SUMMARY OF DIALOGUE BETWEEN THE MINISTRY OF FINANCE AND VIETNAM BUSINESS FORUM

Time: 14:00 – 17:45, Friday 18th March 2016
Venue: Meeting room 625, Ministry of Finance, 28 Tran Hung Dao, Hanoi

1. Corporate Income Tax

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	Response of MOF
1.	**The order of priority for loss carried forward in the period of CIT finalization 2014 of Lixil Vietnam.** Lixil Vietnam during expansion investment has 8 factories (Vinax) in which some still enjoys incentives and the others do not. In 2014, the Company merged with LIXIL INAX DANANG Manufacturing Co., Ltd (Dinax) and LIXIL INAX SAIGON Manufacturing Co., Ltd (Sinax) into two dependent branches which continue to be inheriting the incentives of Sinax and Dinax companies before merger. At the time of CIT finalization 2014, Dinax and Sinax had total accumulated losses. Therefore, we have carried out to transfer the entire amount of such losses in taxable income in the period of each company.	General Department of Taxation supposes that the Company must not transfer the remaining losses to the business activities because **the Company does not separately record and account the revenues and costs of each factory**. However, the Company had to transfer such loss to the factory enjoying tax incentives first and then transfer to the plant which does not enjoy tax incentive.	The reason that General Department of Taxation ("GDT") stated was inconsistent with Circular 78. Point 9, Article 18, Circular No. 78 specified: " In the same tax period, if an enterprise's business activities eligible for tax incentives sustain losses, while business activities ineligible for tax incentives and other incomes from business activities**…, the enterprise may choose to clear such losses against its taxable incomes from income-generating business activities**." As such: - Circular No. 78 doest not state any points regulating that the enterprise must separately account profits and losses of each activity to perform loss transferring. - In fact, in an enterprises with multi-stage investment and various investment incentives, the separate record of profits and losses is not feasible, costly, unnecessary and not required by the Law on Accounting. - In the spirit of avoid extra procedures, costs for enterprises, tax law also provides a mechanism for determining taxable income both	At Clause 2 Article 6 of Decree 218/2013/NĐ-CP of the Government regulating: "Enterprises having many business activities, then the accessable income from business and production activities is the total income of all business activities. Where there is a loss of business activity, the loss shall be offset from the accessable income of income-generating business activities selected by enterprises. The remaining income after offset shall apply the tax rate of corporate income tax of business activities still generating income." As such, the loss carried forward of Lixil Vietnam shall be accounted separately for Sinax and Dinax first, the pending loss shall be allocated to income of 8 factories choosen by Lixil respectively,

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	Response of MOF
	For the remaining losses, the Company made official letter to request for guidance on the principle of loss transfer to the taxable income of 8 factories (vinax), first transfer to the income of the non-incentives factory, after that it will be transferred to the income of the factory enjoying incentives. The incomes of the factories are allocated in proportion to fixed assets of each plant engaged in business activities in the period.		under and not under incentives. (Example:based on propotion of fixed assets). Thus, the guidance of GDT: - Creating separate accounting requirements while the accounting work of the enterprise has complied with accounting standards and is not necessary for management need. The determination of the profits and losses for each investment period only serves for the purpose of tax liability determination and can be done by appropriate allocation measures guided in tax regulations. - More confusedly, while not allowing enterprises to offset losses by income selected by their own since such income is determined under allocation method, the GDT required to offset such losses by the income from non-preferential activities which is also not determined by allocation method. This guidance is not specified in any acticles on Circular No. 78, at the same time go against the previous regulation given by the GDT to reject the enterprise's proposal. Therefore, the Company proposed MoF to reconsider the case of the enterprise, allowing the Company to transfer the remaining losses on the principle of	the pending loss (if any) shall be carried forward under regulation. However, please be noted that it is unable to allocate loss to income from real estate transfer, investment project transfer, income from the transfer of the right to participate in investment projects, income from the transfer of rights to explore, extract and process minerals prescribed by law

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	Response of MOF
			offset with the taxable income of non-incentive activities first and then offset with preferential activites in accordance with the guidance in paragraph 1, point 9, Article 18, and example 18 in Circular 78.	
2.	**CIT incentives for the import of motorbikes and motorcycles under the granted investment certificate of Piaggio Vietnam Company**	According to the IC – 2nd amendment of Piaggio Vietnam ("PVN") issued by the Vinh Phuc Industrial Zones Management Board, for activity of "importing completed motorcycles and motorbikes", PVN is entitled to tax incentive as follows: - Annual corporate income tax ("CIT") rate of 20% (twenty percent) of the earned profit for 10 (ten) years and of 28% (twenty five percent) for the subsequent years. - The Enterprise is entitled to exemption from corporate income tax for 2 (two) years commencing from the time taxable income is generated and a 50% (fifty percent) reduction of the amount of corporate income tax payable for the following six (6) years. Recently, it was said that the CIT incentive in relation to import of completed motorcycles and motorbikes which was stated on PVN's Investment Certificate was not in accordance with effective tax regulation at the time PVN	We highly expect your confirmation/ acceptance to our understanding that the completed-motorcycles/motorbikes-import-activity is allowed to apply CIT incentive in accordance with the granted IC, due to the followings: - The CIT incentive for this activity was stated clearly in IC which was granted by Vinh Phuc Industrial Zones Management Board, which serves as a legal basis and is regarded as a commitment between the Vietnamese goverment and foreign investors in Vietnam. One of factors facilitating our decision-making is CIT incentive package granted by the Government of Vietnam to us. The licensing authority is Industrial Zones Management Board – a representative of Vietnam in implementation of the State's commitments and policies for investors. As such, in case the licensing authority incorrectly recorded the tax incentive on IC, this should be responsibility of the licensing authority instead of forcing	With respect to the obstacle of the Company, the inspection team gave our conclusion in the inspection minute No. 467 in 2015. As such, importing completed motorcycles and motobikes shall not be entitled incentives. The inspection team also proposed the Vinh Phuc Tax Department to report to the Vinh Phuc's People Committee for amendment of Piaggio Vietnam's Investment Certificate. The Vietnamese tax laws are always consistent, to allow applying incentives on Investment project, not trading activities. The record of incentives in the Investment Certificate is understood as mistake of the industrial zones authority. However, in order to reflect properly the economic nature of incentive policies, to ensure the

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	Response of MOF
		was granted the Investment Certificate. We understand that our Investment certificate granted by the Industrial Zones Management Board is the legal basis and we have complied, declared, calculated and made payment for tax as well as determining tax incentives for the import of motorbikes and motorcycles in accordance with the second amended investment certificate granted by Vinh Phuc Industrial Zones Management Board since operation.	the consequences for enterprises. - the State of Viet Nam has issued the investment protection policies are concretized throughout the Law on Investment in 2005 and Law on Investment in 2014. From which, the investors are subject to enjoying the incentives as stipulated in their Investment Certificate regardless of any changes in Law. Based on the incentives given in our Investment Certificates, PVN estimated related production plans and determined the costs of goods sold to achieve a reasonable profit after tax to ensure a long-term sustainable operation in Viet Nam. Our business will suffer a huge burden if we are requested to revise CIT liability as a consequence of the wrong statement of the licensing authority. Furthermore, this will heavily impact to our investment plans of Piaggio group in Vietnam in the future. We propose MoF to allow PVN to enjoy CIT incentive as stated in the granted Investment Certificates. In case the term of incentive on the Certificate is revised in the future, the new CIT scheme will only be applied from the date of such amendment.	equitability between investors, the company should comply with general regulation. However, as the mistake of licensing authority, MOF shall consider not imposing penalty to the company due to objective, irresistible reason.

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	Response of MOF
3.	**Tax incentives for prioritized ancillary products** In accordance with the law on investment since 1996 to present, the Government always upholds the principle of investing protection, in which : In case a newly promulgated law or policy contains higher benefits and incentives than those to which the enterprise was previously entitled, then the enterprise shall be applied to the benefits and incentives in accordance with the new law as from the effective date, in case a newly promulgated law or policy adversely affects the lawful benefits enjoyed by an enterprise prior to the date of effectiveness of such law, the enterprise shall be guaranteed to continue enjoying the current incentives. The provisions in amended tax law No. 71/2014 are also consistent with the spirit of the Law on Investment. Therefore that tax incentives for prioritized ancillary products are only applicable for «new project since 2015» stipulated in the draft curcular guiding tax	In case tax incentives are only applied to ancillary products of new investment project since 2015 but not to those products of previous projects, it would be against the principle of investing protection and create inequality among enterprises. Considering the principle of equal treatment, investment projects for ancillary products both newly established project and already operating project contribute to the economy and promote the process of entering international agreement in which Vietnam is a member (TPP and EVFTA). It is unreasonable that two enterprises of the same scale and produce the same ancillary products eligible for tax incentives but only one enjoys the tax incentive due to its new establishment whereas the other does not since the regulations at the establishment time did not stipulate tax incentives for ancillary products.	Pursuant to the aforesaid regulations, we think that to be in line with the investing protection provisions in the Law on Investment and amended Law on Tax No. 71, tax incentive for ancillary products should be also applied to enterprises having ancillary investment projects or products before 2015 which satisfy the conditions under Decree No. 111/2015/ND-CP and Circular No. 55/2015/TT-BTC. Tax incentives shall be conducted according to the principle that «for the remaining time since the tax period of 2015»	Decree 12/2015/NĐ-CP dated 12/2/2015 detailing on elaboration of the Law on amendments to tax Laws and amendments to some articles of Decrees on taxations, only guiding transition of incentive by location, not guiding transition of incentive by business sector, hence, incentive for projects manufaturing ancillary encouraged industrial products only apply for project from 2015. MOF shall record and consider the proposal of investor to submit to the Government to amend Decree 12

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	Response of MOF
	incentive for ancillary - industries is not consistent with the Law on Investment and the Law on Corporate Income Tax No. 71.			
4.	**Tax incentives for sales cost allowance for retail agents** On 9/12/2015, the Hanoi Tax Department issued the official letter No. 77901/CT-Htr in reply to an enterprise in Hanoi, in which specifies that in case there is provision for sales allowance (bonuses) for retail agents in agency contract such expenses shall not be deductible when determining CIT. The reason is that this allowance does not directly generate revenue for the enterprise but for the distributors, thereby it should not be deductible.	This opinion of the Tax Department is rigid, not thorough and do not keep up with current operating business of enterprises. Sales chain of an enterprises does not stop at the retail agents rather until the ultimate consumers. Depending on the industry, enterprises choose to build its distributor network through distributers then down to retailers. However, for sales sucess, enterprises must adopt policies to encourage and promote sales within the entire supply chain, not only at distributors. The supporting policies for retail agents are to promote sales of goods by the agents, thereby enhancing the purchasing from the manufacturers. Therefore the support for retail agents can not be considered as related to distributors only and unrelated to the manufacturing enterprises. In terms of doing business, an enterprise shall not pay such expenses if it does not contribute to the business of the enterprise.	We propose the MoF to thoroughly consider the nature of the supporting expenses for retail agents, thereby direct the local Tax Department to handle the issues in line with the nature of the expenses and business practice of enterprises.	If such expenses related to business activities of enterprise to promote the sale, they satisfy the conditions to be deductible. Both parties base on supporting policies to pay out, use receipt, payment note.
5.	**CIT deduction for the operational consulting service fees by the headquarter providing to the companies**	Thoes tax authorities' requirement for the evidence documents in accordance with the sample provided by the tax authorities is inconsistent with the business practice	We would like to propose the MoF to reconsider the handling at local level about this outstanding issue. Tax authorities must listen to the explanation	This cost will be fully deductible if the following documents are available: - Foreign companies with

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	Response of MOF
	within the group. In multinational companies or domestic corporations including many member companies, usually the headquarter or the regional base shall establish a center providing services to support and consult its member companies during operations ranging from marketing, sales, production, IT system, finance to HR, etc. so as to ensure the consistency and apply the best business practice in accordance with the corporate's standards as well as save costs. The member companies who received the services will pay together these expenses based on the cost – sharing to the center providng services. Tax authorities when examine and inspect in enterprises usually challenge the enterprise and demand requirements which are difficult to meet or cost a great deal of time and human resource. For instance, tax authorities require the enterprise to provide detailed information about time, duration, report, acceptance	of enterprises, impractical and causes difficults for enterprises when recognizing expenses while it was actually incurred and benefits the operation of enterprises. Such requirements of the tax authorities for proving documents is inadequate because: - Service providing center operates closely to each member company by day-to-day support and on different operational aspects. The forms of support diverse from telephone, meeting to email of extremely huge volume. - The results of such routine service are to facilitate personnel at member companies to handle jobs quickly and efficiently. Between the services providing center and the member companies there is no requirement for detailed written report or evaluation periodically in any certain form. In contrast, the feedback, adjustment, application and evaluation are an ongoing process via modern means of communication. Tax laws do not prescribe that enterprises must have evidence documents in according to the form demanded by tax authorities. In contrast, the regulations clearly specify that enterprises are entitled to recognize expenses if such expenses are actually incurred, related to enterprises'	of enterprises for their operational supporting services so as to acknowledge and evaluate the extent of relevance to enterprises' operation and avoid requiring enterprises to create evidence in certain forms that tax authorities consider appropriate or conclude that the expenses is inappropriate when such forms are not available.	income from the provision of services for Vietnam companies fully pay foreign contractor withholding tax in accordance with regulations. Vietnam party have deducted, declared and paid the withholding tax on behalf of foreign parties. - Contract signed with the Vietnam party - Invoices for provision of service issued by foreign companies to Vietnam company - Payment via bank service charges

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	Response of MOF
	and validation between the two parties and expenses corresponding to each time of consulting in order to calculate the yearly payment to the service providers.	operation and there are sufficient legitimate invoices and dossiers.		
6.	**Corporate Income Tax (CIT) Incentive** Jabil Vietnam Company Limited ("Jabil VN") was established in the Ho Chi Minh City High-Tech Zone in accordance with the Investment Certificate ("IC") dated 2 April 2007 and was granted with the following CIT incentives: - Preferential tax rate of 10% for the whole life of project; - 4-year tax exemption since the first year of generating profit; and - 50% tax reduction for the subsequent 9 years Due to the specifications of the high-tech product manufacturing industry, Jabil VN has incurred certain Non-recurring expenses ("NRE") which arose from the specific requirements of each customer's order. In	The tax authority viewpoint is that the collection of these "Non-recurring expenses" is treated as other income of Jabil VN and thus it will not be entitled to CIT incentive under the Investment Certificate ("IC"). In our opinion, this viewpoint is quite inappropriate. Due to the specifications of high tech product manufacturing, the incurring of NREs is inevitable. However, to ensure the consistent selling price and competitive advantage in the market, the basic selling price of products is agreed and invoiced without the NREs. Instead, we have issued separate invoices to collect the NREs incurred as agreed under the commercial contracts. Based on the above, the incurring and collecting of NREs are directly related to and are inseparable parts of the main manufacturing activity of Jabil VN.	Point 4, Article 18, Chapter V, Circular 78/2014/TT-BTC regulates that: "4. Enterprises which have investment projects eligible for corporate income tax incentives for being entitled under eligible business sectors of investment incentives, incomes from incentive activities and incomes from the liquidation of waste materials and scraps of products from incentive activities, foreign exchange rate differences which are directly related to turnover and expenses from incentive activities, interests of deposit and ***other directly related incomes are also eligible for enterprise income tax incentives"***. Since the collection of NREs is directly related to and is inseparable part of the main manufacturing activity under the IC of Jabil VN, we sincerely request for your consideration and approval that the income from NREs collection shall be entitled to CIT incentive as stated in the IC, specifically: - Preferential tax rate of 10% for the	According to the presentation of the business (not considering the actual record) then the nature of this refund is directly related to activities entitled to incentives, in principle, will also enjoy tax incentives.

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	Response of MOF
	accordance with the commercial contracts, apart from the value of finished goods, the customer shall pay such "NRE" to Jabil VN upon its issuance of invoices. The NRE includes the following: 1. Costs of redundant and obsolete materials because the customers decrease the quantity purchased products or cancel previously placed orders; 2. Costs of taxes and customs fees recollected as the redundant, obsolete materials are scrapped in Vietnam 3. The difference in material purchase price due to market price fluctuations or requirement of changing material suppliers from the customers 4. The difference in inventory valuation (finished goods) between the agreed price with customer and the new market price 5. Costs for implementing new production line as per the requirement of customers, costs for adjusting size of tools and		whole life of project ; - 4-year tax exemption since the first year of generating profit; and - 50% tax reduction for the subsequent 9 years	

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	Response of MOF
	equipment and for technical inspection paid to the third parties 6. Costs for samples including production costs and product quality inspection costs, prototype cancelling costs, etc. 7. Fast shipping fees as per customers' requirements			
7.	**Determination of taxable income of the investment projects that enjoy different incentive in the enterprise.** Pursuant to Clause 3, Article 10, Circular 96/2015/TT-BTC amending and supplementing Clause 5, Article 18, Circular 78/2014/TT-BTC on Corporate Income Tax, the new project of investment include : *Any investment project that is independent from the project of an operating enterprise and granted the Investment Certification from 01 January 2014 to execute such independent project.* Provisions in the law of taxation and investment have not clear explain what is the	The regulations are not clear on guiding on the issue, hence, the tax authorities might not be explained and applied in consistent for the preferential case of new projects. The tax authorities have tended to consider the new **independent** project that means the enterprise can separately in monitoring, accounting the profit and loss of the new project. If the enterprise cannot separate in accounting, the project might bear a risk to not consider as the new project (although the separate investment certification is already granted) and therefore the project will not apply the incentive as the new project. The view has inadequacy: Firstly, when an enterprise who invests many projects is operating, the separate monitoring on the profit and loss of each project is required the accounting procedures are not necessary. One of these reasons why the enterprise chooses	We would like to propose the MoF to thoroughly review and provide detailed guidance on the definition of new independent projects entitled to incentives. For simplicity and in line with the investment licensing process, a project which is approved to be granted with certification should be considered as a new project. In addition, MoF should also consider providing additional guidance for the case of unidentified separately taxable income of a new project; enterprise can use the allocation formula based on the rate of fixed investment assets (prevailing guidance is only applied for the case of investment expansion). The requirement for separate accounting should not be given as it would be costly for enterprises while management practices and the law also do not require.	As stipulated in the Amendment Law on Corporate Income Tax No. 32, the basis for determining tax incentive is shifted from company basis to newly established investment projects. The determination of the taxable income of the new project does not necessarily require its own accounting apparatus but can be determined by allocation mechanism.

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	Response of MOF
	independent project from the operating project. Hence, the enterprise might understand that if the licensing authority grants the separate Investment Certification for each project of the enterprise, the project might be considered as the new and independent project from the currently operating project?	to invest in new project is ability of using the same systems of management, sale, logistics, thereby increasing the business efficiency and reducing the expenses. Secondly, even in production stage, the separate monitoring is not feasible in many cases when a new project aimed at intensive investment (i.e. components) to produce the input for current operating projects. Thirdly, the Law on Accounting does not require enterprises to separately record for each project's income. Whether to separately account or not is decided by the enterprises themselves in accordance with management needs.		

2. Special Consumption Tax

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
1.	Decree 108/2015/ND-CP dated 28 Oct 2015 and Circular 195/2015/TT-BTC dated 24/11/2015 providing detailed guidance for implementation of the Excise Tax Law 2008 and the Excise Tax Law Amendments 2014 introduced new regulations with regards to **sudden change on SCT taxable price** which were not stipulated by the above Laws, **too close to the effect date of 1/1/2016** and **coincided with**	- Leads to contrasted reaction and argument between enterprise and issued authority on the correspondence with prevailing regulated documents. - Enterprise wonders about some new regulations such as changes on taxable price for imported goods in the draft Law on Special consumption tax which discussed by the National Assembly, has been regulated in Decree 108. Afterwards, new provisions of the Decree 108 also regulated the same in draft law	The stability in taxable basis is the foundation for business and manufacture industries of goods, which subjected to special consumption tax to stably and unshakably develop, to contribute to the development of trading area and retail of country, effectively develop jobs for million labors and to stably contribute to the state budget. We agree with the policy on tax reform included Law on Special Consumption tax, however there need to have	Decree 108/2015/ ND researched and published for comments from May 4/2015, however, the research process to build this Decree only to for automobiles. However when discussing at the government level, there are several Ministries have opinions should not only apply to cars that need to expand out for cigarettes, alcohol.

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
	the effective date of increase of SCT rates.	amending and supplementing a number of articles of the Laws on taxation, which expected to submit to the National Assembly in March 2016. - Influence of sudden changes on taxable price: • Leads to **significant incremental tax burden** while SCT payers are trying to manage and adapt to **the new tax rate increases** as stipulated by the Excise Tax Law Amendments 2014 that took effect from 1/1/2016 (beer and alcohol increased to 5%/year until 2019, wine increased 5%/2 years, cigarette increased 5%/ 3 years). • Seriously influent to the status of business and manufacture. Enterprise does not have enough time to prepare, to forecast in advance, no transparency, no itinerary to implement and lead to influent to the whole supply chain. • Influent to the stability of tax policy environment. • Influent to the belief of partner countries when negotiating free trade agreements with Vietnam, negatively influent to achieved benefits through big trade	transparency, and itinerary to implement. We understand that MOF and Government is completing the Law amending, supplementing some articles of Special Consumption Tax (together with VAT and Law on Tax management) for the National Assembly to approve in Session in March with changes on taxable price and tax rate. There are many proposals that this Law should be effective from 1/1/2017 for enterprises to have time to prepare. **Hence we would like to request to revise the effective time of Decree 108 to 1/1/2017 for enterprise to have at least 1 year to prepare.**	Since this is the level of Government Decree, enterprises should fully comply. Where there are problems to be solved, the the Ministry of Finance will consider and send the report to the Government.

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
		agreements to be approved such as TTP Agreement, FTA Agreements between Vietnam and European Union. • Adversely affect the confidence of existing and prospective investors in Vietnam.		
2.	2.1. **How to determine the average selling price of the trading establishments (In the case of Piaggio VN, trading establishments are Dealers):** According to Point 1b, Article 5, Circular No.195/2015/TT-BTC dated 24 November 2015, guidelines for the Government's Decree No 108/2015/ND-CP dated 28 December 2015 on guidelines for some articles of the Law on Special Consumption Tax and the Law on amendments to the Law of Special Consumption Tax, the taxable price of Special Consumption Tax is stipulated as follows: *"Where an importer of goods subject to SCT (except for cars having fewer than 24 seats and gasoline), or a manufacturer of goods subject to SCT (except for cars having fewer than 24 seats) sells such goods to*	2.1. In our case, Piaggio VN manufactures but also plans to import motorcycles which are subject to SCT, and dealers are the first step in trading flow and these dealers are under the sales contract with the Piaggio VN. Based on above regulation, we understand that in this case, Piaggio VN sells motorcycles which were manufactured or imported by Piagio VN to the Dealers, the SCT taxable price is the PVN's selling prices to Dealers but must not lower more than 7% of the average price of the same products sold by Dealers in the month (*"Monthly average selling price"*) However, in fact, due to the relationship between Piaggio VN and its Dealers is purely buy-sell relationship without mutual binding. Hence, it is extremely difficult for Piaggio VN to require its Dealers to report their market selling prices and in fact, many of them refuse to disclose this information. Moreover, the number of Piaggio's Dealers in	2.1. We understand that the purpose of regulations regarding re-determination of the taxable price in case the selling price is lower more than 7% compared with the monthly average price of trading establishments is to control the tax compliance of enterprises and to avoid tax evasion when the tax payers issue invoices with lower taxable revenue than actual. In practice, Piaggio VN is a multinational corporation, which always respects reputation and complies with legal requirement seriously. We could confirm and assure that the values of goods shown on our invoices issued to our Dealers are our real revenues generated from these sales transactions. As we mentioned above, Dealers have independent relationship with Piaggio VN, so they are able to self- determine the price upon the market supply and demand in each specific period. Thus, if in a certain month the dealers' market average selling price is higher more than 7% as compared to Piaggio	MOF will assign the General Department of Taxation together with Tax Policies Division and units of cigarettes industry alcohol industry for early guidance to control the taxable SCT price not below the cap 7%. We will try to resolve before 30/4.

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
	trading establishments, taxable prices are selling prices imposed by such importer or manufacturer and must not fall below 7% of the average price of products sold by the trading establishments in the month. *If the selling prices imposed by the importer of goods subject to SCT (except for cars having fewer than 24 seats and gasoline), or a manufacturer of goods subject to SCT (except for cars having fewer than 24 seats) fall below 7% of the average price of products sold by the trading establishments in the month, the taxable price shall be imposed by a tax authority in accordance with regulations of law on tax administration.* *The aforementioned trading establishments must not have a parent company-subsidiary company relationship with the importer or manufacturer, or have the same parent company as the importer or manufacturer, and must be the*	Vietnam is very enormous, thereby obtaining information on the market selling price of all the Dealers to determine "monthly average selling price" will not be feasible and time consuming. It also requires a lot of efforts and expenditures of our Company while the determination of SCT payable, tax declaration and tax payment must be completed on a monthly basis, no later than the 20th day of the following month under regulations.	VN's selling price, we could not supervise and control. Accordingly, in such case, with our above fact, we are of the view that we should be allowed to declare SCT base on our actual selling price without having to re-determine SCT taxable price based on the selling price of the dealer. We propose that this regulation, if should be maintained, shall be amended on the basic of narrowing the applicable objects, so that it will not be applicable to the cases with independent agencies similar to our cases above. In case this regulation are not yet amended on time, Piaggio VN would like to request for your guidance in determining "monthly the average selling price" or please provide us with this information monthly so that we could determine SCT payable amount. Simultaneously, we submit the notification on "suggested retail price" of manufactured vehicles/ imported vehicles to Department of Finance as well as to all Dealers. Accordingly, we would like to propose that PVN can replace "the monthly average selling price" by our "suggested retail price" to use as the criteria for comparison and	

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
	first link of the distribution chain that has a sale contract with the importer or manufacturer, or with the parent company or a subsidiary that has the same parent company as the importer or manufacturer of goods subject to SCT. The parent company-subsidiary company relationship shall be determined in accordance with the Law on Enterprises." 2.2. If the importer or manufacturer of goods subject to SCT sells their goods **to independent commercial business establishments**, the SCT taxable price is the selling price of the importer which must **not lower than 7%** of the average selling price in that month of the similar of goods stipulated by such independent commercial business establishments.	2.2. - Not feasible, unreasonable and creating difficulties for business in determination of SCT payment and tax finalization. - According to Decree 94, an importer who is also distributor can sell to other distributors, wholesalers (i.e. commercial business establishments) and can retail at importer's shops. Then, these commercial business establishments, depending on their licenses, can sell to other wholesalers, retailers, supermarkets, hotels, restaurants, consumers etc. with many different prices. Importer has no right to fix or ask these independent commercial business establishments to report their selling prices.	determination of taxable price since the "suggested retail price" is the price that PVN notifies Department of Finance when Piaggio VN has new products in the market or there are changes in the selling prices. If this price is used as the criteria for comparison and determination of taxable price, it will be very suitable for Piaggio VN and feasible since the information is always available and significantly time saving for SCT declaration. 2.2. We would like to request MOF to r**emove this provision**, meaning that not using selling price of independent commercial business establishments as a reference for determination of taxed price for importer or manufacturer.	

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
		- This provision will put SCT tax payers to the **risks of post-tax inspection, tax policy breaches, unreasonable taxed price imposed by tax authorities, additional SCT tax payment etc**.	2.3. To request MOF to consider to: • Remove the rule requiring SCT Price is determined based on the selling price of the last affiliated trading entity. • Remove the stipulations of 7%	
	2.3. Decree 108 and Circular 195 stipulated that SCT Price is based on **selling price of the last trading entities which have parent/sisters relationship** with the manufacturer or importer and the SCT Price should **not be 7% lower than the average monthly selling price of trading entities** for the same product group.	2.3. Market prices vary from time to time, from area to area and upon the business needs of each distributor. The relationship between the manufacturer/importer and the distributor is an outright one. Therefore, manufacturers and importers have no authority to request trade customers/distributors to communicate their prices. The requirement that SCT price should not be lower than 7% of the average monthly selling price of an independent trading entity inevitably means that the manufacturer/importer has to control the selling price of the trading entities – which is prohibited by the Competition Law. This provision will be administratively cumbersome for both tax payers to comply and tax authority to enforce. It is very difficult to determine the average monthly selling price of a product group by trading entities in the event that manufacturer/importer has		

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
		many products belonging to different segments, that the same brand may have many products, each with a distinct dimension and packaging. This makes the determined monthly average price is inaccurate, not representative, and not reflective of the precise tax burden, at the same time could result in disputes between taxpayers and tax administrators. This is contrary to existing law whereby SCT is to be declared and paid on the selling price of the manufacturer or CIF. The fact that goods are distributed via a trading entity belonging to the same group or via independent trading entities should not change the nature of the transaction and thus should not have an impact on the tax calculation. Since it is impossible to define market price or selling price of independent trading entities, the role of mother-sisters-trading company is very important in supporting to make sure that SCT is declared in full based on reliable evidence. This also helps tax authorities to easily determine the tax dues. The new provision creates unfair treatment for companies. Trading		

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
		company even having parent-and-sisters relationship with the manufacturer or importer is an independent legal entity, registered legally in Vietnam and having independent accounting system. With the new regulation, the affiliated trading company becomes uncompetitive compared with independent trading companies. The manufacturers will then be reluctant to sell products via the affiliated trading entities since it will result in higher SCT. As a result, the affiliated trading entities will fall into a very difficult situation and may need to be closed. In the long run, this regulation will impair the development of a professional and modern distribution system because manufacturers in any way have to develop their own distribution network. There is no evidence to prove that 7% is necessary vs 10% and by doing so, the Government directly control the profitability/business of our business and traders which is contrary to "Market Orientation" policy. Moreover, the existing Tax Administration Law and the Circular 66/2010/TT-BTC providing for determination of market price in associated transactions already have regulations to control transfer pricing in		

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
		trading companies who have associated relationship with the manufacturer or importer.		
3.	**How to determine deductible SCT at import stage for imported goods subject to SCT** **Pursuant to Clause 2, Article 8, Circular 195/TT-BTC guiding the deductibility of SCT for imported goods subject to SCT:** *"Payers of SCT on goods subject to SCT at import (except for gasoline) may deduct SCT paid at importation from SCT payable on goods sold domestically. Deductible SCT is equal to SCT on goods subject to SCT that are sold after import, and must not exceed the SCT on goods sold domestically. The taxpayer may include SCT that remains after deduction because of a force majeure event in expenses when calculating corporate income tax."* According to the regulation above, we understand that the	The Circular does not provide clear guidelines on the determination of deductible SCT at import stage. Specifically, if Piaggio VN imports motorcycles subjected to SCT, it may import for many times during a period. Despite the same type of motorcycles, the good price and the exchange rate may be different and thus, leading to different import duty / SCT for the same type of motorcycles at every time of importation. As such, when selling goods to trading establishments, there would be difficulties in determining deductible import SCT which is corresponding to the number of goods sold. In particular, we has a concern whether we must determine the SCT amount that already paid exactly for a single of motorcycle sold or can use the average SCT amount of imported motorcycles in the tax period, and the number of vehicles sold.	We kindly request for your specific instruction on determination of deductible import SCT when defining the SCT payable from selling goods in the period, in the case that the amounts of import SCT are different in each time of import. To keep track of the exact amount of import SCT for each motorcycle would be very difficult, time-consuming and costly. Simultaneously, our Company currently calculates the cost of goods sold in the period based on average pricing method; hence we kindly suggest the authority to allow us to calculate deductible import SCT following the average method in order to reduce burden on administrative procedures. Specifically: Deductible import SCT amount corresponding to the number of motorcycles sold in the period is equal to the average amount of deductible SCT of motorcycles at the beginning and new motorcycles imported during the period, multiplied by the number of motorcycle sold during the period.	Enterprises can choose one method for calculating the cost of goods as a basis for determining the special consumption tax deducted in the period: LIFO, FIFO, or average pricing method.

<table>
<tr><th>No.</th><th>Difficulty/ Obstacles</th><th>Influence/Impact</th><th>Proposal/Recommendation</th><th></th></tr>
<tr><td></td><td>deductible SCT amount must be correspondent to SCT amount of imported goods which are sold as well as must not exceed SCT payable amount of the goods at domestically sell stage.</td><td></td><td></td><td></td></tr>
<tr><td>4.</td><td>How to present VAT invoices?</td><td>In case we have to adjust the SCT taxable price since our selling price is lower more than 7% compared with the monthly average price of the same product sold by Dealers and it is possible to use "the suggested retail price" rather than "monthly the average selling price” of trading establishments, then we understand that the invoice issued to Dealers would be presented similar to the example in the following Table:
<table>
<tr><td>Selling price to Dealers (SCT inclusive, VAT exclusive)</td><td>VND50.000.000</td></tr>
<tr><td>Suggested retail price (SCT inclusive, VAT exclusive)</td><td>VND55.000.000</td></tr>
<tr><td>Difference between the selling price to Dealers and the suggested retail price</td><td>VND5.000.000</td></tr>
</table></td><td>We would like to confirm whether our understandings above are in line with the prevailing regulations.</td><td>In this regard, we must firstly determine the initial condition of associated vs. independent agents. The Ministry of Finance will coordinate its divisions to discuss to facilitate guidance in the implementation process, and in such case is to determine the special consumption taxable price and the most difficulty is to determine the average selling price of dealers in the month.</td></tr>
</table>

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
		<table><tr><td>Percentage of the difference</td><td>= 5.000.000/55.000.000 = 9.09% -> more than 7%</td></tr><tr><td>The SCT taxable price is 93% of the suggested retail price</td><td>= 93% x 55.000.000 = 51.150.000</td></tr><tr><td>SCT payable</td><td>= 51.150.000/1.2 x tax rate (20%) =8.525.000</td></tr></table> According to the above example, Piaggio VN understand that the amount of SCT payable that declared on the SCT return will be VND8,525,000, which is calculated based on the taxable income of VND51.150.000 instead of VND50.000.000. Accordingly, the SCT expense of PVN increases while the total amount collected from dealers keeps unchanged. Hence, VAT payable and VAT invoices issued to Dealers for goods sold should be as follow: The value of goods excluding VAT: VND50.000.000 VAT amount payable: VND5.000.000 Total price including VAT: VND55.000.000		

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
5.	Decree 108 and Circular 195 provides that: The SCT Price of goods and services is inclusive of extra revenues in addition to goods selling prices or service charges (if any) that manufacturers and businesses can get/enjoy. **For cigarettes**, the SCT Price is inclusive of compulsory contribution and support regulated in the Law on Tobacco Harms Prevention and Control.	- The compulsory contribution to the Tobacco Harms Prevention and Control Fund is not extra revenues that tobacco manufacturers or traders enjoy. - The funding for the Tobacco Harms Prevention and Control Fund derives from the revenues of tobacco manufacturers and importers and is subjected to State financial management by the Ministry of Finance (Article 28.1 of the Law on Tobacco Harms Prevention and Control), therefore the compulsory contribution of the tobacco industry to the Fund is in essence a tax or fees to the State. - The regulation to include this compulsory contribution to the SCT Price as provided in the Decree 108 and Circular 195 is inappropriate and a tax-on-tax. - Determination of the appropriate nature of the compulsory contribution to the Tobacco Harms Prevention and Control Fund as a tax or fees will help to create a smooth and consistent application to the future contribution of the alcoholic drinks industry to the Health Promotion Fund as directed in the Prime Minister's Decision 244/QD-TTg providing the national policy on	***- Subtract the compulsory contribution of the tobacco industry to the Tobacco Harms Prevention and Control Fund from the SCT Price.*** ***- Amend the SCT Price formula:*** ***Recommended formula:*** $\text{SCT Price} = \frac{\text{Selling price exclusive of VAT, Environmental Protection Tax}}{1 + \text{Excise Tax Rate} + \textbf{\textit{Compulsory Contribution}}}$	The Ministry of Finance would like to acknowledge to modify in the near future.

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
		prevention and control of harms of abuse of alcoholic drinks by 2020.		
6.		Respectfully question MOF on What is definition of "average selling price of trading agencies"? Is it average of Retails Sales Prices (RSP) announced by maker/importer, or average of selling prices of trading agencies (actually in the Invoice)?		
7.		Respectfully question MOF for CBU case, if 2nd SCT payment is less than 1st SCT payment, can the importer get SCT refund? Where to get SCT refund at import port or at HQ of the importers?		Regarding the problems of the company, pursuant to paragraph 2 of Article 8 of Circular 195/2015/TT-BTC regulating "Deductible Special consumption tax (SCT) is equal to SCT on goods subject to SCT that are sold after import, and must not exceed the SET on goods sold domestically. The taxpayer may include SCT that remains after deduction because of a force majeure event in expenses when calculating corporate income tax.", The SCT calculated when sold domestically smaller than amount paid at the import stage, the amount of SCT to be deductible shall be maximum equal to SCT calculated at the stage of sale

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
				in the country and now the difference is accounted for expenses when determining taxable revenue. Therefore, the case of SCT refund would not arise for imported cars.
8.		For CBU case, if we import and pay SCT in December 2015 (under current SCT law-SCT taxable price is CIF+ID) and sell after 1/1/2016, do we need to pay 2nd SCT (under new SCT law-SCT taxable price is WSP) or not		
9.		What is method to make SCT payment declaration for CBU (1st SCT payment, 2nd SCT payment, adjustment)?	Proposal to apply method of Full deduction (similar with VAT) for simple	Decree 108 has been effective since 01/01/2016, so in case of goods imported from 12/2015 but bring in to the market after 1/1/2016, enterprises still subjected to SCT under the new law on SCT and entitled to be deductible corresponding to the SCT paid at import stage when determining the amount of SCT payable. For the imported goods unsold from 2015, the tax authorities and customs agencies will work together to guide the SCT which were paid earlier for each unit of

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
				product as declared and deducted respectively. SCT will be deducted respectively but do not exceed the amount calculated at the domestic stage and will not be the same as the method for calculating input VAT.

3. Value Added Tax and Foreign Contractor Tax

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
1.	**Input Value Added Tax (VAT) deductibility of Piaggio Vietnam** - During our operation, Piaggio VN signed a mold purchasing contract with suppliers to produce components for manufacturing activities. It took a long time from the stage of designing molds to other stages of manufacturing sample spare-parts from the mold, supervising and testing the mold before putting into the mass production of parts. Under our agreed agreement with suppliers,	- Piaggio Vietnam sent the Petition Letter to the Ministry of Finance to explain on their transaction from October 2015 ; - Afterwards the Vinh Phuc Tax Department, through their investigation, they also raised a report to the General Department of Taxation, accordingly the Tax Department proposed to deduct input VAT for Piaggio with respect to invoices of mold purchasing ; - At the dialogue between VBF and Deputy Minister of the Ministry of Finance –Mr. Do Hoang Anh Tuan on 25/8/2014, the Deputy Minister also agreed with our declaration to be input VAT deducted. - After almost 5 months of study, on	We would like to seek for your consideration and instruction for our issues in order for Piaggio Vietnam to focus on our business and manufacture.	In this regard, the General Tax Department had written reply No. 979 dated 11.03.2016 to Piaggio in case of mold components manufactured by Piaggio is defined as fixed assets owned by the company and managed and monitored in accordance with the provisions of the fixed assets and used to serve production and business, the company shall be taxable and having VAT invoices, vouchers cashless payment under the regulations, the company shall be able to declare input VAT deduction.

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
	the suppliers would issue VAT invoices and we would make payments corresponding to progression of the work done. - In order to reduce administrative works, Piaggio VN invested in SRM software that can be able to place the order, check progress and confirm the completion of final product, delivery and inspect the molds. Piaggio VN and the suppliers did not print and sign on the hardcopy hand over minute, all the acceptance documents have been fully recorded on the software system. - There are some opinions from Tax Department that Piaggio Vietnam is not entitled to input VAT deductibility for contracted value of producing mold.	3/3/2015, the General Department of Taxation issued official letter, in which there was no response for Piaggio's queries but stated a bulk of non-sense questions for making decision on our input VAT deductibility or clearly mentioned in either Piaggio or Tax Department's petition letters and requested the Tax Department to continue to work with Piaggio (ie. The copyright of mold belongs to which party ? is there a co-opperation between Piaggio and suppliers ? level of affection to the cost of production of components, etc.) ; - The above tardy plus new requirements increased a significant time for both company and provincial tax department, seriously influent business and manufature of the company, to suffer a loss on finance as we must stop VAT refund to wait for guidance from the General Department of Taxation.		
2.	**Registration procedure to declare VAT under deductible method of**	Article 3 of Circular 219/2013/TT-BTC regulated an EPE must set up a branch to conduct trading activities and directly	- To propose MOF to issue guidance document in details on procedure of VAT declaration for EPEs having	As stipulated in Decree 114/2015/ND-CP amending and supplementing Article

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
	Export Processing Enterprise (EPE) having business of import, export right Company A is an EPE having Business License on trading activities and directly related to trading activities in Vietnam. Company A imports oversea products and stores in its warehouse, afterwards sell those ones to customer is Company B (not an EPE), how will the registration procedure to declare VAT for Company A and which kind of invoice to be used when Company A sell products to Company B?	related to trading activities in Vietnam accordance with regulations of laws on Industrial Park, Processing Zones and Economic Zones. While Decree 114/2015/NĐ-CP dated 9/11/2015 amend, supplement Article 21 Decree No. 29/2008/NĐ-CP dated 14/3/2008 of the Government regulated on Industrial Park, Processing Zones and Economic Zones stipulated: " Export-processing enterprises obtaining the License for goods purchase and sale and activities directly related to goods purchase and sale in Vietnam must open an accounting books for finalizing separately revenues and costs related to the purchase and sale of goods in Vietnam and shall arrange a storage area separate from the storage area of goods serving the production of export-processing enterprises or establish a separate branch that is located outside the export-processing enterprises and zones to carry out such activities." According to the Integrated document No. 18/VBHN-BTC on 2015 integrates Circular guidance on Law on Tax Management; amended Law on Tax Management and Decree 83/2013/ND-CP issued by the Ministry of Finance, there is no clear stipulation on	Business License on trading activities and directly related to trading activities in Vietnam. - To propose MOF to amend, supplement Circulars guiding on invoice those EPEs, which having Business License on trading activities and directly related to trading activities in Vietnam, to use.	21 of Decree 29/2008/ND-CP dated 14/3/2008 of the Government regulations on industrial parks, export processing zones and zones economic, and according to point 12 of Official Letter 18195 of the General Department of customs dated 08.12.2015, EPE is granted the business license on goods trading and activities directly related to goods trading in Vietnam, must have bookkeeping separately accounted revenue, expenses related to the purchase and sale of goods in Vietnam and arrange cargo storage area separated from the cargo storage area serves manufacturing operations EPE or establish branches outside EPE, export processing zones to perform this operation. In case of not establishing branches, EPE shall register with local tax authorities to declare and pay VAT by deduction method and use prescribed invoices for the

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
		registration procedure to declare VAT under deduction method of EPE having Business License on trading activities and directly related to trading activities in Vietnam. Moreover, Circular 39/2014/TT-BTC also does not regulate type of invoice for EPE, which having Business License on trading activities and directly related to trading activities in Vietnam, to use sale invoice or VAT invoice?		purchase and sale of goods and activities directly related to the purchase and sale of goods in Vietnam of EPE. For the specific case of Grant Thornton, client enterprise have been granted business registration license for the purchase and sale of goods but in the process the input VAT incurred but not yet registered the deduction method, the enterprise is required to send written documents to MOF to obtain specific guidance on registration forms.
3.	**0% VAT rate & Foreign contractor tax** Company X buys goods from Company Y in overseas, then sells the same products to a local customer (Company Z) simultaneously under CIF or CIP Incoterms. Company X does not do customs clearance but the title to the goods is transferred to Company Z before the goods	Point 2(a), Article 9, Circular 219/2013 stipulates that 0% VAT rate applies to: "for sale of goods **which are delivered and received outside Vietnam**, the business establishment (the seller) must have documents proving such delivery and receipt, e.g., goods purchase contract signed with the overseas seller; goods sale contract signed with the purchaser; documents proving that goods are delivered and received outside Vietnam such as commercial invoice according to international practices, bill	"Place of delivery" needs to follow Incoterms: - CIF means the seller must bear risk of loss of or damage to the goods until such time as they have passed the ship's rail at the port of shipment. For example, CIF Hai Phong Port means that the seller must bear costs and insurance until the goods reach Hai Phong Port. - CIP means the seller must bear risk of loss of or damage to the goods	Regarding this issue, the General Department of Taxation issued Official Letter No. 3511 dated 22.08.2014 responding to the Hanoi Tax Department, enterprise in Vietnam has a contract to buy goods imported from abroad with delivery terms of goods at the international border, then this enterprise has sale contract of the same imported goods to

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
	have been imported into VN. Company Z is obliged to clear customs and fulfill tax obligations e.g. Import duty, VAT, etc.	of lading, packing list, and certificate of origin, etc.; via-bank payment documents, including via-bank payment document of the business establishment for the overseas seller, and via-bank payment document of the purchaser for the business establishment". The GDT issued OL 3511 on 22/8/2014 providing that if applying incoterms under which goods are delivered at the international border date of Vietnam from Company X (local seller) to Company Z (local buyer clearing customs), this is considered as "delivery of goods in Vietnam's territory", thus no 0% VAT rate can be applied. And some provincial tax departments currently do not apply 0%.	until such time as they have been delivered to the carrier under the carriage contract to the designated place of destination. For example, CIP Noi Bai Airport means that the risk of loss of or damage to the goods is passed from the seller to the buyer when the goods have been delivered to the carrier in overseas, the seller must bear costs and insurance to Noi Bai Airport . **Therefore in both cases above goods are delivered outside Vietnam territories. Hence tax rate of 0% should be applied. Moreover, the foreign contractor tax is not applied due to goods delivered oversea and not attached any services in Vietnam.**	other enterprises in Vietnam with the conditions and terms of delivery directly at Vietnam international border without using warehouse, the sale of goods by the mode of delivery as above within Vietnamese territory subject to VAT, are not eligible for application of paragraphs 1 and 2 of article 9 of Circular 219/2013 / TT-BTC and Circular 06/2012 / TT-BTC. According to Document 827 / xxx reply to ABB, the VAT invoices on issued to buyers, revenue which subjected to VAT, is only the difference between the purchase price and selling price.
4.	**Foreign contractor tax in case of imported goods embedded with "system software"** Company A imports from Company B medical equipment system, including hardware and software. Without the software running, the hardware would not work.	FCT Circular (currently Circular 103) does not stipulate clearly the FCT treatment in this case, but only provides that 10% CIT rate would be imposed on royalty payment. Some tax authorities try to impose FCT when seeing the two portions: hardware and software on invoices/contracts. "Commercial software" will be subject to 10% CIT rate and VAT exempt.	Decree 71 on Information Technology provides: - System software" is the one used for organizing and maintaining the operation of a system or a digital equipment. System software can help to create environment for application software operating on it and is always in active mode when the digital equipment is working	In article 13 paragraph 2 a Circular 103/2014 / TT-BTC regulations on the corporate income tax rate on revenue for commercial sector was 1%, for income from royalties is 10% and in paragraph 2b to Article 13 Circular 103/2014 / TT-BTC regulation " If a main contract or subcontract

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
			- Application software" is the one that is developed and installed in a specific mode/environment, to perform specific tasks. **It is requested that the FCT should not be imposed on the value of system software since this is integral part of the hardware.**	consists of various business activities, the application of CIT rates to each business activity carried out by the foreign contractor or foreign sub-contractor shall be specified in the contract. If the value of each business activity cannot be separated, the highest CIT rate shall apply to the whole contract value." Pursuant to the above provision, withholding tax will be calculated separately between software and machinery. However, after reviewing, we found that there are software attached to machinery and equipment and cannot be separated but shown in separate values in the invoice. We would like to acknowledge, research and consider amendments to Circular 103 clarifies issues in order to be in line with reality. MOF will conduct this content modification, no later than in Q2/2016 to ensure conformity with the reality.

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
5.	**Circular 103 on FCT relating to distribution** Circular 103 particularly stipulates: "Foreign companies which partially or wholly carry out distribution of goods and services in Vietnam, whereby they retain the ownership of goods that are delivered to Vietnamese organizations or take responsibility for the costs of distribution, advertising, marketing, quality of goods/services provided, or retain the right to fix the selling prices of goods and services; including those authorizing or engaging other Vietnamese parties to perform part of the distribution services and other services related to the sale of goods in Vietnam".	Due to the lack of clarity in this provision, the tax authorities will tend to impose FCT if the Vietnamese company is only distributing goods (as opposed to agent earning commission)	Please provide further guidance. For example: Company A in VN is a distributor of product X for Company B in overseas. Before the importation transaction, Company A performs market research, marketing services and charge fees to Company B. Would the payment by Company A to Company B for the imported goods be subject to FCT? Please revise wording in Circular 103 to be more clearly.	Under the provisions of paragraph 3 of Article 1 of Circular 103, foreign traders do not carry out part or all of the business distribution of goods, providing services in Vietnam, foreign traders are not owners of goods delivered to Vietnam or organization responsible for the cost of distribution, advertising, marketing, service quality, quality of goods delivered to Vietnam organizations or commodity price-fixing or price of service providers; including cases where the authorization or organization hired some organizations of Vietnam to implement partial distribution services and other services related to the sale of goods in Vietnam, they will not be subjected to applicable withholding taxes. Issues relating to withholding tax in distribution activities, similar to the example mentioned

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
				above, two separate companies hired another company to carry out the advertising and such company importing goods, they operate independently under sale purchase contract. The nature of the withholding tax is levied on services and business activities performed and generated revenue in Vietnam but that unit was not present in Vietnam. Case has been launched, enterprises pay management service costs or advertising costs globally to another unit. Accordingly, based on the proof of payment, enterprise received services are accounted such cost to the expenses of the business. Withholding tax is not directly related to the price management of enterprise.

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
6.	**Circular 103 on FCT for the case of goods accompanied with service performed outside VN.** Due to operational requirement, Company A in VN has signed contract to purchase machinery and equipment from overseas suppliers (Company B) with delivery term being at the border of Vietnam and overseas suppliers does not accept any liability, costs, risks related to the receipt and transportation of goods from Vietnam border gate. For purposes of ensuring the quality of machinery, equipment, Company A has requested Company B to separate the value of materials and relevant values such as management, planning, designing, researching or other expenses arising abroad constituting the value of machinery and equipment in the quotation sent to Company A. Such quotation is attached as an integral part of the contract.	Under current regulations on FCT (Circular 103/2014 / TT-BTC dated 06/08/2014 of the Ministry of Finance), only contracts to purchase machinery and equipment, in which sellers bear risks related to goods into the Vietnam territory or services implemented in Vietnam are subject to FCT. Meanwhile, repair of machinery, equipment implemented overseas including or excluding spare parts, equipment is not subject to FCT. Company A understand that although the quotation attached to contract purchasing machinery and equipment is disaggregated total value of machinery and equipment, Company A merely purchases machinery, equipment with the delivery term at the Vietnam border and overseas suppliers - Company B does not bear any liability, costs, risks related to the receipt and transportation of goods from Vietnam border gate. Company B's revenue should not be subject to FCT in Vietnam. Practically, there are still many different interpretations. Some local tax authorities still apply FCT on the value portion of goods, machinery and services outside VN.	Request MOF to release clear guidance when adjusting current circular on FCT.	Circular 103 stipulates that "supply of goods accompanying implementation services in Vietnam, must pay foreign contractor taxes." Related to warranty issues, Circular 103 was amended and supplemented the provisions of Circular 60 on the warranty, according to which "if the goods are delivered at the border gate together with the terms of warranty is the responsibility and obligation seller. The seller is responsible, the risk of such goods to the point of delivery and does not perform any service in Vietnam related to goods that are not subject to the application of the Circular. "

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
7.	**Foreign contractor tax for copyright expenses** At dialogue on August/2015 with the Ministry of Finance, the Company raised issues on VAT rate which applied for transferring use of intellectual property right (ie. Trademark). Due to the uncertain and different guidance of GDT, up to now the Company has no clear answer for VAT tax impose with respect to the transfer of intellectual property right use and in case of tax imposing, how many percent of VAT rate of FCT?	Recently after the tax authority auditing, investigating in entity, they recollect the enterprise's VAT (a part of FCT) enclosed with fine for receiving use of intellectual property right from oversea party for period before OL 631/TCT-CS dated 3/3/2014 (OL 631 is the first one issued by GDT guiding on transfer of trademark right subjected to VAT, other previous OL guided not subjected to VAT)	We propose MOF to give instructions in detail and to guide the provincial tax department to start to collect VAT of FCT when having general guidance of MOF. Enterprise shall be not re-collect and fine prior to the time of issuing guidance due to the un-consistent and uncertain of regulations.	GDT has consultation with the Ministry of Science and Technology and was told that the use of trademarks not belonging to royalty. However, after receiving the requests of companies we have reported to the MOF, and was directed by the MOF to work with the Ministry of Science and Technology in this regard to obtain specific guidance. In principle, if you consider the right to use the brand is copyright, applicable withholding tax is 10% of corporate income tax and no VAT. In case of considering the right to use the brand is not copyright, the company should consistently apply withholding tax includes 5% corporate income tax and 5% VAT on services.
8.	**Determining CIT taxable revenue for foreign contractors** Pursuant to guidance of General Tax Department ("GDT") (the Official letter 4615/TCT-CS dated	Point b.2, Clause 1, Article 13 of Circular 103 stipulates that if foreign contractor signs a contract with Vietnamese sub-contractors or foreign sub-contractors who pay tax using direct method or foreign sub-contractors who pay tax using hybrid methods to do part	In tax principle, we understand that the purpose of the deductible value assigned for foreign sub-contractors that pay tax using hybrid method/ or Vietnamese sub-contractors when determining taxable income for CIT purpose of foreign contractors is to	In this regard, according to Circular 103 currently only prescribed when determining CIT taxable income unless only allowed to share part of the value of work or items specified in the contract

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
	21/10/2014 and the Official letter 2464/TCT-CS dated 22/06/2015 about Foreign contractor tax ("FCT") policy: ***foreign sub-contractor level 1*** *(who is construction contractor being licensed for operating and implementing projects in Vietnam, declaring FCT in hybrid method) shall not be deducted the contract value implemented by* ***sub-contractors level 2 when determining CIT taxable income.*** *(the list of sub-contractors level 2 approved and signed between main foreign contractor and foreign sub-contractor level 1).* ***Foreign sub-contractors level 2 must declare/pay tax on the revenue declared by sub-contractor level 1, pay tax when receiving money from main foreign contractor.*** The reason given by GDT is that: ***Foreign sub-contractors level 2 are not under the list of sub-contractors signed between the Investor and the***	of the works in the main contract ***signed with the Vietnamese entity***, and a list of such Vietnamese sub-contractors and foreign sub-contractors is enclosed with the main contract, the revenue subject to CIT of the foreign contractor ***does not include the value of works carried out by Vietnamese sub-contractors or foreign sub-contractors.*** Pursuant to Clause 2, Article 4, Circular 103 guiding the implementation of foreign contractor tax***, the Vietnamese entity*** includes Organizations established and operated under Vietnam's law or registers its operation under Vietnam law; other business entities and individual that purchase services, services attached to goods, or pay income incurred in Vietnam under main contracts or subcontracts; purchase goods in the form of on-spot import/export or under International Commercial term-Incoterms; distribute goods or provide services on behalf of foreign entities in Vietnam.	avoid double tax on the same revenue. This is the principle that tax policy makers aim at to ensure compliance with international practices. However, the guidance of GDT is inappropriate because the list of sub-contractors level 2 is not listed in the contract between the Investor and main contractor, but attached with the list of sub-contractors under the sub-contract signed between the main contractor and sub-contractor level 1. Furthermore, pursuant to Article 4 of aforementioned Circular 103, the main contractor and sub-contractor level 1 are considered as ***the Vietnamese entities***. Accordingly, the main foreign contractor or foregin sub-contractor level 1 are allowed to deduct the value assigned to Vietnamese subcontractors/subordinate contractors when determining taxable income for CIT purpose. Therefore, we would like to respectfully propose MoF to consider deeply and thoroughly and give guidance for this case because the inconsistency between policy and law implementation may lead to improper and unfair resolution to CIT obligation among foreign sub-contractors at different level.	delivery of main contractors Tier 1 subcontractors for which no guidelines for cases of Tier 1 subcontractors transferred to subcontractors level 2. We have reported to MOF on our opinion and conduct further research to this point for guidance to facilitate enterprises to implement the declaration and tax payment.

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
	main contractor.			
9.	**Real estate trading in Vietnam – foreign contractor tax on loan is (i) used to restructure loan signed prior to 1/1/1999 and (ii) disbursed prior to 1/1/1999.** In 1996, Keppel Watco I Co., Ltd. (previously known as FPSL Watco Co., Ltd.), a subsidiary of KL, signed a loan contract to pay for the construction purpose of the project. This loan contract was registered and approved by State Bank of Vietnam ("SBV") in 1996. As Keppel Watco Co., Ltd. did not refund this loan on the due date 31/12/2000, KL under its another subsidiary lent Keppel Watco I an amount of 43.130.456 USD to pay debts and make payments for suppliers. These transactions were shown on audited financial statement and related documents of the Company.	The GDT and MoF give guidance that this loan interest is subject to foreign contractor tax since the written contract with the purpose of register the loan with SBV was made after 1/1/1999. Regarding the nature of the transaction and the definition of economic contract under legislative regulations adopted in Vietnam, the application of foreign contractor tax for the loan interest was unfair for KL. Tax need to be applied in accordance with the nature of a transaction.	In recent years, the Government has given some specific measurements to rescue real estate enterprises. KL is always making its effort to commit with Vietnamese market. We would like to urgently propose the MoF to reconsider this situation and we are willing to provide any necessary documents.	For this issue MOF will discuss with the State Bank the case where disbursement was made before execution of loan contract and associated signing procedures between the parties. Based on the response of the state bank, if the state bank agreed that arragement is consistent with the law, we will ask the General Department of Taxation to revisit the case, if the enterprise disbursed, signed contract in advance, had sufficient documentation and being audited, we will resolve the case.

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	The only arising issue here is until 12/3/2001, the subsidiary of KL officially signed loan agreement in order to re-register with SBV. SBV also issued official letter 266/CV-QLNH dated 16/5/2002 to make approval for this loan.			
10.	**VAT refund for Saigon Offshore Fabrication and Engineering Limited** Under VAT regulations, VAT refund must be made when an enterprise has incurred accumulated input VAT amount which is greater than output VAT amount for a period of continuously 12 months or more. The application of VAT refund for enterprises whose deductible VAT amount is from VND 300 million and above is only entitled to investment projects which are being invested and not yet operated or to new investment projects of operating enterprises; or VAT refund on a monthly or quarterly basis is only entitled to export enterprises with dedutible input VAT more	This causes significant difficulties and does not facilitate the development of the shipbuilding industry.	Kindly propose the Ministry of Finance to allow VAT refund applicable to the shipbuilding industry as same as that of regular investment project, i.e VAT shall be refunded when the input VAT amount not yet credited is from VND 300 million and above.	Under the provisions of the VAT, the VAT refund must be made when businesses incurred accumulated input VAT larger than output VAT for 12 consecutive months. And the deduction of 300 million or more only made for investment projects. The enterprises needs clarify for the shipbuilding business. There are 2 subjects involved. One is customer ordering shipbuilding and the other is shipbuilding company. For customers, they must make payment under interim acceptance, received input VAT which is calculated on the amount to be paid and also counted as investment activities and declared creditable, if more than 300 million will be refunded.

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	than VND 300 million for exported goods during a month. For shipbuiling sector, which particularly requires long- lasting production time and huge capital even much larger than those of many new investment projects, there is no guidelines for VAT refund when the investment amount reaches a specific level (similar to a new investment project).			With specific case of the shipbuilding company, we recognized this problem and will consider amendments to the policy to better suit the business. However, problems related to amendment and the opportunity to bring the Law on amendments to the National Assembly is not totally under the control of MOF.
11	Regarding the time of deducting the work value paid to the Vietnamese sub-contractors performing the work portions listed in the Contract signed between the foreign contractor and the Project Owner with the payment value received from the Project Owner.	Some local tax authorities are on the opinion that the foreign contractors are only allowed to deduct the work value performed by the sub-contractors corresponding to the work portions accepted by the Project Owner. The foreign contractors are not allowed to temporarily deduct the actual payment amount to the sub-contractors for the value paid by the Project Owner. Under prevailing regulations, we understand that Corporate Income Tax of the foreign contractors declaring under hybrid method is according to the time of receiving payment and the taxable income is the income after deducting the value performed by the sub-contractors provided that the assigned workload items and the sub-	Proposal: - The foreign contractor shall temporary declare and pay CIT declaration monthly on a basis of the payment received from the Project Owner less the actual payment to the sub-contractors performing the work portions listed in the Contract between the foreign contractor and the Project Owner. The Vietnamese sub-contractors shall issue VAT invoices as well as make tax declaration and payment for the issued invoices. - At the end of the project, the foreign contractor shall finalize CIT for the entire project with the principle of determining the total revenue received from the Project	The company is required to have documents submitted to MOF and GDT to clear this problem and GDT will directly work with the company to handle the corporate income tax deduction for level 1,2,3 subcontractors, the deduction related to equipment and services provision.

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		contractors are listed in the Contract between the main contractor and the Project Owner. Therefore, the foregin contractors temporarily deduct the payment value to the sub-contractors with the value paid to the Project Owner is resonable. At the end of the project, the foreign contractor shall perform the deduction and finalize the value accepted with the Project Owner and the sub-contractors for each corresponding items as prescribed. If local tax authorities do not agree with this opinion, it would cause difficulties for the foreign contractors on their cash flow as well as the progress of the project. Due to the particularities of the construction projects, the foreign contractors should always perform the payment acceptance according to the progress of the sub-contractors before handovers and receive payment acceptance from the Project Owner. Especially, the construction projects is only accepted once by the Project Owner upon the completion of all construction items.	Owner then less the payment value paid to the Vietnamese sub-contractors performing the corresponding work portions listed in the Contract between the foreign contractor and the Project Owner.	

4. Other tax issues

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation

No.	Difficulty/ Obstacles	Influence/Impact	Proposal/Recommendation	
1.	**Export Processing Enterprise (EPE)** Currently, when selling goods into the domestic market, EPE have to pay tax liability at tax rate of the final product. There are some cases in which the tax rate on the final products are higher sharply than on the input raw materials.	EPE are at a disadvantage position compared to non-EPE and this does absolutely not encourage export activities according to Vietnam's commitments when joining WTO. Our neighbors such as Indonesia have solved this issue as follows: in the case EPE can separate imported materials with the materials used in domestic, the EPE will only be taxed on the materials used in domestic based on the corresponding tax rate.	We propose that in the cases EPE can separate materials used to manufacture products sold into domestic and the materials used to manufacture products for export, EPE will enjoy the corresponding tax rates.	
2.	**China's Free Trade Agreement (FTA)**	In the current situation, a number of products such as prefabricated steel if it is exported from China, they will be enjoying import tax rate of 0%, but the tax rate will at 15% or more if they are imported from Korea.	We hope that the Ministry of Finance will consider giving a most favored nation mechanism about imported duties from countries entering a bilateral trade agreement (BTA) with Vietnam. The Ministry of Finance should also consider reducing the imported duties on goods imported from these countries, at least, for the essential raw materials such as materials and equipment used in construction. By as the current situations, Vietnam is encouraging importation from China instead of Japan and Korea.	
3.	**Transparency of databases used by tax authorities in the inspection and audit of transfer pricing** In transfer pricing inspections,	The tax authorities have not published about the source data and the methods used to create source data to the taxpayers to aware and self-determine transferred price when declaring return	- We recommend the MoF to announce clearly and transparently about source data used in transfer pricing inspections - We recommend the MoF to require	We realized that the opinion of enterprise is correct and up to now MOF has built a circular to consult the ministry and department on

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	particularly enterprises operating in the textile sector, the taxpayers usually are imposed profit margin at high level (much higher than the listed enterprises in the same industry) and these fixed rates are not published for the taxpayers to know and abide, it is only presented in internal official letter between The General Department of Taxation and the local tax Departments. Meanwhile, the enterprises are not explained clearly and transparently about the source data used by the tax authorities. *(Quoted from Online Customs newspaper: Doanh nghiệp Hàn Quốc cần minh bạch thông tin chống chuyển giá. Chủ Nhật, 21/12/2014 10:45 GMT+7 http://www.baohaiquan.vn/Pages/Doanh-nghiep-Han-Quoc-can-minh-bach-thong-tin-chong-chuyen-gia.aspx).*	of related transactions information at the incurring time, which affects the transparency of the tax law enforcement. It also puts taxpayers in passive situation and they must pay a tax penalty if being adjusted	the General Department of Taxation and the local tax authorities to regularly update and publish instruction official letter about transferred price to the tax payers to know and apply for compliance with the regulations on the transferred price in related transactions.	some of the content, including content related to this issue. Accordingly, the tax authority when conducting an inspection, examination in enterprises on information management issues always faced mixed views, especially views related to professional management, information management, tax authorities need to discuss with state authorities and business associations to be able to solve the problem in a satisfactory manner. In addition, the organizers have also decided to request the tax authorities to build a database of high legal value as a basis for the fight against transfer pricing.
4.	**Determination of the Permanent Establishment (PE) in Vietnam in transactions on the on spot**	In this case, the foreign party will have obligations about foreign withholding tax on its income from business activities in Vietnam (calculated on the	On the spot export and import transactions are popular activities in international trade as well as all the parties traded in these transactions are	Vietnam tax authority held a meeting with Korean tax authority to discuss a lot of time on the principle to

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	export and import among three parties or more. According to the Official Letter No 1939/TCT-BTC dated 12 June 2013, when the foreign party designates a Vietnamese enterprise to deliver products and goods for another enterprise located in Vietnam under the on spot export and import method, it shall result in the shape of permanent establishment in Vietnam. This issue was raised by VBF at the dialogues with MoF in August 2015, but there has been no general guidance from the MoF yet based on the exchange opinions of Deputy Minister of MOF.	total value of goods sold on the spot for the Vietnamese party), Vietnamese party importing goods on the spot are obliged to withhold and pay tax liabilities on behalf of foreign seller. If this is considered a permanent establishment in Vietnam, the foreign party will not be eligible for foreign witholding tax exemption (for the Corporate income tax) withheld and paid in Vietnam under the Double Tax Avoidance Agreement which Vietnam has signed.	completely independent parties. Therefore, when the foreign party designates for Vietnamese enterprise to deliver goods to another Vietnamese enterprise, it can only be seen as that the Vietnamese party implement its obligations under the contract signed with the foreign party, not must be representative of the foreign party. Hence, any income of foreign party from on the spot export and import transactions will not be divided for Vietnam parties. In other words, the Vietnamese party is an independent party and not a permanent establishment of the foreign party We propose MoF give specific comments to ensure benefits for investors, and in accordance with agreements signed.	determine permanent establishment. However, one party using OECD principles while the other party using the principles of the UN so therefore not yet unified. We will continue to review and report to MOF to completely settle in the future.
5.	**Yamaha Motor Vietnam** is a motorcycle production enterprise, which include the provision of services related to the car is very important, namely the periodic maintenance services. Maintenance services have been included in the sales price and cannot be separated. According to Circular 200		In this case, car maintenance services, although unfinished, enterprise have to pay corporate income tax. This guidance goes against the provisions of Article 3 of Circular 96 that for CIT, time of revenue is recognized at time of service completion. Yamaha Motor Vietnam said that guidelines of Hanoi Tax Department is inconsistent with the provisions of	After the issuance of Circular 200, MOF has received several proposals of business problems including such problem. MOF has been recorcognized and will review the circular to be in line with practice. For the question of the enterprise, the response of

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	issued recently, the service comes with the goods will have to be recorded separately in the bookkeeping. Maintenance services will last for 2 years, so, according to accounting standards, the company cannot record one time but must be recorded within 2 years until the end of the warranty terms. However, Hanoi Tax Department has sent the company a written guidance on paying tax on the entire value invoiced.		Circular 96 and invisible burden for businesses. We respectfully request MOF and GDT for commenting on this issue.	Hanoi Tax Department is appropriate because the nature of issue is not selling services but warranty maintenance obligations associated with the sale of vehicles. Time of taxable revenue recognition is time of vehicles sold.

❖ **Comments from other enterprises:**

Mrs. Huong Vu – Head of Tax Working Group, Vietnam Business Forum

Not only Piaggio but also other enterprises are facing an issue that local authorities when issue investment license have incorporated tax incentives that are not in line with the law. In that case where enterprise has paid CIT and even has issued financial statements, will they be penalized for the arrears of income tax?

Response from Mr. Do Hoang Anh Tuan – Vice Minster of MOF

MOF has cooperated with enterprises that have paid CIT to ensure fairness and also informed competent authorities not to impose tax penalties to these enterprises.

Under the Law on tax administration's regulation, if things happen due to objective reasons, MOF will consider to waive the penalties for the company.

Mrs. Huong Vu – Head of Tax Working Group, Vietnam Business Forum

There are cases where definition of new investment and investment expansion are not clear causing local tax department does not know whether company should be taxed as investment expansion or not? Local tax authorities came to inspect and did not require company to declare additional

tax as investment expansion and the company already paid CIT. However, after 3 years, the local tax department came back and claimed that their previous opinion was incorrect, and company should pay tax under investment expansion regulation. The problem is when the company paid additional tax as required, local tax authority imposed a huge amount of penalty to the sum. We would like to ask the MOF to comment on this.

Response from Mr. Do Hoang Anh Tuan – Vice Minster of MOF

We need to identify cases that fall into the period from 2009 to 2013 when the Government removed investment incentives previously applied to investment expansion. In this case, this is The tax authority has to inspect the tax on that period but then re-inspect and collect arrears. In my opinion, this is force majeure event, in which, enterprises still need to abide by the obligations under tax law, however, penalties occurred shall be eliminated.

5. Conclusion

Mr. Do Hoang Anh Tuan – Vice Minister of MOF

In addition to the issues raised and answered in the meeting today, there are 7 issues that require further actions, including the followings:

- The first problem, MOF will assign the General Department of Taxation together with Tax Policies Division and units of cigarettes industry alcohol industry for early guidance to control the taxable SCT price not below the cap 7%. We will try to resolve before 30/4.
- The second issue is a withholding tax of machinery and software equipment. Currently, for unseparated case, the withholding tax will be calculated at the highest level is 10%. MOF will conduct this content modification, no later than in Q2/2016 to ensure conformity with the reality.
- The third issue is the value-added tax in the field of shipbuilding. With specific case of the shipbuilding unit, we recognized this problem and will consider amendments to a better policy for the business. However, this problem related to repair the law and we don't have the authority to amend.
- The fourth issue related to the interest withholding tax before 01/01/1999. In case will be delivered to GDT and will be discussed with the State Bank of disbursement before considering a new contract then confirm procedures and documents signed between the parties. Based on the response of the central bank, if the central bank agreed with that statement is consistent with the law, we will deliver to the GDT to review, in the case that business has disbursed, signed the contract, has enough documents and accounted, we will settle for the right reality and remain law-abiding.
- The fifth issue we will deliver to GDT as test inspecting some contractors in the region of Thanh Hoa. On that basis, guidelines for contractors level 1, level 2 and level 3 to ensure the accurate and timely collection and not overlap.
- Problem sixth, GDT within 20 days to a month has a guideline for copyright tax.
- The last issue related to determining permanent establishment to determine the tax liability or no tax obligations to perform under the agreement on avoidance of double taxation between Vietnam - Korea and Vietnam - Singapore. Last year, the Ministry of Finance had missions to Korea to discuss the issue but has not come to an agreement. This May 20th, 2016, South Korea will work with Vietnam and will discuss more in this regard. Ministry of Finance hopes can unify soon this issue to guidance to businesses when determining the tax liability.