**SPEECH OF TAX WORKING GROUP & CUSTOMS WORKING GROUP**

*Presented by*

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In recent years, the Government has really paid attention to improve the investment environment, support enterprises, and reform administrative procedures. Enterprises are expecting a lot from an architecting government. However, from our observation, the implementation of investment and tax policies reveals some concerning issues.

1. **Investment protection**

Investment regulation always affirm the principle of investment protection; accordingly, in case under the new regulations, investment incentives are lower than those stipulated in the licenses, the investors are entitled to continue enjoying investment incentives provided in such licenses. However, in practice, there are many cases where enterprises were licensed with specific incentives, but when the tax authorities conducted tax audit and tax inspection, they denied and refused to apply these incentives and even required enterprises to pay additional tax, late payment interest and penalties due to incorrect tax declaration. Such situations often cause great distress among investors as they think that the government disrespects the principle of investment protection, and that the tax authorities are forcing enterprises to take responsibility and suffer the damages for the mistakes made by the governmental authorities themselves.

1. **Complying with the tax philosophy when collecting tax**

Since the tax policies and regulations are amended very frequent and can not be clear and specific in all situations, the implementation of tax policies should be based on reasonableness and the tax philsophy. Nonetheless, in fact, some cases showed that the local tax authorities did not consider the tax philosophy and the nature of transaction but solely relied on the appearance, or due to revenue pressure, has forcefully interpret tax policies in a way benefit to tax collectors.

**VAT refund**: many enterprises have experienced difficulties during VAT refund process. In one case, the General Department of Taxation relied on the fact that the enterprise used the incorrect VAT input declaration form being Form 1 instead of Form 2 to deny a tax refund even though the enterprise had priory amended the declaration in accordance with the guidance of the local tax department. The enterprise has struggled to explain to the General Department of Taxation and even had to work with the Ministry of Industry and Trade to obtain a confirmation that the products of the Project are eligible for tax refund. After more than 6 months since the enterprise explained with the General Department of Taxation, the enterprises have not yet received any official reply. It seems that the tax authorities intend to "avoid" the tax refund for the enterprise**.**

**HS codes:** in another case, post customs clearance audit’s conclusions of customs authority on HS codes for the same imported good are inconsistent at different points of time. The problem is that the customs authorities retroactively collected tax for the previous period while the enterprise applied the HS code follow the conclusion of customs authority at the first post customs clearance audit. In this case, the enterprise fell unfair as they have to bear the consequence of the customs authority’s fault. Moreover, the enterprise will be very worry and don’t know how to implement other guidance from customs authority, as they cannot be assured that they will not be penalized in the future even if they comply with these conclusions and guidance.

**Dutiable value**: there are cases where importer was imposed higher dutiable value by customs authority based on administrative errors such as not filling appropriate items on the customs declaration. After duly going through the appeal process, the unfair decision on imposing taxes above has been revoked. However, the customs authority has been delaying for many months and not taking any action to correct their mistakes and solve the issue for the enterprise. Consequently, the enterprise has a huge pending tax amount overpaid to customs. This issue seriously impacts the implementation process of the enterprise’s investment project.

**PIT**, many enterprises have encountered problem related to the formula to convert after-tax income to before-tax income. Previously, the enterprises applied the formula as officially guided by the Ho Chi Minh Tax Department. However, later at tax audit/tax inspection stage, the General Department of Taxation provided a totally different guidance and requested the retroactive application for the previous period. Such retrospective application requirement resulted in not only additional PIT liability but also interest for late payment and administrative penalty for incorrect tax declaration for the enterprises.

1. **Sanctions for tax officers**

The current laws provided regulations that the State being responsible for paying compensation to the damage of enterprises for unlawful acts of state agencies, as well as regulations on disciplining of tax and customs officers who violate regulations. However, in practice, tax authorities make mistakes, tax officers are irresponsible f causing losses to the enterprises but do not conduct any compensation to enterprises.

In addition, we also find that the current tax law does not yet have specific regulations for acts of promulgating documents, decisions, official letters with unlawful contents, improper authority, or contradictory content for the same issue. Hence, the lack of prudence of tax officials in the preparation of documents happens more frequent.

1. **Administrative procedures to reduce tax compliance time**

To promote the reform of administrative procedures, tax authorities are currently using the Tax Management System (TMS) to manage tax debts of enterprises. This system will automatically calculate the amount of tax levies, interest on late payment based on tax return of enterprise. However, sometimes,, there are debts “automatically” appear in system that even the tax authorities are not aware of and cannot explain to the enterprises. This cause the enterprises a lot of time to confront, and explain to the tax authorities. Enterprises have to travel dozens of times during the whole year to fix it.

***Suggestions:***

* Tax authorities must strictly comply with all their commitments to investors and respect the law;
* Tax authorities should base on the nature of transactions to assess tax obligation of enterprise and should not stick to administrative errors and ignore entirely the nature of transaction.
* There should be a clear sanction for tax officers when they wrongly implement as well as issue unlawful documents so that tax officers can be more responsible for their own decisions.
* There should be a hot line to receive feedbacks and answer queries of enterprises. Especially those who are in charge of answering queries should be really knowledgeable about tax laws or competent enough to contact with functional departments to thoroughly solve the questions of enterprises.