HARLEY MILLER Law Firm

INVESTING IN UK AND VIETNAM

THE Q&A HANDBOOK

+84 93 721 5585

HM Town, 412 Nguyen Thi Minh Khai, Dist 3, HCMC

hmlf.vn

INVESTING IN UK AND VIETNAM

LIST OF ABBREVIATION 2

SECTION 1: FOREIGN INVESTMENT & VISA APPLICATION

1. What types of companies are attracting foreign investment and what are the most active sectors? 3

2. What other international agreements apply to foreign investment? ... 4

3. Are there any visas, permits or other requirements for foreign individuals entering for business purposes? 5

4. Are there any visa waivers or fast-track procedures available for foreign individuals entering as investors? 7

SECTION 2: CORPORATE GOVERNANCE

5. Any minimum capital requirements for foreign investment?...........9

6. Are there any exchange control or currency regulations? 10

7. Are there any restrictions on the importation of commercial goods? 10

8. What import duties apply to commercial goods? 12

9. Are the safety regulations and standards applicable to commercial goods compatible with standards recognised internationally? 13

10. How is foreign investment into your jurisdiction typically structured?15

11. Have you considered Joint ventures with local partners? 17

SECTION 3: TAX

12. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction? 19

13. What are the main business tax rates? 21

14. What transfer pricing and/or thin capitalisation restrictions may apply to investments into your jurisdiction from elsewhere? 23

15. What tax incentive or other schemes exist to encourage foreign investment? 25

16. Are there any issues in relation to the enforcement of intellectual property rights? 27

17. Are there any issues in relation to the gaining and enforcement of judgments and/or arbitral awards? 29

18. Have there been any significant recent or proposed legal developments affecting investors? 31

19. Are there any planned or on-going treaty negotiations? 32

LIST OF ABBREVIATION

Abbreviation	Definition
APEC	Asia-Pacific Economic Cooperation
BIT	Bilateral Investment Treaties
CE	Conformite Europeenne
CFC	Chlorofluorocarbon
EORI	Economic Operations Registration and Identification number
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATS	WTO General Agreement on Trade in services 1994
IP	Intellectual Protection
JSC	Joint Stock Company
LLC	Limited Liability Company
LLP	Limited Liability Partnership
LOE	Law of Enterprises
LOI	Law of Investment
LP	Limited Partnership
PPP	Public Private Partnership
SEZ	Special Economic Zones
SPS	Sanitary and Phytosanitary
TFEU	Treaty on the functioning of the European Union
TRIMs	WTO Agreement on Trade-Related Investment Measures
UN	United Nations

HARLEY MILLER Law Firm

SECTION 1:

FOREIGN INVESTMENT & VISA APPLICATION

HOST
Lawyer Nguyen Hoang Minh

PRESENTED BY
Maisy Shead-Jones

EDITED BY
Bui Vuong Nam Phuong

SECTION 1: FOREIGN INVESTMENT & VISA APPLICATION

1. What types of companies are attracting foreign investment and what are the most active sectors?

VIETNAM

A foreign investor can invest in the Vietnamese market in a number of ways, including:

- Establishing a new enterprise which can be either a wholly foreign-owned enterprise or a joint venture company between foreign investors and local investors.
- Making capital contribution to or purchasing shares or equity capital in Vietnamese companies.
- Investing through a business co-operation contract between foreign investors and local investors.

Investing in the form of a Public Private Partnership (PPP) using the following contracts:

- Build-Operate-Transfer;
- Build-Transfer-Operate;
- Build-Transfer;
- Build-Own-Operate;
- Build-Lease-Transfer; or
- Operation and Management.
- PPPs are mainly used for infrastructure projects or provision of public services.

Limited liability companies and joint stock companies are the most appropriate corporate structures for foreign investors.

UNITED KINGDOM

"Technology companies that want to develop artificial intelligence and renewable energy are more attracted to foreign investment due to innovative solutions and room for growth. Financial services and companies are very appealing to investors, especially in the development of digital and contactless payments, therefore, foreign investors see a chance to access the UK's strong regulatory framework and allow access to international markets. In commercial property, real estate is very attractive to forging investors due to the wide investment the UK gets, especially in London, therefore, there is potential for investors to contribute to a country's economic development and modernisation.

In 2018, foreign investments were recorded in 19 different industry sectors. Sectors such as pharmaceuticals and life science have increased due to constant new drug development through medical research. Another example is the technology and digital services due to the fast and new developments of artificial intelligence, e-commerce and digital service (with London, Manchester and Edinburgh becoming the main technology hubs)."

2. What other international agreements apply to foreign investment?

VIETNAM

Vietnam has more than 90 bilateral trade agreements and nearly 60 bilateral investment promotion and protection agreements. It is also a member of WTO agreements, including:

- WTO General Agreement on Trade in Services 1994 (GATS).
- WTO Agreement on Trade-Related Investment Measures (TRIMs).

In addition, Vietnam is a member of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), WIPO Paris Convention for the Protection of Industrial Property 1883 (Paris Convention), UN Convention on Contracts for the International Sale of Goods 1980 (CISG) (effective from 1 January 2017).

UNITED KINGDOM

There are many international agreements and treaties which are designed to facilitate and regulate foreign investment by providing a framework for investor protections, dispute resolution, and harmonisation of investment-related policies.

One example is bilateral investment treaties (BITs). These agreements are established between two countries to promote and protect investments made by investors from one country in the other. BITs typically include provisions related to non-discrimination, compensation for expropriation, and dispute resolution mechanisms. The UK also has a large network of tax treaties with over 100 countries which prevent double taxation of income or gains.

3. Are there any visas, permits or other requirements for foreign individuals entering for business purposes?

VIETNAM

In general, foreign individuals must obtain a visa before entry into Vietnam. Visa exemption is available under certain circumstances. There are 20 types of visa divided into 13 groups. The following groups can be issued to individuals entering Vietnam for business purpose:

- ĐT visa is issued for a maximum of five years to foreign investors and lawyers practicing in Vietnam.
- DN visa is issued for a maximum of 12 months to foreigners entering Vietnam to work with Vietnamese enterprises.
- NN1 visa is issued for a maximum of 12 months to chief representatives of representative offices or projects of international organisations and foreign non-governmental organisations in Vietnam.
- NN2 visa is issued for a maximum of 12 months to chief representatives of representative offices, branches of foreign

traders, representative offices of other foreign economic, cultural, professional organisations in Vietnam.

- NN3 visa is issued for a maximum of 12 months to people who come to work with foreign non-governmental organisations, representative offices, branches of foreign traders, representative offices of other foreign economic, cultural, professional organizations in Vietnam.
- HN visa is issued for a maximum of three months to foreigners entering Vietnam to attend conferences.
- LĐ visa is issued to workers for a maximum of two years.
- TT visa is issued for a maximum of 12 months to parents, spouse, children under 18 years of age of those under ĐT, NN1, NN2 and LD visas.

  (Article 9, Law of foreigners in Vietnam No. 47/2014/QH13.)

Foreign nationals with ĐT, NN1, NN2, LĐ and TT visas can be qualified for temporary resident cards. Foreigners working in Vietnam must secure work permits. As of 1 April 2016, the following people are, among others, exempted from securing work permits:

- Individual owners of limited liability companies.
- Members of the board of management of joint stock companies.
- Service sales persons or personnel attending complicated technical problems entering Vietnam for not more than three months.
- Lawyers having practice licence in Vietnam.

Intra-corporate transferees from foreign enterprise which has established commercial presence in Vietnam in any of the 11 sectors listed in the Schedule of Specific Commitments in Services contained in Vietnam's WTO accession package. Managerial personnel working in Vietnam for not more than 30 days consecutively or 90 days aggregated in a year.

UNITED KINGDOM

The visa requirements and restrictions for foreign individuals entering the UK for business purposes depend on the activity the individual intends to carry out. Applications for all visas are made directly to the UK Visas and Immigration Department of the Home Office.

One example is the Standard Business Visitor, which allows individuals to visit the UK for business-related activities, such as attending meetings, conferences, negotiations, and short-term training. It does not permit individuals to work or undertake paid employment in the UK.

Another example is Tier 1 (Investor) Visa which is a visa for high-net-worth individuals who want to invest a significant amount of capital in the UK. It is designed for those who wish to make substantial financial investments.

4. Are there any visa waivers or fast-track procedures available for foreign individuals entering as investors?

VIETNAM

Visas are exempted in the following cases:

- Foreigners from countries which are members of the treaties on visa exemption that Vietnam is a member of (such as ASEAN Framework Agreement on Visa Exemption and APEC Business Travel Card Scheme).
- Foreigners having permanent or temporary resident cards.
- Foreigners entering into certain border economic zones or special administrative-economic territories.
- Foreigners from countries for which the Vietnam Government issues unilateral special decisions on visa exemption.

  (Article 12, Law of foreigners in Vietnam No. 47/2014/QH13.)

Citizens of ASEAN countries can enter Vietnam without visa for temporary visits for a period of 14 to 30 days.

Holders of APEC Business Travel Card can:

- Enter Vietnam without visa multiple times.
- Stay in Vietnam for up to 90 days on each entry.

- Access the fast-track immigration lanes at the airports.

UNITED KINGDOM

Whether individuals require a visa before arriving in the UK depends on the activities they intend to undertake in the UK and their nationality.

Based on the visa waiver program currently in place, non-UK citizens are classed by the UKVI as either "visa nationals" who must obtain a visa before entering the UK) or "non-visa nationals". Non-visa nationals can enter the UK for up to six months without a visa if the purposes of their trip fall outside what is allowed under a standard visitor visa, they must obtain the relevant visa before entering the UK.

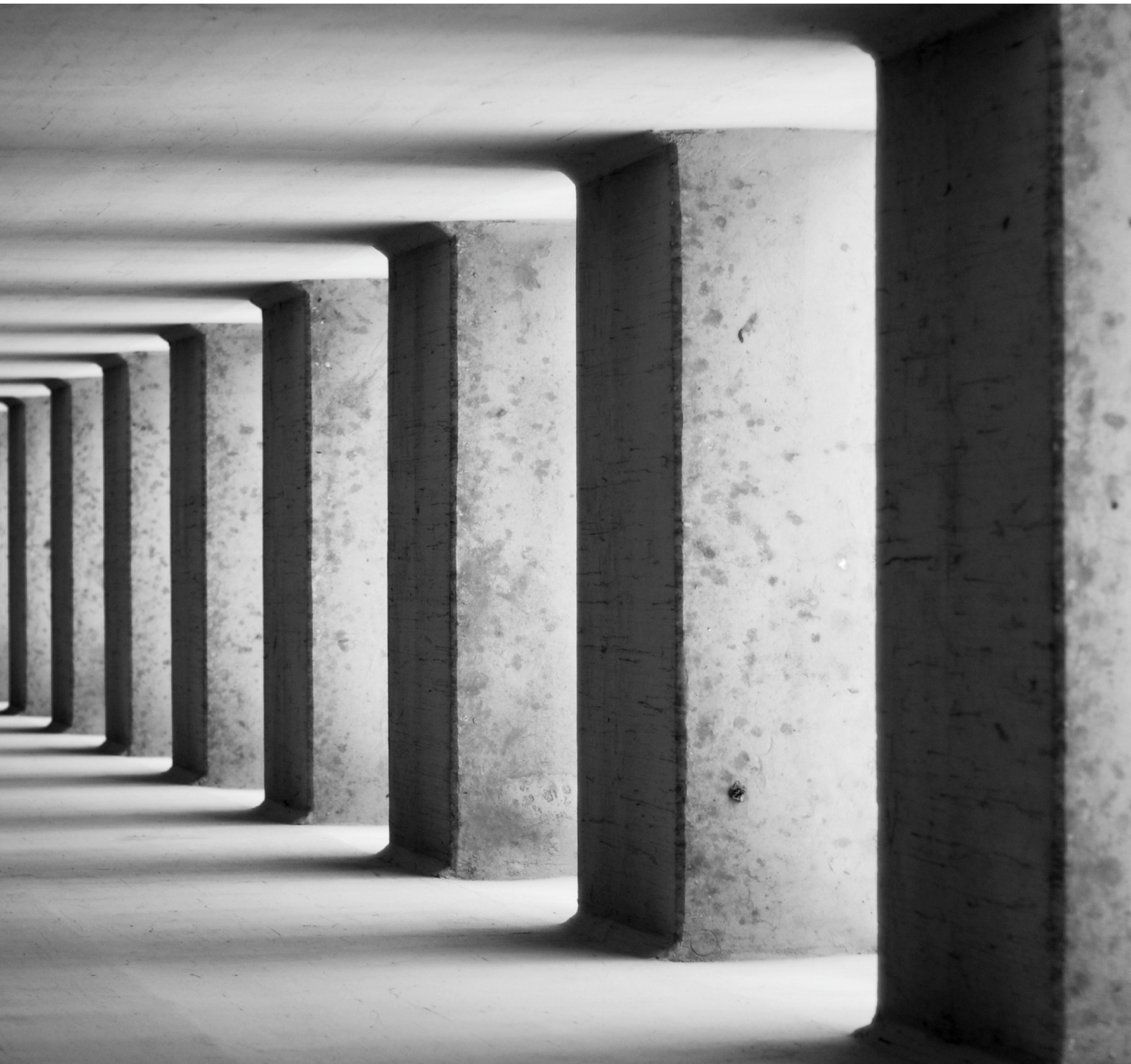
SECTION 2:

CORPORATE GOVERNANCE

HOST
Lawyer Nguyen Hoang Minh

PRESENTED BY
Olivia Cornish

EDITED BY
Bui Vuong Nam Phuong



SECTION 2: CORPORATE GOVERNANCE

5. Are there any minimum capital requirements for foreign investment?

VIETNAM

Certain businesses, such as banks, real estate, motion picture production, air transportation, airports, auditing services, and telecommunication networks require a minimum charter capital. Investment projects like real estate development and PPPs also have a minimum percentage of total investment capital required for the project company's charter capital.

Some examples of foreign investment restrictions include the following:

- Foreign investors can only own up to 99.99% of the capital of an advertising business;
- Foreign-invested enterprises may only purchase buildings for their own use and cannot sublease them to others;
- Foreign owners of 100% foreign-owned banks must have a financial capacity of at least USD 10 billion in assets; and
- Foreign investors in hospital projects must capitalize the projects with at least USD 20 million in investment capital.

UNITED KINGDOM

Foreign investors are treated the same as British investors and there are no capital requirements specific to FDI. The only minimum capital requirement that exists in relation to companies is for public limited companies, which must have a minimum share capital requirement of 50,000£ , of which 25% must be paid up in full.

6. Are there any exchange control or currency regulations?

VIETNAM

Foreign exchange is highly regulated in Vietnam. Remittance of foreign currencies offshore is allowed only in limited circumstances, including for the remittance of invested capital and profits. Offshore loan repayment, payment of interest and fees, payment for import, and funding permitted activities such as expenses of offshore office or investment.

Vietnamese enterprises are not permitted to publish or quote prices in foreign currencies, including in contracts, even if they are established by foreign investors. Foreign investors can remit profits abroad after paying corporate income and dividend taxes in Vietnam.

UNITED KINGDOM

There are no exchange controls or currency regulations restricting funds flowing in or out of the UK. However, individuals must declare when they are entering the UK carrying the equivalent of 10,000£ or more in cash.

7. Are there any restrictions on the importation of commercial goods?

VIETNAM

The Government has issued a list of goods that are prohibited from importation. These include:

- Weapons, ammunition, explosives (except for industrial explosives), military technical equipment.
- Firecrackers (except for fire signal used for maritime safety), flying lights, vehicle speed-meter jammers.
- Used consumer goods (such as textiles, footwear, clothes, electronic goods, refrigerating products, household goods, medical equipment or furniture and so on).

- Assorted cultural products that are banned from dissemination and circulation or suspended from dissemination and circulation, or subject to revocation, confiscation and destruction in Vietnam.
- Goods used in information technology products.
- Publications prohibited from distribution in Vietnam, prohibited postal stamps, radio equipment which is not in line with the radio frequency master plan.
- Right-hand steering vehicles (including those in knocked-down forms and those with converted drive before being imported in Vietnam), automobile parts and motorcycles with erased serial number, specialised motorcycles.
- Used materials and equipment (machine, motor, frame and chassis, tire, inner tire, parts of automobiles, trucks and motorbikes), automobiles with structures modified from initial design or erased serial number, ambulances, bicycles, motorbikes.
- Rotterdam convention chemicals.
- Prohibited plant protection products.
- Samples of precious, rare and endangered animals and plants under CITES and samples and processed products of species, such as white rhinoceros (Ceratotherium simum) and so on.
- Garbage and waste, refrigerating equipment using chlorofluorocarbon (CFC).
- Asbestos products and materials in amphibole group.
- Prohibited chemicals under Chemical Weapons Convention and other chemicals prohibited in Vietnam.

(Decree 69/2018/NĐ-CP.)

Importation of services (that is, cross-border services) is subject to the market access commitments of Vietnam under the Schedule of Specific Commitments in Services contained in Vietnam's WTO accession package.

UNITED KINGDOM

In order to import goods into the UK after Brexit, companies will need an EORI number and an import declaration. Businesses will also need to check the tax and duty rates that need to be paid to ensure that they get the correct licence. There are also restrictions on alcohol and tobacco import for personal use and anyone below the age of 17 must declare these. A new risk based model of SPS-checks for food, animal and plant products will also be introduced from the end of 2023.

8. What import duties apply to commercial goods?

VIETNAM

Import duties are generally applied on imported goods based on the value of the goods and levied at the rates which vary depending on the country of origin.

There are different types of custom duty tariff, normal, preferential and special preferential (such as tariffs under FTA agreements that Vietnam is a member). Imported goods are subject to value added tax and special consumption tax.

UNITED KINGDOM

Now that the UK has left the EU, businesses wont have to pay any tariffs on imports from the EU as long as the goods meet the rules of origin. Goods such as alcohol and tobacco are still subject to VAT in exercise duty.

Goods that are not imported from another member state are susceptible to a much more rigid process. Any intended importation must be declared to HM Revenue and Customers, who require a declaration of the reason for importing the goods and the relevant commodity code, which can be found on the HM Revenue and Customers website and they will then determine the rate of duty to impose on the goods.

9. Are the safety regulations and standards applicable to commercial goods compatible with standards recognised internationally?

VIETNAM

Vietnam has over 8,800 standards, of which about 45% are compatible with international and regional standards. The Vietnamese government is committed to protecting consumer rights and issued the Law on Consumer Protection in 2010 to protect consumers' personal information, prohibit certain vendor conducts, eliminate contract provisions that limit vendor liabilities or consumer rights, and mandate product warranties.

Vendors must use registered contract templates for specific goods and services, including electric and water for living purposes, pay television, landline telephone, post-paid mobile phone, internet service, passenger air transportation, passenger railway transportation, apartments in condominiums, and services rendered by condominium managers.

Manufacturers and traders must take responsibility for the quality of their goods or products under the Law on Quality of Products and Goods. The quality of goods is controlled based on manufacturers' announced standards, and some products, such as cosmetics, foods and beverages, construction materials, chemicals, and toys, must announce their standards before circulation. Certain products, such as medical equipment, vehicles, lifting equipment, and boilers, require a certificate of quality inspection before use. Other regulations include the Law on Food Safety, Ministry of Health's regulations on administration of cosmetic products and quality administration of pharmaceuticals, Decree on the management of quality and maintenance of construction works, and Ministry of Science and Technology's regulations on quality administration in petroleum product trading.

Vietnam has acknowledged the importance of international standards and has been incorporating them into its domestic regulations. The government has adopted various international standards developed by organizations like the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), and Codex Alimentarius Commission (CAC). Overall, while Vietnam is working towards aligning its safety regulations and standards with international norms, there may still be areas where compatibility and enforcement can be improved. Continued efforts are being made to bridge these gaps and enhance compatibility with global standards.

UNITED KINGDOM

The UK has a wide regulatory framework fusing both national and EU legislation. Most product sectors have specific safety legislation that sets out detailed safety requirements such as for electrical goods, machinery or toys.

To provide goods to the EU market, the goods must bear the CE mark, which is a seal from the manufacturer that the product complies with EU health and safety and environmental regulations.

If goods are not compliant, the penalties can be both civil and criminal. The UK General Products Safety Regulations 2005 set out the requirements for products supplied to the public. Manufacturers that do not comply face criminal sanctions. The Consumer Protection Act 1987 imposes strict liability for death, personal injury, loss or damage caused by unsafe products.

10. How is foreign investment into your jurisdiction typically structured?

VIETNAM

Under the legal framework of enterprise LOE, the main types of corporate structures are:

- Limited liability companies (LLC).
- Joint stock companies (JSC).
- Incorporated partnerships.
- Private enterprises (i.e., sole proprietorships).

For foreign investors, LLC or JSC would be the most appropriate structure to consider.

JSCs have advantages such as the ability to raise capital through share issuance, the ability to alter quorum and voting requirements and profit entitlement through preference shares, and the option for foreign investors to purchase minority shares in existing JSCs as a way to test the Vietnamese market before fully establishing themselves. Foreign business entities can invest in Vietnamese enterprises or choose to set up a branch or representative office in Vietnam after obtaining the necessary licenses. A representative office can be used to explore the local market and promote commercial opportunities for the parent company, while a branch is authorized to directly conduct profit-generating activities in specific sectors such as banking and insurance.

In most cases, foreign investors will be better protected and have more control over their investment via a wholly foreign-owned enterprise. However, in some cases it may be better for foreign investors to consider investing via joint venture with local partners instead.

Specific land requirements. Joint ventures are especially applicable in investment projects, where real estate plays a significant part (for example, property development, hotel/resort), and the LUR over land is held by a Vietnamese party. The Vietnamese party may not have financial resources to undertake a project but may be able to contribute LUR to the JVC. Many projects started in this form with the foreign investor later buying-out the Vietnamese parties to operate the project as the sole owner.

Limit on foreign investment. Despite of the Schedule of Specific Commitments in Services contained in Vietnam's WTO accession package to open many sectors to foreign investment, there are a number of sectors where foreign investment is not permitted, unless it is in the form of a joint venture with a Vietnamese partner. Foreign ownership limit in such projects varies sector by sector. For example, in advertising, foreign investors can theoretically hold up to 99% of equity, but for container handling services, foreign ownership cannot exceed 50%. In such investments, a local partner will be required, and the company can be structured in a way to maximise the foreign control.

Sensitive or conditional sector. Even when 100% foreign investment is permitted in certain sectors, in conditional or sensitive sectors, it may be easier for the local partner to establish the domestic company first and obtain all the necessary operational licences, and then allow foreign investors to invest in the company.

Strategic investment. Although it is not a true joint venture, this form of investment, in both the private and state-owned enterprises, provides an investment route for foreign investors with experience in the sector (and most often competitors of the target enterprise) to invest up to the threshold maximum percentage. For banks, the maximum is currently not more than 20% for one foreign strategic investor and not more than 30% for all foreign strategic investors combined. The levels of strategic investment vary sector by sector. Typically, such investments offer a board seat and other voting/strategic privileges.

UNITED KINGDOM

The most common type of company is a private company limited by shares. If the company becomes unable to pay its debts and goes into liquidation, it is limited to the nominal value of the shares issued to the shareholders.

Public companies limited by shares can offer securities to the public, while a private company cannot. Public companies must have a minimum share capital requirement of 50,000£ of which 25% must be paid up in full.

11. Have you considered joint ventures with local partners?

VIETNAM

Foreign investors may have more control over their investment through a wholly foreign-owned enterprise, while joint ventures with local partners may be preferable in some cases. Joint ventures are often used in investment projects that involve real estate, where Vietnamese parties may contribute land use rights to the joint venture company. In some sectors, foreign investment is only allowed through joint ventures with Vietnamese partners, with varying limits on foreign ownership depending on the sector. In sensitive or conditional sectors, it may be easier for local partners to establish domestic companies and then allow foreign investors to invest. Strategic investment allows foreign investors with experience in the sector to invest up to a threshold maximum percentage in private or state-owned enterprises, with varying levels of strategic investment depending on the sector.

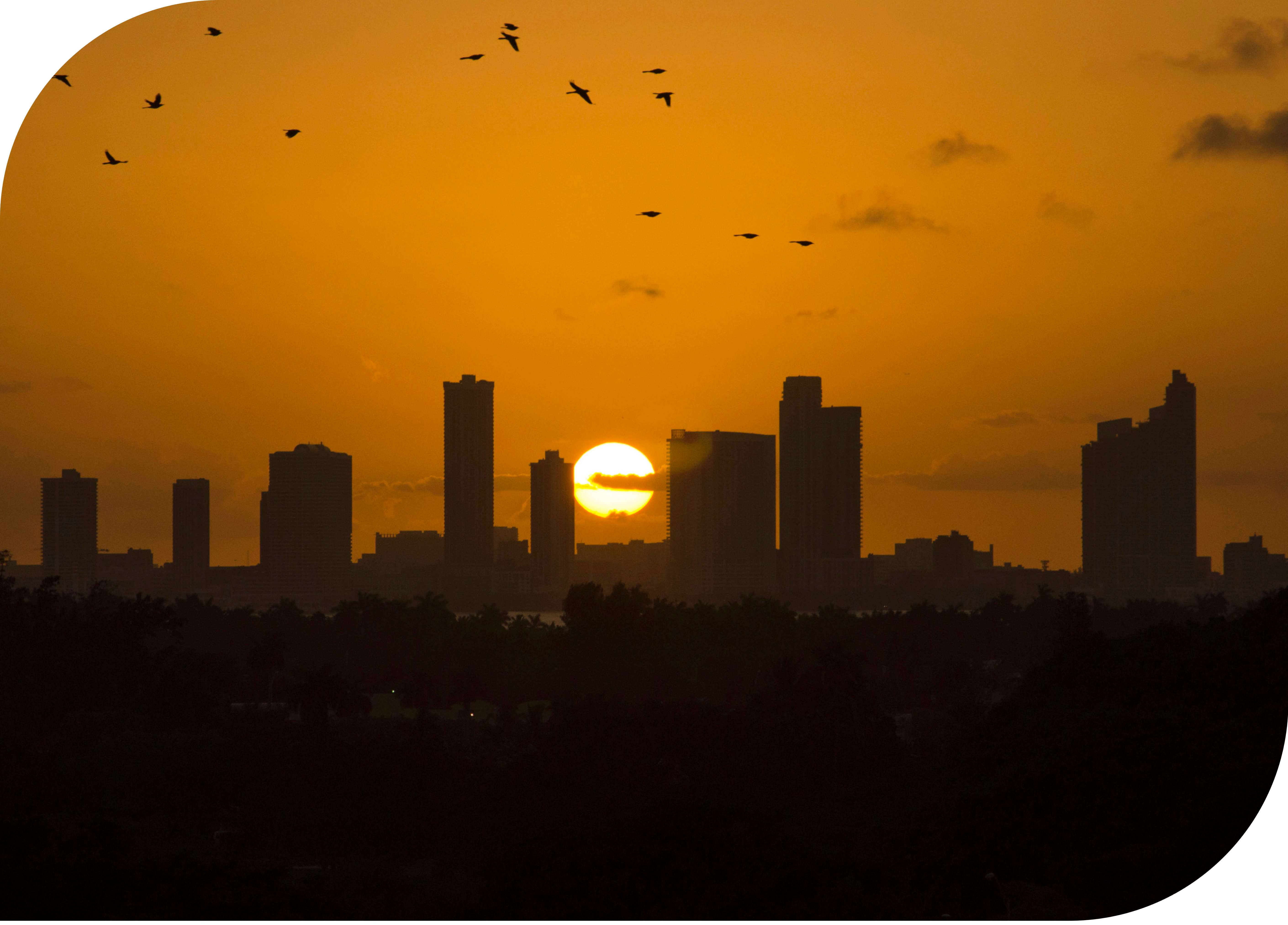
UNITED KINGDOM

Joint ventures in the United Kingdom can be implemented using the same structures as those available to any business, the most common being:

- A private company with liability limited by shares;
- A limited liability partnership (LLP);
- A general partnership; and

- A limited partnership (LP);

One advantage of establishing joint ventures in the UK is that the UK, unlike several jurisdictions, does not have any foreign exchange controls, meaning that foreign investors are generally free to bring in and take out capital from a UK joint venture as and when required, subject to applicable taxation. This makes a joint venture in the UK a very popular option.



SECTION 3:

TAX

HOST

Lawyer Nguyen Hoang Minh

PRESENTED BY

Maisy Shead-Jones

EDITED BY

Bui Vuong Nam Phuong

SECTION 3: TAX

12. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?

VIETNAM

Foreign investors conducting business in Vietnam, whether through enterprises, permitted project offices, branches in Vietnam, or cross-border, are subject to Vietnamese taxes.

Enterprises or branches established in Vietnam are subject to various business taxes, including:

- Business registration tax
- Value added tax
- Corporate income tax
- Special consumption tax
- Land use fees or land rental
- Natural resources taxes if the business is involved in natural resources exploitation.

Foreign companies or organizations conducting business in Vietnam or earning business income from Vietnam (such as cross-border service providers) are obligated to pay value added tax and corporate income tax in Vietnam. Unless foreign companies or organizations (or contractors) are eligible to register tax payment on their own, the taxes will be withheld and paid by the service users.

UNITED KINGDOM

A company based in the UK is generally chargeable to corporation tax on all its sources of income and capital gains. A non-resident company carrying on a trade in the UK through a permanent establishment located in the UK is liable to corporation tax on all income and gains attributable to that permanent establishment. However, UK companies with overseas permanent establishments can elect to exempt profits and losses from those permanent establishments from the UK tax under certain conditions.

A non-resident company has a UK permanent establishment if either:

It has a fixed UK place of business through which its business is wholly or partly carried on. Fixed places of business include:

places of management, branches or offices;

factories or workshops;

installations or structures for the exploration of natural resources;

mines, oil or gas wells, quarries or any other place of extraction of natural resources; or

building sites or construction or installation projects.

An agent acting for the company has, and habitually exercises in the UK, authority to do business on the company's behalf and that agent is not independent and acting in the ordinary course of its business.

As the definition of "permanent establishment" in UK domestic law is based on the Organisation for Economic Co-operation and Development (OECD) model treaty, HMRC has stated that where the wording of the UK domestic legislation is the same as that of the OECD model treaty, the OECD commentary on that wording applies.

However, HMRC notes that the UK provision relating to agents is wider than the equivalent provision in the OECD model treaty and accordingly, the sections of the OECD commentary on that provision cannot be wholly relied on in the context of UK domestic law. However, the activities of an agent do not give rise to a permanent establishment if the agent is independent and is acting in the ordinary course of its business.

If income or gains arising overseas are taxable in the hands of a UK resident company due to the conditions for exemption not being met, double taxation relief is generally available in respect of foreign tax suffered. Controlled foreign companies (CFC) legislation is in place to ensure that profits diverted from the UK to subsidiaries resident in low tax jurisdictions are included in a controlling UK company's taxable income.

UK resident trusts are liable to UK tax on worldwide income and gains. Non-resident trusts are liable to UK tax only on UK income. Trusts are subject to their own inheritance tax regime on worldwide assets. However, foreign assets settled by a non-UK domiciled person (who was also not deemed domiciled) are excluded.

13. What are the main business tax rates?

VIETNAM

- Business registration tax.
- Value added tax.
- Corporation income tax.
- Special consumption tax.

UNITED KINGDOM

Corporation tax

A UK resident company is liable to corporation tax on all its sources of income and capital gains, wherever these arise. A company is deemed to be resident in the UK for tax purposes if it is incorporated in the UK or its central management and control is exercised in the UK.

Corporation tax rates are fixed for each financial year, starting 1 April. If a company's accounting period does not coincide with the financial year, its profits must be time apportioned and the corporation tax rate applied accordingly. The UK standard rate of corporate tax is currently 19% and is expected to reduce to 17% with effect from 1 April 2020. If a company is "large" for a second successive period (a large company being a company with taxable profits in excess of GBP1.5 million), or where its taxable profits exceed GBP10 million, it must pay its corporation tax liability for that period in quarterly instalments. The first payment is generally due six months and 13 days after the start of the accounting period, and quarterly thereafter. Companies with an annual corporation tax liability of GBP10,000 or less are not required to pay taxes by instalments. For companies that are not required to pay their corporation tax in instalments, the payment date is nine months and one day after the end of the relevant accounting period.

Companies' capital gains are taxed at the standard rate of corporation tax. Non-resident companies are only taxed on capital gains from the sale of assets used in, or for the purposes of, a trade carried on through a permanent establishment located in the UK. Non-UK resident companies are chargeable on certain disposals of residential property in the UK, (Further charges are planned for UK commercial property.) There are special provisions allowing tax deferrals by UK resident and non-resident companies for reinvestment/migration. Capital losses can only be offset against capital gains arising in the same financial year, or carried forward indefinitely to set against future capital gains. It is not possible to carry back capital losses.

Foreign branch profits of a UK company are liable to UK corporation tax with relief generally available for overseas taxes paid on the same profits. An irrevocable election can be made to exempt the overseas branch profits from UK tax. If an election is made, any branch losses are not available to offset against the company's profits and previous losses relieved against UK profits are clawed back.

In terms of corporation tax, this tax is paid by limited companies and organisations on all their sources of income and capital gain. Corporation tax rates are fixed for each financial year, starting 1st April. The main rate of corporation tax is 25% for the financial year as of April 2023, which has increased from 19% in April 2022.

VAT

VAT is charged on the supply of most goods and services made by businesses in the UK. VAT is collected at each stage of the supply chain.

Supplies of goods or services made in the UK by foreign entities can give rise to a requirement to register for VAT in the UK. VAT registration is compulsory for businesses established in the UK making annual taxable supplies in excess of the registration threshold. VAT registration is required if a business' VAT taxable turnover is more than GBP85,000. Voluntary registration is sometimes available for businesses trading below this level. There is no VAT registration threshold for businesses making taxable supplies in the UK that have no UK business address. Such businesses must register for VAT immediately on making taxable supplies in the UK unless the reverse charge simplification applies. The standard rate is 20% and there are also reduced rates and zero rates depending on the product.

The export of goods from the UK, plus UK supplies of some other goods and services (such as books, food or children's clothing) are zero-rated. Other UK supplies can also be subject to VAT at the reduced rate of 5% (such as certain building works and energy saving products). VAT-registered businesses with an annual taxable turnover not exceeding GBP150,000 can elect to simplify their VAT accounting by using the "flat rate" scheme. Under the scheme, businesses account for VAT at a flat rate on turnover rather than on every single transaction. However, they are not able to recover VAT on expenditure other than for capital items over GBP2,000.

14. What transfer pricing and/or thin capitalisation restrictions may apply to investments into your jurisdiction from elsewhere?

VIETNAM

All businesses must conduct transactions with related parties at market prices. Tax authorities can make adjustments if they suspect that the transactions were not conducted at market prices. Market prices can be determined using various methods, including:

- Comparing prices in independent transactions

- Using reselling prices
- Calculating prime cost plus profits
- Comparing profits
- Dividing profits
- Thin capitalisation restrictions apply to real estate development projects and public-private partnerships.

UNITED KINGDOM

Transfer pricing

Transfer pricing is when companies in the same group set a price when sharing resources and exchanging services or goods. It covers all aspects of pricing arrangements between affiliate companies' services or goods. Failure to comply with the requirements can lead to adjustments to taxable profits and other potential penalties.

UK group companies must abide by the transfer pricing rules to prevent any manipulation of internal transfer prices from artificially reducing their taxable profits. The rules are widely drafted to cover nearly all kinds of transactions. There are exemptions from the UK transfer pricing rules for small and medium-sized enterprises (SMEs). However, the conditions are hard to meet. The exemption does not cover companies entering into a transaction with a tax haven entity, and the SME is assessed at group level, so groups with more than 250 employees and a turnover of EUR50 million or more would not qualify for the exemption.

Thin capitalisation

Thin capitalisation is another method of artificially reducing profit whereby international group companies with subsidiaries choose to finance their subsidiaries through loans. As interest on a loan is a deductible cost but dividends are not, the transfer pricing rules exist to challenge the deductibility of excessive interest rates on loans from related parties paid by UK entities. This is done on an arm's length basis (that is, whether a third party would have granted the same loan to the company on the same terms).

15. What tax incentive or other schemes exist to encourage foreign investment?

VIETNAM

Enterprises must transact with related parties at an arm's length basis to avoid tax authority adjustments. Market prices are determined by comparison of prices in independent transactions, reselling prices, prime cost plus profits, profit comparison, and profit division. Thin capitalisation restrictions apply in real estate development and public-private partnership projects.

In Vietnam, incentives are given to both foreign and domestic investment projects in certain business and locations. Investment incentives include:

- Lower corporate income tax rates (10%; 15% or 17%), exemption and reduction of corporate income tax (see Articles 13 to 14, Law on corporate income tax and Article 1.7, Law No. 71/2014/QH13).
- Import duties exemption.
- Exemption or reduction of land use fees/land rental.
- Businesses subject to incentives include:
- High-tech activities, production of high-tech ancillary products, research and development.
- Production of new materials, new energy, clean energy, renewable energy; production of products with at least 30% value added, energy-saving products.
- Production of key electronic, mechanical products, agricultural machinery, automobiles and parts, shipbuilding.
- Production of ancillary products serving textile and garment, leather and footwear industry.

- Production of IT products, software, products with digital contents.
- Cultivation and processing of agriculture products, forestry products, aquaculture products, afforestation and forest protection, salt production, fishing and ancillary fishing services; production of plant varieties, animal breeds, and biotechnology products.
- Collection, treatment and recycling of waste.
- Development, operation, management of infrastructural works, development of public passenger transportation in urban areas.
- Preschool, elementary and high school education, vocational education.
- Medical examination and treatment, production of medicines, materials for medicine production, scientific research for pharmaceutical manufacturing.
- Investment in sport facilities for the disabled or professional athletes, protection and development of cultural heritage.
- Investment in geriatric centres, mental health centres, treatment for agent orange patients; care centres for the elderly, disabled, orphans, street children.
- People's credit funds, microfinance institutions.
- Business investment in the:

  + Distribution chain of small and medium-sized enterprises' (SME's) products;

  + Technical establishments that provide assistance to SMEs and incubators of SMEs; and

  + Co-working spaces serving SMEs and start-ups in accordance with the regulations of law on assistance for SMEs.

Incentives are also available for investments in disadvantageous socio-economic areas and industrial zones with a total investment capital of at least VND6,000 billion or employing 500 employees or more in rural areas.

UNITED KINGDOM

There are a number of grants and other forms of assistance available to businesses in the UK. Certain expenditure incurred in respect of qualifying research and development activities carried on by companies qualifies for enhanced tax relief.

There are schemes such as Venture Capital Trusts which are investment vehicles that provide funds to small, higher-risk trading companies. Investors can receive income tax relief on new shares they subscribe to., as well as exemption from capital gains tax on disposals of VCT shares.

Another scheme is the Enterprise Investment Scheme and Seed Enterprise Investment Scheme, which encourage investment in small and medium-sized enterprises. Investors can receive income tax relief on their investments, as well as other benefits like capital gains tax relief on qualifying gains and loss relief.

16. Are there any issues in relation to the enforcement of intellectual property rights?

VIETNAM

The intellectual property (IP) system in Vietnam has improved after Vietnam became an official member of the WTO in 2007. The Vietnamese Intellectual Property Law was amended in 2009 in line with the minimum standards under the Agreement on Trade-Related Aspects of Intellectual Property Rights. Vietnam has since entered into a number of multilateral and bilateral conventions regulating IP matters. International treaties prevail over domestic laws in case of differences in regulations. However, regardless of these improvements, in practice the enforcement of IP rights remains difficult and time consuming. In IP disputes there are often inconsistencies in the legal system and ineffective penalties due to the authorities' lack of expertise in resolving complex cases.

IP rights can be enforced by:

- Administrative action.

- Civil litigation action.
- Criminal prosecution.

(Article 199, Intellectual Property Law.)

Most IP disputes in Vietnam are handled administratively, as the IP right holders view the administrative route less costly and time consuming, considering the unclear legal basis of IP disputes and lack of judicial experience.

Under the Civil Code 2015, an enterprise may be held responsible for the criminal liability of infringement of copyrights and relevant rights and infringement of industrial property rights (Article 76.1, Article 225, and Article 226, Criminal Code 2015). The state agencies responsible for handling IP infringements are:

- Courts.
- Inspectorates.
- Market management offices.
- Customs offices.
- Police offices.
- People's Committees at all levels.
- Vietnam Competition Authority.

If the right holders have not registered their IP right over its intellectual industrial property for protection in Vietnam, they can register at the National Office of Intellectual Property of Vietnam. For copyrights and related rights, and rights to plant varieties, foreign investors can request guidance from the Copyright Office of Vietnam and Plant Variety Protection Office.

UNITED KINGDOM

There are no specific issues concerning IP rights in relation to investment guarantees. In general, if IP rights are infringed in the UK, the proprietor of the rights can obtain remedies including interim relief, such as the freezing of assets and injunctions restraining certain activities, damages or an account of profits.

17. Are there any issues in relation to the gaining and enforcement of judgments and/or arbitral awards?

VIETNAM

For settlement of their disputes involving investment in Vietnam, foreign investors can choose:

- Vietnamese court.
- Vietnamese arbitration.
- Foreign or international arbitration.

Vietnam is a member of the New York Convention. Accordingly, the arbitral awards rendered through arbitration in any country which is a member of the New York Convention can be recognised for enforcement in Vietnam. An application for recognition and enforcement of a foreign arbitral award must be filed with the Ministry of Justice before it is submitted to the courts of Vietnam for recognition and enforcement (Article 451.1, Code of Civil Procedure 2015).

A foreign court judgment will be recognised and enforced in Vietnam provided either:

- Vietnam has entered into an international treaty with the foreign country where the court is located to recognise the judgment for enforcement in Vietnam.
- The recognition and enforcement of the foreign court judgement is on a reciprocal basis.

(Article 423.1, Code of Civil Procedure 2015.)

Enforcement of judgments and arbitral awards in Vietnam would be a time-consuming and inefficient process due to shortcomings in verification of the conditions and assets of the obligors against whom the judgments and awards were issued.

Vietnam allows private bailiffs to participate in the enforcement of judgments and arbitral awards. However, the lack of authority to use coercive enforcement methods limits the efficiency of the enforcement by bailiffs.

UNITED KINGDOM

The UK has an independent and impartial judicial system. The court system is effective and there is an appeals process based on factual and legal grounds. However, in some cases, decisions can also be challenged by individuals and corporate bodies in some cases on the basis of illegality, irrationality or procedural impropriety, the latter of which would include bias, should it be necessary. London is also regarded as a global capital for arbitration; the relevant legislation can be found in the Arbitration Act 1996. Arbitral awards made in England and Wales can be enforced through the courts in the same way as court judgments.

18. Have there been any significant recent or proposed legal developments affecting investors?

VIETNAM

The most significant legal developments in Vietnam are the issuance of the new Law of Investment (LOI) and Law on Enterprise (LOE). These laws aim to simplify the licensing process for investment, provide transparent investment conditions, and clarify licensing procedures applicable to foreign investors. Decrees guiding the implementation of these laws were issued in 2015, providing more details on their implementation and application. However, the laws are still criticized, as mentioned in Question 3. The Government has drafted amendments to the LOI and LOE, and they are expected to be issued soon.

The announcement of the list of conditional sectors for foreign investors enforces the lifting of the foreign ownership limit in public companies and clarifies some licensing procedures applicable to foreign investors. Additionally, the new law on investment in the form of public-private partnership (Decree 63/2018/ND-CP) is expected to boost foreign investment in infrastructure projects.

Furthermore, the Law on Real Estate Business and Law on Housing (effective from 1 July 2015) have expanded the permitted scope of real estate business for foreign investors and removed several restrictions on purchases of houses by foreign nationals. Together with the Law on Land, which became effective from 1 July 2014, these laws aim to boost the property market in Vietnam.

Finally, the new Civil Code 2015, which became effective from 1 January 2017, has introduced several well-known concepts into Vietnam for the first time. However, it is a challenging time for foreign investors, their local business partners, and dispute settlement bodies to apply these concepts in practice.

UNITED KINGDOM

The UK's planned departure from the EU in 2019 has created uncertainty and a downturn in investment. However, the fall in currency value for sterling after the referendum in 2016 has made doing business in the UK more attractive to foreign investors.

19. Are there any planned or on-going treaty negotiations?

VIETNAM

Vietnam has signed multiple free trade agreements, including the EU FTA and CPTPP. These agreements have attracted more investment from EU countries and encouraged foreign manufacturers to invest in technology for production in Vietnam. Vietnam has also established three special economic zones and is considering the establishment of more to further its economic development. However, the adoption of the Law on SEZs has been delayed ensuring the successful construction of the special administrative economic units while maintaining national defence and sovereignty.

UNITED KINGDOM

Following the EU referendum, the UK voted to leave the EU and has given the withdrawal notification to the EU invoking Article 50 of the TFEU. This will have implications for immigration, tax, trade, and much more. The UK has been given a date of 29 March 2019 to negotiate an agreement with the EU on points such as immigration and the status of EU members living in the UK to name a couple.

AUGUST, 2023

CONTACT US

HARLEY MILLER Law Firm

+84 93 721 5585

HM Town, 412 Nguyen Thi Minh Khai, Dist 3, HCMC

hmlf.vn