

# Managing Risk and Compliance under COVID-19 in Vietnam. What can Businesses do?

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**Domicile**  
Corporate Services 

A partner of Acclime.

# Managing Risk and Compliance under COVID-19 in Vietnam. What can businesses do?

## Your Presenter

**Matthew Lourey** is an Australia Chartered Accountant with over 24 years professional work experience, over 15 of those in Vietnam.



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

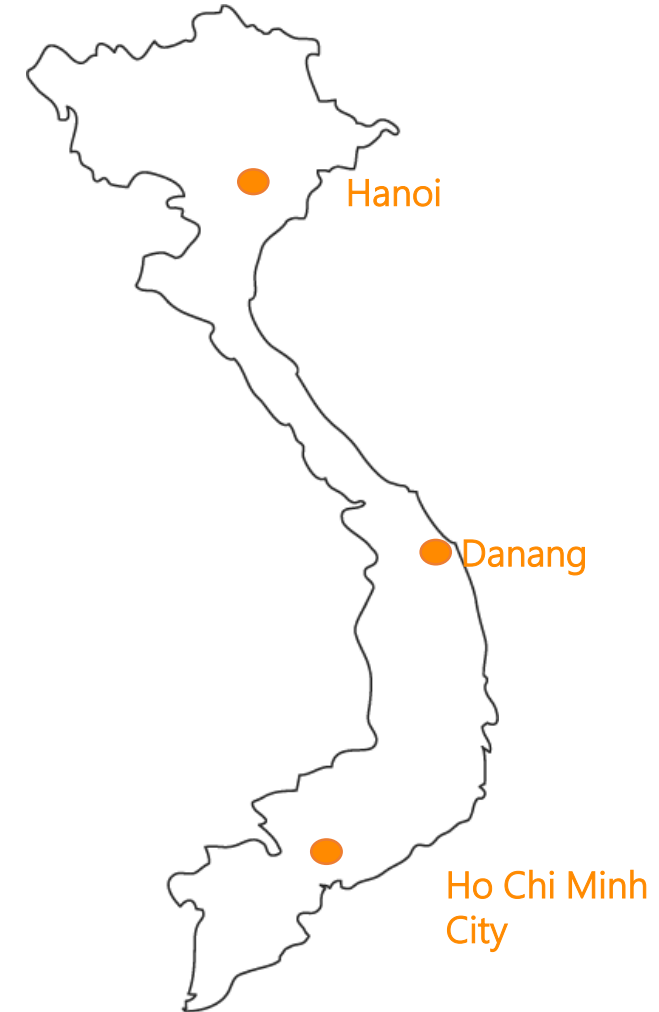
Matthew's has extensive experience with foreign investment in Vietnam, combining strong technical knowledge of accounting, tax, labour and investment laws, with significant practical experience in market entry, transactions and ongoing compliance. In the past, Matthew has held positions in Vietnam as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

Managing Risk and Compliance under COVID-19 in Vietnam. What can businesses do?

# Domicile Corporate Services

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

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



Managing Risk and Compliance under COVID-19 in Vietnam. What can businesses do?

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A regional specialist with global standards.

In a market characterised by increasing sophistication and complexity, our regional network of grass-roots experts is pushing the corporate services sector with bold, innovative solutions that are seamlessly delivered to the highest global standards.

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Current, practical compliance issues in regard to obtaining or renewing visas, WP and TRC

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A row of bicycles parked against a wall with shutters. The bicycles are parked on a paved surface, and the wall behind them has several windows with closed shutters. The scene is dimly lit, suggesting an overcast day or a shaded area.

# Impacts and Risks For Businesses in Vietnam

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Covid-19

# Impacts and Risks of Covid-19

For Businesses in Vietnam

## For businesses in Vietnam, what does this mean?

- The impacts of the virus will not be short term; the initial social impacts alone are to be felt over a long period. The recovery phase will also be slow and long; the world will effectively need to “restart”.
- Almost all sectors will be impacted, but certain sectors are suffering significantly – and will continue to suffer. Hospitality, travel, entertainment, to name a few. There will be many jobs lost, and some businesses in these sectors may never recover.
- Be proactive with protecting your business. Negotiate early with landlords, suppliers and staff. Plan and protect, in order to survive. This may need to happen a few times over the impact period. Conserving cash needs to be a focus.
- Move towards and embrace the limitations with the movement of staff and experts. Conference calls, online meetings and staff working from home will become the norm. Look at the technology options available and embrace these. Empower your staff to embrace these.
- The virus will be overcome, and businesses need to look to the future (even if they are struggling to understand how they can react for operations today).

# Impacts and Risks

## For Businesses in Vietnam

- There will be a seismic shift in Vietnam to the “online” and “delivery” worlds. We have seen some Vietnamese government agencies move swiftly to online only (as part of social distancing), where they were previously slow to embrace.
- Opportunities will arise, and Vietnam provides a significant platform to take advantage of those opportunities. Many (potentially all) developed economies will fall into recession as a result of the virus, however Vietnam’s higher underlying growth rate is likely to withstand the worldwide slowdown better than most, and will hopefully give a stronger foundation to grow from.

## Most Importantly Right Now

- Look after your staff, and protect them as best you can – many staff are stressed and worried right now, and you will need them to get through these challenges and to succeed when we get to the other side.  
and
- Manage your Immediate Risks and maintain a sustainable compliance strategy at all times





# Labour and Employment Implications

Termination, Insurance, Suspension

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# Labour & Employment Implications

## Compliance Issues under Covid-19

*As part of the planning on how to manage business continuity and control costs, understanding the rights and responsibilities with respect to employment and staff is essential. Where difficulties are encountered, we encourage all parties to act rationally, with the employer being open with their challenges and longer-term objectives, thus making it easier for employees to understand and for appropriate decisions to be made.*

### **CAN EMPLOYERS UNILATERALLY TERMINATE LABOUR CONTRACTS DUE TO THE PANDEMIC?**

- Article 38 of the Labour Code 2012 allows an employer to make redundancies where it seeks to overcome “the consequences of natural disasters, fire or other force majeure events”. This is commonly regarded as including pandemics, such as Covid-19.
- However, careful attention is required in order to utilise this clause as it requires the employer to “take all measures” to overcome the consequences, and must follow a prescriptive notice period and payout process, depending on how long the employee has been working and their contract type (ie, fixed or indefinite term).

# Labour & Employment Implications

## Compliance Issues under Covid-19

### **CAN HOURS OR SALARIES BE REDUCED FOR EMPLOYEES WITHOUT THEIR CONSENT?**

- Article 98 of the Labour Code 2012 allows for a reduction in salaries where force majeure events, including “dangerous epidemics”, arise and which permits paying employees an “idle salary” whilst there is no work for them and they remain suspended from working. However any reduction in salary needs to be agreed by employer and employee by mutual consent, and cannot be less than the minimum monthly wage for the region as prescribed in law. If a mutual agreement cannot be reached, then this Article is difficult to utilise in practice.

### **EMPLOYEES IN MANDATORY QUARANTINE - CAN THEY CLAIM SICKNESS INSURANCE?**

- Where employees are subject to mandatory quarantine, but are not inflicted by or suspected to be inflicted by a disease requiring treatment, then they are generally regarded as not meeting the requirements to access the Social Insurance for sickness benefits. Therefore, the options available to individuals in mandatory quarantine would be to:
  - Take annual leave,
  - Take unpaid leave, or
  - Mutual agreement for salary reduction in accordance with the suspension of employment (as referred to above)

A grayscale photograph of a person sitting on a chair under a canopy in a dilapidated building. The person is wearing a cap and a light-colored shirt. The building has peeling paint and a doorway. A motorcycle is parked nearby. The text 'Work Permits, TRCs and Visas Compliance & Issues' is overlaid in orange and white.

# Work Permits, TRCs and Visas Compliance & Issues

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# Work Permits, TRCs and Visas

## Compliance & Issues

*The situation is fluid and changing each day.*

### Visas

The issuance of new visas for Vietnam has been suspended, and that is not likely to change in the near future. Those in Vietnam with existing Visas are able to extend these, although the process and extension period (1 to 3 months) does depend on the Visa type and the original sponsoring party.

We did see a period in the previous weeks where extensions were being denied to some, but as at the date of writing we believe that everyone can get an extension.

There are different processes for tourist visas and business visas extensions, and this needs to be kept in mind when seeking an extension.

# Work Permits, TRCs and Visas

## Compliance & Issues

*The situation is fluid and changing each day.*

### **Work Permits**

Recently the Labour Authorities issued notices stating that no Work Permit applications would be accepted from recent arrivals from countries effected by Covid-19, without elaborating significantly on which countries this impacted. In practice, the authorities ceased to accept new applications and only a limited number of renewal applications were accepted.

We understand that applications will start to be accepted in the near future for those in country and eligible, and that the current hold is only temporary.

Work Permit extensions are currently being processed, provided that the individual has not left Vietnam since 1 February 2020.

# Work Permits, TRCs and Visas

## Compliance & Issues

### TRC's

Where individuals have expiring TRC's, we have seen cases of temporary extensions (via a replacement visa) recently, but we understand that the authorities will begin to issue TRC's for valid cases again shortly.

### TRC Changes 1 July 2020

Under current laws, individual foreign investors contributing capital to a Vietnamese company can obtain a TRC, generally for a period of 3 to 5 years.

However, new laws from 1 July 2020 will result a TRC not being available for investors contributing capital of less than VND 3 billion (~USD130,000). Individual investors contributing capital in excess of VND 3 billion will be entitled to receive a TRC with periods of up to 10 years, depending on the value of their capital invested.

Individual investors that do not meet the capital requirements will still be able to obtain a 1 year business visa, and can renew that visa when it expires. However, the restrictions in holding a visa versus a TRC should be kept in mind with this change.

# Work Permits, TRCs and Visas

## Compliance & Issues

### What should I Do?

If you have valid documents that are expiring soon, ensure that you are getting everything together required for the extension or new application, in accordance with normal practice. The chances are that your lodgement etc will proceed as it did before. But, be prepared for some disruption, just in case.

For employers, if you have foreign individuals inside Vietnam, then follow the instructions as above – just follow normal process. If you have foreign individuals “locked” outside Vietnam, you will need to assume for now that there will be very limited opportunities for them to enter Vietnam for an extended period, and to work around that.

### Is your Legal Representative out of the country for more than 30 days?

The residency prerequisites of the Legal Representatives of Vietnamese enterprises may create statutory non-compliance exposures, and foreign investors have to be aware of the risks involved if these requirements are not met. It is advised that Companies operating in Vietnam analyse the status of their Legal Representatives and if the conditions are not sufficient to comply with the Law of Investment and the Enterprise Law, they should consider appointing an additional Legal Representative and mitigate this risk. *Businesses should review their ERC to determine the current status of the Legal Rep. and potentially appoint another individual to take the role and remain compliant.*



# Work Permits, TRCs and Visas

## Compliance & Issues

### What should I Do?

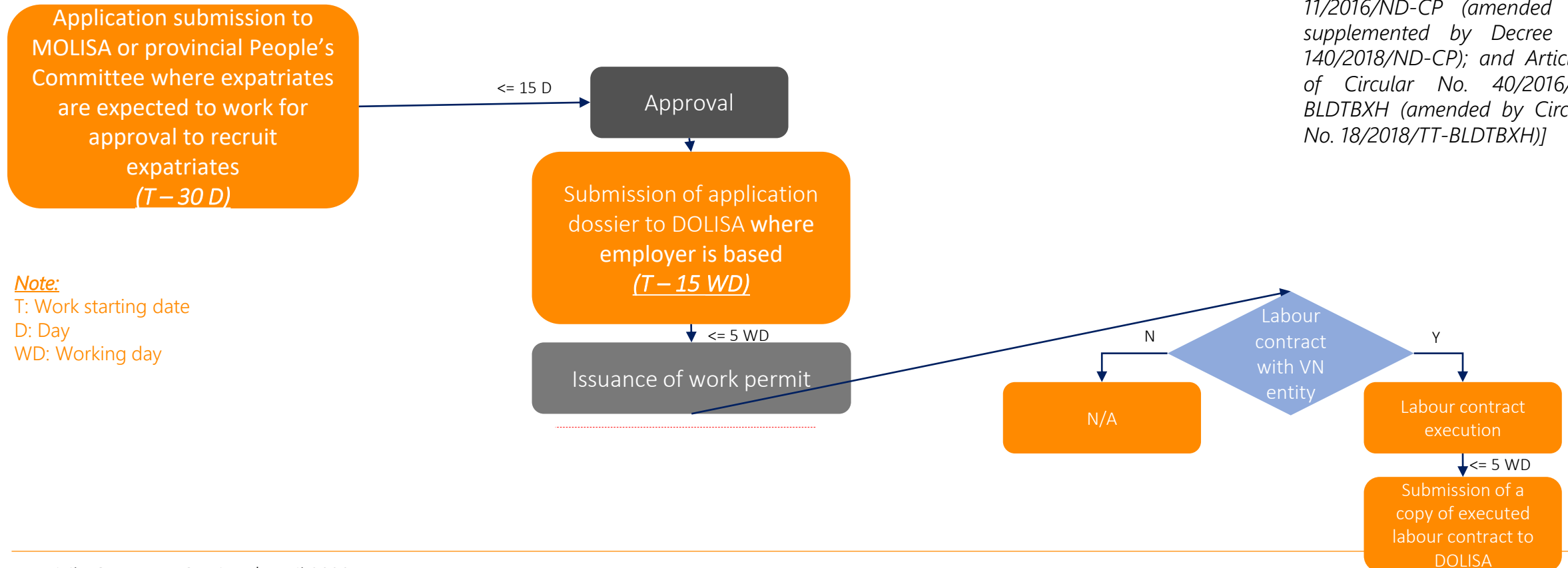
For individuals who have historically spent extended periods on Visas or even Visa Exemption Certificates (ie, those married to a Vietnamese or with Vietnamese heritage), then now is the time to move to a more secure basis of tenure in Vietnam.

- If working in Vietnam, ensure you have a Work Permit and arrange a Temporary Resident Card
- If an investor, seek to arrange a Temporary Resident Card through investor rights (noting the upcoming changes from 1 July 2020), or seek to be formally employed with a Work Permit.
- For those on Visa Exemption Certificates, which are essentially designed to come and spend extended time periods in Vietnam but are not designed for long-term living in Vietnam, seek to move to a marriage-base Temporary Resident Card, or arrange a Work Permit with your employer and a Temporary Resident Card based on the employment
- For those on Business or Tourist Visas that don't have the option of being formally employed or obtaining a Temporary Resident Card, there is always the risk of your tenure in Vietnam, and we strongly suggest that you revisit the basis of your term in Vietnam and look to move towards something more secure (ie, establishing your own company in Vietnam to support your status here).

# Work Permits

For Foreign Individuals in Vietnam

## Application Process Work Permits



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

**Note:**

T: Work starting date

D: Day

WD: Working day



# Corporate Governance and Compliance

Be Prepared

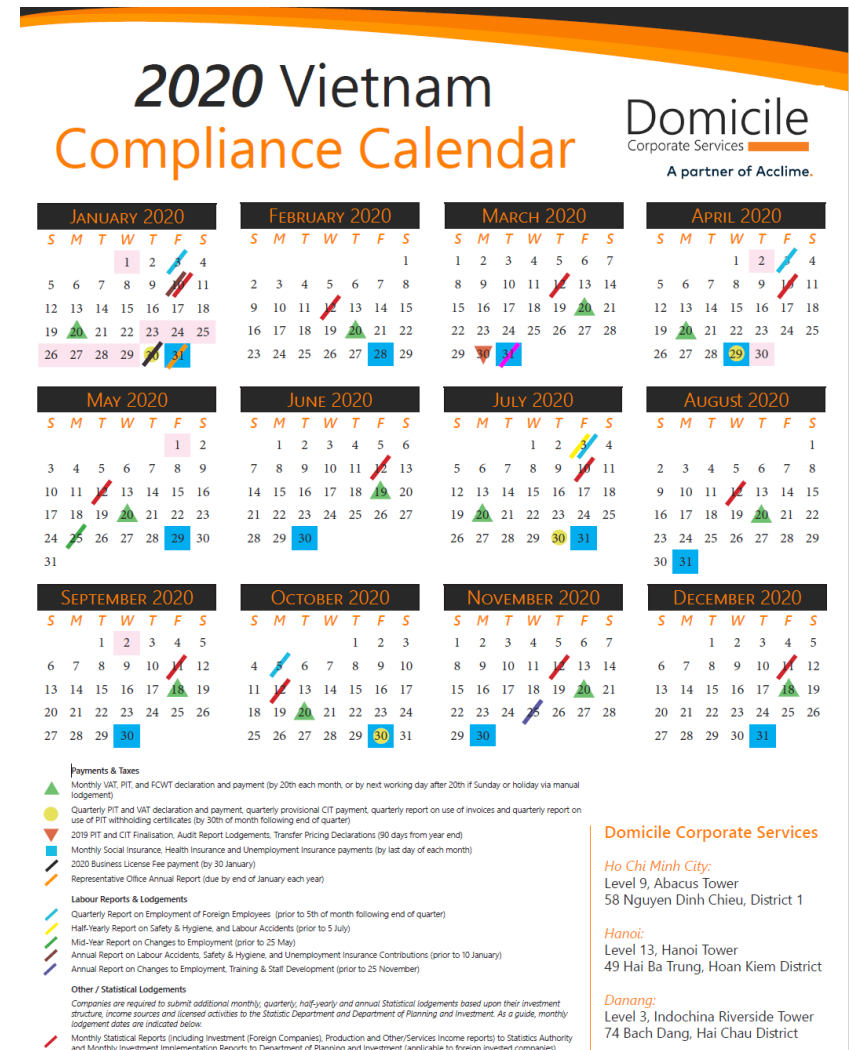
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# Corporate Governance and Compliance

Be Prepared

# 2020 Corporate Governance Framework

- Completing the Annual Finalisations and Audit
- Apply and use a Compliance Calendar
- Support your Workforce and Understand Employment Obligations
- Advance Digital Transformation for your Compliance Systems
- Adopt a Risk Management Approach on all levels of Compliance
- Stay updated on how Authorities support Businesses in time of crisis



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# Deferring Taxes and Land Rental

Decree 41

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## Deferring Taxes and Land Rental

On 8 April 2020, the Vietnam Government issued Decree 41/2020/ND-CP

### Deferral of CIT Payments

Eligible companies are able to defer their 2019 final CIT payment (which was in fact due at the end of March 2020) for 5 months, and will also be able to defer their 2020 Quarter 1 and Quarter 2 CIT provisional payments for 5 months from their existing due dates.

Where companies have already made their 2019 final tax payment, which was due at the end of March 2020, they can request an offset of this amount against other taxes due – allowing them to essentially defer this payment although it has been remitted already. To make an adjustment request, companies will need to use Form C1-11/NS from Circular 84/2016/TT-BTC issued by the Ministry of Finance.

### Deferral of VAT Payments

Eligible Taxpayers can defer VAT payments, so that Quarter 1 and Quarter 2 payments can be deferred for 5 months (for quarterly payers), and March, April, May and June 2020 payments can also be deferred for 5 months for (monthly payers). Note that lodgements are still required to be performed on time, and the exemption excludes VAT for imports).

### Household Businesses & Individuals – VAT and PIT Deferrals

The annual VAT and PIT payments due for 2020 for Household Businesses and Individuals can be deferred until 31 December 2020.

### Land Rental Deferrals

Taxpayers with direct land lease contracts from the State can defer 2020 annual land rental payments for 5 months, from 31 May 2020.

# Deferring Taxes and Land Rental

## Applicable Taxpayers

1. Those involved in **production** activities covering:

- a) agricultural, forestry and fisheries sectors;
- b) production and processing of food, textile & garments, and footwear;
- c) production of wooden, metal, paper, plastic and rubber products;
- d) production of electronic products, computers and optical products;
- e) automobile manufacturing; and
- f) construction sector

2. Those operating in **service** sectors covering:

- a) transport sector and associated supporting activities;
- b) accommodation and catering services;
- c) travel agents, tour businesses and support services related to tour promotion and organization;
- d) training and education;
- e) medical and social assistance activities;
- f) real estate businesses;
- g) artists, recreational activities, sport activities, museums and cinemas;
- h) labour and employment services

# Deferring Taxes and Land Rental

## Applicable Taxpayers

3. Taxpayers engaged in the **production of industrial products supporting the development** of Vietnam and other key mechanical products

(following previous guidelines released by the Government on Supporting Industry development, and Mechanical Engineering development)

4. **Small and micro enterprises** defined by regulations of the Law on Supporting Small and Medium Enterprises.

The definitions include: Enterprises in the fields agriculture, forestry, fisheries, construction and industrial sectors with no more than 100 staff, and turnover no more than VND 50 billion or total capital not more than VND 20 billion. Enterprises in the fields of commerce and services with no more than 50 staff, and turnover no more than VND 100 billion or total capital not more than VND 50 billion. 6.

Implementation & Access to Deferrals Taxpayers wishing to take advantage of the tax deferrals in this Decree using the form attached to this Decree, and which needs to be submitted no later than 30 July 2020. Submission can be made electronically or in paper form. The Decree took effect on 8 April 2020 when issued.

5. **Credit** Institutions and Foreign **Bank** Branches

For those effected by the COVID-19 epidemic, as prescribed by the State Bank of Vietnam.



## Deferring Taxes and Land Rental

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## Deferring Other Payments

### Social Insurance & Trade Union Payments

# Deferral of Social Insurance & Trade Union Payments

Authorities have released guidance on reducing on possible deferrals for portions of Social Insurance (14% for employer and 8% for employee) and Trade Union contributions until 30 June 2020 (and potentially to December 2020), for selected/affected businesses where:

- There has been a reduction of 50% of the workforce, or
- Assets (excluding real estate) have endured a 50% reduction



# Action Points

What to focus on?

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# Actions for Companies in Vietnam

## Governance & Compliance in the wake of Covid-19

# Actions

- Review your eligibility for Tax Deferrals, and prepare lodgements with the tax authorities to activate
- Review eligibility for other deferrals or benefits (Social Insurance or Trade Union payments), and consider the process to access
- Deal with landlords and other fixed costs, and negotiate sustainable arrangements – protecting your cashflow
- Look at staffing – consider near-term and long-term needs. Where necessary, negotiate and action this (and get external assistance in doing so, as that may make the process easier)
- Plan for various scenarios (good, bad and worse), ensuring you remain compliant – so that in the future you can restart
- Review your ERC/IRC and ensure that the individuals named are in the right place (ie, Legal Representative is in Vietnam), and amend if necessary
- Consider your foreign employees and their status, and seek to correct/amend.

Most importantly – you are not on your own. Seek advice and assistance.



THANK  
YOU

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# Presentation disclaimer

Please note that the information provided is general in nature and not mean to be a legal advice.