Luther in Vietnam

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Dear Readers,

Welcome to our June 2026 edition of the Luther Vietnam Newsletter. Vietnam continues to strengthen its position as one of Southeast Asia's fastest-growing economies, supported by significant investment, infrastructure development and an increasingly competitive business environment. As the first half of 2026 draws to a close, businesses continue to navigate a rapidly evolving regulatory landscape. In response to the country's continued growth, the government is implementing a range of legal and regulatory reforms that are aimed at modernising administrative processes, improving regulatory efficiency and also strengthening compliance across areas such as construction, employment, immigration and taxation.

We begin with Vietnam's new Law on Construction 2025. Taking effect on 1 July 2026, the law aims to streamline project approval procedures, improve the efficiency of project implementation, expand exemptions from construction permit requirements, and modernise key aspects of the construction framework. Our article highlights the increased responsibilities placed on investors, particularly with regard to design approval, compliance and contractor selection, underscoring the importance of reviewing project and contract management practices.

The second article focuses on payroll compliance in Vietnam, which extends far beyond paying salaries, requiring businesses to align employment law, tax, accounting and statutory insurance obligations in every payroll cycle. As authorities increase scrutiny through data matching and audits, particularly for foreign-invested companies, businesses should regularly review and localise their payroll practices to ensure compliance, reduce regulatory risk and avoid costly penalties.

The third article examines Vietnam's draft amendments to Decree 219, which propose to simplify work permit procedures, expand the categories of work permit exemption, and make it easier for businesses to engage foreign professionals. Given the potential impact of the proposed amendments, employers are encouraged to closely follow these developments and review their current compliance procedures to ensure a smooth transition to the new requirements.

The final article examines Vietnam's approach to double taxation relief under its network of Double Taxation Avoidance Agreements (DTAs), with a focus on the Vietnam Tax Authority's recent Official Letter 3326 clarifying how treaty relief applications will be assessed. It emphasises the importance of proper documentation, tax residency, beneficial ownership and permanent establishment considerations for foreign businesses seeking to claim DTA benefits.

Together, these updates highlight the importance of keeping pace with Vietnam's rapidly evolving legal and regulatory environment.

We hope the insights in this edition give you a clear understanding of these regulatory developments and what they may mean for your business in Vietnam. As always, we remain committed to supporting your business with practical, commercially focused advice that helps you navigate an evolving regulatory landscape with confidence.

If you have any questions about the topics covered or would like to discuss how these developments may affect your business, our team would be pleased to assist.

Yours sincerely,

Luther Vietnam Law LL.C.
Ho Chi Minh City, June 2026

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Vietnam's New Construction Law: New Opportunities And New Responsibilities For Investors

I. Introduction

On 10 December 2025, the National Assembly of Vietnam adopted the Law on Construction No. 135/2025/QH15 (the "**Law on Construction 2025**" or the "**Law**"), replacing the Law on Construction No. 50/2014/QH13. The Law took effect on 1 July 2026, except for certain provisions relating to construction works requiring, or exempt from, construction permits, which have been in place since 1 January 2026. The Ministry of Construction is currently preparing implementing regulations to guide the application of the Law.

The Law introduces a number of changes to Vietnam's construction regulatory framework, with the aim of streamlining administrative procedures and improving the efficiency of project implementation. The reforms affect various aspects of construction investment activities, including project approval procedures, construction permitting, contractor qualification requirements and the legal framework governing construction contracts.

This article sets out four key changes of immediate relevance to foreign investors and contractors operating in Vietnam.

II. Key Changes

1. Abolition of Mandatory Organisational Capacity Certification for Domestic Entities

The Law on Construction 2025 abolishes the requirement for domestic organisations to obtain Construction Activity Capacity Certificates (previously classified into Classes I, II and III) and introduces a new disclosure-based regime.

- **No organisational capacity certificates:** Domestic organisations are no longer required to obtain Construction Activity Capacity Certificates in order to participate in construction activities.
- **Self-disclosure of capacity information:** Organisations must publicly disclose information regarding their capacity on the Ministry of Construction's electronic information portal, enabling project owners to evaluate and select contractors.

Importantly, this is a change in how capacity is being monitored, not a removal of the capacity requirements themselves.

Capacity is no longer confirmed by a state-issued certificate before work begins. Instead, organisations disclose their capacity, project owners select on that basis, and organisations remain subject to inspection and to greater liability if they take on work they cannot properly perform. The qualification requirements applicable to individuals carrying out regulated construction activities or holding certain statutory positions, such as the personal practice certificates needed for design or construction supervision, continue to apply. These individuals do not have to be Vietnamese. Experience gained abroad, and practice certificates issued abroad, can be used, although they must first go through a Vietnamese recognition or conversion procedure.

These capacity certification rules apply to domestic organisations. Foreign contractors remain subject to the separate Foreign Contractor Permit regime.

2. Streamlining Pre-Construction Approval Procedures

The Law on Construction 2025 reduces the number of approval steps a project must pass through before construction can begin. The following change matters most in practice.

Regarding the appraisal of certain post-basic construction designs (including technical and construction drawing designs), the Law on Construction 2025 has abolished the requirement for appraisal by competent construction authorities. Instead, following project approval, the sole responsibility for appraising, reviewing, and approving these designs now rests with the investor.

In practice, this turns what used to be two separate state appraisals, first of the feasibility study report and then of the detailed designs, into a single state review. The scope of the remaining review has also been narrowed: the authorities no longer assess whether the project matches the approved investment policy or the environmental procedures, and review only construction safety and fire prevention as well as the project's compliance with construction standards and technical regulations. The developer also gains more freedom over the level of design detail, because the feasibility study report no longer always has to include the basic design.

This reform grants investors greater autonomy over the design process, streamlines approval procedures and is expected to shorten project implementation timelines. The flip side is greater responsibility. Because the authorities no longer check the detailed design, the investor now bears the risk and the liability for design errors, including those affecting safety, fire prevention and compliance with technical standards.

3. Expanded Exemptions from Construction Permit Requirements

The Law on Construction 2025 substantially broadens the scope of construction work exempt from the requirement to obtain a Construction Permit, aiming to expedite project implementation. Key additions to the exemption list include:

- Projects subject to special investment procedures (projects that go through the separate fast-track investment approval regime, so a standalone construction permit is not required);
- Airports, works within airport perimeters, and air navigation auxiliary facilities;
- Works whose Feasibility Study Report has been formally appraised and approved by competent construction authorities (the counterpart to the change described above: where the State has already appraised the feasibility study report, requiring a separate construction permit would duplicate that review); and
- Grade IV structures or standalone residential buildings below seven storeys (with a gross floor area below 500 m²). Here, "Grade IV" refers to the statutory construction grade, which ranks works from Special and Grade I down to Grade IV by their scale, complexity and importance. Grade IV is the lowest grade, covering the smallest and simplest works.

An exemption removes the construction permit as an up-front step. It does not reduce the substantive requirements that apply to the works, which must still comply with the approved planning, design and technical standards. This expansion shifts the regulatory approach from "pre-approval" to "post-review". Prior to commencement, investors must still satisfy all statutory commencement conditions and submit a formal Commencement Notification to the local construction authority (except for state secrets, emergency, temporary works and individual residential buildings).

Note:
For most commercial and project developments, the Commencement Notification must be accompanied by a comprehensive technical dossier and design drawings equivalent to a standard construction permit application. This notification must not be treated as a mere formality: any non-compliance or discrepancy identified during subsequent post-reviews may trigger severe administrative sanctions, suspension orders, or compulsory demolition, since compliance is checked after work has started rather than before.

4. Stricter and Clearer Regulation of Construction Contracts

The new Law on Construction resolves interpretative uncertainties by excluding the Law on Commerce from the governing law hierarchy for construction contracts. Matters unregulated by the Law on Construction will now be governed, in order of priority, by the Law on Bidding, the Law on PPP Investment, and the Civil Code.

This legislative restructuring drives three critical reforms:

a. Formal Codification of Liquidated Damages (LDs):

For the first time, the Law expressly recognises liquidated damages, meaning pre-agreed compensation amounts, as a lawful basis for determining compensation, separate from contractual penalties. Under the Law on Commerce, a contractual penalty for breach may not exceed 8% of the value of the breached obligation. It was previously unclear whether pre-agreed compensation would be treated as such a penalty and capped in the same way. By excluding the Law on Commerce from the governing hierarchy and recognising liquidated damages as separate from penalties, the Law removes that 8% ceiling as a limit on pre-agreed compensation.

This broadens the contractual framework for construction contracts by allowing parties to agree on pre-estimated compensation where actual loss may be difficult to quantify, such as delays in achieving contractual milestones. In such cases, the agreed sum can be claimed without proving the exact loss, and the power of a court or tribunal to reduce a disproportionate amount is an exception rather than a routine recalculation.

The express statutory recognition may also provide greater legal certainty and a clearer basis for courts and arbitral tribunals when considering the validity and enforceability of liquidated damages clauses in the event of a dispute. However, the agreed liquidated damages must align with the "degree of breach". If the stipulated amount is unconscionably high, courts or arbitral tribunals retain the power to adjust it downward.

b. Recognition of Material Change of Circumstances:

For the first time, the Law expressly brings the concept of a material change of circumstances into the construction law framework. The concept itself is not new to Vietnamese law: it has existed for contracts generally since Article 420 of the Civil Code 2015 whose conditions continue to govern whether such a change exists. Such circumstances include changes in State policies or regulations of law, unforeseen abnormal geological conditions, and other cases prescribed by relevant laws. However, these events will only constitute a material change of circumstances where the statutory conditions under the Civil Code are satisfied. Where such circumstances arise, the parties may agree to amend the construction contract and, where applicable, adjust the relevant public investment project where the change results in an amendment to the project's objectives, investment scale, total investment capital or implementation period.

c. Recognition of International Dispute Resolution Mechanisms:

The Law formally recognises the use of dispute resolution mechanisms developed under international practice in construction contracts. For public investment and PPP projects, the application of such mechanisms must be required under an international treaty or approved by the competent investment decision-maker and agreed by the parties in the construction contract. The Law also permits dispute resolution costs incurred by the investor to be included in the project's total investment cost.

III. Impact on International Clients

Key practical implications include:

- Faster project start: with two State appraisals reduced to one and more projects exempt from a construction permit, the approval path before construction is shorter. In return, the investor approves the detailed design itself and is responsible for it;
- Contract terms closer to international practice: liquidated damages clauses now have a clearer legal basis and are no longer caught by the 8% penalty cap, and contracts can rely on material change of circumstances and on internationally recognised dispute resolution. Precise drafting of these clauses has become more important; and
- More responsibility shifted to the investor: because the state checks compliance after work has started, the investor carries the risk for design and for the accuracy of the commencement dossier, with penalties, suspension or removal orders if a later review finds problems. When selecting contractors, the abolished capacity certificate must be replaced by the investor's own checks, using the disclosed capacity information and confirming that the individuals doing regulated work hold the required practice certificates.

IV. How We Can Help

Our team advises foreign investors and contractors across all phases of construction and infrastructure projects in Vietnam. In light of the Law on Construction 2025, we can assist with:

- Contract review and restructuring: advising on liquidated damages clauses, force majeure and material change of circumstances provisions, and governing law arrangements under the new legal hierarchy;
- Permit and commencement compliance: assessing whether a project qualifies for a permit exemption and preparing compliant commencement notification dossiers;
- Contractor pre-qualification: updating due diligence frameworks in light of the abolition of organisational capacity certificates; and
- Dispute resolution: advising on the selection and application of international dispute resolution mechanisms, including in PPP and public investment contexts.

Payroll Compliance In Vietnam: Why Your Payroll Is Not Just An HR Issue

For many businesses, payroll is viewed primarily as an administrative or HR process. In Vietnam, however, payroll is a multidisciplinary compliance function sitting at the intersection of employment law, accounting, taxation and social insurance. Decisions made during a routine payroll cycle can simultaneously affect statutory insurance contributions, Personal Income Tax (**PIT**), financial reporting and corporate tax compliance. As Vietnamese authorities continue to place increasing emphasis on the enforcement of payroll, tax and social insurance obligations, payroll compliance has become an area of growing regulatory scrutiny. Foreign-invested enterprises are particularly exposed, as payroll structures and group-wide policies developed overseas do not always align with Vietnam's highly prescriptive regulatory framework.

I. Payroll Compliance: More Than Paying Salaries

A compliant payroll process extends well beyond calculating monthly salaries. Each payroll cycle requires employers to:

- calculate employee remuneration and taxable income;
- determine mandatory Social Insurance (**SI**), Health Insurance (**HI**) and Unemployment Insurance (**UI**) contributions;
- assess whether trade union contribution obligations apply;
- withhold and declare PIT;
- record payroll costs correctly in the accounting records; and
- make timely statutory payments to the relevant authorities.

These obligations are closely interconnected. An error in one area frequently creates compliance issues across several others. For example, an incorrect salary base may simultaneously affect payroll accounting, SI, HI and UI contributions, PIT withholding, corporate income tax deductibility and, ultimately, the company's financial statements.

Payroll compliance should therefore be viewed as an integrated compliance function rather than a collection of separate HR, accounting and tax workstreams. In practice, effective payroll compliance requires close coordination between HR, finance, accounting, tax and legal functions.

II. Increasing Regulatory Scrutiny

Vietnamese authorities are enforcing existing payroll, tax and social insurance obligations with increasing consistency and sophistication. Tax authorities and the social insurance authorities are making greater use of electronic filings and data matching to identify inconsistencies between payroll declarations, insurance contributions and tax filings.

As a result, issues that may previously have gone unnoticed are increasingly identified during routine inspections, tax audits and social insurance reviews. Common consequences include:

- reassessment of unpaid PIT or statutory insurance contributions;
- late payment interest;

- administrative penalties;
- additional reporting and corrective filings; and
- increased regulatory scrutiny during future inspections.

Consequently, payroll compliance has become an increasingly important component of corporate governance, financial controls and enterprise risk management, particularly for foreign-owned subsidiaries operating in Vietnam.

III. Global Payroll Policies Often Need Local Adaptation

One of the most common issues we encounter is the assumption that a payroll policy successfully implemented elsewhere can simply be rolled out in Vietnam. In practice, Vietnam's regulatory framework contains numerous local requirements that differ from those in other jurisdictions. Group-wide approaches to employee benefits, allowances, bonuses, expatriate remuneration, reimbursement policies and payroll administration frequently require localisation before they can be implemented compliantly.

In our experience, many compliance issues arise not because multinational groups intentionally disregard Vietnamese law, but because globally standardised HR and payroll processes are implemented locally without sufficient adaptation to Vietnam's regulatory requirements. This is particularly relevant for multinational groups that centralise HR or payroll functions outside Vietnam. While global consistency remains important, local implementation should always be reviewed against Vietnamese labour, tax, accounting and social insurance requirements. Simply because a payroll practice is compliant elsewhere does not necessarily mean it is compliant in Vietnam.

IV. Regular Reviews Are Increasingly Important

Vietnam's payroll framework continues to evolve through legislative amendments and changing administrative practice. Businesses should therefore periodically review their payroll operations to ensure continued compliance with current Vietnamese requirements. Such reviews should extend beyond HR and include accounting, taxation, social insurance and internal compliance controls. Particular attention should be given to:

- payroll accounting treatment;
- insurance contribution calculations;
- taxable and non-taxable employee benefits;
- expatriate payroll arrangements;
- internal payroll controls; and
- consistency between payroll records, accounting records and statutory filings.

Regular payroll compliance reviews can identify issues before they become findings during tax audits or social insurance inspections, enabling businesses to address risks proactively rather than through costly corrective measures.

V. Key Takeaway

Payroll compliance in Vietnam is no longer simply an administrative back-office function. It is a multidisciplinary compliance area where employment law, accounting, taxation and statutory insurance obligations are closely interconnected. As Vietnam continues to strengthen the enforcement of payroll-related obligations, businesses (and particularly foreign-invested enterprises and multinational groups) should ensure that their payroll practices are regularly reviewed against current Vietnamese requirements rather than relying solely on global policies or long-standing internal practices.

A proactive payroll compliance review can significantly reduce regulatory risk, improve the reliability of financial reporting and help businesses avoid costly adjustments during future inspections. Because payroll compliance spans multiple disciplines, businesses benefit from advice that combines legal, tax, accounting and payroll expertise. Our integrated team in Vietnam regularly assists multinational companies in reviewing payroll structures, identifying compliance risks and adapting global policies to Vietnam's regulatory framework. If you would like to discuss your organisation's payroll practices or conduct a payroll compliance review, we would be pleased to assist.

Vietnam's Draft Amendments To Decree 219: Simplified Procedures And Expanded Access To Foreign Professionals

I. Introduction

The Ministry of Home Affairs ("**MOHA**") has released a Draft Decree amending and supplementing Decree 219/2025/ND-CP governing foreign employees working in Vietnam ("**Draft Decree**"). Recently, the MOHA has also released a Summary of Comments, Responses and Explanations on the Draft Decree (the "**Summary**"). Notably, the Summary indicates that MOHA now intends to replace Decree 219/2025/ND-CP by issuing a new decree, rather than adopting the amendments through an amending decree as originally proposed in the Draft Decree. This reflects a change in the legislative approach and suggests that the forthcoming regulations are expected to provide a more comprehensive revision of the existing framework governing foreign employees in Vietnam.

According to MOHA, the proposed amendments are intended to remove certain legal and administrative barriers to the recruitment and engagement of foreign personnel, particularly in areas such as science, technology, innovation and digital transformation, while maintaining the regulatory framework governing the employment of foreign workers in Vietnam.

To achieve this objective, the Draft Decree proposes amendments to a number of qualification, procedural and compliance requirements applicable to foreign employees. The proposed changes affect matters including work permit ("**WP**") eligibility, work permit exemption ("**WPE**") eligibility, documentary requirements and employer compliance obligations. Several of the proposed amendments would reduce qualification thresholds, expand exemption categories and simplify application documents.

At the same time, the Draft Decree introduces new notification and compliance requirements that employers will need to incorporate into their internal mobility and workforce management procedures.

Although the Draft Decree remains subject to further revision before adoption, employers engaging foreign personnel in Vietnam should assess how the proposed changes may affect them and monitor further developments.

II. Key Changes

1. Changes to Qualification Criteria for WP and WPE

A key objective of the Draft Decree is to facilitate the recruitment of foreign experts by lowering qualification barriers and providing greater certainty regarding eligibility requirements.

a. Acceptance of health certificates issued by competent foreign medical institutions

A notable proposed change relates to foreign-issued health certificates. Under the current framework, a health certificate issued overseas is accepted only where Vietnam and the issuing country or territory have entered into a treaty or agreement on mutual recognition. In practice, this requirement often results in foreign personnel obtaining health examinations in Vietnam as part of the WP or WPE application process.

The Draft Decree would remove the mutual-recognition condition. Instead, health certificates or medical examination certificates issued within the previous 12 months by competent foreign medical institutions are required, except in cases where the relevant health examination results have already been connected to and shared through the Information System for Management of Medical Examination and Treatment Activities or the National Health Database.

If adopted, this change may allow employers to rely on valid overseas medical certificates and complete the WP/WPE process before the foreign employee's arrival in Vietnam.

b. Reduced experience requirement for Executive Directors

Furthermore, the Draft Decree proposes to reduce the minimum experience requirement for Executive Directors from three years to two years. This change would broaden the pool of individuals eligible for Executive Director positions and provide employers with greater flexibility in appointing and transferring managerial personnel.

c. Experts working in strategic technology sectors

The Draft Decree also proposes significant changes for experts holding a bachelor's degree or higher, working in strategic technology sectors, including finance, banking and insurance, science, technology, innovation and national digital transformation. In particular, the current one-year experience requirement would be removed.

In addition, eligibility would no longer be determined through case-by-case assessment by the competent authority. Instead, it would be based on occupations and positions included in government-issued strategic technology lists. While this approach may provide greater legal certainty and simplify the eligibility assessment process, it may also narrow the range of qualifying positions, as only occupations and roles expressly included in the designated lists would benefit from the preferential treatment. The practical impact will therefore depend on the scope and content of the Strategic Technology Lists once issued.

d. Codified qualification criteria for certain professional sectors

The Draft Decree would introduce Appendix III, which codifies qualification requirements applicable to experts in the fields of education, training, culture, arts and sports.

Under the current framework, employers often need to refer to multiple regulations and guidance documents issued by different authorities when assessing eligibility for WP applications. The Draft Decree would consolidate these qualification criteria into a single appendix, providing a central reference point for determining whether foreign personnel satisfy the applicable requirements.

The proposed change is expected to reduce uncertainty arising from differing interpretations of qualification requirements during the WP application process and promote greater consistency in WP approvals.

e. Simplified documentary requirements for foreign students and trainees

The Draft Decree proposes to simplify the documentary requirements applicable to foreign students, trainees and interns seeking confirmation of WPE status.

Under the current framework, applicants must submit:

- a document issued by the foreign employer assigning the individual to Vietnam; and
- a relevant agreement or international treaty to which Vietnam is a party.

In practice, these requirements may be difficult to satisfy where the internship or training arrangement is based directly between the intern and the host organisation in Vietnam.

The Draft Decree would replace this requirement with a more practical and flexible documentary framework.

- For students, trainees and pupils studying at overseas educational institutions, the supporting documents would consist of an assignment document issued by the educational institution, together with either (i) an internship agreement between the educational institution and the Vietnamese employer, or (ii) an invitation letter issued by the Vietnamese employer.
- For individuals studying at educational institutions in Vietnam, the supporting document would be the internship agreement with the educational institution or the invitation letter issued by the Vietnamese employer. However, the latest revisions reflected in the Summary would additionally require a confirmation from the educational institution confirming the individual's current enrolment.

By recognising documents that more closely reflect actual internship and training arrangements, the amendment provides greater clarity regarding the documents required to establish eligibility under the relevant WPE category. Nevertheless, it should be noted that this exemption is available only to individuals who are currently enrolled at an educational institution. Accordingly, graduates who have already completed their studies would not fall within the scope of this WPE category.

2. Expanded Work Permit Exemptions

The Draft Decree would expand several categories of foreign employees who may work in Vietnam without obtaining a WP. These include, among others, the following three cases:

a. Intra-corporate transfers

The Draft Decree removes the previous requirement to provide documentary evidence of 12 consecutive months of prior employment, although the underlying eligibility condition remains unchanged. However, it is unclear which documents are needed to prove that the foreign employee has been employed by the parent company for the statutory period.

According to the latest update in the Summary, the scope of intra-corporate transfers has been narrowed to align with Vietnam's commitments under the WTO and relevant FTAs. In particular, "technical workers" have been removed from this category, which will apply only to managers, executive directors and experts.

The Draft Decree also clarifies that "commercial presence" includes foreign-invested economic organisations, representative offices and branches of foreign traders in Vietnam, and executive offices established by foreign investors under business cooperation contracts (BCCs).

In addition, the Summary further proposes that intra-corporate transferees in the 11 service sectors covered by Vietnam's WTO commitments may be granted WPE certificates with a validity period of up to three years, instead of the general two-year validity. If adopted, these amendments may reduce the documentary burden for eligible applicants while providing greater clarity on the scope and duration of the transfer exemption.

b. Special Visa Exemption Card

Another notable addition is a new exemption category for individuals holding a Special Visa Exemption Card under Decree 221/2025/ND-CP, including:

- High-level foreign guests invited by Vietnamese state authorities;
- Scholars, experts, scientists, professors, chief engineers, and high-quality digital technology personnel;
- Investors, corporate executives, and leaders of major global enterprises;
- Influential individuals in culture, arts, sports, and tourism.
- Honorary Consuls of Vietnam overseas; and
- Foreign nationals invited by designated research institutes, universities, or major enterprises.

This change reflects the Government's broader strategy of attracting foreign individuals who can contribute to Vietnam's socio-economic development. Employers may therefore consider assessing whether key personnel could qualify for this route as an alternative to conventional WP procedures.

c. Expanded WPE categories in the education sector

The current requirement for confirmation from the Ministry of Education and Training would be removed, and the exemption regime would be extended to:

- Participants in educational cooperation programs and projects;
- Managerial personnel at educational institutions; and
- Certain master's degree holders, PhD holders, professors and other qualifying academic personnel engaged in teaching or research activities.

In addition, the Draft Decree would allow qualifying PhD holders to work in Vietnam under the exemption regime for up to three years, compared to the current two-year period generally applicable to most exemption categories.

For educational institutions and research organisations engaging foreign academic personnel, these amendments may broaden the circumstances in which individuals can work in Vietnam without obtaining a WP while also extending the permitted duration of certain exemption arrangements.

3. Administrative Simplification and New Compliance Obligations

The Draft Decree proposes several measures aimed at reducing documentary burdens and simplifying administrative procedures.

a. Administrative simplification

Key simplifications in the Draft Decree include:

- Only requiring a copy (without legalisation or notarisation) of the personal information page of a valid passport;
- Waiving submission of certain documents already available in the Government's shared database among the State authorities;
- Allowing most documents to be submitted as ordinary copies or electronically certified copies; and
- Introducing a simplified notification procedure, in lieu of a WPE application, for PhD holders and professors engaged in teaching or research, as well as holders of a Special Visa Exemption Card.

Following comments received from ministries and other stakeholders, MOHA further proposes in the Summary to:

- Remove the requirement to submit a health certificate when applying for an extension of a WP or a WPE certificate;
- Streamline the integrated procedure for obtaining a criminal record certificate and a WP, with the overall processing time reduced to that applicable to WP issuance only; and
- Remove the requirement to publicly announce recruitment notices for Vietnamese employees before recruiting a General Director or Director whose title is recorded in the enterprise registration certificate, and for all WP extension applications.

Collectively, these changes may significantly reduce document preparation time and administrative costs associated with WP and WPE applications. They may also facilitate document preparation overseas, allowing foreign employees to complete more of the application process before entering Vietnam. However, it remains unclear how to verify whether the information is already available in the shared database, and further guidance will therefore be needed to confirm this mechanism.

b. New compliance obligations

Alongside the proposed simplification measures, the Draft Decree would also introduce several new compliance obligations that employers should not overlook.

In particular:

- Employers must notify the issuing authority whenever a foreign employee works at a location not specified in the WP or WPE, even where the new location is within the same province;
- Changes to the workplace would become an express ground for WP re-issuance; and
- Employers receiving a reissued WPE certificate would be required to return the previously issued original document.

These changes may require employers, particularly those deploying foreign employees across multiple locations, to review internal mobility procedures and allow additional lead time for WP applications and workplace changes.

III. Practical Recommendations

Employers should begin assessing the impact of the proposed changes by:

- Reviewing current eligibility assessments for foreign employees;
- Identifying personnel who may qualify under newly expanded exemption categories;
- Updating internal timelines for WP applications;
- Establishing procedures to monitor workplace changes and multi-site assignments; and
- Monitoring further guidance regarding the operation of the shared database and practical acceptance of electronic documents.

IV. How We Can Help

As the Draft Decree remains subject to further revision and implementation guidance, businesses may wish to assess the potential implications of the proposed changes for their foreign workforce arrangements. Our team can assist with assessing eligibility under the revised WP and WPE framework, identifying which exemption categories may apply, advising on the new reporting requirements, and preparing and filing WP and WPE applications.

Double Taxation Of Cross-Border Income

I. Overview

Vietnam is a signatory to Double Tax Avoidance Agreements (**DTA**) with 80 countries and territories[1]. These agreements are designed to protect income from simultaneous taxation in Vietnam and in the taxpayer's country of residence. DTAs apply to residents of Vietnam and its treaty partners and allocate the taxing rights over different types of income between the two countries. For business profits in particular, Vietnam may generally tax a foreign company only where that company has a permanent establishment (**PE**) in Vietnam. Where there is no PE, the company can usually claim relief from Vietnamese tax on those profits under the relevant DTA. DTAs generally cover different types of income and outline how taxing rights are allocated between Vietnam and its treaty partners. Overall, DTAs contribute to a more transparent tax environment and support cross-border investment and workforce mobility.

Most DTAs provide relief from double taxation through two main mechanisms:

- Tax exemption or reduction method: In certain cases, income earned in Vietnam may be fully or partially exempt from Vietnamese tax.
- Tax credit method: Foreign taxpayers may claim a tax credit in their country of residence for taxes already paid in Vietnam.

Despite relatively clear rules, foreign taxpayers may face difficulties due to inconsistent DTA interpretation by local tax authorities, which can lead to the rejection of applications.

To address this issue, the Vietnam Tax Authority (**VTA**) has recently issued an official letter[2] (**Letter 3326**) to clarify how DTAs should be applied. Letter 3326 offers greater transparency into the assessment procedures and specifies the requirements and appropriate documentation for DTA applications. This improves the chances of obtaining the desired VTA approval.

In light of this development, this article outlines what foreign companies need to know when trying to apply for DTA relief in Vietnam, including common challenges and practical steps to improve approval outcomes.

II. Key Takeaways from Letter 3326

Letter 3326 offers more insight into how the VTA assesses DTA applications in practice. The document emphasises several important aspects:

1. Tax residency:

- Applicants must demonstrate that they were a tax resident of a contracting jurisdiction in the year the income arose.
- Certificates of Residence issued by the competent authority (indicating the relevant fiscal year) are accepted as evidence.

2. Beneficial owner:

- Applicants must prove that they are the beneficial owner[3] of the income.

1 As of June 2026. Based on information published by the Vietnam Tax Authority.

2 Official letter No. 3326/CT-CS dated 22 May 2026 which was issued by Vietnam Tax Authority to Quang Ninh Province Taxation Sub-Authority.

3 The right to own, control, use, and dispose of the income or the income generating assets.

- Supporting legal documentation must be provided to substantiate the authenticity and substance of the arrangement. In practice, this typically includes evidence such as board resolutions and minutes, employment contracts for local staff, lease agreements for office premises, and documentation showing that the applicant exercises genuine control over the income and bears the associated economic risk.

3. Nature of income:

- Not all types of income qualify for DTA relief.
- Applicants are required to determine and align the nature of the income with the relevant articles of the corresponding DTA.

4. PE:

- DTA relief in the form of tax exemption or reduction only applies if the foreign taxpayer does not have a PE in Vietnam.
- If the taxpayer has a PE in Vietnam[4], the income will be taxed in Vietnam. In such cases, relief is typically achieved through a tax credit in the foreign taxpayer's country of residence.
- PE risk in Vietnam can arise inadvertently in several common scenarios, including a construction project or installation exceeding the duration threshold under the relevant DTA (commonly six months); the presence of a dependent agent in Vietnam habitually concluding contracts on behalf of the foreign company; or local staff or representatives performing core business functions (rather than purely preparatory or auxiliary activities) on the foreign company's behalf.

III. Practical Challenges

Despite Letter 3326, foreign taxpayers may still encounter difficulties when applying DTA principles. Common issues include:

- **Inconsistent interpretation by different local tax authorities** (e.g., across several provinces and diverse sub-tax authorities);
- **Lack of valid proof of tax residency or beneficial ownership;**
- **Incorrect classification of the nature of the income;**
- **Accidental PE creation;**
- **Incomplete legal documentation** (which can extend processing times beyond the prescribed 40 working days[5] or lead to application rejections); and
- **Failure to meet statutory deadlines** imposed by local tax authorities[6].

IV. Conclusion

The recent clarification by the VTA is a positive development. It enhances transparency and provides clearer expectations for taxpayers. At the same time, it also signals a continued focus on substance and compliance, which may result in more rigorous scrutiny of DTA applications.

For foreign enterprises operating in Vietnam, this translates into practical precautions in respect of Vietnam's current law and practice:

- **DTA relief should not be taken for granted** but requires special attention for each application and underlying documentation.
- **Careful tax planning in cross-border transactions is crucial** (PE risk control, income nature determination, functions and resources of foreign sellers, articles and terms of contracts, etc.).
- **DTAs can be outdated and may not properly account for newer types of income** (e.g., derived from e-commerce and digital business models). This limits the likelihood of successful DTA applications for such income.

Given the VTA's renewed focus on substance and documentation, foreign companies with cross-border income from Vietnam should take this opportunity to review their existing DTA relief procedures and supporting documentation.

V. Your Advantage with Luther

Our team of legal and tax experts provides end-to-end services covering all your DTA-related advice and statutory filings in Vietnam. Our engagement includes the assessment of eligibility for treaty relief, preparation and filing of all types of tax returns in line with DTA provisions, assistance during tax audits, direct engagement with and representation before the relevant tax authorities, and the handling of your tax refund procedures.

4 E.g., due to a fixed place of business or projects exceeding six months.

5 Clause 1, Article 64, Circular No.80/2021/TT-BTC dated 29 September 2021 issued by Ministry of Finance.

6 Right to reject applications submitted more than three years from the date the tax liability arose (Clause 1, Article 6, Circular No.205/2013/TT-BTC dated 24 December 2013 issued by Ministry of Finance).

■ GENERAL INFORMATION

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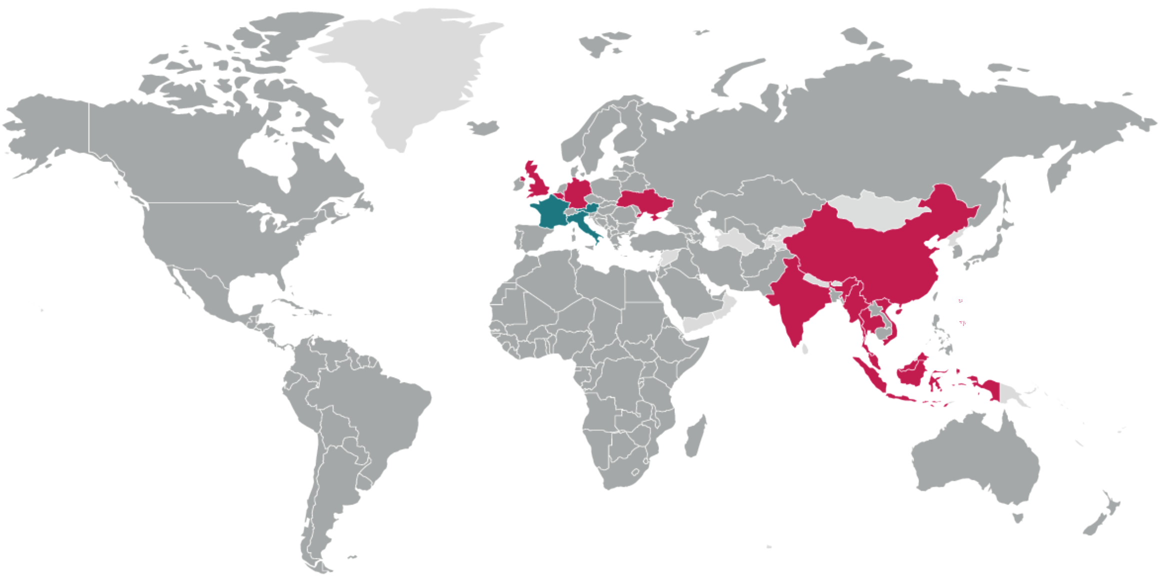

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