

LEGAL UPDATE

LAW ON SPECIAL ADMINISTRATIVE ECONOMIC UNITS

As an effort to attract more foreign investments into Vietnam and to create competition, Vietnam offers tax benefits and lease incentives for certain areas in Vietnam known as special economic zones (**SEZ**). The development of SEZ shall assist in Vietnam's growth, with a focus on the development of R&D activities, creative start-ups, new sciences and technologies, high-quality health and education, high-class resorts and tourism services.

In line with such effort, the Vietnamese Government has decided to develop three SEZ located in the north, the centre and the south of the country, respectively in Van Don (Quang Ninh), North Van Phong (Khanh Hoa) and Phu Quoc (Kien Giang). Each SEZ has a particular focus:

- Van Don (Quang Ninh): development in hi-tech supporting industry, ecotourism, culture tourism, culture industry, airport services, air logistic, commercial services and shopping centres;
- North Van Phong (Khanh Hoa): development in IT, mechanical engineering; sea ports for goods and international passengers, sea port logistic, commerce and finance; and
- Phu Quoc (Kien Giang): development in resorts, ecotourism; conference, international exhibitions, commercial services and shopping centres, assets management services, health services and R&D in bio-technology.

The idea of setting up SEZ dates back to 2012. However, to date, the legal provisions and basis in relation to SEZ are still being reviewed and discussed with the first draft law being put on hold in 2014. The current draft law titled as "Law on Special Administrative Economic Units" (**Draft Law**) will form the legal basis for the SEZ, and is planned to be approved in the first quarter of 2018.

We set out below the key points in relation to the Draft Law. It is important to note that the Draft Law is still in the stages of finalisation. With this in mind, such key points as highlighted hereafter may be further revised, and further guidance will be needed from the relevant authorities of Vietnam.

1. Strategic investors

The Draft Law provides for a new definition for the term "Strategic Investors", being investors who have investment project(s) in Vietnam which meet(s) one of the requirements in the Draft Law.

2. Construction permits exemptions

The Draft Law also provides for construction of certain buildings in the SEZ to be exempted from obtaining construction permits and approval of the construction design, subject to conditions having been met.

3. Extension of land use rights

The Land Laws typically grants to a foreign-invested enterprise (**FIE**) a land use rights (**LUR**) for a term of 50 years. The Draft Law now provides for a longer term, and may grant, depending on the nature of the project, 70 or 99 years.

4. Land use tax and surface rent exemptions (non-agricultural)

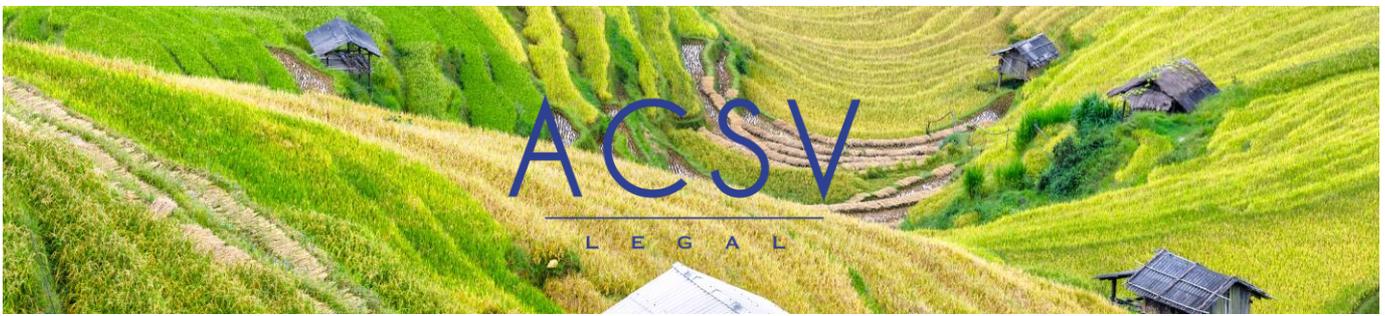
In addition to a longer LUR term as set out above, an exemption on land use tax for non-agricultural land may be granted and investors may be exempted of land and water surface rent. If requirements relevant to a specific investment are met, exemption can be granted from up to 36 months to 15 years; and in certain cases for the entire investment period.

5. Mortgage for land-attached assets

Land-attached assets in the SEZ will be allowed to be mortgaged to overseas credit institutions that have a legal presence in Vietnam, such as a branch or representative office. Currently mortgages can only be obtained at credit institutions that are fully established in Vietnam. This will apply to both domestic and foreign-invested enterprises.

6. Tax incentives

Tax incentives are provided to companies investing in the SEZ as well as to individuals working in the SEZ. The applicable tax incentives are subject to the type of sector in



which the investment takes place or where the job is performed.

6.1 Personal income tax (PIT)

The general understanding is that individuals working in the SEZ, earning taxable incomes may enjoy PIT exemption for the first 5 years but not beyond 2030. For individuals holding the positions of managers, scientists and specialists, this exemption may apply for 10 years on the condition that such exemption will not go beyond year 2030. The Draft Law also provides for a 50% reduction of PIT for subsequent years after the expiration of the relevant tax exemption period.

6.2 Corporate income tax (CIT)

A general CIT rate of 10% will be applied for a period of 15 years to investment projects implemented in the SEZ which will be welcoming since this is lower than the generally applied CIT rate of 20%. This rate of 10% is not permanent and may be reduced for projects in certain sectors from the date taxable income is generated as proposed under the Draft Law.

The Draft Law provides also for some specific CIT regimes, depending on the nature of the project. These vary and go from a 10% CIT rate for 10 or 30 years to the project term including some years exemption and reduction.

If an investor is eligible for different special CIT regimes for the same project, he/she may select the most beneficial CIT treatment.

6.3 Special consumption tax

New casino projects shall be granted a preferential SCT rate of 10% for 10 years from the date the project generates taxable income.

6.4 Exemptions on import tax, value added tax (VAT)

Various exemptions may apply for different taxes depending on the type of product, investor or the project sector.

7. Trading activities

The Draft Law provides that foreign investors or an FIE having its business activities listed in the appendices of the Draft Law may not be required to comply with the investment conditions applied to foreign investors. This could be understood that restrictions on foreign ownership

in accordance with Vietnam's WTO Commitment will not be applied if foreign investors or the FIE invest in such identified business activities set out in the Draft Law.

8. Visa and temporary residence

Special visa regulations may be applied to foreigners who enter the SEZ by air or sea. In accordance with the Draft Law, foreigners may enjoy visa exemption with a temporary residence term of 60 days in a period of 180 days. Specific regimes are likely to be applicable in the various SEZs, depending on the sector a person works in, or the project he/she has invested in.

9. Exemption on labour use report and work permits

The Draft Law provides employers the ability to recruit foreign experts, managers, executives, technicians (**Foreign Staff**) without the need to apply for a work permit when the Foreign Staff works for less than 60 days in a row and not exceeding 180 days per year. The employer does not have to submit a foreign labour use report in relation to the hire of Foreign Staff either.

10. Training

The Draft Law also describes how, when and under which circumstances the Vietnamese Government will fund training of Vietnamese staff working for an investment project in an SEZ.

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