



<< Left
Michael K. Lee
Department Head — Commercial
michael.l@tillekeandgibbins.com

<< Right
Dzung Thi Thuy Nguyen
Consultant
thuydung.n@tillekeandgibbins.com

Employing Foreign Workers in Vietnam

In 2011, the number of registered foreign employees in Vietnam exceeded 74,000, which is a staggering number compared with the last three years where the numbers remained at around 55,000. As more companies employ foreign staff to work in Vietnam, management needs to be aware of some core legal issues before sending staff on employment assignments in the country.

Who Can Work in Vietnam?

Foreigners wishing to work in Vietnam must be at least 18 years old and be healthy enough to satisfy the job requirements. Only those with high technical skills or high professional qualifications regarding service and with considerable experience may be employed. As with other jurisdictions, a foreign employee is required to prove that he or she does not have any criminal record with a national security offense, and must not currently be subject to criminal prosecution or any criminal sentence in accordance with Vietnamese and foreign laws.

Grounds for Employment

The law lays out clearly different forms under which a foreign employee may work in Vietnam. Generally, a foreign expatriate may enter into Vietnam to work only under the following grounds:

- ▶ Performance of a labor contract between the foreigner and a Vietnam-based company.
- ▶ Internal transfer within an enterprise that has a commercial presence in Vietnam.
- ▶ Performance of a type of contract (but not a labor contract), namely economic, commercial, financial, banking, insurance, scientific and technical, cultural, sporting, educational, or medical health contracts between a foreign entity and a Vietnam-based entity.
- ▶ Service providers pursuant to a contract or, in other words, contractual service suppliers.
- ▶ Service salespersons.
- ▶ Foreigners representing a foreign nongovernmental organization that is permitted to operate in Vietnam.
- ▶ Persons responsible for setting up a commercial presence.

Visa

Foreigners entering Vietnam must have a valid passport and visa, and must be able to state the purpose and length of their stay in the country before they can be granted entry. Visas may be applied for, and issued, at the Immigration Department of the Ministry of Police, a consulate office under the Ministry of Foreign Affairs, a foreign representative office, or a Vietnamese consulate overseas. If a visa applicant is already in Vietnam, he or she may apply to the Vietnamese immigration authority for a visa. The maximum visa term for a foreigner working in Vietnam is 12 months. Visas cannot be renewed once expired, but a new one can be applied for if necessary.

A foreign worker with a valid work permit may also apply for a Temporary Residence Card for a period of up to three years. The application must be submitted to the provincial Immigration Department, and may include supporting documents such as a housing lease contract and an employer's certificate of incorporation.

Work Permit

A work permit is normally required from a foreign employee working for more than three months in Vietnam. Once an employer receives two sets of application files from the potential foreign employee, the employer can apply for issuance of a work permit for that foreigner from the Department of Labor, War Invalids, and Social Affairs (DOLISA). For a foreign employee working in Vietnam on the ground of performance of a labor contract between the foreigner and a Vietnam-based company, after a work permit has been issued, usually within two weeks of submitting an application file to DOLISA, a written labor contract in accordance with the labor law of Vietnam, and consistent with the work permit issued, must be signed by the foreigner and the employer. A copy of this signed contract must be forwarded by the employer to DOLISA. For foreigners working in Vietnam on other grounds, including internal transfer, no Vietnamese labor contract is required.

A work permit is not required from the following foreign employees:

- ▶ A member or owner of a limited liability company or a member of the board of management of a shareholding company.
- ▶ A person offering services to practice law, under a professional license issued by the Ministry of Justice.
- ▶ A Chief Representative Officer, Chief Project Officer, or representative of a foreign nongovernmental organization for its operation in Vietnam.
- ▶ An internal transferee of a company that engages in one of 11 service sectors as stated in Vietnam's WTO service commitments.
- ▶ A person providing professional and technical consultancy service or conducting other missions serving for the implementation, evaluation, and supervision of Official Development Aid programs or projects according to the agreements signed between foreign parties and the Vietnamese Government.
- ▶ A person permitted by the Ministry of Foreign Affairs to conduct media activities in Vietnam.
- ▶ Other circumstances as stipulated by the Prime Minister.

Personal Income Tax

Foreign residents who stay in Vietnam for at least 183 days within 12 consecutive months are subject to personal income tax on all income earned in Vietnam and regular income earned abroad. Vietnam uses a progressive tax scale when calculating personal income tax, with the highest rate being 35%. Foreigners who stay in Vietnam for less than 183 days during a 12-month period are subject to personal income tax on regular and irregular income sourced in Vietnam during their residence in Vietnam and, instead of the progressive rate, a 20% flat rate will be applied.

Vietnam has signed double tax agreements (DTA) with many countries, in which tax exemptions may be applied in specified circumstances. As the language of each agreement differs to some extent, each country should be considered separately. The tax exemptions under the DTAs will not apply automatically, as the application for the exemption must be submitted to the Ministry of Finance. ⚖️