POSITION PAPER OF TAX AND CUSTOMS WORKING GROUP

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Vietnam Business Forum

The Tax and Customs Working Group's position paper is divided into two distinct sections. The first section identifies high-level problems with tax policy in Vietnam and proposes fundamental changes to address them. The second section lists specific tax issues companies are encountering with the local tax authorities and our recommendations.

Section 1
How tax and customs policy can expand benefits of Trade and Investment by enhancing Productivity and Predictability

How to expand the benefits of Trade and FDI is a very relevant topic for Tax and Customs because tax impacts all companies regardless of size or nationality, and customs impacts any company participating in the global supply chain.

The answer we believe boils down to two words: Productivity and Predictability.

In terms of productivity, Vietnam General Department of Taxation (GDT) and General Department of Vietnam Customs (GDC) have implemented a number of initiatives in recent years that have had a significant positive impact, but as we highlighted, there is much work to be done.

Vietnam's total tax as a percentage of profit is 38%, and with an increase in social insurance that amount is rising putting Vietnamese companies at a clear disadvantage in terms of total tax costs. But the costs go beyond the published rates. Local tax authorities often set collection targets for each company during the audit process. Even if the officer *knows* no tax is due, tax officers will continue looking for offenses, effectively harassing until the "quota" is paid. So in addition to the highest total official tax rates as a percentage of profit in Asia, the enterprise usually pays an additional amount during the audit. The audit also drains the enterprise of precious time and creates the opportunity for "leakage" where tax officer keeps a portion for himself. All at the expense of, in most cases, are charged to companies who are law abiding and acting in good faith.

And what of cost in terms of time. According to the World Bank Doing Business Report, the time to comply with tax filing requirements in Vietnam is 498 hours! Nearly 3 times that of Cambodia 2 ½ times the average for Asia and countries like China and Malaysia and 7.75 times that of Singapore and 6.8 times that of Hong Kong. And that does not include the time consumed from tax audits.

Consider in practical terms the burden that places on an SME. Assuming a workday of 8 hours, that equals 62 days of work of a single individual. If we could cut that in half (to China's level), that would leave 31 days to spend for planning, innovating or selling.

And time-based compliance costs are a true "leaks" in this tax system. They are a real cost to the enterprise but not a source of revenue for the government.

We believe that no other government policy initiative would have a larger more immediate or more cost effective impact on productivity than a commitment to cutting the time for tax compliance in half within 2 years. We note the goals outlined in Resolution 19 on this KPI, and GDT's many significant advances in e-filing and e-invoicing over the past several years are encouraging.

What needs particular attention now is risk and uncertainty in the tax system which is perhaps an even larger problem for Vietnam based enterprises.

Vietnam's over reliance on audits as collection tools is one of the main causes for uncertainty. It is extremely inefficient; a major source of corruption; and a cause of growing mistrust of the tax authorities. It must be fundamentally reviewed and changed.

The tax audit should not be used as a significant revenue collection tool. Revenue collection should be done overwhelmingly via an online filing that allows for collection of all information necessary for a tax assessment, and provides online guidance including check lists that take into account existing and updated laws. The purpose of the audit should be primarily to verify the completeness and accuracy of information entered online. Doing so would significantly increase the efficiency of GDT's tax collection effort and reduce revenue "leakage" during audits.

It's worth comparing the nature of a typical tax audit in Vietnam to a country like Singapore.

Vietnam's tax audits are not inspections; they are reassessments. Instead of focusing on verification, tax officers focus on adjusting an enterprise's tax base by disallowing deductions, changing pricing, often based on differing interpretations, or honest mistakes due to misunderstanding or lack of awareness of the laws. The tax officers' assessments are often highly subjective and sometimes outright wrong, and disagreements both official and unofficial are high. Instead of acting as "inspectors", tax officers assume the roles of an untrained tax lawyer.

In Singapore, the audit focuses primarily on objective verification of facts, mainly through the review of source documents. Singapore's IRAS website advises taxpayers exactly what to inspect in terms of auditor activities and focal points, number of auditors visiting the offices, and the time they will spend there. Singapore's audits last several hours or a day. Vietnam's audits typically last many days or weeks, dragging down the productivity of the enterprise and the tax department.

And look at the impact of these audits on predictability and business confidence. Every dong (VND) collected in a post-filing audit is a dong the enterprise didn't expect to spend and would clearly want to avoid if only they'd been aware. So what dysfunction is causing well-meaning businesses to be put in this situation?

Why is it easy for auditors to find errors during audits but very difficult for taxpayers to predict what those will be? If tax assessors are aware of the issues and they have several days or weeks during an audit to sit with a company to search for related errors, why couldn't they have found the time to educate enterprises or redesign the e-tax interface to prevent these common errors in the first place?

Under Decision No. 115/2009/QD-TTG of September 28, 2009, defining the functions, tasks, powers of the GDT, the legally mandated role of the GDT is "To guide and explain tax policies of the State; to provide support for taxpayers to fulfill the tax payment obligation in accordance

with law." But if the vast majority of revenue collected in audits is due to unintentional errors, then audit collections signal a failed guidance effort, or overly complex compliance requirements, or both, as more complex rules require more education to understand. Some might say enterprises should spend more hours studying how to comply, but that's the wrong approach. Studying complex laws takes time and money, further dragging productivity, and Vietnam already has the highest compliance burdens in terms of hours in the region.

The tax authorities must address the problem at the source by identifying the sources of complexity and confusion during audits and simplifying the lax laws. The first area for simplification regards deductions. A fundamental principle of tax fairness is that any expense logically incurred in pursuit of taxable revenue should be deducted. Vietnam's illogical exceptions to that principal create confusion and complexity and increase Vietnam's effective total tax rate, already the highest in Asia, but doing so in a manner that is less transparent and certain.

Transfer pricing is another area of widespread uncertainty and confusion. Vietnam has adopted some of the principles of the OECD countries with respect to transfer pricing, but the adoption is incomplete, lacking the essential element of an advanced ruling which provides transparency, objectivity and predictability during the audit. Tax authorities insist on applying their own pricing during the audits, with their "secret" formula. Again, if the tax authorities are able come up with their own version of a transfer price which they are all too willing to enforce with certainty during the audit, why can't they manage to allocate far fewer resources to review enterprise pricing formulas in advance via an advanced ruling? A reliable advanced ruling is particularly important as trade and FDI continue to increase and must be in place for pricing and customs valuation.

Also, the ever-shifting interpretation regarding the definition of a permanent establishment continues to be misunderstood and appealed years after its issuance and amendment. It is time to simplify this definition to achieve alignment among GDT and local authorities and businesses.

Refusal of documentary evidence during tax audits is also a problem, with tax officers ignoring documentation that is fundamental to a transaction due to reasons that are unrelated to the substance of the transaction (such as the spelling of a supplier name missing a letter). The verification of documents should be focused on ascertaining whether they support the amount, parties and nature of a transaction as entered at the time of online filing. Documents should only be dismissed if there is good reason to believe they are false, or if their information contradicts the information entered in the online filing.

The consequences of this confusion and complexity become significantly magnified for businesses because of four other elements of the audit system. The first is the 20% penalty. The second is a high interest rate that is not linked to the Vietnam Government's cost of borrowing and is in fact substantially higher (it is actually more than 2 times the yield on Vietnam government bonds currently 4.69%), making the interest on tax a second kind of penalty. Both of these charges remove any incentive for the tax authorities, under pressure to increase revenue, to clarify laws or invest in education and guidance which would improve collection at the time of filing; it also provides an incentive to postpone the audits for as long as possible. This brings us to our third issue: audits take place far too long in arrears. The result is not only a delay in the education of well-meaning enterprises on the tax law, but unexpected and often crippling penalty and interest costs which can only be alleviated through corruption. For example, after penalty and 5 years of interest, an error of a fixed amount that goes undetected and unaddressed for five years results in a tax liability nearly 13 times the cost of that error in its initial year. Enterprises

should be advised of this impact and have the right to have an audit within a specified number of months of request. Good faith companies should not have to suffer a growing tax liability due to unclear laws or delayed audits and interest rates.

The Business Community has recognized the GDT's success in implementing e-filing and e-invoicing. We also appreciate the recent successes of GDC including movement to risk-adjusted inspections and establishing and monitoring KPI's like clearance time. However, there is a deep and growing concern that the increasing pressure on local tax offices and officers to collect revenues is increasing harassment, aggressiveness and rent seeking on the part of tax officers, particularly over transfer pricing assessments by both GDT and GDC. This risks offsetting the gains by GDT/GDC over the past several years.

We would like to propose several fundamental adjustments to tax policy that we believe would provide both short and long term benefits to the Vietnam treasury, GDT, and key stakeholders in the business community including foreign and local enterprises and SME's in particular. Vietnam's approach to taxation needs its own *Doi Moi.*

1. Change the Mindset: There seems to be the belief among some that the need to raise revenue justifies practices businesses find objectionable; that providing businesses with firm commitments or greater clarity limits the tax authorities' flexibility to collect revenue during the audits. This thinking is shortsighted and wrong and presents a false choice.

The evidence overwhelmingly suggests that high quality tax administration including low administrative burden on business, high degrees of accountability and transparency from the tax authorities, actually increases revenue. A comparison of countries' rankings on World Bank's Paying Taxes with Taxes Collected as a percentage of GDP and Total Tax Rates, shows that on the whole, countries with more business friendly tax administration were able to collect more tax revenue as a percentage of GDP at significantly lower total tax rates. For example, Singapore collects more tax as percentage of GDP but its Total Tax Rate is nearly half - a clear win/win. A study in 2014 of 118 economies over six years found that a 10% reduction in the tax administrative burden led to a 3% increase in annual business entry rates.

And tax administrative quality is particularly important to SME's. A 2017 study by the IMF revealed that in countries that scored low on tax administrative quality index (TAQI) SME's are 45% less productive than larger firms, but where TAQI scores were slightly high, the productivity differences were only 6%. Given Vietnam's high number of SME's as a percentage of local enterprises, improvements in quality of tax administration are particularly important.

2. Expand the Mission/Vision/Values: Given the importance of enterprise productivity to national economic goals and the clear impact of tax policy on productivity, the mission of the GDT needs to be updated. I encourage you to look at the mission, vision and value statements of countries ranking high on the Paying Taxes report. Most of them extend beyond the administration of revenue collection and link tax administration to broader socio-economic objectives, and most address the *manner* in which tax collection is implemented. Singapore's vision is to be "A partner in the community in nation building and inclusive growth". Hong Kong's mission is to "… promote prosperity and stability". Canada's promise includes to "...promote Trust". We suggest Vietnam's include "enhance economic productivity and confidence" and "promote trust" as part of the GDT's mission/vision/value statement.

3. Laws must be Logic Tested: Facts are by definition "the truth of an event as opposed to an interpretation". That truth will not change based on who is looking at it or when. The writing of

the law must allow for answers to a set of "yes"/"no" questions to lead to a single, objective outcome. If they do, a taxpayer answering questions correctly at the time of filing should arrive at the same conclusion as the tax officer at the time of audit. This allows for collection through efficient self-assessment at the time of filing, improving cash flow for the state and minimizing uncertainty for enterprises, while significantly improving the efficiency of tax inspections by allowing offers to focus on verification of facts.

If the law's writing does not allow for this, not only will online-self assessment be limited, subjective and uncertain, so will any subsequent assessment by a tax officer, or appeals judge. The foundation of an efficient tax administration system is laws that lead to a single, objective conclusion based on the same set facts. We recommend using flow diagrams be a part of the legal drafting process. This will make for easy adaptation to online filing as well as for clear online education of taxpayers.

4. Continued Progress on E-tax/E-customs and Online Education: Logically drafted laws as suggested above, expand the possibilities and certainty of e-filing and online education of officers and taxpayers alike. They will improve alignment among national and local authorities and also make for a clear reference point in case of tax disputes.

5. Use Audits as Verification Tool not a Major Collection Source: This shift in focus would include setting targets for increasing the portion of revenue collected through self-assessment and e-filing vs. post-filing/clearance audits and for monitoring and minimizing the time taxpayers and tax officers spend on an inspection.

6. Quotas or collection targets set by tax authorities during audits should stop: This practice encourages harassment, provides tax officers with a clear "stake" in the audit outcome and thus prevents tax officers from acting objectively and fairly during audits.

7. Combined/Penalty Interest should be reduced or capped: Vietnam's penalty and interest, when combined, are higher than many other countries in the region. Interest on tax due should not be another form of penalty or a tactic to increase revenue on a given tax liability.

8. "Dashboard" on GDT and GDC Website: A dashboard containing: description of errors committed, reference to the relevant law; the incidence of such issues ranked by frequency, average cost to enterprise, and the historical number of years; location of local tax authority. This will serve not only as a means of notice and education to tax payers on what to avoid, but will serve as a of regional dashboard to chart how local tax authorities are progressing in education efforts to shift a larger portion of tax collection to voluntary pre-audit compliance. Such a central database would also enable the General Tax authorities to note where misalignment may exist and to address that either through written clarification of the law both to inform taxpayers as well as a means of ensuring more alignment and consistency among local authorities.

9. Online Appeals / Refund Dashboard: a Dashboard similar to the above tracking appeals and refunds (focus on time to pay) by location. This will improve transparency and accountability of local tax authorities in refund processing.

10. Early Detection, notification and audit of "at risk" enterprises: Notification should be done within several months of year-end. This will help enterprises to identify errors earlier, ensuring compliance sooner and reducing costly penalty and interest. Enterprises should have the right to request information on their risk profile, and if "at risk", they should be entitled to request an audit within a specified time from the request. If the response is later than that, then

any errors detected during the audit should be treated as if those errors were voluntarily disclosed before the audit. This will minimize the magnified risk to the enterprise of tax authorities waiting to until the five-year statutory period is nearly expired to conduct the audit.

11. Permit Source Documents to be kept exclusively in Electronic Form: Given that this is common practice among tax authorities globally, the technology is standard and productivity gains significant, we are unclear why this cannot be implemented.

12. Review and reduction in disallowed deductions: VBF and GDT shall compile a master list of disallowed deductions within Quarter 3 of this year and eliminate those that are illogical, unnecessary and/or do not conform to the most basic principles of tax fairness.

Section 2
Current Tax and Customs issues

The suggestions we have made above involve high-level readjustments to mission and practices of GDT and GDC, but opportunity exist now for the GDT and GDC to improve enterprise productivity, increase certainty, and win back trust by resolving specific issues.

1. Investment protection

Issue

For investors, licenses issued by the competent authority are regarded as strong commitment between the Government of Vietnam and the investors. These documents are very important in securing their investment activities in Vietnam. The Investment Law has always affirmed the principle of investment protection; accordingly, in case under the new regulations, investment incentives are lower than those stipulated in the licenses, the investors are entitled to continue enjoying investment incentives provided in such licenses.

However, in practice, enterprises have initially been licensed with specific incentives and have implemented in accordance with such incentives. However, when the tax authorities conducted tax audit and inspection, they denied and refused to apply incentives that the enterprise being granted. In some cases, the tax authorities claimed that the licensing agencies have made mistakes when issuing such incentives to investors, accordingly required enterprises to pay additional tax, late payment interest and even pay penalties due to incorrect tax declaration.

From the perspective of investors, they argue that the Government has failed to comply with the commitments, disrespect the principle of investment protection, and that the tax authorities are forcing enterprises to take responsibility and suffer the damages for the mistakes made by the governmental authorities themselves. Such situations often cause great distress and loss of confidence among investors. As a result, they will express their resentment on different investor forums and communities, which in turn seriously affects the investment environment and the ability of Vietnam to attract new investors. In fact, there were many cases where enterprises have been facing prolonged prosecution.

Recommendation

In case the licensing authority of Vietnam incorrectly states the tax incentive criteria on the IC, the responsibility of which should accordingly be borne by the licensing authority, not the Enterprises. Therefore, tax incentives for the Enterprises for which ICs are issued should be

implemented as stated in the issued IC if all conditions for enjoying the tax incentive are qualified. Upon discovering inaccuracy in the IC, the licensing authority should explain to the Investors to amend the incorrect terms, then enterprises shall implement calculation of tax in accordance with the amended ICs from the date amended in the ICs.

2. VAT refund for goods imported and subsequently exported

The constant alteration of tax regulations is essentially required by the economic development and growth of business activities. Due to the fast pace of change, tax policy cannot cover all situations. However, the most important is that if there is any difficulties on implementing the policy, the policy maker need timely resolve.

Issue

From 1 July 2016, the refund for input VAT incurred from imported goods for subsequent export was not allowed as Decree 100/2016/NĐ-CP came into force. This had since then become a matter of concern for many enterprises having significant VAT input not fully credited. Taking into account this matter, Decree 146/2017/NĐ-CP effective on 1 February 2018 has supplemented the provision of refund for the same under certain conditions.[1]

That is to say, from the effective date of Decree 146 (1 February 2018), an enterprise can apply VAT refund for the activity of import for export. However, it is not clear under the new Decree whether enterprises could get refunded for all input VAT accumulated up to time of refund application (including input VAT incurred from 1 July 2016 to 1 February 2018).

Due to the lack of guidance, during the period from 1 July 2016 to 1 February 2018, input VAT incurred from imported goods for export to EPE or to overseas which has not been credited are also likely treated by tax authorities as not subject to VAT refund.

Recommendation

Considering the nature of the business and tax philosophy, enterprises carrying import for subsequent export should be treated as subject to VAT refund considering that these goods are not consumed in Vietnam. The relevant clause as specified in Decree 100 has appeared to be a mistake during drafting process and caused unclear and confusing guidance which is against tax philosophy.

Therefore, the amendment of the relevant clause in Decree 146 is necessary and reasonable. As such, the Government and Ministry of Finance should consider providing a detailed guidance which allows entities to enjoy refund for all input VAT incurred but has not been credited during the period from 1 July 2016 and 1 February 2018.

[1] Clause 1, Article 1, Decree 100/2016/NĐ-CP that took effect on 1 July 2016 amending Article 10, Decree 209/2013/NĐ-CP regarding VAT refund provides as below:
"Tax shall not be refunded in case goods are imported and then exported, goods exported outside a customs controlled area according to the Law on Customs and its instructional documents."
Afterwards, Clause 2, Article 1, Decree 146/2017/NĐ-CP that took effect on 1 February 2018 amends the aforementioned Article 10 as below:
"3. In a month (in case of monthly declaration) or quarter (in case of quarterly declaration), if the input VAT on exported goods/services (including goods that are imported and subsequently exported to non-tariff areas and the goods that are imported and subsequently exported to other countries) of a business entity remains at least VND 300 million after being offset against, it shall be refunded by month or quarter. If such input VAT is less than VND 300 million, it shall be offset against in the next month/quarter."

3. Timing of VAT refund for investment project

Issue

The current regulation allows VAT input refund for investment projects with some exceptions. However, the current regulations do not specify the time limit for the submission of VAT refund dossier or specifically request enterprises to submit the tax refund dossier during the investment stage, when it yet to start operation. It hence is understood that the enterprise is still entitled to claim refund for input VAT incurred during the investment and pre-operational stage regardless of the time of refund dossier submission.

In practice, by the completion of investment, the enterprise shall have to determine and declare the proposed refundable amount separately for this investment stage in the VAT declaration form of the last month before the business operation stage commences. After that, it will take the enterprise a certain period of time to complete their VAT refund dossier and fulfill all other related requirements to ensure a valid dossier to be submitted. The application for VAT refund, furthermore, is such a long-lasting process that the enterprise cannot wait until completion of tax refund process to start its business operation.

Tax authorities, however, recently rejected VAT refund of enterprises with a reason that such refund dossiers are submitted after the enterprise starts its operation and generates revenue while the dossiers request for refund of input VAT incurred in the investment stage. This interpretation is not reasonable with the common practice of business and seems not appropriate with the principle of tax regulation. In fact, after finalizing VAT input amount for refund, it will take enterprises a certain period of time to prepare refund dossier. Hence, enterprises could not submit the refund dossier right upon the first date of investment completion and start of operation. If following this tax authorities' approach, tax refund mechanism for investment project would become infeasible to tax payer.

Recommendation

It is recommended that the tax authorities respect the tax philosophy and spirit of legal regulation and avoid incorrect interpretation. In this particular case, VAT refund dossier is submitted when the project already commences its operation, requesting for refunding input VAT amount incurred in the investment stage which was determined before the operation stage should be accepted providing that other requirements are met.

4. Custom valuation upon post-clearance audit

Issue

The in transparent custom revaluation upon post-clearance audit in many circumstances causes unfavorable impact on the enterprises' business pushing them into lengthy reclaiming process.

In many cases, due to administrative errors made on the customs declarations, various enterprises were imposed higher dutiable prices (compared to invoice prices) by customs authority for their imports. The re-valuation method and its ground for the arbitrary price are unclear and/or not open. The enterprises, as a result, had to unfairly pay a significant amount of additional taxes for the increase in dutiable prices, accompanied by huge administrative penalties and late payment interests for the deemed violation.

When appealing to such re-valuations and tax imposition of the customs authority, some decisions were revoked but the taxes overpaid were not returned to the enterprises timely and correctly. Consequently, some cases are followed by court a proceeding, which is time-consuming and costly for the companies, even though they were wrongly imposed without violating any regulations.

Recommendation

In this regard, customs valuation regulations must be clear, transparent, and in compliance with Vietnamese regulations as well as international agreements/protocols and practices. More importantly, interpretation and application of customs re-valuation shall be reasonable in terms of transactional considerations and circumstances that constitute customs value re-determined by customs auditors.

5. HS code application

Issue

There are some practical situations where the application of HS codes is inconsistent over different periods of time. For the exact same items, at different periods, customs authority issues different guidance on the correct HS code to apply. Even when the enterprises have applied the exact HS codes as instructed during the effective period of the official guidance, they were retrospectively collected not only taxes on the shortfall tax amount caused by the higher duty rate of the latter HS code, but also a huge amount of administrative penalties and late payment interests for supposedly wrong declaration. As import duty is an indirect tax and the enterprises cannot collect them back from customers for goods sold years ago, they had to put up with considerable financial losses.

Similarly, the enterprises had to go through lengthy and costly appeal processes to reclaim their unfairly imposed taxes, even when they have completely complied with customs authority's guidance. The outcomes of these appeal differ case by case, despite that the issue is the same.

Recommendation

HS code guidance by customs authority (in the form of Notification on goods classification, or HS code conclusion in the Post-clearance audit conclusion) is the official guidance that the enterprises shall comply with. Therefore, when issuing inconsistent HS code guidance on one item at different periods, application shall be effective as at the date of a specific guidance without retrospective claw-back. In other words, the customs authority should not retrospectively collect taxes based on the latter guidance, if the enterprises have complied with the previous guidance at its effective dates.

6. Concern about the proposed amendments to the Law on Tax Administration addressing taxation of travel agencies in e-commerce

Issue

The proposed amendments to the Tax Administration Law ("Draft Proposal"), includes requesting foreign digital service providers to directly file and pay foreign contractor tax in

Vietnam and to set up a contact point in Vietnam such as a representative office for the purpose of tax filing and payment.

This will create unnecessary confusion, complexity and administrative burden for the following reasons: OTAs' online booking service is neither virtual nor unverifiable. Current tax withholding mechanism already accounts fully for offshore OTAs' tax liability on Vietnam sourced income and the current withholding tax mechanism in line with tax practice of other countries. This will create an unnecessary additional cost for foreign OTAs to comply with tax filing obligation. It is far more efficient to for local hotels to declare and pay taxes arising from commission payments to foreign OTAs as they need to claim expense and input VAT credit. And it is practically impossible for offshore OTAs to claim tax treaty protection in Vietnam.

Vietnam's WTO Commitments do not require a foreign OTA to set up a local presence in Vietnam to provide travel agency service on a cross-border basis.

Recommendation

It is recommended that the MOF thoroughly considers the Draft Proposal in relation to the taxation of e-commerce, leave the current tax withholding mechanism unchanged as provided under Circular 103/2014/TT-BTC and OL 848/BTC-TCT with respect to foreign OTAs' business in Vietnam, continue to let Vietnamese taxpayers collect and pay Vietnamese taxes, and not try to pass this duty off to foreign services suppliers abroad. Improving the long-standing approach is better than trying to introduce a completely new system with all of its potential unforeseen complications. This would enable foreign OTAs to continue to contribute to the development of Vietnam's tourism industry and consumption of products and services in Vietnam all together.

7. The application of tax treaties and benefits

Vietnam has a very broad tax treaty network with 75 signed treaties. Generally, income tax could be exempted or reduced under the relevant tax treaties between Vietnam and other countries if stipulated conditions are satisfied. However, tax treaty benefits do not apply automatically in Vietnam. Taxpayers must self-assess their eligibility, and if tax treaty benefits are available, tax treaty notification must be submitted to the local tax authorities, together with supporting documents. The tax authorities do not issue any confirmation of the tax treaty benefit entitlement upon the receipt of the tax treaty notification dossier.

In practice, this means that the Vietnamese party withholds the tax as it is not willing to accept the uncertainty of the treaty relief applying and potentially being left with the responsibility to pay the tax. This nullifies the application of treaties in Vietnam. As a further consequence, overseas tax authorities do usually not allow the foreign company a tax credit when they consider relief should technically be available under a treaty, thus giving rise to double taxation.

EuroCham Tax and Transfer Pricing Sector Committee recommends the tax treaty notification dossiers be reviewed upon receipt by the local tax authorities. Any further request or issue must be notified within a certain timeline, for example 1-3 months. If there are no issues raised within the set timeline, this can be relied upon as acceptance by the taxpayer. This would enhance taxpayers' full compliance with Vietnamese regulations, whilst protecting its tax treaty benefits and demonstrating Vietnam's respect and commitment to the mutual application of tax treaties and the avoidance of double taxation.

8. The use of Comparable Companies in Transfer Pricing Audits

Enterprises commonly find that the tax authorities reject such taxpayer analysis and propose a different arm's length margin based on other taxpayers' data or 'secret comparables'. This is based on the data of other Vietnamese taxpayers which is only accessible to the tax authorities.

Tax authorities should give due consideration to the analysis undertaken by the taxpayer. Challenges should be based on the merits and demerits of the taxpayer's comparables and adequate rationale should be provided for rejecting their comparable companies. If comparables are rejected, authorities should propose a better set based on the same database or another public database, rather than resorting to data which is not accessible to the taxpayer.

9. Special Consumption Tax Reforms

The European wine and spirits industry has suffered from successive reforms of the Special Consumption Tax (SCT) and in our opinion, the successive SCT reforms have nullified any benefits that the industry was contemplating from the EVFTA. This has put unfairly higher tax burden on imported wine & spirits and further intensify the economic incentive for illicit cross-border activities and counterfeit and thereby exacerbate revenue loss and increase the risks to public health. W&S SC would welcome greater transparency in evaluation of SCT regime, and requests that public consultations on any proposed changes to the regime happen as early as possible. We also would like to engage with the Government, the Ministry of Finance and other government authorities to initiate a positive dialogue and explore a sustainable and evidence-based alcohol tax roadmap that addresses public health concerns around harmful consumption.

10. EU-VN Free Trade Agreement

The European Union (EU) wines and spirits industry has been supportive of an ambitious FTA with Vietnam from the very beginning as it expected to benefit from a mutual opening of markets. The EU-Vietnam Free Trade Agreement (EVFTA), will facilitate the market access of EU wines and spirits to Vietnam through tariff elimination on EU originated goods based on Non-alteration rule, European brand and Geographic Indications (GIs) protection, as well as trade facilitating reform to simplify administrative measures and to harmonize the technical regulations with international practices. We would respectfully request Vietnamese Government to conduct a speedy and smooth ratification of EVFTA for implementation.

11. Special Consumption Tax (SCT) cap for imported CBU passenger cars

Due to the limited volume of imported CBU passenger cars, the SCT cap deducted from the taxable price should be increased from 7% to 15% in order for the importers and dealers to be able to maintain sustainable business operations. Also, the definition of 'related parties' applied to SCT calculation has been changed over time. It remains unclear and this creates uncertainty for the importers on the tax liabilities.

We recommend that the SCT cap deducted from the taxable price should be increased from 7% to 15%. SCT should become a standard calculation applicable to all regardless of the distribution channels, integrated ownership and unrelated parties' relationship. Tax liabilities generated by unclear or changing definitions of related parties should not be subject to late payment penalties and should be waived.

12. VAT for vehicles and spare parts and accessories

Regarding the Value Added Tax (VAT) for vehicles, spare parts and accessories, we are aware that Ministry of Finance has proposed increasing VAT for most goods and services, including vehicles, spare parts and accessories from 10% to 12%. If such a proposal is approved by the National Assembly in 2018, the new tax rate will be applicable from early 2019.

Given the current economic status with relatively low household income, living standards and business performance, the increase in VAT may have unexpected negative impacts, which could become a burden for Vietnam's socio-economic conditions in general and the motorcycle sector in particular. The Government should carefully review the proposal of increasing VAT for vehicles, spare parts and accessories. In particular, there should be a roadmap for VAT adjustment in the long-term which is relevant to the socio-economic status and residents' income.

13. Tax on Sweetened Drinks

We believe that excise taxes on sweetened drinks would be an uncommon and ill-advised practice. Only four countries in the entire Asia-Pacific region, accounting for approximately two percent of the population in the region, impose excise taxes on sweetened beverages. Most countries do not impose this tax because it harms the economy and has not been proven to protect heath.

Conclusion

The above issues are not those recently arising but outstanding for a long time due to lack of reasonable solution. For each issue, a suggestion has been given out based on our practical experience in coordination between authorities and tax payers. We hope that, the Government will promptly look into those outstanding issues and take timely action in this regard to enhance the investment environment in Vietnam. For the 6th issue, we propose maintaining and applying the current foreign contractor tax mechanism for foreign OTAs.