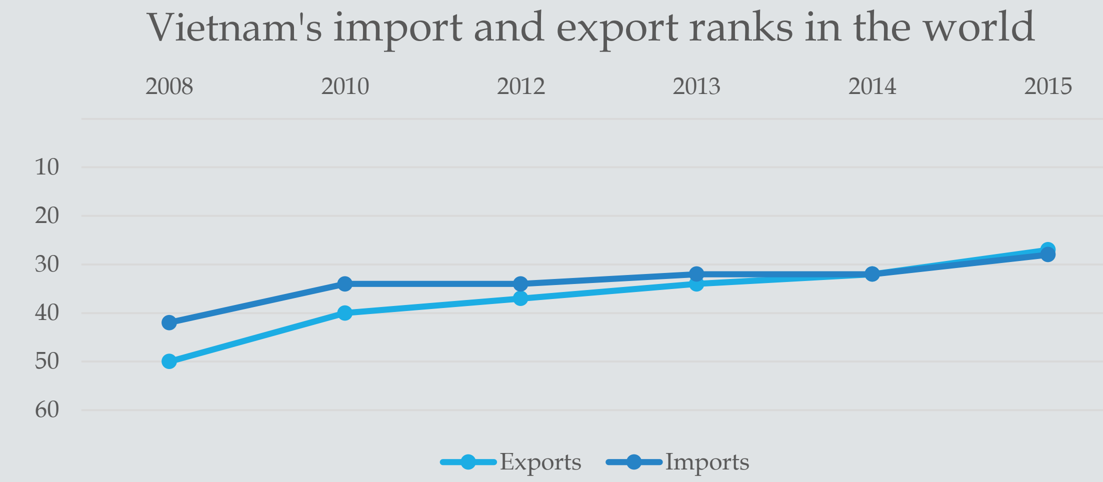
- Both exports and imports have grown steadily with 6-year CAGR of 16.1% and 12.7% respectively.
- Balance trade recently better controlled, with surpluses in 2012, 2014 and 2016. Minor deficits in the other years.
- Vietnam's export ranks have improved consistently while import ranks advance more slowly.
- In 2015, for the first time, export rank has surpassed import' rank (27 vs 28).
- Top 10 trading partners conducted 71% of total trade with Vietnam in 2016. The names have not changed much in the past years.
- 8 out of the top 10 are Asian, including 3 ASEAN members.
- Top European partners are Germany (#7), Holland (#11), UK (#12), Italy (#17), France (#18).
- Agribusiness trade has consistently dominated total turnovers with numerous commodities in various subsectors.



# Country Profile
## Foreign Trade – Merchandises & Trade Partners

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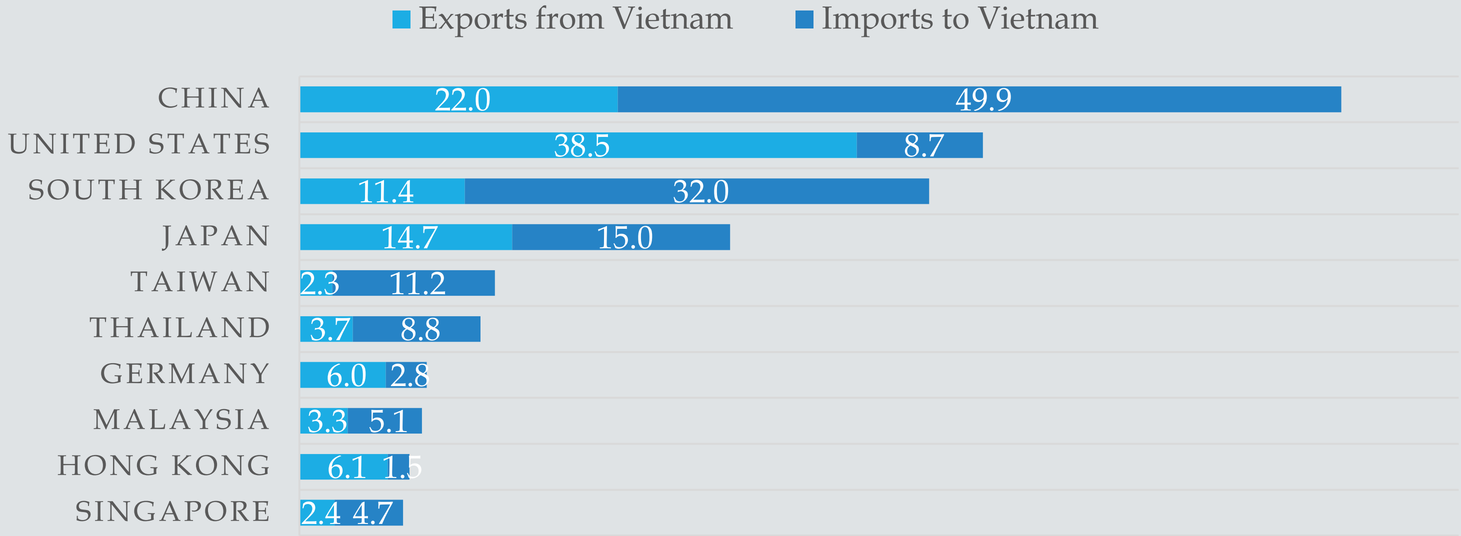
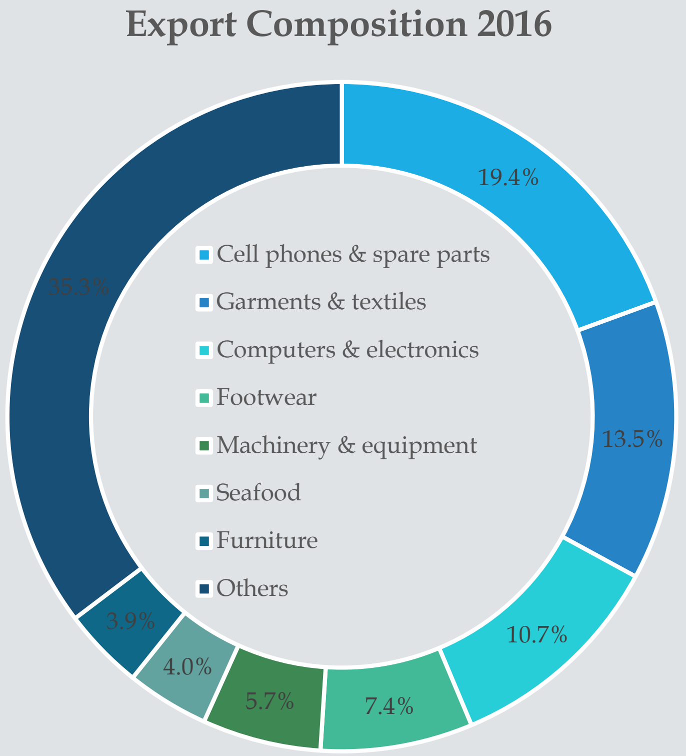
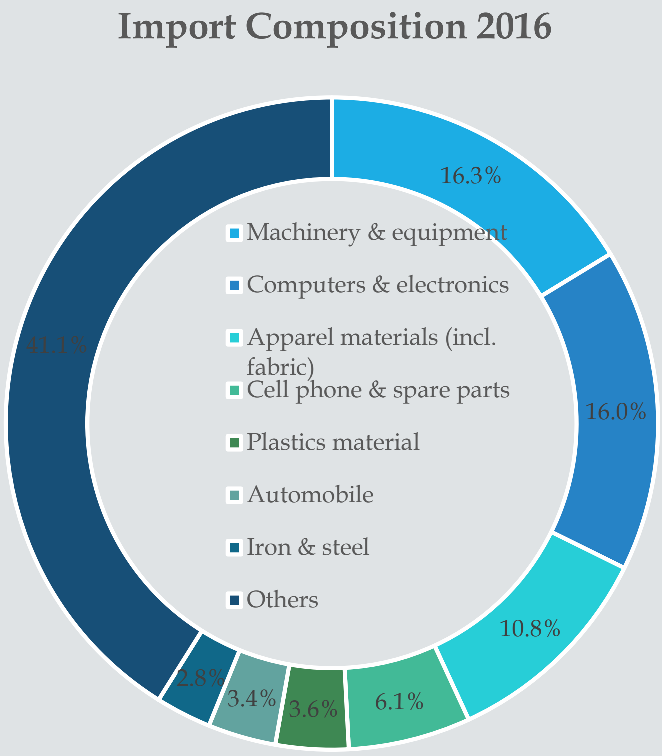
- Major export goods: cellphones, garments & textiles, computers & electronics, footwear, seafood, furniture, coffee, cashews, fruits & vegetable. Industrial items are with low added value and/or localization – most of which are exported by the FDI sector. Agricultural & fishery products, along with apparels, have long been strengths of Vietnam exports.
- Major import goods: machinery & equipment, computers & electronics, apparel materials (notably fabric), cellphones & spare parts, plastics material, automobile, steal and iron. Major import merchandises coincide with export goods. Technology-intensive items and automobile are in sharp rises.

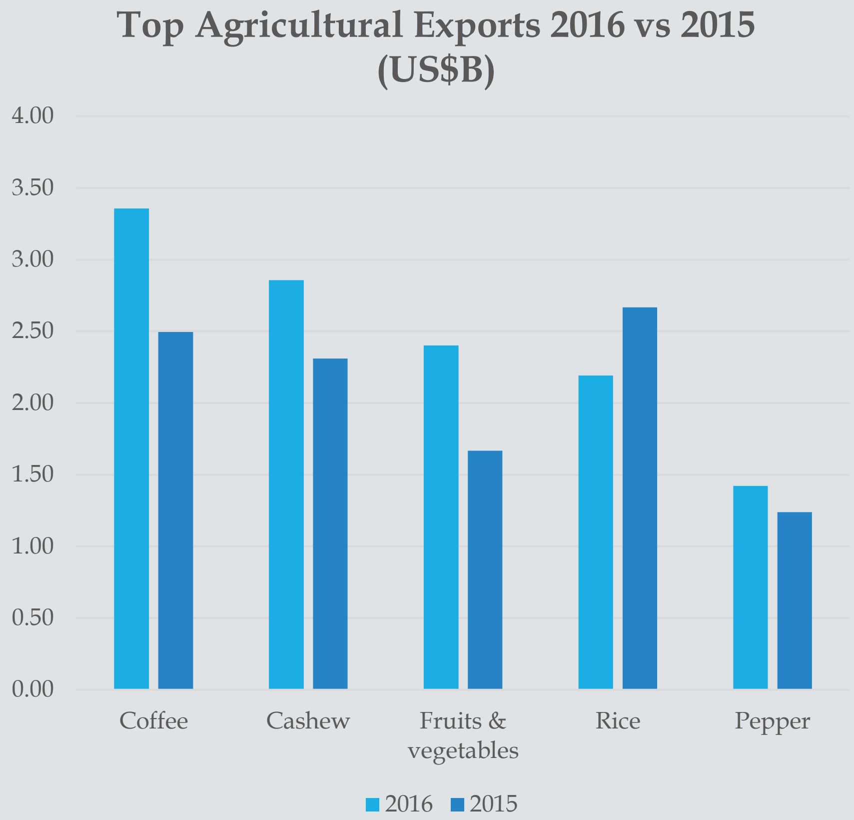



| US$bn (2016) | Exports | Imports | Net trade |
|---|---|---|---|
| *Industrial/ manufacturing* | | | |
| Cell phones & s. parts | 34.32 | 10.56 | 23.76 |
| Garments & textiles | 23.84 | 15.42 | 8.42 |
| Computers & electronics | 18.96 | 27.87 | -8.91 |
| Footwear | 12.92 | 1.79 | 11.13 |
| Machinery & equipment | 10.14 | 28.37 | -18.23 |
| Furniture | 6.97 | 1.83 | 5.14 |
| Plastics | 2.20 | 10.68 | -8.49 |
| Iron & steel | 1.96 | 8.02 | -6.06 |
| Automobile | - | 5.87 | -5.87 |
| *Agribusiness* | | | |
| Seafood | 7.02 | 1.10 | 5.92 |
| Coffee | 3.36 | - | 3.36 |
| Cashew | 2.86 | - | 2.86 |
| Fruits & vegetables | 2.40 | 0.92 | 1.49 |
| Rice | 2.19 | - | 2.19 |
| Pepper | 1.42 | - | 1.42 |

# Country Profile
## Foreign Trade – Key Statistics 2016



# Country Profile
## FDI – Key insights (1)

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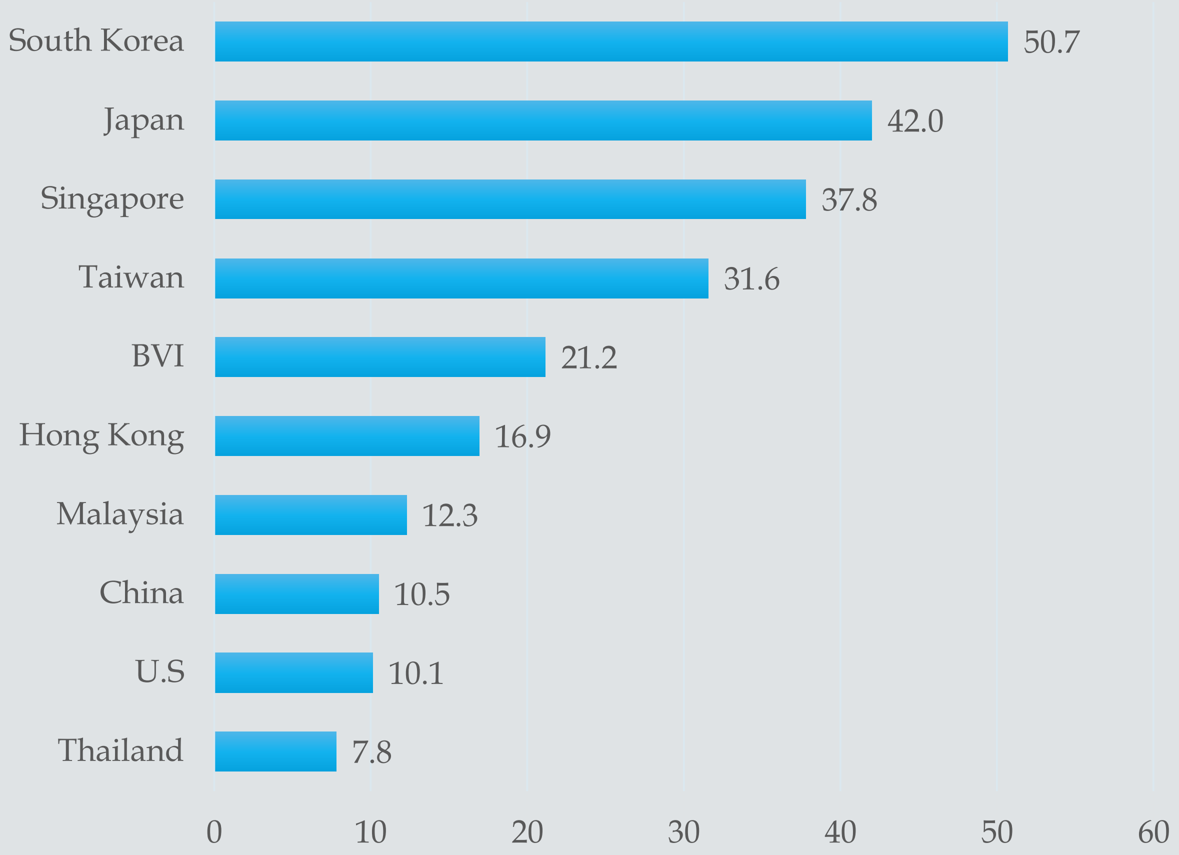
- FDI from ASEAN soared in 2016 following the AEC formation (45% of total registered FDI from 18% in previous year). Major ASEAN players: Singapore, Malaysia and Thailand.
- China is increasingly becoming a major provider of FDI (from 2% in 2014 to 13% in 2016).
- South Korea, Japan, and Singapore continue to be very top FDI providers (together 44% of total registered FDI).
- Domestically, Hanoi, HCMC, Hai Phong, Dong Nai, and Binh Duong continue to lead FDI attractions. Emerging destinations: Bac Ninh, Thai Nguyen, Hai Duong
- Disbursements account for a steadily increasing share of registered FDI (from 50% in 2012 to 65% in 2016).

**Accumulative FDI of top 10 providers as of end 2016 (US$B)**




- British Virgin Islands (BVI) and Hong Kong remain key tax-haven territories to structure holding companies.

# Country Profile
## FDI – Key insights (2)

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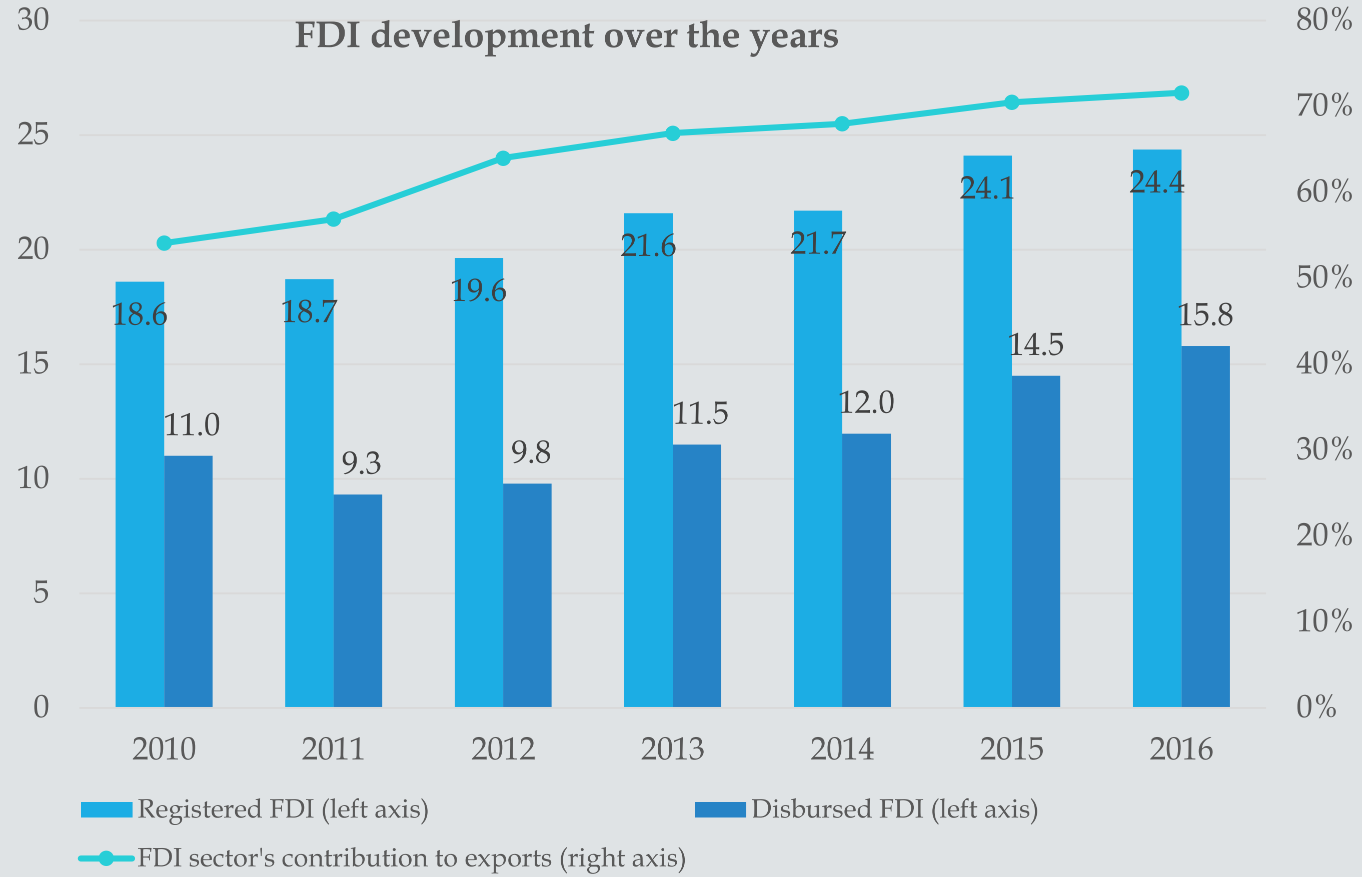
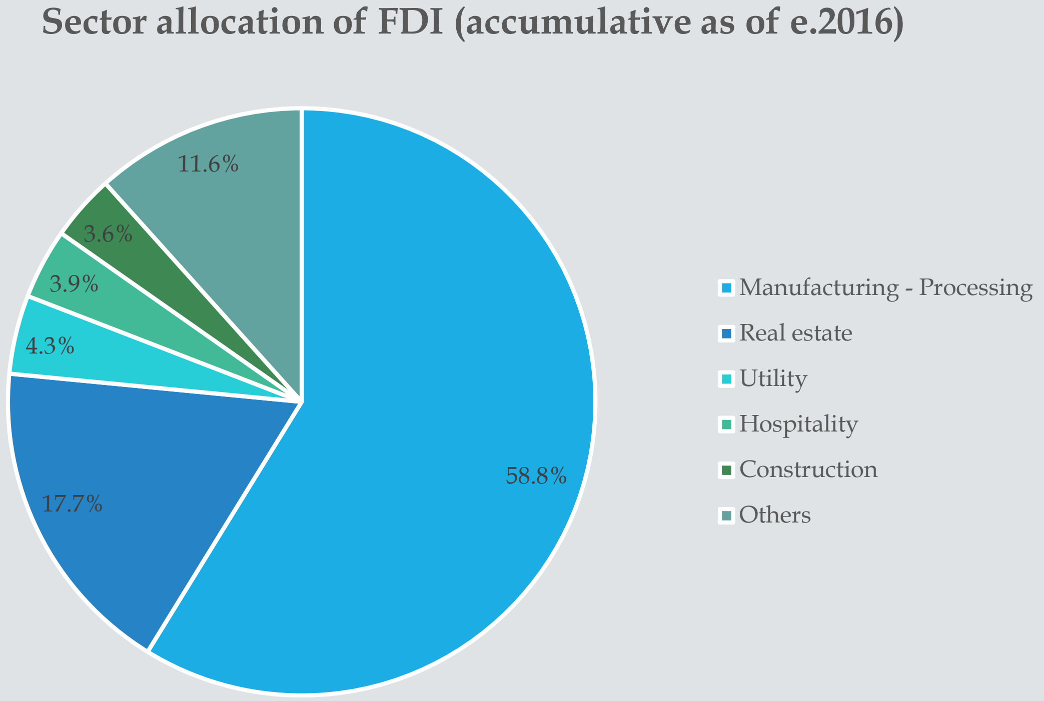
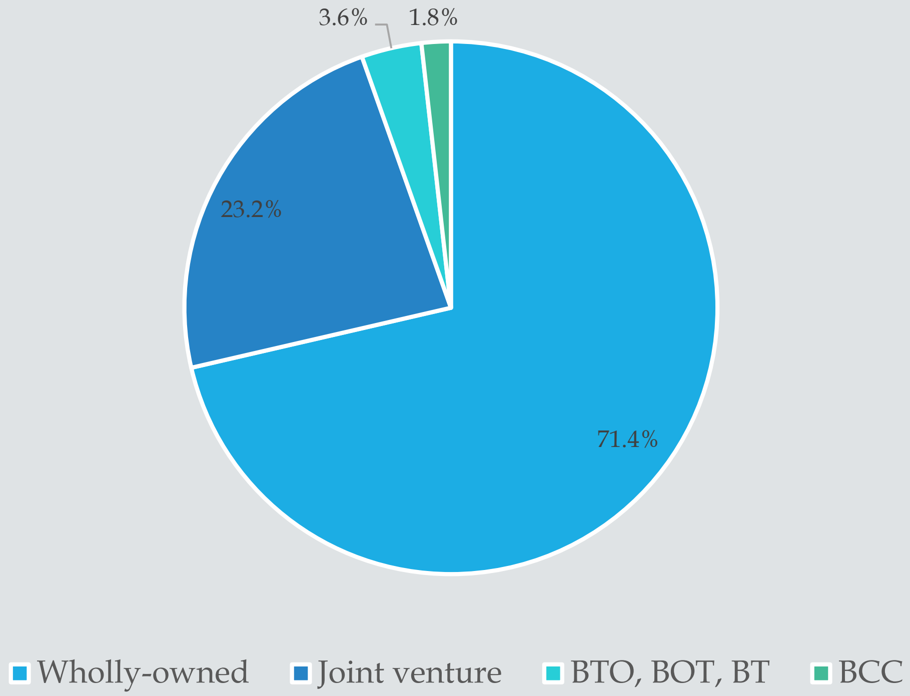



FDI sector has contributed increasingly to country's exports (72% in 2016 vs 51% in 2010), conducts most of the manufacturing (if any), assembling and export of industrial products (notably electronics), employs 4 mil people, contribute 18.7% of GDP. However it is believed to explore mostly low labor cost and do little to strengthen the VN domestic economy.

# Country Profile
## FDI – Key insights (3)

**FDI allocation by business form**
(accumulative as of end 2016)




**Top destinations for inbound FDI**
(accumulative as of end 2016)

| # | Locality | # of projects | Registered FDI (US$B) | Share of total |
|---|---|---|---|---|
| 1 | Ho Chi Minh City | 6,737 | 44.82 | 15.3% |
| 2 | Ba Ria - Vung Tau | 342 | 26.86 | 9.2% |
| 3 | Binh Duong | 3,035 | 26.70 | 9.1% |
| 4 | Hanoi | 3,950 | 26.17 | 8.9% |
| 5 | Dong Nai | 1,359 | 25.77 | 8.8% |
| 6 | Haiphong | 565 | 14.51 | 4.9% |
| 7 | Bac Ninh | 928 | 12.49 | 4.3% |
| 8 | Ha Tinh | 64 | 11.59 | 4.0% |
| 9 | Thanh Hoa | 86 | 10.64 | 3.6% |
| 10 | Hai Duong | 382 | 7.42 | 2.5% |

There has not been much change in top destinations of FDI (HCMC, Hanoi and their surroundings) except for:

- ✓ Ha Tinh Province, with Formosa Steel Project
- ✓ Thanh Hoa Province, with Nghi Son Oil Refinery Project

# Country Profile
## Ease of Doing Business

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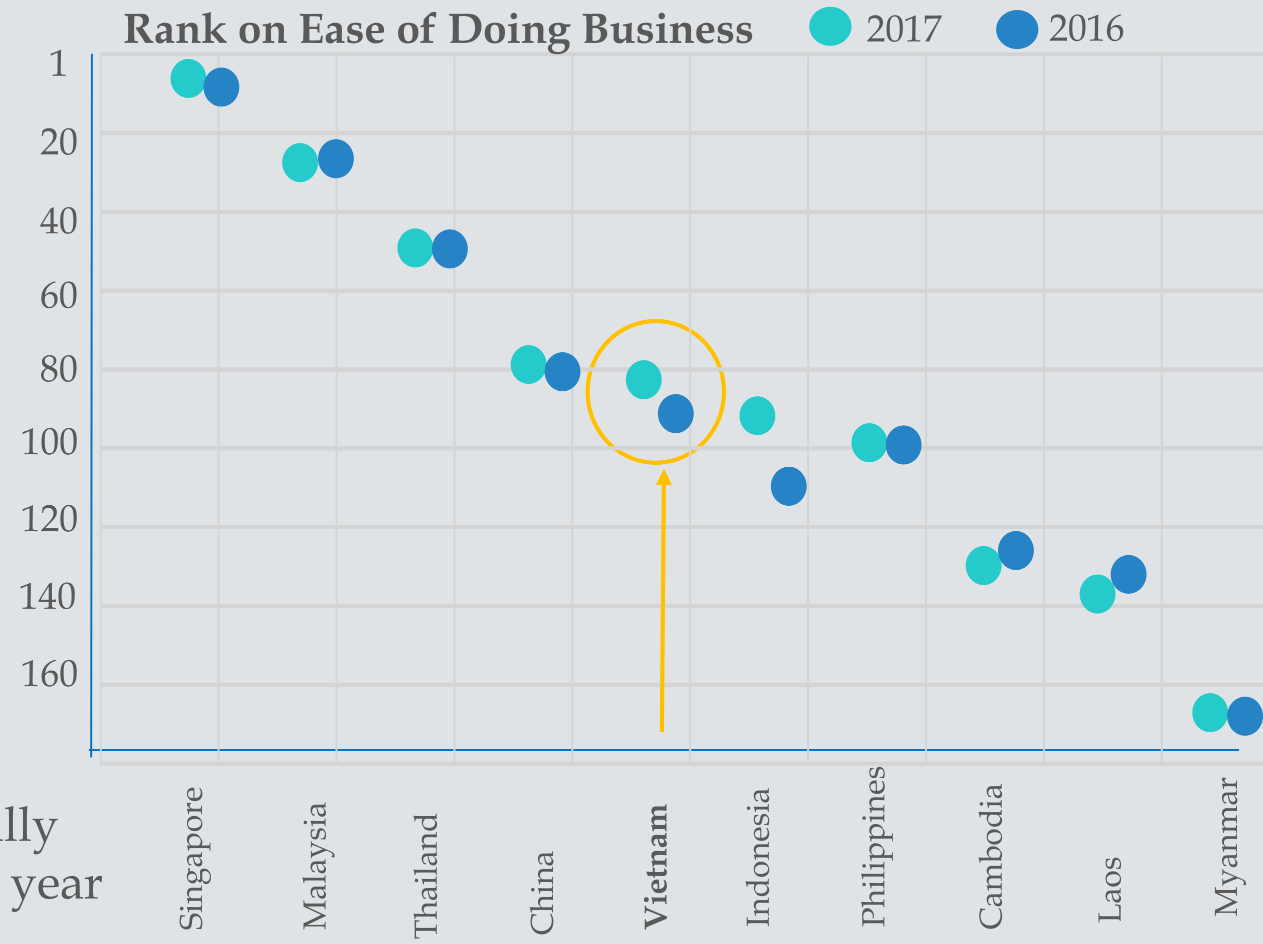
| | R2017 | R2016 | Change |
|---|---|---|---|
| Starting a Business | 121 | 111 | ↓ 10 |
| Dealing with Construction Permits | 24 | 21 | ↓ 3 |
| Getting Electricity | 96 | 101 | ↑ 5 |
| Registering Property | 59 | 58 | ↓ 1 |
| Getting Credit | 32 | 29 | ↓ 3 |
| Protecting Minority Investors | 87 | 118 | ↑ 31 |
| Paying Taxes | 167 | 178 | ↑ 11 |
| Trading Across Borders | 93 | 108 | ↑ 15 |
| Enforcing Contracts | 69 | 68 | ↓ 1 |
| Resolving Insolvency | 125 | 126 | ↑ 1 |
| Aggregate rank (Ease of Doing Business) | 82 | 91 | 9 |




Vietnam has an average ranking (82/192 economies), globally and regionally. In general, Vietnam made slight progresses year after year; but in some cases, reforms do result in worse performance/ ranking. For example, incorporation for foreigners remain a big trouble and a regress in years.

# Business Opportunities
## Macro-level facts

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- Numerous economic dynamics: steady GDP growth, strong investor confidence, high export competitiveness, rising consumer demand and robust consumer sentiment.
- With low labor costs and recent improvements in infrastructure and economic reforms, Vietnam has increasingly become a major alternative manufacturing base to China, India, Bangladesh, etc.
- Highly integrated into the global and regional economy; have concluded many free trade agreements concluded, bilateral and multilateral.
  - Multilateral: AEC and AFTA, ASEAN-China, ASEAN-Japan, ASEAN-S.Korea, ASEAN-India, ASEAN-Australia, ASEAN-New Zealand, Vietnam-EAEU, Vietnam-EU
  - Bilateral: VN-Japan, VN-S.Korea, VN-Chile, VN-Egypt, VN-India, VN-Austria, VN-Argentina, VN-Australia, VN-Poland, VN-Bangladesh, VN-Canada, VN-Holland, VN-USA, VN-Hongkong, VN-Greece, etc.
- Increasing DTA agreements (DTAAs) signed and executed over time: DTAAs signed with 76 countries so far; About 10 DTAAs being negotiated (*See Details in Slide 39*).
- Foreign ownership of real estates permitted in Vietnam now, despite leasehold land status.

# Business Opportunities
## Agribusiness Sector

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- Free trade agreements reduce or remove tariff for trade of many agricultural products between Vietnam and numerous markets => boost trade.
- Tax incentives available in many agribusiness subsectors promote inbound investments (FDI/M&A) => boost production/trading investment:
  - [Cultivating and/or processing] horticulture (crops), forestry or aquaculture;
  - Fishing and fishery logistics;
  - Seeding/brooding, or producing biotechnology products.
- Global demand for Vietnam key agricultural products remain strong and in upward trend: seafood (notably shrimps/prawns, catfish, tuna, squid), rice, coffee, tea, cashew, pepper, rubber, cassava, various fruits, etc. => import from Vietnam.
- Strong, soaring demand from Vietnam for agricultural raw material and end products: cotton, soybeans, dairy, wheat, wood, animal feed, fertilizer and pesticides, fruits.
- Vietnam's critical needs for hi-tech agriculture (to improve productivity and added value), and clean/organic agriculture (to enhance food safety – which is the biggest concern or challenge now).

# Business Opportunities
## Non-agribusiness Sectors *(selected)*

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| Industry Sector | Main Rationale [of Opportunities] |
|---|---|
| Retail | Among highest growth industries; modern trade currently has still low penetration (25%) but is expanding fast, dominated by foreign players (52% market share); F&B retail most promising. |
| E-commerce | High internet penetration & smartphone usage; growing trends of online shopping; e-payment, though currently a key challenge, is being addressed with enormous efforts. |
| Education | Society's emphasis on significance of education; country's demand for education reforms, and needs for international-standard general education and foreign-language training; changing awareness about vocational education. |
| Healthcare & Pharma | Population severely underserved for healthcare services; middle and upper classes have huge needs for overseas treatment; Local drug production remains weak and is heavily dependent on import of raw materials (85%); foreign products dominate the market with 53% market share. |
| Infrastructure | Enormous needs for infrastructure in all fields and geographies; ODA much less available; PPP expected to become a key collaboration format with increasing participation of private parties. |
| Automobile | Rising disposable income and enhanced lifestyles; improved road infrastructures (expanding highway network); increasing perception of cars being safer than motorbikes. |

# Business Opportunities
## Incentives to preferential sectors

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Above are business sectors incentivized by Vietnam Government. Common incentives includes:

- Lower VAT tax rates (0% or 5%) or no VAT;
- Import duties exemption;
- CIT exemption for a number of years, followed by CIT rebate for a couple of years.
- Discounts of land rents or land use levies.

Above incentives are applied to both green field and expansion projects; capital-intensive and labor-intensive projects regardless of the business sector.

# Market entry
## Choices of Strategy

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| Without incorporation | Incorporation |
|---|---|
| Normal trading with local partners, with or without having a rep office (in Vietnam) | Establish a company, whether wholly-owned or partly-owned (i.e. joint venture with local partners).<br>The company can take various legal forms, the most common of which are: limited liability company (LLC), joint stock company or stock corporation (JSC), partnership company.<br>The process can take long (90 days or more) especially if your business sector is restrictive/ conditional to foreigners.<br>Documentation requirements can be heavy. For foreigners, duplicate business licenses (IRC and ERC) are required. |
| Commercial alliance: distributorship, agency, franchise/ product licensing, with or without having a rep office | |
| Contractual relationships: BT, BOT, BTO, BCC (usually applied for infrastructure and energy projects), manufacturing contracts. | |
| M&A: Acquire or merge into an existing domestic company (of varied ownership types). This helps a foreign investor save a lot of time for market entry and penetration. Prevailing laws have allowed foreigners to acquire up 100% shares in a firm, including a listed company, in many business sectors. | |

# Market entry
## Commercial presence without incorporation

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| Forms requiring licensing | Forms that do NOT require licensing |
|---|---|
| Although no legal entities are created, the below forms still require you to run through whole licensing procedures (at Provincial Dept. of Industry & Trade), which may be less complex than those for incorporation | These forms simply require a commercial contract between parties involved. |
| **Rep Office**: Less requirements and procedures to set up; yet NOT allowed to conduct full operation (that generates revenue and profit). May cause corporate tax exposure (PE issue) under certain conditions. | **BCC:** Investors sign contracts with state agencies to collaborate in a business on a production sharing or profit sharing basis. Mainly fit for energy projects. |
| **Branch Office**: Not an independent legal person but is allowed to conduct full operation and taxed as an independent legal person (separate from its HQ). Mostly fit for banks. Other than that, not practically useful. | **BT-BOT-BTO:** Investors sign these contracts with state agencies to execute mostly infrastructure projects (various sub-sectors). |
| | **Others**: M&A, commercial alliance, etc. |

# Market Entry
## Incorporation – Legal forms

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| Limited Liability Company | Joint Stock Company | Partnership Company |
|---|---|---|
| Most common form of business where owners are liable for obligations within the level of contributed charter capital. | Second most common form of business among larger companies. Owners are liable for obligations within the level of contributed capital. | Not so common in Vietnam; fit for certain professional firms only (legal, accounting); |
| Divided into 2 types: single-member and multi-member (no more than 50). | At least 3 shareholders (no maximum cap). | Divided into limited and unlimited partnerships |
| Cannot issue shares. | The only form that can issue shares, privately or publicly. Fit for medium to large corporations with needs for extended shareholder base. | |

# Market Entry
## Incorporation – Licensing procedures

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| Step 1: Pre-investment approval (not required of all) | Step 2: IRC application | Step 3: ERC application |
|---|---|---|
| Required for certain lines/sizes of investment; officially known as "investment policy" approval. Approver can be: Provincial People's Committee or PC (lowest level), Prime Minister or PM, National Assembly or NA (highest level). | Required of all FDI projects with foreign ownership of 51% or above. | Required for all kinds of incorporated business. |
| Timeline: 35 days (PC), 60 (PM), and 150 (NA). | Timeline: 15 business days (at least) | Timeline: 03 business days |
| Standard documentation: application form, financial statements, use of technology, environmental impact and socio-economic evaluations, relocation plan (if any). | Standard documentation: application form, investment proposal, lease agreement, financial statements plus financial capability proof. | Customary documentation: application form, company charter, list of board members, Power of Attorney. |

**Notes:** i) Any foreign documents or supporting info provided as part from the above processes will need to be notarized/ legalized by Consular and translated into Vietnamese by competent bodies. ii) Companies with less than 51% foreign ownership can skip the IRC application but still need to go through a step before ERC application: getting an acknowledgement of capital contribution (15 business days), with less required documentation.

# Market Entry
## Incorporation – Post-licensing procedures

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| Action required | Respective timeline |
|---|---|
| Seal (stamp) carving | Immediately after ERC granted |
| Corporate bank account opening | As soon after incorporation as possible |
| Startup tax registration (eliminated from Jan 1, 2018) and payment of business license tax for 1st year. | Within 30 days from incorporation (date of ERC) |
| Labor and Social Insurance registration | By the 20th day of the calendar month in which employment occurs. |
| Charter capital paying-up | Within 90 days from incorporation |

# Market Entry
## Incorporation – Important notes



### Minimum Capital

- There are 6 business lines whereby the notion of "legal capital" (the minimum charter/share capital) is applied: financial institutions (banking/ non-banking), real estate (development/ trading), debt collection, security services, labor export, film production, airlines, airports, airport services, general air transport services, audit, telecommunication.
- Other than the above business lines, there are no minimum capital requirement; however, investors should put forward a reasonable minimum amount for charter capital depending on the business line.

  Eg. Trading/services: VND50mil or US$2,200.

  Manufacturing: VND100mil or US$4,400.

### Legal representative(s) or director(s)

A company may have more than one legal representatives to represent the Company in various categories of transactions. Legal representatives can be Vietnamese nationals or expats (resident/ non-resident).

### Local director

A foreign-owned company doesn't need to have a local director. Nor does it have to hire local employees. Yet, local employees are a lot less expensive than expats.

# Taxation
## An overview

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| Major applicable taxes | Tax administration |
|---|---|
| ▪ Corporate Income Tax (CIT)<br>▪ Value Added Tax (VAT)<br>▪ Foreign Contractor Tax (FCT) or also known as Withholding Tax<br>▪ Personal Income Tax (PIT)<br>▪ Other taxes: Special Sales Tax, Stamp Duty, Inheritance/Gift Tax, Business License Tax, Non-agricultural Land Use Tax, Natural Resource Tax, Environmental Protection Tax and Fee. | ▪ Tax administration is controlled by National Taxation Authority (briefly known as GTD), under Ministry of Finance.<br>▪ At each province/municipality, it is performed by Provincial Department of Taxation. Below it, there is District Department of Taxation.<br>▪ Foreign-invested and large-sized local companies will be administered by Provincial Taxation Dept. instead of District Taxation Dept. |

# Taxation

## CIT - Fundamentals

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### Tax rates

- Standard Tax Rate: **20%**.
- Preferential tax rates can be obtained for small businesses and encouraged projects (See Slide 26).
- Certain industries may be levied higher tax rates (e.g. oil and gas operations and natural resources industries – 32% to 50%).

### Application

CIT applies to all domestic and foreign-owned entities that operate in Vietnam – i.e. companies incorporated under Vietnamese laws and those which are incorporated under foreign law and carry on a business in Vietnam through a branch office or rep office.

### Compliance requirements

- Assessment system: Generally self-assessment.
- 3 types of filing:
  - ✓ Annual return (i.e. the 90th day following the end of the calendar year or fiscal year)
  - ✓ Ad hoc (transaction-based) returns (i.e. the 10th day following the date of incurrence of tax liability)
  - ✓ Return for cessation of business, completion of contract, change of ownership or re-organization (i.e. the 45th day following the event or completion of the transaction).

# Taxation
## CIT – Important notes

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- CIT liability is quarterly self-assessed and then temporarily paid (if >0) with the same timeline as quarterly CIT filing.
- Tax losses can be carried forward fully and consecutively and offset against profits of subsequent years for up to 5 years. Carryback of tax losses is not allowed.
- Concept of tax grouping/consolidation is not addressed; offsetting profits/ losses between inter-companies not permitted.
- Gains from transfer of shares/ assets are also taxed at 20%. No registration fee on the transfer of shares or non-registerable assets. For registerable assets (houses, land, ships, cruisers and boats, automobiles, motorcycles, aircrafts, etc.), registration fee is between 0.5-20% (depending on the asset transferred).
- CFC rules are not in place. Yet, a Vietnamese enterprise deriving income overseas must declare and pay corporate tax in respect of the foreign income at 20% CIT, even when it enjoys tax reduction/ exemption under the foreign country's law. Where foreign income has been subject to any foreign corporate tax, the Vietnamese outfit <u>in principle</u> may claim a foreign tax credit up to the equivalent of tax payable under Vietnamese CIT law.
- No specific tax-driven thin capitalization rules. However, certain restrictions to that effect can be found in the regulations on foreign loans and corporate income tax (permitted borrowing capacity and excessive interest rates).
- No specific anti-avoidance rules in Vietnam. Still, the tax authorities have the power to carry out tax audits of any taxpayer to determine tax obligations within a period of 10 years. After this time limit, they can no longer levy any fine or penalties, but can still collect any unpaid or understated amounts.
- Formal rulings are allowed and relatively common in Vietnam. Official letters issued by National/ Provincial Tax Departments are applied to all relevant taxpayers or a taxpayer and can be used as reference.

# Taxation

## CIT – Preferential rates

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**10% rate** applies for

- Business income from implementing new projects:
  - ✓ based in areas with <u>extremely</u> disadvantaged socio-economic conditions, economic zones, hi-tech zones, IT-focused parks;
  - ✓ of research and development (R&D), hi-tech;
  - ✓ developing water plants, power plants, water supply & treatment systems; bridges, roads, railways, airports, sea ports, river ports, terminals and similar works;
  - ✓ producing software, composite materials, light materials, rare materials, recyclable energy, clean energy, energy from recycled waste; developing bio-tech;
  - ✓ of environmental protection;
  - ✓ new mega manufacturing projects (criteria including investment capital & revenue/ staff)
  - ✓ others with specific eligibility criteria.
- Applies for hi-tech enterprises, agricultural enterprises applying hi-tech.

**15% rate**

business income from agriculture and seafood processing in areas <u>not</u> based in disadvantaged and extremely disadvantaged socio-economic zones.

**17% rate**

- business income from implementing new projects
  - ✓ areas with disadvantaged socio-economic conditions;
  - ✓ producing superior steel, energy-saving products, agricultural equipment & machinery, irrigation equipment; animal, poultry and fish feed; developing traditional sectors.
- people’s credit funds and microfinance institutions.

# Taxation

## CIT – Transfer Pricing (TP)

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- Increasingly become a key issue and attention in tax administration of Vietnam' taxation authorities, especially for foreign-owned companies and local companies transacting with overseas business parties.
- Decree 20-2017/ND-CP, effective as of 1 May 2017, replacing Circular 66/2010/TT-BTC, becomes key in TP regulation:
  - ✓ Provides new TP compliance requirements (including 3-tiered TP documentation), new TP declaration forms, and guidance on the deductibility of related-parties expenses and interests (regarding inter-company loans);
  - ✓ Introduces additional concepts and principles from OECD's TP guidelines and BEPS action plan;
  - ✓ Launches the concept of "substance over form" to be applied in TP administration, examination and audit.
- Highlights of Decree 20's specific provisions:
  - ✓ Ownership threshold increases to 25% from 20%; two parties having transactions between them making up above 50% of sales or revenues are no longer treated as related parties.
  - ✓ Intercompany loans' interests are capped at 20% of EBITDA for CIT deductibility; criteria for tax deductibility of intercompany services get more stringent.
  - ✓ Taxpayers must prepare and maintain a master file, local file and country-by-country report. Higher level of breakdowns are required in reporting.
  - ✓ A taxpayer is exempt from TP documentation if: i) taxpayer has revenue below USD2.2m or total value of related-parties transactions is below USD1.3m; ii) concludes an APA and files annual APA reports; or iii) taxpayer has revenue below USD8.8m, performs simple biz functions and achieves the minimum EBT margin (trading/service: 5%; manufacturing 10%, processing 15%).

# Taxation
## VAT – Fundamentals



| Tax rates | Exemptions (VAT not applied) |
| --- | --- |
| ▪ Standard rate: **10%**.<br>▪ Concessionary rate: **5%** (applies for essential goods such as agricultural produce, fishes)<br>▪ Preferential rate: **0%** (for export goods and services) | Certain agricultural products; water supply and drainage; salt; transfer of land use rights; life insurance, financial, medical, public postal, telecommunications, public hygiene services; construction work related to cultural work; education and vocational training; radio and television broadcasting; publication; public transportation; goods that cannot be produced in Vietnam, specialized arms; imported goods for humanitarian purposes; technology transfers; gold bars; unprocessed minerals and natural resources, goods in transit via Vietnam territory. |

**Registration requirements**

- Required for all organizations and individuals producing and trading taxable goods and services in Vietnam and importing taxable goods or purchasing taxable services from overseas.
- Penalties for failure to register or late registration will apply.
- An overseas company subject to VAT on the income arising from Vietnam (as part of FCT) may (i) register a tax ID and declare VAT on its own (certain conditions including permanent establishment must be met to adopt this VAT declaration method) or (ii) choose to pay VAT under deemed VAT withholding method.

# Taxation

## VAT – Important notes



### Compliance requirements (returns filing)

- VAT returns are to be filed on a either quarterly or monthly basis.
- Quarterly basis: the 30th day following the end of each quarter. Applied for start-ups and smaller-size firms whose annual revenue of the nearest year is VND20bn (~US$810k) or less.
- Monthly basis: by the 20th day of the following month. Applied for larger companies.
- For overseas companies paying VAT under deemed VAT withholding method, VAT shall be declared and withheld by the Vietnamese contracting party within 10 days from the date of making the payment.

### Invoices and Payment vouchers

- Entities may use pre-printed invoices, self-printed invoices or electronic invoices to declare their VAT liability.
- The invoice, contract, payment voucher and the related must be consistent; payment voucher must state clearly the payment for the reference contract. Otherwise, it may not be creditable for VAT purpose.

### Refund claim

Less cases eligible for VAT refund (compared to before Jul 2016) to address the budget constraints.

- Companies that have expansion/investment projects in provinces/municipalities other than where the HQs are located with accumulated VAT credits exceeding VND300 mil (USD13,215) may claim VAT refund.
- Exporters whose excess input VAT credits exceed VND300 mil can claim a refund on a monthly/quarterly basis.

# Taxation

## FCT – Fundamentals

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### Concept/ Application

- Also known as FCWT (Foreign Contractor Withholding Tax) because of the way it is withheld from the income payer.
- Applies to certain Vietnam-derived payments (either domestic or outbound) to foreign parties without a licensed presence in Vietnam, including: interest, royalties, service fees, leases, insurance, transportation, transfers of securities and goods supplied in Vietnam or associated with services rendered in Vietnam.
- Normally comprises a combination of CIT and VAT at varying rates, but can also include PIT for payments to foreign individuals.
- DTA: Any foreign tax which is paid on the part of income out of which dividends are paid will be deductible against the corporate tax payable in Vietnam (up to the equivalent of Vietnamese corporate tax payable on that income).

### Exclusions/ Exemptions

FCT does NOT apply to:

- pure supply of goods (i.e. where title passes at or before the border gate of Vietnam, and there are no associated services performed in Vietnam), services performed and consumed outside Vietnam, and various other services performed wholly outside Vietnam (e.g. certain repairs, training, advertising, promotion, etc.).
- dividends paid to non-resident corporate investors; profit distributions or dividends repatriated abroad by foreign-invested enterprises (provided they have fulfilled all tax and financial obligations toward the Vietnam Government).

# Taxation
## FCT – Tax rates

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| Type of business activities | | Deemed VAT-FCT rate | Deemed CIT-FCT rate |
|---|---|---|---|
| Trading | Distribution, supply of goods | | |
| | Distribution, supply of goods associated with services rendered in Vietnam (including on-spot export and import) | 1%/ exempt | 1% |
| | Supply of goods under Incoterms where sellers bear risks relating to goods in Vietnam | | |
| Services | Services (except those listed below) | 5% | 5% |
| | Services together with supply of goods (unseperatable) | 3% | 2% |
| | Restaurant, hotel and casino management services | 5% | 10% |
| Construction | Construction, installation without supply of materials, machinery or equipment | 5% | 2% |
| | Construction, installation with supply of materials, machinery or equipment | 3% | 2% |
| Lease | Leasing of machinery and equipment | 5% | 5% |
| | Leasing of aircraft, vessels (including components) | Exempt | 2% |
| Transportation | Domestic transportation (including seaway, airway) | 3% | 2% |
| | International transportation | 0% | 2% |
| Banking | Interest from loans | Exempt | 5% |
| | Financial derivatives | Exempt | 2% |
| Insurance | Insurance (except certain exempted sub-categories) | 5% | 5% |
| | Re-insurance, commission for re-insurance | Exempt | 0.1% |
| Oil & Gas | Supply of goods and/or services for oil & gas exploration and development | 10% (standard)/ 5%/ exempt | 5% |
| | Leasing drilling rigs | Exempt | 5% |
| Licensing | Royalties/ license fees (from such activities as software licensing, technology transfer, transfer of IP rights) | Exempt | 10% |
| Capital transfer | Transfer of securities, certificates of deposit | Exempt | 0.1% |
| Others | Manufacturing, other business activities | 3% | 2% |

# Taxation
## FCT – Methods of tax determination

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### 1. Deduction method

Foreign contractor registers for VAT purposes and filing CIT and VAT returns in the same way as a local entity (VAT deductibility and CIT at 22% on its net profits). Eligibility criteria for the method:

- Has a PE or is tax resident in Vietnam;
- Operates in Vietnam under a project that lasts more than 182 days; and
- Adopts fully the Vietnam Accounting System (VAS).

Other requirements upon applying the method:

- Vietnamese customer is to notify the tax office of the foreign contractor paying tax under the deduction method within 20 working days from the date of signing contract.
- If foreign contractor carries out many projects in Vietnam, and qualifies for the deduction method for one project, the contractor is to also apply deduction method for its other projects.

### 2. Direct method (withholding method)

Applies to foreign contractors who do not register for VAT purposes nor file CIT or VAT returns. Instead CIT and VAT will be withheld by the Vietnamese contracting party at prescribed rates applied to gross turnover (as per table on Slide 32). The VAT withheld by the Vietnamese contracting party is generally deductible for their VAT return.

### 3. Hybrid (combined) method

Allows foreign contractors to register for VAT and accordingly pay VAT based on the deduction method (i.e. output VAT less input VAT), but with CIT being applied at the direct method rates on gross turnover. Eligibility criteria for this method: same as for deduction method (except that the adoption of VAS may be to a less extent).

# Taxation
## PIT – Fundamentals



**Tax status: tax resident vs non-resident**

Any foreign individual shall be considered a tax resident if he/ she meets one of the following conditions:

- Being present in Vietnam for 183 days or more within either a calendar year or for 12 consecutive months from the first arrival;
- Having a permanent residence in Vietnam (including a registered residence which is recorded on the permanent/temporary residence card in case of foreigners);
- Having a leased house in Vietnam with a term of 183 days or more in a tax year and unable to prove tax residence in another country.

A person not meeting any of the above criteria is considered a tax non-resident.

**Taxable income**

Employment income, business/trading income, income from capital investments/ capital transfers, income from property transfers, winnings or prizes, royalties/ income from franchising, income from inheritances and receipts of gifts.

**Tax return filing and payment**

- *Employment income*: Responsibility rests with the employer who shall file tax returns and make payments on a monthly or quarterly basis (depending on size).
- *Non-employment income*: The income earner is required to declare and pay PIT deriving from each type of taxable income, on a regular basis (within days after such income is received).
- *Expatriate employees* are also required to carry out a PIT finalization on termination of their Vietnamese assignments before leaving Vietnam. Refunds due to excess tax payments are only available to those who have a tax ID number.

# Taxation
## PIT – Tax rates

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| Type of PITable income | PIT rate |
|---|---|
| **Employment income** | |
| i) Tax residents | 5-35% of gross income, progessively in 7 brackets |
| ii) Tax non-residents | 20% of gross income |
| **Business/trading income** | |
| i) Goods distribution/supply | 0.5% of gross proceeds |
| ii) Operating lease, insurance brokerage, lottery brokerage, network marketing | 5% of gross proceeds |
| iii) Services (other than the above), construction exclusive of building materials | 2% of gross proceeds |
| iv) Manufacturing, transportation, services associated with goods, construction inclusive of building materials | 1.5% of gross proceeds |
| v) Other business activities | 1% of gross proceeds |
| **Financial income** | |
| i) Dividends | 5% of gross proceeds |
| ii.a) Transfer of capital in LLCs | 20% of net gains (resident), 0.1% of gross proceeds (non-resident) |
| ii.b) Transfer of shares in JSCs (listed/ unlisted) | 0.1% of gross proceeds |
| Real estate transfer | 2% on gross proceeds |
| Royalties/ License fees | 10% on proceeds over VND10m |
| Winnings/ Prizes/ Inheritance/ Gifts | |

# Taxation
## PIT – Tax deductibility and tax credit

| Tax deductibility | Tax credit |
|---|---|
| ▪ Contributions to mandatory social, health and unemployment insurance schemes; local voluntary pension schemes (subject to a cap)<br>▪ Personal and family relief: Personal relief of VND9 mil/month, and family relief of VND3.6 mil/month/dependent. The dependent allowance is not automatically granted; the taxpayer needs to register qualifying dependents and provide supporting documents to the tax authority;<br>▪ Contributions to certain approved charities. | For tax residents who have overseas income, any PIT paid in a foreign country is creditable against tax paid in Vietnam subject to certain tax administration procedures. |

# Taxation
## Other taxes (1)



**Business license tax**

- A fixed fee imposed on business organizations according to the registered capital in the business registration license or the investment license, ranging from VND2mil (US$88) to VND3 million (~US$132) per year.
- Payable within 30 days from the incorporation date (first year) and subsequently on annual basis (by Jan 30 each year).

**Special sales tax (SST)**

- A form of excise tax, with tax rates ranging between 10-70% of goods' value.
- Applies to production or import of certain goods including cigarettes, cigars, spirits, beer, cars, assorted types of petrol, air conditioners and the provision of certain services including dance halls, massage parlors, casinos, golf clubs and lotteries.
- Exported goods are not subject to SST.

**Stamp duty** (also called "Registration Fee")

- Rates range between 0.5-20% of the object's value.
- Applies on required registration of ownership of certain assets, including buildings/ land, transportation vehicles and guns.

**Inheritance/gift tax**

- Unified rate of 10% of the object's value.
- Applies to income from inheritance or gifts in excess of VND10 mil (~US$440).
- Exception for inheritances or gifts of real estate between specified family members or next-of-kin.

# Taxation

## Other taxes (2)



**Non-agricultural land-use tax**

- Applies to residential land in rural/urban areas and non-agricultural land used for business purposes.
- Calculation is based on the land area, land price and tax rate.

**Natural resource tax**

- Imposed on exploitation/ use of natural resources including metallic or non-metallic minerals, crude oil, natural gas, coal gas, natural forest products, natural marine products, natural water, swallow's nests, and others.
- Applicable tax rates vary depending on the specific classification of natural resources and/or production output.

**Environment protection tax (EPT) and fee (EPF)**

- EPT: Introduced in 2012 to impose tax on goods that may cause damage to the environment, such as gasoline, oil and grease, coal and certain chemicals.
- EPF: Also launched in 2012, aimed at businesses engaging in mining natural resources including crude oil, natural gas, coal gas, metallic/ non-metallic minerals.
- Rates of EPT and EPF vary depending on the type of mineral.

# Taxation
## DTA treaties – Countries covered

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**In force (67)**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Azerbaijan | Canada | Hong Kong | Japan | Malaysia | Pakistan | Serbia | Taiwan |
| Australia | China | Hungary | Kazakhstan | Manta | Philippines | Seychelles | Thailand |
| Austria | Cuba | Iceland | Korea, North | Mongolia | Patestine | Singapore | Tunisia |
| Bangladesh | Czech | India | Korea, South | Morocco | Poland | Slovakia | UAE |
| Belarus | Denmark | Indonesia | Kuwait | Myanmar | Qatar | Spain | UK |
| Belgium | Finland | Iran | Laos | Netherlands | Romania | Sri Lanka | Ukraine |
| Brunei | France | Ireland | Luxembourg | New Zealand | Russia | Sweden | Uruguay, East |
| Bulgaria | Germany | Israel | | Norway | San Marino | Switzerland | Uzbekistan |
| | | Italy | | Oman | Saudi Arabia | | Venezuela |

**Concluded but yet in force (9)**

| | | | | | |
|---|---|---|---|---|---|
| Algeria | Egypt | Macedonia | Panama | Turkey | USA |
| | Estonia | Mozambique | Portugal | | |

**Under negotiation**

| | | | | | |
|---|---|---|---|---|---|
| Argentina | Cambodia | Kyrgyzstan | Latvia | Mauritius | South Africa |
| | Costa Rica | | Lithuania | | Sudan |
| | Croatia | | | | |

# Taxation
## DTA treaties – Fundamentals

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| Application | Judgement |
|---|---|
| DTAAs apply to individuals (PIT) and corporations who are [tax] residents of Vietnam (CIT), citizens of the country that Vietnam had signed a DTAA with, or both. Residents of countries that are signatories to DTAAs with Vietnam are subject to the relevant taxes in their native countries.<br><br>If there is a direct conflict between local tax laws and the tax provisions in a DTAA, those in the DTAA will prevail. However, local tax laws will prevail when the relevant tax obligations included in the DTAA do not exist in Vietnam or when the tax rates in the agreement are heavier than the domestic tax rates. For example, if a signatory country is entitled to impose a type of tax that Vietnam does not recognize, then Vietnam's tax laws will apply. | DTAA entitlements will be denied where the main purpose of the arrangements is to obtain beneficial treatment under the terms of the DTAA (treaty shopping) or where the recipient of the income is not the beneficial owner. A substance over form analysis is required for the beneficial ownership, whereby the following factors are to be considered:<br>▪ Whether the recipient is obligated to distribute more than 50% of the income to an entity in a third country within 12 months;<br>▪ Whether the recipient has little or no substantive business activities;<br>▪ Whether the recipient has little or no control over or risk in relation to the income received;<br>▪ Back to back arrangements;<br>▪ Whether the recipient is resident in a country with a low tax rate;<br>▪ Whether the recipient is an intermediary or agent. |

# Contact Us

Frank Morgan
Empowering SMEs

Should you be interested in undertaking business in Vietnam, please contact us at:

**Frank Morgan LLC**
Unit 102, Thien Son Plaza
800 Nguyen Van Linh Ave
Phu My Hung, District 7
Ho Chi Minh City
Vietnam
Tel:  (84) 965 964 896
Website: www.frankmorganllc.com
Email: truong@frankmorganllc.com
Contact person: Mr Truong Tran.

Thank you and welcome!