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## AUTOMOTIVE WORKING GROUP REPORT

*Prepared by  
Automotive Working Group  
Vietnam Business Forum*

The Automotive Working Group – Vietnam Business Forum comprises interests of the following sub sections of the industry:

- a) Four Wheelers (Passenger Cars and Commercial Vehicles)
  - i. CKD (Local Assembly/Manufacturers)
  - ii. CBU (Import)
  
- b) Two Wheelers (Scooters/Motorbikes)

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**We would like to express our high appreciation for the Government’s Resolution No. 19/2015/NQ-CP dated 12 Mar. 2015, No. 19/2016/NQ-CP dated 28 April 2016 and Gov’t Resolution 35/2016/NQ-CP dated 16 May 2016 to improve business environment, national competitiveness and support enterprise development including startup stage. We specially thank the Government’s specific instructions, MOF’s and MOIT’s efforts in tax laws including special consumption tax (SCT) and issuance of PM’s decision 229/QD-TTg dated February 4th 2016. This reinforces the interest of the Government to the development of the Vietnam automobile industry by enabling healthy competition and promoting a level playing field for all players.**

### **I. FOUR WHEELER INDUSTRY (CKD/CBU)**

Thanks to the Government’s efforts in addressing our raised issues and the remarkably increasing economy growth this year, it is estimated that automotive market size may reach over 300,000 units (including CKD and CBU vehicles) in 2016 (increase by over 22%). Even so, the growth in the overall automotive sector with more than 20 players and 40 brands in Vietnam has not been as per expectations of both- the investors and the Government in reference with the total available assembly capacity of ~500,000 units/year. The current total Industry structure of CKD and CBU vehicles with the CKD being approx. 74% of the industry, the overall capacity utilization is a mere ~45%. Lack of sub optimal capacity utilization to grow has hurt the investor confidence and also questioned the future returns for new investments.

A key factor to attract investment in a country is to grow the overall size of the market and drive cost competitiveness of the CKD and Component industry.

In addition to adding automobile and its supporting industries in the incentive investment sector list and proposing some tax policy review recently, the Government of Vietnam should consider further steps to accelerate growth of the overall industry and to drive cost competitiveness of CKD to maintain a sustainable automotive industry in Vietnam. These factors will lead to suppliers and investors coming to Vietnam and support the growth and development of the industry.

In this part, we would like to emphasize on the four main issues as below:

## **1. Automobile business is needed to add in the list of conditional business lines in the investment law**

Automobile is a complicated, high technology product and automobile quality is highly related to traffic safety and environment protection, so that professional service and maintenance is required to ensure vehicles always are in good quality during their long service life. MOIT's circular No. 20/2011/TT-BCT (circular 20) dated on 12th May 2011 has been playing well its important role in protection of consumers' rights and ensure traffic safety and environment protection as stated in the purpose of this circular. We would like to express our deep concern on serious impact to consumer's rights as well as traffic safety and environment protection if Government does not have any relevant alternative measure taken in place as soon as the circular 20 expires.

With support from OEM (Original Equipped Manufacturer), authorized distributor confirms vehicle's usage condition and prepares not only for sales, but also for after-sales service, so that they can provide periodic maintenance, repair service, warranty and recall for official import vehicles.

Without any support from OEM, unofficial importers cannot provide after-sales service properly, so vehicle quality is not maintained appropriately during its long service life.

### **Recommendations**

With above mentioned reasons, VBF would like to propose Government to add automobile business into annex 4 of the investment law which is a list of businesses subject to conditions to protect consumer's rights, traffic safety and environment.

## **2. Fuel must be aligned with emission required for motor vehicles and available in the market before emission level is required**

VBF would like to express our deep concern on Euro4 emission implementation, which was scheduled to start from January 1st, 2017 as required by Prime Minister's decision No. 49/2011/QĐ-TTg (Decision 49). It is totally unclear for us because Euro 4 fuel introduction has not confirmed yet, while only more than 02 months remains.

In line with Government direction of environment protection and perusal to the decision 49, automakers have seriously prepared during the last 06 years and now they are ready to upgrade from Euro 2 engines to Euro 4 engines before 1st January 2017. However, until now Euro 4 fuel has not yet supplied to the market. We very much concerned about using Euro 4 engines with Euro 2 fuel will cause serious impacts on performance and durability of the engine, as well as on emission of the vehicle; impacting to environment protection and benefit of vehicle consumers.

The impact is even more serious for diesel engines, especially big diesel engines using for buses and trucks. They are very much concerned about this issue because until now there is no detail information of Euro 4 fuel introduction roadmap: by when, which province, how many fuel stations?

Due to this concern and a long awaiting for Euro 4 fuel introduction, some makers have to delay their preparation for Euro 4 diesel vehicle introduction. And it would take them around 1 year for restart the preparation for Euro 4 diesel vehicle introduction from planning, ordering to homologation and production.

In order to implement Decision 49, contribute to environment protection and for consumer benefits, we would like to submit our proposal to H.E. Prime Minister regarding Euro 4 implementation as follows:

- Euro 4 emission roadmap:
  - For gasoline vehicle is from 1st January 2017 (no change vs. Decision 49)
  - For diesel vehicle is from 1st January 2018 (delay for 1 year)
- Euro4 fuel introduction roadmap:
  - Issue Euro 4 fuel introduction roadmap and ensure supply of Euro 4 fuel to the nationwide market before above Euro4 emission application time (for gasoline fuel is before 1st January 2017; for diesel fuel is before 1st January 2018)
  - To prevent mistaken fuel to vehicles as well as possible fraudulence in fuel supply, it is recommended to fully replace Euro 2 fuel with Euro 4 fuel.

### **3. Lubricant oils should be allowed to import and distribution by any enterprise established under Vietnam law**

Automakers consider oils/lubricants (oil) as necessary parts for CKD production at factory and service parts at dealers. Many automakers has been started oil import and distribution since their establishment 1995-1996. However, according to MOIT circular No. 34/2013/TT-BCT, FDI automakers are not allowed to import & distribute oil including Lubricant oils.

VBF would like to propose Government to allow automakers to continue their import and distribution business for oil/lubricant products which be used in their production and after-sale service.

### **4. Policy for development of automobile industry and its supporting industries:**

Due to disadvantages of small production and economic scales, and importing most of CKD parts, manufacturers need to owe the logistics and packaging cost, and import duty. That is why, domestic production costs are higher than those assembled in Thailand or Indonesia. This production cost gap may go up to approx. 20% after 2018 when ASEAN FTA tariff exemption for vehicles.

Consequently, local automotive makers will face a difficult situation to continue domestic production due to inflow of many import cars coming from Thailand and Indonesia, which has strong cost competitiveness.

Production incentive policy mentioned in Article 5-1 of Prime Mister's decision No. 229/QD-TTg dated February 4th 2016, is very important measure for automobile companies. However, the current policy is unclear and difficult for companies to prepare project proposal to enjoy such incentives.

### **Recommendations**

- Eliminating all MFN import duty for automotive parts that Vietnam has not yet produced to improve cost competitiveness for keeping local production.
- Applying stricter control and enforcing transparency on import of CBU vehicles
  - Verify declared value of imported cars
  - Tighten the control of "Used Car" import

- Clarifying the contents and requirement of production incentives mentioned in PM 's decision 229/QD-TTg.
- Issuing relevant policy more attractive to accelerate development of supporting industries for automobiles.

## **II. TWO WHEELER INDUSTRY (Scooters and Motorcycles)**

### **1. FCT-VAT portion charged on income from transfer the right to use trademark**

Relating to VAT portion of withholding tax charged on income of foreign contractors from transfer the use rights to use of trademark, the guidance of the state agencies in the previous period were not consistent. Specifically, from Official No.4153/TCT-CS of the GDT dated 02/12/2013 guiding this activity not subject to VAT, to Official No.631 guiding this activity subject to 5% VAT and recently, under Official No.10453/BTC-CST dated 27/7/2016, foreign contractors royalty income from transfer the use rights of trademark shall be subject to withholding tax in Vietnam under the corporate income tax rate of 10% and VAT rate of 5% (in the case of the supplier declaration and payment of withholding tax in Vietnam according to the credit method) or 10% VAT (in the case of contractor to declare and pay withholding tax in Vietnam according to the hybrid method or VAS).

However, the latest Official No.10453/BTC-CST dated 27/7/2016 does not mention the effective date of the above applicable tax rates on taxable income of foreign contractors, for example, being applied from the date of Official letter issuing - dated 27/07/2016; or enterprises must be re-collected by force applying to date 01/10/2014 under Circular No.103/2014/TT-BTC; or need to calculate the tax liability retrospectively even for previous periods.

#### **Recommendation:**

Due to the inconsistency instructions of the state agencies, the enterprises actually have been facing many difficulties and problems when determining the tax obligations. Meanwhile, VAT is indirect tax, the company pay VAT on behalf of foreign contractors, which then will be deducted from the VAT payable obligations of later month, thus, the total VAT obligation after deduction is equal to zero. Therefore, to reduce time spending to review and adjust the tax declaration, we would like to suggest the date of applying tax rates under the guidance of the Ministry of finance (MoF) is the issuing date of the MoF dispatch this instruction, which is 27/07/2016. In case of retrospective application of this guidance, we respectfully request the MoF to clarify the date of application and **not charge interest of late tax payment** due to unprejudiced factors and to allow enterprise to claim additional VAT incurred as deductible input VAT.

### **2. Assurance of investment**

Chapter II: Law on Investment clearly state regulation on assurance of investment, in which Article 13 confirm:

*"1. Where a new law that provides more favorable investment incentives that those currently enjoyed by investor is promulgated, investors shall enjoy the new incentives for the remaining period of the incentive enjoyment of the project.*

*2. Where a new law that provides less favorable investment incentives that those currently enjoyed by investor is promulgated, investors shall keep enjoying the current incentives for the remaining period of the incentive enjoyment of the project."*

Article 3, Decree 118 also provide further guidance:

1. *Where a new legislative document promulgated by a competent authority changes investment incentives that have been applied to investors before such document comes into force, investors shall have their investment incentives guaranteed in accordance with Article 13 of the Law on Investment.*

2. *Guaranteed investment incentives mentioned in Clause 1 of this Article are incentives to which an investor is entitled according to legislative documents applicable before the effective date of the new legislative document, including:*

a) *Investment incentives specified in an Investment License, Business License, Investment Incentive Certificate, Investment Certificate, Investment Registration Certificate, decision on investment guidelines, or other documents issued by a competent authority;*

b) *Investment incentives to which the investor is entitled as prescribed by law other than those specified in Point (a) of this Clause.*

The Law and Decree clearly provide the rule on investment assurance. In which, the law and decree also affirm that the incentive to be assured is the incentive given in licenses which were granted by Licensing authority. However, in practice, recently we observe this rule is not properly implemented.

### **Recommendation**

This rule should be reinforced and respected to ensure to good condition and a healthy investment environment for investors.

### **3. Penalty on late payment of tax: inconsistency in prevailing regulations**

Point 9, Article 2, Circular 26/2015/TT-BTC dated 27/02/2015:

*“e) If the taxpayer’s insufficient tax declared before January 01, 2015 is found by the tax authority after January 01, 2015 during inspection or by the taxpayer, late payment interest shall be charged an interest at 0.05% per day on the deficit of tax payable until tax is fully paid”*

Clause 3, Article 3, Circular 130/2016/TT-BTC dated 12/08/2016 amends as follows:

*“e) If a taxpayer declares tax inadequately for a tax period before July 01, 2016 though such incident is exposed by a competent government authority through inspection or is voluntarily detected and announced by the taxpayer after July 01, 2016, late payment interest shall be imposed at the rate of 0.05% per day (or another rate defined in legislative documents from time to time) from the payment deadline as defined in the laws to the 30th of June 2016 inclusive. However, the daily rate of late payment interest, from July 01, 2016 to the date that the taxpayer pays the tax to the state budget, is 0.03% of the insufficient amount of tax.”*

We understand that the Ministry of Finance always tries to issue detailed guidelines to support enterprises complying well their tax obligation with the Government. However, there has been a conflict between legal documents issued at different times when stipulating 01 issue, which results in the concern and worry for enterprises about the basis to determine the late payment interest they are required to pay to the State Budget, specifically:

On 27/12/2015, the Ministry of Finance issued Circular 26/2015/TT-BTC guiding in details the method to determine late payment interest as below:

*“e) If the taxpayer’s insufficient tax declared before January 01, 2015 is found by the tax authority after January 01, 2015 during inspection or by the taxpayer, late payment interest shall be charged an interest at 0.05% per day on the deficit of tax payable until tax is fully paid.”*

Accordingly, we understand that since 01/01/2015, the late payment interest is 0.05% on the insufficient tax, not differentiating the tax adjustment for which period. However, the Circular 130 stipulates that if insufficient tax amount paid to the State Budget is found, the enterprise should apply the late payment interest as regulated for each period, specifically, the tax period from 01/07/2014 to 31/12/2014, the late payment interest to be charge will be 0.07% on the understated tax payable since the 91th day. Therefore, for 01 issue on the determination of late payment interest, 02 legal documents have different guidance, which results in the difficulty for enterprises to calculate the late payment interest.

### **Recommendation**

We propose the Ministry of Finance should issue consistent guidance for cases so that the enterprises can comply well and sufficiently with their tax obligation to the State Budget. Regarding the inconsistency in the determination of late payment interest, the Ministry of Finance should issue consistent guidance for local tax departments in provinces and cities to implement.

## **III. COMMON ISSUES ACROSS TWO WHEELER / FOUR WHEELER VEHICLES**

### **1. Improved road safety needs**

Although 4 wheelers are safer than 2-wheelers, the era of motorization will also bring its own potential challenges –a key challenge being “safety requirements” (e.g. driving skills and traffic rule compliance, vehicle safety features, upgraded infrastructure, etc.)

Therefore, the Government should approach safety from the aspects of:

- People (compliance attitudes and skills of drivers, passengers and other traffic attendants),
- Vehicles (step-by-step enhancing vehicle safety features in line with regional level)
- Further improve traffic infrastructure status (including road, parking and traffic control system, etc.).

Since the issues in the above area need longer gestation time frames, we recommend that the Government should start to develop a joint forum inviting a comprehensive dialogue from different ministries – MOST/MOF/MOT (VR) etc. to discuss and develop a policy framework with key parameters and milestones for the automotive industry of Vietnam.

## **IV. OVERALL CONCLUSION**

Joint working and cooperation with industry bodies like VBF to address the situation in the automotive sector will help in having inclusive growth policies that will develop the overall industry and serve to increase tax revenue for the Government.

The players in the automotive industry are committed to develop the industry in Vietnam and we request the Government to consider the above mentioned key factors for both -Two wheeler and Four wheeler vehicles (CBU-CKD).

Thank you.